

Country Report: Spain



Accem

**2022
Update**

Acknowledgements & Methodology

Since 2018 and up to 2022, updates of this report were written by Teresa De Gasperis at Accem and were edited by ECRE. The 2017 update was written by Teresa De Gasperis, Jennifer Zuppiroli and Laura Carrillo at Accem, and was edited by ECRE. The first version of this report was written in 2016 by Magdalena Queipo de Llano and Jennifer Zuppiroli at Accem, and was edited by ECRE.

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

The information in this report is up-to-date as of 31 December 2022, 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.



This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.



Table of Contents

Glossary & List of Abbreviations	6
Statistics	7
Overview of the legal framework	8
Overview of the main changes since the previous report update.....	12
Asylum Procedure	16
A. General	16
1. Flow chart	16
2. Types of procedures	17
3. List of authorities that intervene in each stage of the procedure	17
4. Determining authority	18
5. Short overview of the asylum procedure	18
B. Access to the procedure and registration	21
1. Access to the territory and push backs	21
2. Registration of the asylum application	48
C. Procedures.....	54
1. Regular procedure	54
2. Dublin	62
3. Admissibility procedure	65
4. Border procedure (border and transit zones)	67
5. Accelerated procedure	72
D. Guarantees for vulnerable groups	73
1. Identification.....	73
2. Special procedural guarantees	84
3. Use of medical reports	85
4. Legal representation of unaccompanied children	85
E. Subsequent applications.....	87
F. The safe country concepts.....	88
1. Safe third country	88
2. Safe country of origin	89

G.	Information for asylum seekers and access to NGOs and UNHCR.....	89
1.	Provision of information on the procedure.....	89
2.	Access to NGOs and UNHCR	90
H.	Differential treatment of specific nationalities in the procedure	91
	Reception Conditions.....	96
A.	Access and forms of reception conditions.....	97
1.	Criteria and restrictions to access reception conditions.....	97
2.	Forms and levels of material reception conditions.....	102
3.	Reduction or withdrawal of reception conditions	103
4.	Freedom of movement	104
B.	Housing.....	106
1.	Types of accommodation	106
2.	Conditions in reception facilities	108
C.	Employment and education.....	116
1.	Access to the labour market.....	116
2.	Access to education	117
D.	Health care	118
E.	Special reception needs of vulnerable groups.....	120
F.	Information for asylum seekers and access to reception centres	128
1.	Provision of information on reception.....	128
2.	Access to reception centres by third parties.....	128
G.	Differential treatment of specific nationalities in reception	128
	Detention of Asylum Seekers	130
A.	General.....	130
B.	Legal framework of detention	135
1.	Grounds for detention.....	135
2.	Alternatives to detention.....	136
3.	Detention of vulnerable applicants.....	137
4.	Duration of detention.....	138
C.	Detention conditions	138
1.	Place of detention	138

2. Conditions in detention facilities	140
3. Access to detention facilities.....	146
D. Procedural safeguards	146
1. Judicial review of the detention order.....	146
2. Legal assistance for review of detention	147
E. Differential treatment of specific nationalities in detention	147
Content of International Protection	149
A. Status and residence	149
1. Residence permit	149
2. Civil registration	151
3. Long-term residence	151
4. Naturalisation.....	152
5. Cessation and review of protection status.....	153
6. Withdrawal of protection status.....	154
B. Family reunification	155
1. Criteria and conditions.....	155
2. Status and rights of family members.....	158
C. Movement and mobility	159
1. Freedom of movement	159
2. Travel documents.....	159
D. Housing.....	159
E. Employment and education.....	161
1. Access to the labour market	161
2. Access to education	163
F. Social welfare.....	164
G. Health care	165
ANNEX I – Transposition of the CEAS in national legislation	166

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
DGSAPIT	Directorate General for the International Protection and Temporary Protection Reception System Dirección General del Sistema de Acogida de Protección Internacional y Temporal
ECCHR	European Centre for Constitutional and Human Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Act
ERIE	Emergency Immediate Response Teams Equipos de Respuesta Inmediata en Emergencia
EUAA	European Union Agency for Asylum
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
TP	Temporary Protection Protección Temporal
TPD	Temporary Protection Directive
UTS	Social Work Unit Unidad de Trabajo Social
VIS	Visa Information System
UNHCR	United Nations High Commissioner for Refugees

Statistics

Overview of statistical practice

Statistics in Spain are collected by the Office on Asylum and Refuge (OAR), and published on an annual basis by the Ministry of Interior.

Applications and granting of protection status at first instance: 2022

	Applications lodged in 2022	Pending for admission at 1 st instance at end of 2022	Pending for decision at end of 2022	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Sub. Prot. rate	Hum. Prot. rate	Rejection rate
Total	118,842	29,883	92,152	6,830	7,405	20,924	51,838	7.9%	8.5%	24%	58.6%

Breakdown by countries of origin of the total numbers

Venezuela	45,748	-	-	-	-	-	-				
Colombia	36,012	-	-	-	-	-	-				
Peru	8,937	-	-	-	-	-	-				
Morocco	3,905	-	-	-	-	-	-				
Honduras	3,017	-	-	-	-	-	-				

Source: Ministerio del Interior, Subsecretaría del Interior, *Dirección General de Política Interior, Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022*, January 2023, available at: <https://bit.ly/3KC9Feg>.

*"Rejection" covers negative decisions on the merit of the application, not inadmissibility decisions.

**Applicants in year" refers to the total number of applicants, and not only to first-time applicants.

The Spanish Ministry of Interior also provided limited statistical information at the beginning of 2023.¹ According to the latter, a total of 118,842 persons applied for international protection in Spain in 2022. The top 5 countries of origin were **Venezuela** (45,748), **Colombia** (36,012), **Peru** (8,937), **Morocco** (3,905) and **Honduras** (3,017).

¹ Ministerio del Interior, Subsecretaría del Interior, *Dirección General de Política Interior, Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022*, January 2023, available at: <https://bit.ly/3KC9Feg>.

As regards decision making at first instance, a total of 51,838 applications were rejected, while the refugee status was granted to 6,830 persons, subsidiary protection to 7,405 persons and 20,924 were granted protection for humanitarian reasons.

The top 5 countries of persons granted any form of *international protection* (refugee status and subsidiary protection) in 2022 were **Mali** (4,883), **Afghanistan** (1,535), **Ukraine** (1,337), **Syria** (1,297), and **Colombia** (658), while the top 5 countries of persons who were granted *protection for humanitarian reasons* were **Venezuela** (20,580), **Colombia** (193), **Peru** (26), **Panama** (23) and **Chile** (18).

The top 5 countries of applications *rejected* were **Colombia** (15,336), **Venezuela** (10,431), **Morocco** (3,542), **Honduras** (3,062) and **Senegal** (2,261).

Gender/age breakdown of the total number of applicants: 2022

	Number	Percentage
Total number of applicants	118,842	
Men	64,219	54.04%
Women	54,623	45.96%
Children	21,309	17.93%
Unaccompanied children	N/A	N/A

Source: Ministerio del Interior, Subsecretaría del Interior, *Dirección General de Política Interior, Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022*, January 2023, available at: <https://bit.ly/3KC9Feg>.

Note: The gender breakdown (Men/Women) applies to all applicants, not only adults. The number of children includes both girls and boys.

Comparison between first instance and appeal decision rates: 2022

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

Overview of the legal framework

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

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

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

Title (EN)	Original Title (ES)	Abbreviation	Web Link
Royal Decree 1325/2003 of 24 October 2003 approving the Regulation on a regime of temporary protection in case of mass influx of displaced persons Official Gazette No 256, 25 October 2003	Real Decreto 1325/2003, de 24 de octubre, por el que se aprueba el Reglamento sobre régimen de protección temporal en caso de afluencia masiva de personas desplazadas BOE núm. 256, de 25 de octubre	Temporary Protection Regulation	http://bit.ly/1QBTjuN (ES)
Royal Decree 203/1995 of 10 February 1995 approving the Regulation implementing Law 5/1984 of 26 March 1984, regulating the law of asylum and criteria for refugee status, as amended by Law 9/1994 of 19 May 1994.	Real Decreto 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley 5/1984, de 26 de marzo, reguladora del Derecho de Asilo y de la condición de Refugiado, modificada por la Ley 9/1994, de 19 de mayo.	Asylum Regulation	http://bit.ly/21x75H7 (ES)
<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/2BXCNTl (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/OtwlX6 (ES)
Royal Decree 164/2014 of 14 March 2014 on the regulation and functioning of internal rules of the CIE Official Gazette No 64, 15 March 2014	Real Decreto 164/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los CIE. BOE núm. 64, de 15 de marzo	CIE Regulation	http://bit.ly/1WRxts0 (ES)
Framework Protocol for protection of victims of human trafficking, adopted by agreement between the Ministers of Justice, Home Affairs, Employment and Social Security, Health, Social Services and	Protocolo Marco de Protección de las Víctimas de Trata de Seres Humanos, adoptado mediante acuerdo de 28 de octubre de 2011 por los Ministerios de Justicia, del Interior, de Empleo y Seguridad Social y de Sanidad, Servicios	Framework Protocol on Trafficking	http://bit.ly/2sqgZDi (ES)

Equality, the Office of the Attorney General and the State Judicial Council on 28 October 2011	Sociales e Igualdad, la Fiscalía General del Estado y el Consejo del Poder Judicial		
Resolution of 13 October 2014 on the Framework Protocol on actions relating to foreign unaccompanied minors Official Gazette No 251, 16 October 2014	Resolución de 13 de octubre de 2014, de la Subsecretaria, por el que se publica el Acuerdo para la aprobación del Protocolo Marco sobre determinadas actuaciones en relación con los Menores Extranjeros No Acompañados BOE núm. 251, de 16 de octubre	Framework Protocol on Unaccompanied Children	http://bit.ly/1WQ4h4B (ES)
Royal Decree 497/2020 of 28 April establishing the organic structure of the Minister of Inclusion, Social Security and Migration	Real Decreto 497/2020, de 28 de abril, por el que se establece la estructura orgánica del Ministerio de Inclusión, Seguridad Social y Migraciones.		https://bit.ly/3sACM69 (ES)
Royal Decree 220/2022 of 29 March which approves the Regulation governing the international protection reception system	Real Decreto 220/2022, de 29 de marzo, por el que se aprueba el Reglamento por el que se regula el sistema de acogida en materia de protección internacional	Asylum Reception Regulation	https://bit.ly/3QR8SHo (ES)

Overview of the main changes since the previous report update

The last version of this report was updated in **April 2022**.

International protection

Asylum procedure

- ❖ **Access to territory and pushbacks:** In 2022, 31,219 migrants arrived to Spain by land and sea, which represents a decrease of 25.6% compared to the 41,945 arrivals in 2021. While the arrivals to mainland and the Canary Islands decreased in 2022, the number of persons who arrived to Ceuta and Melilla increased compared to the previous year.
Pushbacks practices continued in 2022. At the beginning of March, around 2,500 people attempted to enter Melilla by jumping the fence, and almost 500 managed to access to the enclave. Many organisations denounced the violence used by the police against migrants that attempted the jump, which resulted in about 20 people being hospitalised and 30 pushed-back. On 24 June, around 2,000 persons attempted to enter Melilla from Morocco by jumping the fence, resulting in 37 persons dead and hundreds injured, while 133 individuals managed to enter the Spanish enclave. Different organisations expressed concerns regarding the use of indiscriminate violence in border management activities. In addition, various organisations, migrants' groups, political parties, and institutions asked for an independent investigation to be carried out to clarify the situation and to ascertain political accountability.
- ❖ **Situation on the Canary Islands and in the Mediterranean:** Regarding the number of deaths in the Mediterranean, several figures have been reported. The NGO *Caminando Fronteras* (Walking Borders) estimated that 2,390 persons died while reaching Spain in 2022, being 1,784 those who lost their life in the Canary route. It further reported that 288 of victims were women, 101 were children, and that a total of 64 vessels disappeared with all persons on board. In addition, according to the organisation, 11,522 persons died at the Euro-African Western border from 2018 to 2022; that means an average of 6 deaths per day.
- ❖ **Key asylum statistics:** A total of 118,842 persons applied for international protection in Spain in 2022. Venezuela, Colombia, Peru, Morocco and Honduras were the top five nationalities of applicants. Among them, 54.04% were men, while 45.96% were women. As regards decision making at first instance, a total of 51,838 applications were rejected, while the refugee status was granted to 6,830 persons, subsidiary protection to 7,405 persons and 20,924 were granted protection for humanitarian reasons. The recognition rate remained low, with only around 16% of cases being recognised international protection. It should however be highlighted that the overall recognition rate reaches more than 40% if decisions granting humanitarian protection are taken into account. The top 5 countries of persons granted any form of international protection (refugee status and subsidiary protection) in 2022 were Mali, Afghanistan, Ukraine, Syria, and Colombia. At the end of the year, 92,152 applications were still pending at first instance.
- ❖ **Partial reform of the definition of 'refugee':** In February 2023, Article 3 of the Asylum Law was modified by the law for the equal opportunities of transgender persons and guarantees of rights of LGBTI people, in relation to the definition of 'refugee', by the introduction of 'gender identity' as a ground of persecution.
- ❖ **Automatic suspension of the expulsion procedure while waiting for the asylum decision:** In December 2021, the High Court (*Tribunal Supremo*) issued a decision establishing that an application for international protection implies the automatic suspension of the return procedure for cases of irregular stay, until the competent asylum authorities issue a decision which rejects or declares the application inadmissible. This means that the expulsion or return order cannot be executed before a decision on the asylum application has been taken, because during the decision-making period of the asylum application is not possible to consider the stay as irregular.

- ❖ **Delays in the appointments for registering the asylum application:** During 2022, asylum seekers faced many challenges and long waiting times for obtaining an appointment to express their intention to applying for asylum and for formalising the application, mainly due to a lack of appropriate resources. The selling of appointments on the black market was also reported, arriving to the point of having offers published also in Wallapop. The UNHCR's Representative defined the situation regarding access to asylum in Spain as critical.

Reception conditions

- ❖ **Reforming the reception system:** In March 2022, the Government adopted the Royal Decree 220/2022 of 29 March, approving the Regulation governing the international protection reception system. The new Regulation entered into force on 31 March 2022.
- ❖ **Enhancing the asylum reception system:** To improve the asylum reception system, the Government established it would allocate a total of 190 million Euros between 2021 and 2023 within the Recovery and Resilience Plan. In October 2022, the Government announced that 215 million Euros of the Plan would be used to build 17 reception facilities for migrants and asylum seekers, with a capacity of 6,100 places.
- ❖ **Developing mechanisms for preventing and responding to GBV within the asylum reception system:** UNHCR supported the Ministry of Inclusion, Social Security and Migrations (MISSM) and NGOs managing reception centres for refugees and asylum seekers in the implementation of national standard operating procedures to prevent and respond to gender-based violence in the reception system, enhancing the reception personnel capacity to adequately detect, refer, and intervene in GBV cases with a survival-centre approach. Some guidelines (data collection tool, pocket guide, a leaflet for professionals, and posters and leaflets for refugees, asylum seekers and stateless persons) were developed. A plan to disseminate the guidelines through targeted trainings will be rolled out in 2023.
- ❖ **Discrimination and hate crimes:** Discrimination and hate crimes against migrants and refugees continued to be a reason of concern in 2022, as they continued to face xenophobia and racism in different contexts (i.e. public transport, education, shops, etc.). Unaccompanied migrant children and LGTBQI+ persons kept on being the target of such crimes.

Detention of asylum seekers

- ❖ **Conditions at the CIEs and the CATEs:** The Spanish Ombudsman continued to urge the adoption of a regulation for the CIEs and the CATEs. In addition, the Supervising Judges of the CIE of Aluche (Madrid) agreed on a set of measures to improve the health assistance provided to inmates at the facility, such as allowing the use of the infirmary during the night, the provision of psychological assistance and the introduction of digital health records. A protocol to report ill-treatment towards to inmates and to guarantee effective judicial remedies has been also recommended.
- ❖ **Access to medical assistance in detention:** Concerns on access to medical assistance have been expressed by different stakeholders. In particular, in its 2022 annual report on the situation of CIEs, the Jesuit Migrant Service highlighted the main deficiencies of medical services, such as the medical examinations carried out at the presence of the police, the lack of mental health assistance, the isolation regime for COVID19 cases, the lack of interpreters during medical assistance, etc.

Content of international protection

- ❖ **Access to rights:** Asylum seekers, migrants and refugees continued to face challenges in accessing rights, especially housing, employment, and financial services, partially due to discriminatory practices. Following a visit carried out in Spain, the Council of Europe Commissioner for Human Rights called on the Government to improve the human rights of migrants and asylum seekers, especially in relation to accessing social rights, including housing and health care.

Temporary protection

The information given hereafter constitute a short summary of the Spain Report on Temporary Protection, for further information, see Annex on [Temporary Protection](#).

Temporary protection procedure

- ❖ **Scope of temporary protection:** Following the outbreak of war in Ukraine, the Spanish Government started to design a more flexible and simple mechanism for providing protection to persons fleeing the country, without the necessity for them to lodge an asylum application. In March 2022, the Government adopted two orders extending the temporary protection to Ukrainian nationals, persons and stateless persons legally residing in Ukraine, Ukrainians staying (regularly or irregularly) in Spain before 24 February 2022, and their family members, and detailing the procedure to grant such status. According to such orders, the decision granting temporary protection is adopted by the OAR in 24 hours from the lodging of the application.
- ❖ **Non-refoulement:** In December 2022, the Supreme Court (*Tribunal Supremo*) granted protection to a Ukrainian family with an expulsion order, and established the criteria that, due to the situation in Ukraine, all Ukrainians living in Spain can automatically invoke the protection from the principle of non-refoulement, without the necessity to lodge an application for temporary protection.
- ❖ **Key statistics on temporary protection:** During 2022, the Asylum Office granted temporary protection to 161,037 persons fleeing from Ukraine. The permits granted until 16 January 2023 were 163,140. 63% of beneficiaries were women and 37% men; 33% of the total number of beneficiaries were children.
- ❖ **Registration:** Regarding the registration of applications, the Government has foreseen the possibility of apply for temporary protection both directly at the CREADE and in designated police stations.

Content of temporary protection

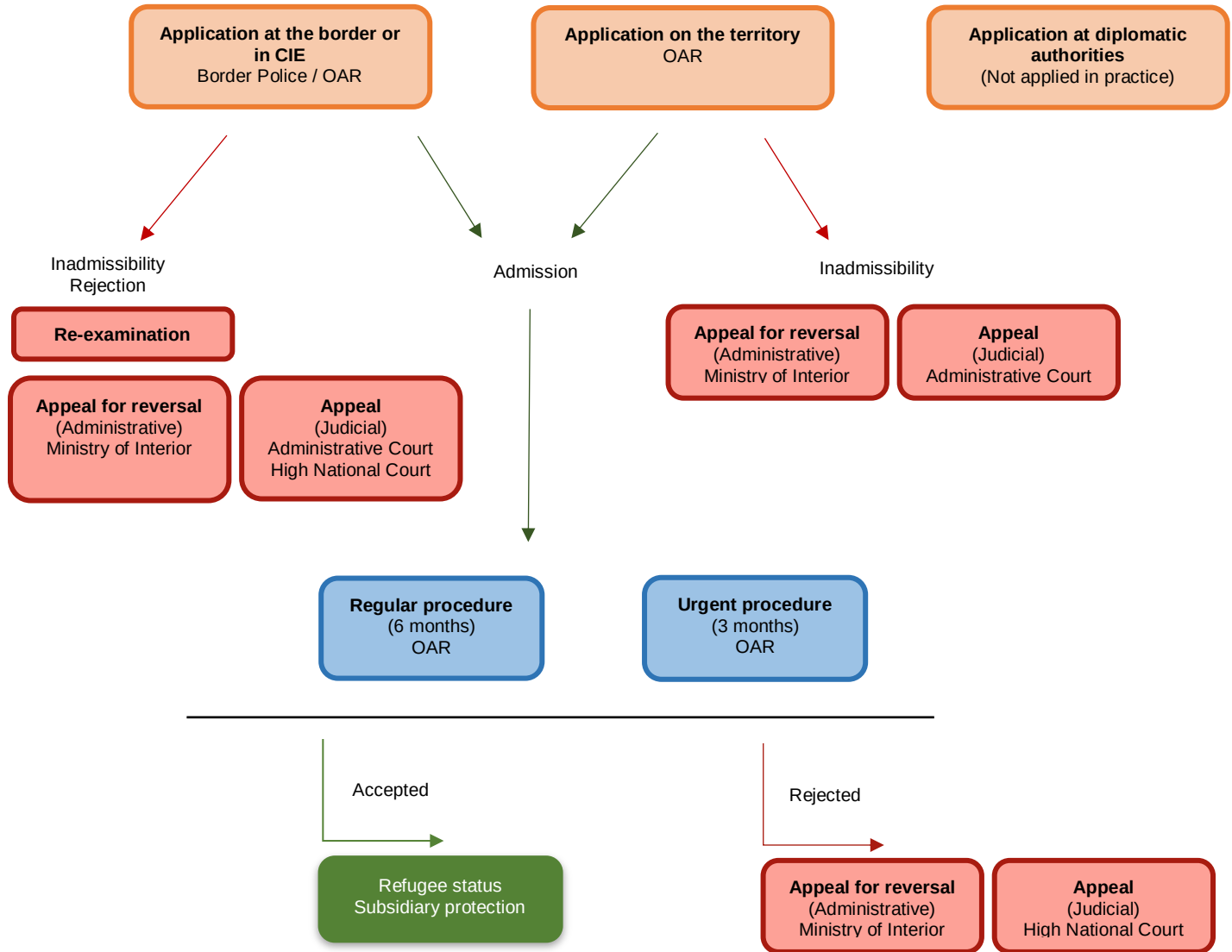
- ❖ **Housing:** To address reception needs, at the beginning of March 2022 the Minister of Inclusion, Social Security and Migration adopted a Reception Plan, and provided for the creation of four Emergency and Referral Centres (CREADE), managed by NGOs. Such centres give access to different rights and services, such as: accommodation and maintenance; financial support; schooling and language of Spanish; psychosocial support; job assistance which includes vocational trainings, job guidance, homologation of educational degrees; health assistance; legal support; validation of the driving licence for 1 year; free telephone coverage (roaming). UNHCR has been present at the CREADE to monitor the access to the procedure and the reception conditions.
- ❖ **Residence permit:** According to the two orders adopted by the Spanish Government in March 2022, temporary protection, as well as the residence and work permit granted, will be automatically renewed for 1 year after 1 year since the granting of the temporary protection. In practice, Spain issues residence and work permits directly for the duration of 2 years.

- ❖ **Financial allowances:** In August 2022, the Government adopted a Royal Decree providing for the transfer of 80 million Euros to the Autonomous Communities, with the aim of providing a monthly financial support of 400 Euros during a period of 6 months to beneficiaries of temporary protection. The measure aims at supporting those beneficiaries who have not sufficient resources, and are not receiving assistance nor accommodated within the international protection reception system.
- ❖ **Healthcare:** Persons fleeing from Ukraine have access to the health national system in the same conditions as the rest of the population.
- ❖ **Access to the labour market:** Beneficiaries of TP are entitled to work in Spain at the same conditions and rights of Spanish workers. They are also entitled to access vocational trainings. According to available data, 13,695 Ukrainians with TP were employed by 31 December 2022.
- ❖ **Access to education:** The Minister of Education created a dedicated webpage containing information on the access to education for displaced Ukrainians, available also in Ukrainian. In addition, in May 2022 the Ministry of Education started to hire 200 Ukrainian Language Assistants, with the aim of supporting regional authorities in fostering the inclusion of Ukrainian children in schools.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination: ²	☒ Yes	☐ No
▪ Fast-track processing: ³	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure: ⁴	☐ Yes	☒ No
❖ Other: Embassy procedure	☒ Yes	☐ No

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

Up until 2020, applications for international protection could not be lodged at Spanish embassies or consular representations, even though 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.⁵

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.⁶ 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.⁷ Thus, the judgement overturned previous practices and officially recognised the right to apply for asylum at embassies and consulates.

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

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

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

² For applications likely to be well-founded or made by vulnerable applicants.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as "accelerated procedure" in national law.

⁵ For an analysis of the previous practice on this regard, as well as relevant jurisprudence such as *the N.D. and N.T.v.Spain* judgement of the ECtHR, refer to the previous version of this report, available here: <https://bit.ly/3j7X2b6>, 17.

⁶ Supreme Court, Sala de lo Contencioso, STS 3445/2020, 15 October 2020, available in Spanish at: <https://cutt.ly/whkz8eN>.

⁷ El Diario, 'El Supremo reconoce el derecho a pedir asilo en las embajadas en contra del criterio del Gobierno', 18 November 2020, available in Spanish at: <https://cutt.ly/jhkvtsM>.

4. Determining authority

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

All applications for international protection are examined by the Office of Asylum and Refuge (OAR) falling under the responsibility of the Ministry of Interior. The Ministry of Interior is responsible for a broad range of tasks involving national security, such as the management of national security forces and bodies – including police guards and *Guardia Civil*, which are responsible of border control activities – the penitentiary system, foreigners and immigration-related issues.⁸

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 oversees a certain number of countries. Moreover, cases are also allocated depending on the applicable procedure (i.e. at the border or on the territory).⁹ According to the information provided by the OAR, as of March 2020, there were 270 caseworkers taking decisions on applications for international protection at the OAR. Statistics on the full year 2022 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),¹⁰ 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 EUAA publications).

5. Short overview of the asylum procedure

Any person willing to request international protection in Spain must make a formal application to the competent authorities. There are two main ways to apply for asylum: on the Spanish territory or at border controls. As explained in [Types of procedures](#), asylum applications could not be lodged at embassies or consular representations outside the Spanish territory in practice up until 2020, although the Asylum Act

⁸ Royal Decree 400/2012 of 17 February 2012 developing the basic organic structure of the Ministry of Interior.

⁹ ECRE, Asylum authorities: An overview of internal structures and available resources, 2019, available at: <https://bit.ly/3Zih5ru>, 12.

¹⁰ Article 23(2) Asylum Act.

foresees that possibility. While it was hoped that the landmark judgement of the Supreme Court would lead to positive changes in terms of access to asylum, there are currently no reports of asylum applications being registered by embassies or consulates.¹¹

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.¹² 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*),¹³ Detention Centre for Foreigners (CIE) or police station.¹⁴

The OAR is the authority competent for examining asylum applications.¹⁵

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.¹⁶

Following the identification of irregularities in the processing of the asylum applications lodged at the borders, in July 2022 the Spanish Ombudsman recommended the Minister of Interior to register and count all asylum applications lodged at borders, and to present disaggregate data with respect to those unadmitted, specifying how many applications were rejected despite having received a positive supporting report issued by UNHCR. The General- Directorate of Internal Policy of the Minister of Interior has not answered to the recommendation at the time of writing of this report.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.

¹¹ Supreme Court, Sala de lo Contencioso, STS 3445/2020, 15 October 2020, available in Spanish at: <https://cutt.ly/whkz8eN>.

¹² Article 4(1) Asylum Regulation.

¹³ Aliens' Offices are managed by the General Commissariat of Aliens and Borders (*Comisaría General de Extranjería y Fronteras*) of the Police.

¹⁴ Article 4(1) Asylum Regulation.

¹⁵ Article 23(1) Asylum Act.

¹⁶ Articles 21 and 25 Asylum Act.

¹⁷ Defensor del Pueblo, 'Solicitudes de protección internacional en puestos fronterizos', 11 July 2022, available at: <https://bit.ly/3Hfa02T>; El Correo, 'El Defensor del Pueblo denuncia irregularidades de Interior al tramitar los asilos, 5.9.22, available at: <https://bit.ly/3kNRelD>.

¹⁸ Article 20(2) Asylum Act.

¹⁹ Article 20(1) Asylum Act.

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

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

In case of denial of international protection, the issuance of a return decision is not automatic. In addition, the competence to issue the international protection and return decisions lays with two different authorities.

In December 2021, the High Court (*Tribunal Supremo*) issued a decision establishing that an application for international protection implies the automatic suspension of the expulsion procedure for the irregular stay until the competent asylum authorities issue a decision which rejects or declares the application inadmissible. This means that the expulsion or return order cannot be executed before a decision on the asylum application has been taken, because during the decision-making period of the asylum application the stay of the applicant cannot be considered as irregular.²²

In November 2022, the High Court (*Tribunal Supremo*) adopted a decision establishing the obligation for the administration to evaluate the existence - or lack of - humanitarian reasons to impede the applicant's return, and thus on the granting or not of the residence permit on such grounds. The High Court indicates that the administration is however obliged to consider such motives only if an explicit request has been made during the administrative phase of the asylum procedure, while in case of vulnerable applicants the administration is obliged *ex officio* to assess and determine the existence of humanitarian reasons.²³

In February 2023, Article 3 of the asylum law was modified through the law for the equal opportunities of transgender persons and guarantees of rights of LGTBI people, in relation to the definition of 'refugee', by the introduction of 'gender identity' as one of the grounds of persecution.²⁴

Appeal

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

²⁰ Article 25 Asylum Act.

²¹ Article 17(2) Asylum Act.

²² Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Quinta, Sentencia núm. 1.458/2021, 13 December 2021, available at: <https://bit.ly/41FjOgf>.

²³ Tribunal Supremo, Sala de lo Contencioso, STS 4338/2022, 16 November 2022, available at: <https://bit.ly/3yVaess>.

²⁴ Boletín Oficial del Estado, 'Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria', available at: <https://bit.ly/42dtYVI>; El Derecho, 'Modificación de la Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria', 8 March 2023, available at: <https://bit.ly/3YEgijB>.

- 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 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.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

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

Arrivals in Spain, and in particular to the **Canary Islands**, have been significantly increasing during the last years, and the impact of COVID-19 restrictions on irregular arrivals was only temporary. In 2022, 31,219 migrants arrived to Spain by land and sea, which represents a decrease of 25.6% compared to the 41,945 arrivals in 2021. While the arrivals to mainland and the Canary Islands decreased in 2022, the number of persons who arrived to Ceuta and Melilla increased compared to the previous year.²⁵ One of the reasons for this decrease might derive from the change of position on the Western Sahara, as in 2022 Spain declared to consider it as a Moroccan province; this allowed Morocco to increase its control of the area, from which a significant number of migrants leave to reach the Canary Islands.²⁶

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.

At the beginning of 2022, Spain has been granted more than 1 million Euros by Europol to fight against transnational organized crime, which includes smuggling and trafficking in human beings.²⁷

²⁵ Ministerio del Interior, 'Inmigración Irregular 2022. datos acumulados del 1 enero al 31 de diciembre', January 2023, available at: <https://bit.ly/3vPitov>.

²⁶ Euro News, 'El cambio de posición de España respecto al Sáhara provoca la reacción de Argelia', 20 March 2022, available at: <https://bit.ly/3K1qzRF>.

²⁷ Guardia Civil - Gabinete de Prensa, 'España obtiene de Europol más de un millón de euros para luchar contra el crimen organizado transnacional', 4 January 2022, available at: <https://bit.ly/3zssUix>.

In January 2022, more than 40 organisations denounced the plan of the Government to use facial recognition surveillance tools at the borders of Ceuta and Melilla, and warned that the use of artificial intelligence could result in discriminations and violation of fundamental human rights. The Spanish Government has allocated 4.1 million euros for the deployment of said tools at the borders; the operations to install them are still ongoing at the moment of writing, despite the initial plan to finalise them in 2 years, starting from 2019.²⁸

In the 2022 annual report on the migratory assessment at the southern border, the *Asociación Pro Derechos Humanos de Andalucía (APDHA)* called the Spanish Government to recognise its accountability for the deaths of migrants at the Spanish southern border, that are a consequence of its border management policies. It also called to the Government to stop hiding such situation and to adopt an appropriate protocol for the identification of migrants' bodies.²⁹ More recently, APDHA noted that migrant women have double possibility to lose their lives in the sea compared to migrant men. In addition, it affirmed that human rights violations suffered by migrant women are deeper than those suffered by migrant men.³⁰

In view of the reopening of the land borders between Spain and Morocco, closed for two years due to the pandemic, in May 2022 the Spanish Government announced that border management authorities would start using drones to survey Melilla's border, together with the air surveillance already in place.³¹

In June 2022, the body of a young migrant was found in the river Bidasoa, located at the border between Spain and France. In about 1 year, 5 persons drowned in the river while transiting from Spain to France, and the Government of the Basque Country reiterated its call to create safe corridors for the transit of migrants.³² Since 2015, France reinforced its border surveillance and (race profile) checks for counter-terrorism purposes, thus the Spanish city of Irún, its river Bidasoa and the land border between France and Spain became the scenarios of various migrants' deaths: some drowned trying to cross the river separating the two countries, others died while trying to cross railroads, and others committed suicide.³³ In August 2022, the Director of Migration and Asylum of the Basque Country denounced the selective and racist checks carried out by the French police at the borders, which push migrants to look for more dangerous and risky ways to access France.³⁴ In September, the support group *Irungo Harrera Sarea* and the Welcome Network of Irún (Red de Acogida de Irún) launched a joint press release stating that border controls at the Spanish-French border have intensified, which could by itself increase the risk of individuals trying to cross by swimming in the river.³⁵

In July 2022, the organisation *Caminando Fronteras* denounced the systematic use of force by Moroccan and Spanish authorities guarding the fences of Ceuta and Melilla, where border management activities are carried out through the use of military tools, such as tear gas, rubber bullets and fire.³⁶

²⁸ El Periódico, 'Expertos denuncian el plan del Gobierno para usar cámaras de reconocimiento facial en la frontera de Ceuta y Melilla', 13 January 2022, available at: <https://bit.ly/3JB3mVD>; Melting Pot, 'Ceuta e Melilla: implementazione dell'Intelligenza Artificiale alla frontiera e la violazione dei diritti', 20 January 2022, available at: <https://bit.ly/3bDN9IS>.

²⁹ Asociación Pro Derechos Humanos de Andalucía - APDHA, 'Balance Migratorio Frontera Sur 2021', February 2022, available at: <https://bit.ly/3vV1KQM>.

³⁰ Asociación Pro Derechos Humanos de Andalucía - APDHA, 'Derechos Humanos en la Frontera Sur 2022', 7 March 2022, available at: <https://bit.ly/3JKLWpA>.

³¹ 20 minutos, 'España utilizará drones para vigilar la frontera entre España y Marruecos en Melilla', 12.5.22, available at: <https://bit.ly/3djet9O>.

³² Cadena Ser, 'Hallan el cadáver de un joven migrante en el río Bidasoa', 18 June 2022, available at: <https://bit.ly/3Sstl09>.

³³ El Salto Diario, 'Irún, el cerrojo migratorio de Francia', 18 May 2022, available at: <https://bit.ly/3JFTwSe>.

³⁴ Donostitik, 'El Gobierno vasco denuncia los «controles racistas» en la muga, Xabier Legarreta incide en que los migrantes arriesgan sus vidas para pasar a Francia', 18 August 2022, available at: <https://bit.ly/3QTS8hj>.

³⁵ Donostitik, 'Se dan «las condiciones» para más tragedias en el Bidasoa', 29 Septemebr 2022, available at: <https://bit.ly/3F1Tnqs>.

³⁶ El Faro de Melilla, 'La ONG de Helena Maleno denuncia el "uso sistemático de la fuerza" en las vallas de Melilla y de Ceuta', 21 July 2022, available at: <https://bit.ly/3JNuAs3>.

In August 2022, the Maritime Rescue (*Salvamento Marítimo*) rescued three migrants drifting in a watercraft.³⁷

In September 2022, the Government-Delegate in Melilla announced the start of the works for setting up a biometric identification system also at the border with Morocco.³⁸

In the same month, the *Asociación Pro Derechos Humanos de Andalucía (APDHA)* held that the agreement between Morocco and Spain was the real cause behind the death of a young woman and the injuries of other three persons, where Moroccan authorities opened fire, on the beach of Akhfennir in Tarfaya, against a boat setting sail towards the Canary Islands.³⁹ Following the incident, different organisations gathered in front of the Moroccan embassy in Madrid to protest against what had occurred.⁴⁰

In mid-October, six Yemenis reached Ceuta by swimming from Morocco.⁴¹ At the beginning of December, a Yemeni man died while attempting to do the same.⁴²

At the end of November, three men were detected by *Salvamento Marítimo* at the port of Las Palmas de Gran Canaria after traveling during 12 days in the rudder blade of a ship from Nigeria to the Canary Islands. The migrants were immediately referred to the hospital, as they presented symptoms of dehydration and hypothermia.⁴³ The Minister of Interior denied their asylum applications at first instance, despite UNHCR recommendation that at least one of them be granted a residence permit for humanitarian reasons, due to his vulnerability and health conditions.⁴⁴ Following the re-examination of the denial, the Minister of Interior admitted their applications, and authorised the three asylum seekers to access the Spanish territory, while their asylum requests will follow the accelerated procedure.⁴⁵

At the beginning of December, a migrant entered Melilla using a paraglider to pass the border fence.⁴⁶

In 2022, the construction of a wall around the port of Bilbao continued; the main objective is to prevent migrants to access ferries leaving Spain for the UK through this route. The decision to build such a wall was taken a couple of years before. The wall will be 4 metres high and 520 metres wide, will include a metallic fence, and had a cost of 300,000 Euros.⁴⁷

Especially during 2022, arrivals through the migratory route from Algeria to the Balearic Islands increased, also due to the rupture of the friendship agreement between Algeria and Spain, following the declarations of the Spanish President of the Government to support the Moroccan sovereignty over the Western

³⁷ Ideal, 'Salvamento rescata a tres migrantes que viajaban en moto acuática a 30 millas de Almería', 14 August 2022, available at: <https://bit.ly/3HhJ7NJ>.

³⁸ El Confidencial Digital, 'Melilla inicia obras en la frontera con Marruecos para instalar un "sistema inteligente" de control biométrico', 20 September 2022, available at: <https://bit.ly/3h4h35J>.

³⁹ Asociación Pro Derechos Humanos de Andalucía (APDHA), 'APDHA responsabiliza a los acuerdos de España con Marruecos de la muerte de una joven en el tiroteo a una patera', 15 September 2022, available at: <https://bit.ly/3kKJHKn>.

⁴⁰ Público, 'Las ONG se movilizan frente a la embajada marroquí en Madrid para denunciar la muerte de una migrante', 19 September 2022, available at: <https://bit.ly/3wutOKU>.

⁴¹ El Faro de Ceuta, 'Seis yemeníes logran cruzar a Ceuta tras bordear a nado por Benzú', 18 October 2022, available at: <https://bit.ly/3FsofSz>.

⁴² El Periódico, 'Muere un migrante yemení al intentar entrar a nado en Ceuta', 6 December 2022, available at: <https://bit.ly/3iDjJHL>.

⁴³ Cadena Ser, 'De Nigeria a Canarias en la pala del timón de un barco: 4.000 millas náuticas y 12 días sin comida', 29 November 2022, available at: <https://bit.ly/3iFhleP>; Público, 'Hospitalizados tres hombres que llegaron a Gran Canaria tras pasar 11 días subidos en el timón de un petrolero', 29 November 2022, available at: <https://bit.ly/3Uyh0wG>.

⁴⁴ Público, 'España no admite a trámite el asilo de los tres migrantes que viajaron en el timón de un petrolero', 5 December 2022, available at: <https://bit.ly/3Uy4Q73>.

⁴⁵ El País, 'Interior autoriza a seguir en España al tercero de los polizones que llegaron a Canarias en el timón de un petrolero', 7 December 2022, available at: <https://bit.ly/3VI9kcl>.

⁴⁶ El Diario, 'Un migrante entra a Melilla volando en parapente para superar la valla fronteriza', 1 December 2022, available at: <https://bit.ly/3Bc1wHH>.

⁴⁷ El Salto Diario, 'El muro antimigrantes del Puerto de Bilbao que engorda el negocio de la seguridad privada', 21 December 2022, available at: <https://bit.ly/3jo9kjG>.

Sahara in spring 2022. In 2022, a total of 176 boats with 2,637 migrants reached the archipelago.⁴⁸ In 5 years (from 2018 to 2022), more than 5,000 Western Saharan nationals have obtained protection in Spain by obtaining the status of statelessness.⁴⁹

Together with other the EU countries, in December 2022, Spain announced its participation in two initiatives against smuggling in the Mediterranean, and its commitment to support operational activities to manage migration.⁵⁰

In September 2022, the newspaper 'El Salto' in collaboration with the Foundation 'Rosa Luxemburgo', presented the movie 'Anatomy of borders', with the aim of contributing to the reflexion on the human right to migrate.⁵¹

A report on pushbacks published by The Left in the European Parliament in December 2022 indicates that instrumentalization of migrants is part of the managing of the Moroccan-Spanish border in Ceuta, and that testimonies of survivors of border violence by border authorities have been registered in Melilla.⁵²

In a meeting held in March 2023, the five members (Spain, Italy, Malta, Greece and Cyprus) of the Mediterranean Alliance agreed on preventing migrants' deaths by impeding irregular departures from countries of origin through the reinforcement of bilateral agreements with third countries, as well as by increasing returns.⁵³

UNHCR carries out monitoring activities at Spanish borders, including through its physical presence in **Melilla** (with a team of three persons), **Algeciras** (with a team of three persons covering also **Ceuta** and the province of **Cádiz**), **Málaga** (whose field team additionally covers the provinces of **Granada** and **Almería**), and in the **Canary Islands**. Regarding the latter, UNHCR had a team of two persons during 2021, and it counted on an additional staff member during 2022, all based at Gran Canarias and covering all the islands of the archipelago. UNHCR's work at the borders aims at supporting the authorities in the early identification of the international protection needs of migrants arriving by boat and in fostering the access to the asylum procedure of persons in need of international protection. The activities that UNHCR's teams implement are mainly provision of information on asylum, training addressed at different stakeholders, and support to different actors with the registration, reception and assistance of new applicants. In addition, UNHCR promotes a fair and rapid procedure allowing a border management in line with the international obligations that Spain has, including the UN Refugee Convention.⁵⁴

Thanks to its monitoring activities, in 2022 UNHCR reached out to 40,000 newly arrived migrants, asylum seekers, refugees, including beneficiaries of temporary protection, and a stateless person, to provide individual counselling or group information sessions on international protection, asylum, temporary protection and statelessness procedures, the Spanish asylum law and policies, and refugee rights in Spain, mainly to those in Andalusia, the Canary Islands, Ceuta, Madrid and Melilla. Individual counselling was provided in person or via telephone helplines or email.⁵⁵

Based on the needs of persons arriving to the **Canary Islands**, in June 2022 Accem started to implement a project providing an interpretation service funded by the UNHCR. Such a service is directed at

⁴⁸ El Diario, 'La ruta migratoria de Argelia hacia Balears se intensifica entre las denuncias por falta de medios y protocolos', 6 January 2023, available at: <https://bit.ly/3H9LcdO>.

⁴⁹ Público, 'Más de 5.000 saharauis han regularizado su situación como apátridas en España en los últimos cinco años', 5 March 2023, available at: <https://bit.ly/3YwD5xC>.

⁵⁰ Euro Efe, 'España participa en dos iniciativas contra la migración irregular en el Mediterráneo', 12 December 2022, available at: <https://bit.ly/3Rd5hU7>.

⁵¹ El Salto Diario, "Anatomía de las fronteras": el primer largometraje documental de El Salto', 22 September 2022, available at: <https://bit.ly/3D9pRPx>.

⁵² The Left in The European Parliament, 'The black book of pushbacks', December 2022, available at: <https://adobe.ly/3kAFcSB>.

⁵³ Rai News, 'Condoglianze all'Italia dal vertice Med5: "Prevenire perdite di vite evitando partenze irregolari"', 4 March 2023, available at: <https://bit.ly/3kWVDtj>.

⁵⁴ Information provided by UNHCR in March 2023.

⁵⁵ Information provided by UNHCR in March 2023.

supporting the authorities and other actors involved in the reception of sea arrivals, including in detention and reception centres and in the provision of medical services, with the aim of improving the identification of persons in need of international protection among those arriving by boat and of fostering their access to the asylum procedure and to specialized assistance. The service counts with a team of 12 interpreters (8 men and 4 women) speaking different languages and dialects, i.e. Arabic, English, French, Dahiya, Hassanal, Bambara, Soninke, Pular, Wolof and Diola. The interpreters have been trained on international protection, prevention of and response to gender-based violence, child protection, protection of LGBTIQ+ persons, the psychological impact of migration process, as well as on the role of interpreters and on professionalism. Through this service, a total of 8,125 persons were assisted in 609 interventions. The main nationalities were Morocco, Mali, Senegal, Côte d'Ivoire and Guinea, and the main languages covered by the service included Dariya, Bambara, Wolof, Mandinga, Djula and Soninke. For 2023, the project counts with a team of 6 interpreters (2 women and 4 men) speaking the same mentioned languages.⁵⁶

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

1.1. Arrivals in the enclaves of Ceuta and Melilla

The number of persons arriving in Ceuta and Melilla by land in 2022 was 2,289, marking an increase compared to 2021, when 1,845 persons entered the enclaves. In addition, a total of 293 personas arrived by sea to the enclaves, being 169 those who reached Melilla (representing a +333.3% increase compared to 2021), and 124 Ceuta by sea (a 69.3% decrease compared to the previous year).

Arrivals in Spain by land: 2022	
Point of entry	Number of irregular arrivals
Ceuta	1,114
Melilla	1,175
Total arrivals by land	2,289

Arrivals in Spain by sea: 2022	
Point of entry	Number of irregular arrivals
Ceuta	124
Melilla	169
Total arrivals by sea	293

Source: Ministry of Interior, *Immigración Irregular 2022. Datos acumulados del 1 de enero al 31 de diciembre*, available in Spanish at: <https://bit.ly/3ZCcctU>.

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 hundreds of people throughout 2021 and 2022.

⁵⁶ Information provided by Accem and UNHCR in March 2023.

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.⁵⁷ 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 [Access to the Territory](#)).

Following renovations at the **Ceuta** and **Melilla** fences that started in 2019 in order to remove the steel wire, different organisations reported that the height of the fences were increased by 30%, thus further increasing the risk of breaching human rights standards.⁵⁸ In August 2020 the Government announced an enlargement of the asylum post at the **Melilla** border with a budget €138,000,⁵⁹ 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.⁶⁰ 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.⁶¹ In July 2022, the Council of Ministers approved the plan to carry out additional renovations to the borderline fence in Ceuta, allocating a budget of 4 million Euros. Such renovations are part of the Plan to reinforce and modernize the land border protection system in Ceuta and Melilla, which started in 2019.⁶²

Similarly to the previous update of the report, which provided a list of incidents at the border in 2021, the following list provides an overview of several incidents that were reported at the border in 2022 and at the beginning of 2023:

- At the beginning of March 2022, around 2,500 people attempted to enter **Melilla** by jumping the fence, and almost 500 managed to access to the enclave.⁶³ Many organisations denounced the violence used by the police against migrants that attempted the jump, which resulted in about 20 people being hospitalised and 30 pushed-back.⁶⁴ Two videos disseminated through social networks show how the Guardia Civil violently attacked some migrants descending from the fence on Spanish soil.⁶⁵ The Spanish Ombudsman requested information to the Minister of Interior regarding the actions of the police in that circumstance,⁶⁶ but the Ministry of Interior publicly

⁵⁷ CEAR, *Informe 2020: las personas refugiadas en España y Europa*, June 2020, available at: <https://cutt.ly/QjkYUYt>, 74.

⁵⁸ 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>.

⁵⁹ 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>.

⁶⁰ 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>.

⁶¹ 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>.

⁶² Europa Press, 'El Gobierno aprueba las últimas reformas de modernización de la valla de Ceuta por un importe de 4 millones', 19 July 2022, available at: <https://bit.ly/3zRwh35>.

⁶³ Público, 'Valle de Melilla: Unos 2.500 migrantes subsaharianos intentan entrar en Melilla en el salto de la valla', 2 March 2022, available at: <https://bit.ly/34nk5eP>; El País, 'Unas 2.500 personas intentan acceder a Melilla en un salto a la valla', 2 March 2022, available at: <https://bit.ly/3lXnq3w>.

⁶⁴ Público, 'Organizaciones de derechos humanos denuncian "la violencia policial" en el salto en la valla de Melilla', 3 March 2022, available at: <https://bit.ly/3Ksjojl>.

⁶⁵ El País, 'ONG internacionales exigen investigar agresiones a migrantes durante los saltos en Melilla', 4 March 2022, available at: <https://bit.ly/3lVBjpc>; El Nacional, 'Un vídeo muestra cómo la Guardia Civil se ensaña con un migrante en Melilla', 4 March 2022, available at: <https://bit.ly/3HRDRgq>; El Diario, 'Agentes policiales propinan una brutal paliza a un joven migrante cuando se descolgaba de la valla de Melilla', 4 March 2022, available at: <https://bit.ly/3sRXjoZ>.

⁶⁶ Europa Press, 'El Defensor pide información a Interior sobre la actuación de la policía con una persona migrante en la valla de Melilla', 4 March 2022, available at: <https://bit.ly/3CmRqmE>.

defended the police officers' conduct, stating that it had been the result of the violent actions of migrants trying to cross the border by using force.⁶⁷

- The land border between Morocco and the two Spanish enclaves of **Ceuta and Melilla**, which was closed since the start of the COVID-19 pandemic, was reopened only on 17 May 2022.⁶⁸
- On 24 June 2022, around 2,000 persons attempted to enter **Melilla** from Morocco by jumping the fence, resulting in 37 persons dead and hundreds injured, while 133 individuals managed to enter the Spanish enclave.⁶⁹ Different organisations (i.e. Amnesty International, UNHCR, IOM, ELIN, CEAR, APDHA) expressed concerns regarding the use of indiscriminate violence in border management activities.⁷⁰ In addition, various organisations (i.e. Coordinadora de Barrios,⁷¹ Amnesty International), migrants' groups, political parties (i.e. Unidas Podemos, ERC, Bildu, Compromís), the Spanish Episcopal Conference, and the Mayor of Barcelona asked for an independent investigation to be carried out in order to clarify the situation and to ascertain political accountability.⁷² The Spanish Public Prosecutor Office opened an investigation to ascertain whether a violation of fundamental rights had occurred, due to the seriousness of the allegations.⁷³ The Ombudsman also announced an investigation and visited Melilla in July to collect information and testimonies on the incident.⁷⁴ Gatherings and demonstrations were organised by NGOs in different Spanish cities to protest against the deaths that occur at the southern border.⁷⁵ Additionally, 74 NGOs signed a letter sent to different UN Special Rapporteurs asking for the investigation and persecution of the incidents, as well as for a joint visit of the Rapporteurs to the place where the events occurred, to foster a dialogue with Spain and Morocco so that the two countries would adopt appropriate measures to avoid such acts and conducts in the future.⁷⁶

⁶⁷ El Diario, 'Marlaska defiende la actuación policial en la valla de Melilla tras las imágenes de la paliza a un migrante', 4 March 2022, available at: <https://bit.ly/3vP0D6i>

⁶⁸ Euronews, 'Borders between Spain and Morocco reopen for the first time in two years amid improved relations', 17 May 2022, available at: <https://bit.ly/3QazCBt>.

⁶⁹ El País, 'El masivo salto de migrantes en la valla fronteriza de Melilla, en imágenes', 24 June 2022, available at: <https://bit.ly/3QgDMHU>; ECRE, 'Atlantic Route and Spain: Deadly Tragedy at Melilla Border Causes Local Protests and International Outcry – More Deaths on the Atlantic', Weekly Bulletin, 8 July 2022, available at: <https://bit.ly/3A9951S>; Melting Pot, 'Almeno 27 migranti muoiono in Marocco nel tentativo di superare la barriera verso Melilla', 25 June 2022, available at: <https://bit.ly/3bNzgBW>.

⁷⁰ Amnistía Internacional, 'Amnistía Internacional expresa gran preocupación por los graves hechos ocurridos hoy en Melilla y en la frontera entre Marruecos y España, y pide una investigación independiente y exhaustiva', 24 June 2022, available at: <https://bit.ly/3AdXPBr>; CEAR, 'CEAR denuncia el «uso indiscriminado de la violencia» en el control de fronteras', 25 June 2022, available at: <https://bit.ly/3PFYXZr>; El Pueblo de Ceuta, 'La Asociación Elín condena la situación de violencia vivida en la frontera de Melilla', 25 June 2022, available at: <https://bit.ly/3zLVwE3>; Asociación Pro Derechos Humanos de Andalucía (APDHA), 'APDHA muestra su consternación y exige una investigación tras el último salto a la valla de Melilla', 25 June 2022, available at: <https://bit.ly/3pecrdq>; RTVE, 'Las ONG denuncian el "uso indiscriminado" de la violencia en la frontera de Melilla y apuntan a una cifra mayor de muerte', 25 June 2022, available at: <https://bit.ly/3QAapQA>; ACNUR, 'ACNUR y la OIM lamentan la pérdida de vidas en la valla fronteriza de Nador-Melilla', 25 June 2022, available at: <https://bit.ly/3QuO87r>.

⁷¹ Coordinadora de Barrios, see: <https://www.coordinadoradebarrios.org/>.

⁷² El Faro de Ceuta, 'Coordinadora de Barrios exige una investigación y una política migratoria basada en la seguridad humana', 24 June 2022, available at: <https://bit.ly/3p6qwd1>; El Salto Diario, 'Colectivos migrantes exigen responsabilidades políticas por las muertes en Melilla y convocan concentraciones', 26 June 2022, available at: <https://bit.ly/3A914tQ>; La Sexta, 'Unidas Podemos solicita una investigación independiente para esclarecer la "tragedia humana" en la valla de Melilla', 27 June 2022, available at: <https://bit.ly/3C0xEzv>; El Mundo, 'Ada Colau insta a investigar las muertes de Melilla y acusa al Gobierno de "racismo institucional"', 25 June 2022, available at: <https://bit.ly/3PedQeE>; Alfa y Omega, 'Los obispos tras la tragedia en la frontera de Melilla: «No son invasores, son seres humanos»', 25 June 2022, available at: <https://bit.ly/3zGDZNA>; Noticiasde, 'Podemos, ERC, Bildu y Compromís acuerdan pedir que el Congreso investigue las muertes en Melilla, pero no ponen fecha', 30 June 2022, available at: <https://bit.ly/3QiDJoS>.

⁷³ Cadena Ser, 'La Fiscalía investigará las muertes de migrantes por el salto a la valla de Melilla', 28 June 2022, available at: <https://bit.ly/3PiGfjQ>.

⁷⁴ Defensor del Pueblo, 'El Defensor del Pueblo acude a Melilla', 19 July 2022, available at: <https://bit.ly/3vShP9R>; El Faro de Melilla, 'El Defensor del Pueblo visita Melilla para investigar los sucesos del 24J', 19 July 2022, available at: <https://bit.ly/3zNGYE6>.

⁷⁵ La Vanguardia, 'ONGs convocan protestas para denunciar muertes en fronteras Ceuta y Melilla', 26 June 2022, available at: <https://bit.ly/3QeGL3P>.

⁷⁶ Andalucía Acoge, '74 Organizaciones sociales reclaman responsabilidades por las vulneraciones de derechos humanos en la Frontera Sur ante Naciones Unidas', 18 July 2022, available at: <https://bit.ly/3vXvJrp>

The UN Secretary General also condemned the violence and the excessive use of the force, 50 MEPs requested the European Commission to start an investigation, while the Council of Europe asked Spain to carry out an independent, comprehensive and effective investigation.⁷⁷ After declaring that the jump was a violent and organised act coordinated by traffickers and smugglers, and that it represented an attack against the territorial sovereignty that was positively solved, the President of the Spanish Government rectified his positions and expressed concerns regarding the deaths, but continued to support the response given by Spanish and Moroccan police officers.⁷⁸ Among the persons who attempted to jump and those who achieved to enter Melilla, there were many Sudanese nationals. Many of them witnessed the violence used by Moroccan police officers, who beat and killed migrants.⁷⁹ Testimonies of similar acts performed by the Spanish police against migrants were also collected from those who were pushed back.⁸⁰ All those who achieved to reach Melilla applied for asylum.⁸¹ According to the Moroccan Association for Human Rights, immediately after the incident, Morocco sped up the burial of the dead migrants, without carrying out autopsies nor identifications.⁸² Besides, since the beginning of July, Morocco started to prosecute migrants for different crimes, such as smuggling, violence, armed assault injury, damage to public goods.⁸³ By mid-August, a total of 60 migrants and asylum seekers were convicted by Morocco with prison sentences ranging from 11 months to two years and a half.⁸⁴ An investigation carried out by the Moroccan Association for Human Rights denounced that 64 persons continued to be missing one month after the incident.⁸⁵

According to an investigation carried out by the National Council of Human Rights, Spanish police officers used violence against migrants and did not assist the wounded persons who were jumping or falling from the fence.⁸⁶ In a letter sent to the Spanish President, Amnesty International remarked that eight human rights violations had been committed in occasion of the jump, including the breach of the principle of non-refoulement and of the right to apply for asylum.⁸⁷

- In September 2022, Morocco denied entrance to its territory from Melilla to three Members of European Parliament and Observers who wanted to investigate the facts occurred on 24 June.⁸⁸
- At the beginning of November, BBC launched a documentary accusing the Spanish Government for not impeding the deaths of the migrants in Melilla. It also documents the violence used by

⁷⁷ 20 minutos, 'Cincuenta eurodiputados piden a la CE una investigación sobre las muertes en Melilla', 29 June 2022, available at: <https://bit.ly/3zla7k1>; El País, 'El secretario general de la ONU ve "inaceptable" el uso "excesivo" de la fuerza en la valla de Melilla', 29 June 2022, available at: <https://bit.ly/3Qxhe5t>; Naiz, 'La Eurocámara debatirá las muertes de migrantes en la frontera de Melilla', 1 July 2022, available at: <https://bit.ly/3p73hiT>; El Faro de Melilla, 'El Consejo de Europa pide a España que se investiguen los sucesos de la valla', 13 July 2022, available at: <https://bit.ly/3SGft7N>.

⁷⁸ RTVE, 'Sánchez responsabiliza a las mafias del violento salto a la valla de Melilla: "Fue un ataque a la integridad territorial"', 25 June 2022, available at: <https://bit.ly/3QAikgM>; Público, 'Sánchez lamenta ahora las muertes en el salto a Melilla, pero se niega a condenar la actuación de la gendarmería marroquí', 29 June 2022, available at: <https://bit.ly/3vTMpAh>.

⁷⁹ El Diario, 'Los sudaneses que lograron saltar la valla de Melilla: "La policía marroquí nos ha pegado y ha matado a nuestros amigos"', June, available at: <https://bit.ly/3JLW55f>.

⁸⁰ Público, 'Devueltos en caliente en Melilla hablan desde Casablanca: "Los españoles nos pegaban por un lado y los marroquíes por detrás"', 5 July 2022, available at: <https://bit.ly/3A8FaXB>.

⁸¹ Europa Press, 'Todos los migrantes que saltaron la valla de Melilla el pasado viernes han solicitado protección internacional en España', 29 June 2022, available at: <https://bit.ly/3AcJXYb>.

⁸² El País, 'Marruecos se apresura a enterrar a los migrantes que intentaron entrar en Melilla entre críticas por la falta de investigaciones', 26 June 2022, available at: <https://bit.ly/3paYmh3>.

⁸³ Noticias de Navarra, 'Juzgan este lunes en Nador a 36 de los 64 migrantes detenidos en Melilla', 3 July 2022, available at: <https://bit.ly/3Pf2ZkU>; Ceuta Actualidad, '28 subsaharianos que intentaron cruzar a Melilla, a juicio el miércoles', 15 August 2022, available at: <https://bit.ly/3zZI4g7>.

⁸⁴ Info Migrants, 'Morocco: 13 migrants sentenced for Melilla border crossing attempt', 18 August 2022, available at: <https://bit.ly/3wkMtsG>.

⁸⁵ El Foro de Ceuta, 'Más de un mes después, 64 personas siguen desaparecidas', 28 July 2022, available at: <https://bit.ly/3BY73CP>; Melting Pot, 'Il massacro di Melilla e le responsabilità politiche: Spagna e UE', 25 August 2022, available at: <https://bit.ly/3BgWgmJ>.

⁸⁶ El Diario, 'Una institución oficial marroquí acusa a las autoridades españolas de no auxiliar a los heridos del salto de Melilla', 13 July 2022, available at: <https://bit.ly/3BYI2ZC>.

⁸⁷ Amnistía Internacional, 'Carta al presidente Sánchez por las ocho violaciones de derechos humanos cometidas en la valla de Melilla y la frontera marroquí', 29 June 2022, available at: <https://bit.ly/3QFMeAt>.

⁸⁸ Público, 'Marruecos impide la entrada de tres eurodiputados y observadores internacionales a sus fronteras desde Melilla', 20 September 2022, available at: <https://bit.ly/3iGVEzS>.

Moroccan police against migrants, as well as the pushbacks carried out by the Spanish police.⁸⁹ Following the release of the documentary, different stakeholders (i.e. more than 100 NGOs, the Spanish Ombudsman, UN experts, Members of the European Parliament) asked for an independent and comprehensive investigation of the facts.⁹⁰ In particular, the Spanish Ombudsman underlined that legal guarantees for migrants and refugees were not respected during the jump, and that they did not have any other option to seek asylum than jumping the fence,⁹¹ concluding that migrants were refused entry at the border with Morocco without respect for existing legal framework in respect.⁹² Similarly, the UNHCR questioned the legality of people being returned to Morocco in this manner,⁹³ and confirmed that many of them were vulnerable individuals.⁹⁴ A group of lawmakers who visited the scene in November denounced the use of 86 tear gas projectiles by the Spanish Civil Guard.⁹⁵ On the contrary, the Government reiterated that the intervention on the fence was “proportionate”, and that no deaths were registered on Spanish territory as a consequence of the action.⁹⁶ However, a joint investigation carried out by El País and Lighthouse Reports established that, among others, at least 1 Sudanese migrant died on Spanish territory.⁹⁷ These findings were considered credible by different Members of the Parliament composing the Committee of Interior, who concluded that the incident had in fact happened in the Spanish side of the border, and that the Spanish Civil Guard pushed back 470 persons in collaboration with the Moroccan Police,⁹⁸ a number that was also confirmed by the Spanish Ombudsman.⁹⁹ Following such disclosures and conclusions, different stakeholders (i.e.

⁸⁹ BBC, ‘Migrants - Melilla : comment l’Espagne a laissé mourir des dizaines de personnes à sa frontière - BBC News Afrique’, 3 November 2022, available at: <https://bbc.in/3Oo88YU>; Público, ‘La BBC responsabiliza al Gobierno de la tragedia de Melilla con unas imágenes adelantadas por ‘Público’’, 2 November 2022, available at: <https://bit.ly/3tNFCq5>.

⁹⁰ Infolibre, ‘ONG exigen una investigación exhaustiva de la tragedia de Melilla: “Esto puede ocurrir de forma reiterada”’, 2 November 2022, available at: <https://bit.ly/3TVfoNc>; La Vanguardia, ‘Amnistía denuncia que cuatro meses después nadie ha rendido cuentas por las 37 muertes ocurridas entre Melilla y Marruecos’, 2 November 2022, available at: <https://bit.ly/3tOW89i>; La Vanguardia, ‘Más de 100 ONG piden a los portavoces de Interior que el Congreso investigue la tragedia de Melilla’, 7 November 2022, available at: <https://bit.ly/3tMrXQd>; RTVE, ‘Tragedia de Melilla: “Lo peor ocurrió en territorio español”’, 8 November 2022, available at: <https://bit.ly/3AtiD7p>; The Voice, ‘UN experts slam lack of accountability for ‘stark dehumanisation’ of African migrants at Melilla border’, 8 November 2022, available at: <https://bit.ly/3ASmSeX>; Accem, ‘Accem: Melilla-24J: Es necesario seguir investigando por justicia y para que no vuelva a pasar’, 10 November 2022, available at: <https://bit.ly/3OrOjJG>; CEAR, ‘CEAR reclama ante el Parlamento Europeo una investigación exhaustiva de la tragedia de Melilla’, 17 November 2022, available at: <https://bit.ly/3UWOJkr>; Alfa y Omega, ‘Eurodiputados reclaman una comisión de investigación independiente sobre la tragedia de Melilla’, 18 November 2022, available at: <https://bit.ly/3V9ADf4>.

⁹¹ Antena 3, ‘El Defensor del Pueblo considera que no se respetaron las garantías legales en el salto a la valla en Melilla’, 14 November 2022, available at: <https://bit.ly/3EOF9u8>; La Voz de Galicia, ‘El Defensor del Pueblo señala a Exteriores e Interior y dice que los asaltantes de la valla de Melilla no tenían opción de pedir asilo’, 16 November 2022, available at: <https://bit.ly/3tKHhga>.

⁹² Ele, ‘El Defensor del Pueblo concluye que se devolvieron migrantes en Melilla sin suficiente base legal’, 1 December 2022, available at: <https://bit.ly/3usXs29>.

⁹³ El País, ‘Acnur cuestiona la legalidad de las devoluciones a Marruecos durante la tragedia de Melilla’, 30 November 2022, available at: <https://bit.ly/3P39zfz>.

⁹⁴ El Faro de Melilla, ‘Acnur constata que muchos migrantes devueltos en Melilla eran vulnerables’, 2 December 2022, available at: <https://bit.ly/3UAUG5o>.

⁹⁵ Yahoo, ‘Spanish inquiry shows tear gas use in border tragedy -lawmaker’, 7 November 2022, available at: <https://yhoo.it/3tPS88O>.

⁹⁶ El Faro de Melilla, ‘El Gobierno insiste en que la actuación en la valla “fue proporcional”’, 8 November 2022, available at: <https://bit.ly/3AZfenQ>; Nius, ‘Marlaska insiste en que ningún migrante murió en territorio español tras difundirse las imágenes de la tragedia de Melilla’, 8 November 2022, available at: <https://bit.ly/3Xlmygv>; Heraldo, ‘Marlaska arremete contra el PP y otros grupos por la tragedia de Melilla; niega las muertes en España y la desatención a los heridos’, 30 November 2022, available at: <https://bit.ly/3P3A8RX>.

⁹⁷ El País, ‘Agonía a ambos lados de la frontera de Melilla’, 29 November 2022, available at: <https://bit.ly/3gYCeG7>; La Sexta, ‘Tres indicios de que un migrante sudanés pudo morir en suelo español en la tragedia del salto de Melilla’, 30 November 2022, available at: <https://bit.ly/3ir3FbZ>.

⁹⁸ Público, ‘PP y PSOE vetan la comisión de investigación de la tragedia de Melilla sin que los diputados hayan visto las imágenes’, 18 November 2022, available at: <https://bit.ly/3ASDYyd>; El País, ‘Masacre en Melilla: la peligrosa decisión de socialistas y populares’, 26 November 2022, available at: <https://bit.ly/3UfUybr>; Público, ‘Los diputados confirman tras ver los vídeos que hubo devoluciones ilegales y omisión de socorro en Melilla’, 25 November 2022, available at: <https://bit.ly/3VxCtqp>.

⁹⁹ RTVE, ‘El Defensor del Pueblo estima que 470 migrantes fueron rechazados en la valla de Melilla sin garantías legales’, 14 October 2022, available at: <https://bit.ly/3W0UoFZ>.

the Progressive Union of Public Prosecutors, the Popular Party, the Ciudadanos Party, etc.) called for the immediate resignation and the cessation of the Minister of Interior.¹⁰⁰

- In the occasion of the World Migrants Day on 18 December, hundreds of people protested in Valencia, both advocating for migrants' rights, and commemorating the migrants dead in Melilla in June 2022.¹⁰¹ A press release published by different organisations, groups and individuals on the same day denounced the denial of the Government to assume its accountability for such deaths.¹⁰²
- In December, Amnesty International launched a campaign directed at asking justice for the persons dead in Melilla. The organisation denounced the violation of international law as well as the cover up by both by Morocco and Spain, considering that the investigations carried out so far were inadequate and stagnant.¹⁰³ The NGO CEAR launched a video gathering the testimonies of five persons who witnessed the incidents.¹⁰⁴
- In the same month, a Sudanese young man who was pushed back to Morocco on 24 June, applied for asylum at the Spanish Embassy in Rabat, with the aim of challenging the declarations of the Minister of Interior on the possibility to apply for asylum at the Spanish Embassies and Consulates, as well as at the Spanish land borders of Ceuta and Melilla without jumping the fences.¹⁰⁵ In March 2023, his asylum interview was held at the embassy and the letter for his safe-conduct to Spain was received by the Spanish Ambassador in Morocco.¹⁰⁶
During the same month, the Public Prosecutor decided to close the file on the case and declared the Minister of Interior unconnected to the deaths, which were considered as a responsibility of Moroccan authorities, but it decided to open a file against the officers who attacked and hit migrants with stones.¹⁰⁷ More than 150 organisations denounced said decision, for allowing impunity for national authorities.¹⁰⁸
- In occasion of the lunch of its 2022 annual report on Spain, Human Rights Watch expressed concerns on how the country responded to the incident occurred in Melilla and for what can happen in the future in relation to pushbacks.¹⁰⁹
- In a hearing held at the European Parliament in January 2023, the Spanish Minister of Justice informed that the incident was closed by the Public Prosecutor Office following a thorough investigation.¹¹⁰

¹⁰⁰ Europa press, 'La Unión Progresista de Fiscales pide el cese de Marlaska por la tragedia de Melilla', 30 November 2022, available at: <https://bit.ly/3Hb4TSY>; Europa Press, 'Ciudadanos exige la dimisión inmediata de Marlaska por la tragedia de Melilla: "Su irresponsabilidad es intolerable"', 29 November 2022, available at: <https://bit.ly/3FqO45d>; Nius Diario, 'El PP exige que Marlaska dimita "por sus mentiras" sobre el salto a Melilla', 29 November 2022, available at: <https://bit.ly/3F0jqhH>.

¹⁰¹ El Salto Diario, 'La ciudad de València se moviliza en el Día de las personas Migrantes', 18 December 2022, available at: <https://bit.ly/3hMSHOa>; Levante, 'Cientos de personas protestan en València por el día del migrante: "Tenemos derecho a tener derechos"', 18 December 2022, available at: <https://bit.ly/3PLFmIG>.

¹⁰² Caravana Abriendo Fronteras, 'Comunicado internacional 18 de diciembre Día Internacional de las Personas Migrantes', 16 December 2022, available at: <https://bit.ly/3jld19J>.

¹⁰³ Amnistía Internacional, 'Marruecos / España: Investigaciones estancadas e inadecuadas, "denotan encubrimiento" seis meses después de 37 muertes en la frontera de Melilla', 13 December 2022, available at: <https://bit.ly/3vb7hCk>; El País, 'Amnistía Internacional acusa a España y a Marruecos de violar el derecho internacional en la tragedia de Melilla', 13 December 2022, available at: <https://bit.ly/3BRauuk>.

¹⁰⁴ CEAR, '5 testimonios sobre la tragedia de Melilla', 16 December 2022, available at: <https://bit.ly/3varFmR>.

¹⁰⁵ Público, 'Reto a Marlaska: un sudanés devuelto a Marruecos en la tragedia de Melilla pide asilo en la embajada de España en Rabat', 13 December 2022, available at: <https://bit.ly/3hLTzmc>.

¹⁰⁶ El Faro de Melilla, 'Entrevistado el joven sudanés que pidió asilo en la Embajada española en Rabat hace tres meses', 6 March 2023, available at: <https://bit.ly/3ZMxjJi>; Público, 'El salvoconducto a España del sudanés que sobrevivió a la tragedia de Melilla ya está en manos del embajador en Marruecos', 8 March 2023, available at: <https://bit.ly/3YDmmIM>.

¹⁰⁷ El Diario, 'La Fiscalía exculpa a Interior de las muertes en Melilla y pide expedientar a los agentes que apedrearon a migrantes', 23 December 2022, available at: <https://bit.ly/3FTJ2x6>.

¹⁰⁸ La Vanguardia, 'Más de 150 organizaciones denuncian el archivo de la investigación sobre la tragedia porque "deja impunes" hechos muy graves', 24 December 2022, available at: <https://bit.ly/3G0O1fl>.

¹⁰⁹ Huffington Post, 'HRW denuncia: las devoluciones en caliente en España contribuyeron a la muerte de migrantes', 12 January 2023, available at: <https://bit.ly/3ZwrJv8>.

¹¹⁰ El Faro de Melilla, 'La ministra de Justicia explica al Parlamento Europeo que la tragedia del 24J se cerró tras una profunda investigación', 12 January 2023, available at: <https://bit.ly/3GN11WN>.

The above incidents illustrate how migrants and asylum seekers continue resorting to dangerous ways to enter **Ceuta** and **Melilla**, sometimes resulting in their deaths. Further incidents at the border are likely to continue in 2023.

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

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

The amendment, introduced through the adoption of the Law “on the protection of citizen security”,¹¹¹ includes a specific regulation within the Aliens Act concerning the “Special regime of Ceuta and Melilla”. This 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, they are 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,¹¹² the Council of Europe Commissioner for Human Rights,¹¹³ 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 made Spain one of the European countries with the highest numbers of refusal of entry at the border between 2017 and 2019.

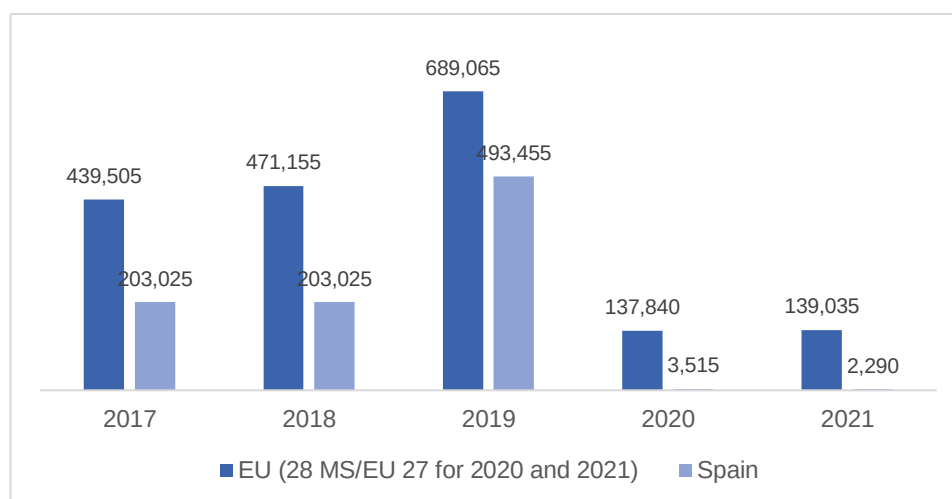
In 2020, however, the number of refusals of entry for Spain dropped to 3,515, while in the EU-27 (UK already excluded) it was 137,840 in total. Even lower numbers were registered in 2021, with 2,290 refusals of entry were issued. In 2022, similar 7,205 similar decisions were issued;¹¹⁴ while this represented an increase compared to the two previous years, it was in no way close to pre-pandemic numbers.

¹¹¹ Organic Law 4/2015 of 30 March 2015 on the protection of citizen security.

¹¹² 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>.

¹¹³ 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>.

¹¹⁴ Eurostat; *migr_eirfs*.



Source: Eurostat; *migr_eirfs*.

In previous years, 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).¹¹⁵

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,¹¹⁶ overturning the 2017 judgment. The GC addressed whether the removal of the applicants amounted to an expulsion or ‘non-admission’ of entry. It interpreted expulsion in the generic sense, consistent with previous findings, to mean any forcible removal irrespective of, *inter alia*, the lawfulness of an applicant’s stay. Indeed, a collective expulsion is characterised as an absence of a reasonable and objective examination of each applicant’s individual case. In the present case, both requirements were satisfied.¹¹⁷

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 the importance of respecting the principle of non-refoulement.¹¹⁸

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

¹¹⁵ ECtHR, *N.D. and N.T. v. Spain*, Application Nos 8675/15 and 8697/15, Judgment of 3 October 2017.

¹¹⁶ 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>.

¹¹⁷ 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>.

¹¹⁸ Ibid.

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 4.¹¹⁹

This GC's decision has been heavily criticised by civil society organisations and other several stakeholders, including the Progressist Union of Public Prosecutors,¹²⁰ who saw a lost opportunity in condemning the Spanish authorities for their pushback practices at the border.¹²¹

In November 2022, Netflix launched the documentary 'The Gourougou trial' which narrates the stories of two migrants from Africa, ND & NT, who in 2014 joined other 500 migrants to jump the fence in Melilla from Morocco to enter Spain, and that were pushed back.¹²²

For a more exhaustive explanation, see [AIDA Country Report: Spain 2020 Update](#).

The Constitutional Court's ruling of 19 November 2020

On 19 November 2020, the Spanish Constitutional Court (*Tribunal Constitucional*) endorsed the Organic Law on the protection of citizen security, which establishes a special regime for the rejection at the borders in **Ceuta** and **Melilla**.¹²³ After analysing the constitutional doctrine and the ECtHR's jurisprudence, the Constitutional Court concluded that the law is in line with the Spanish Constitution. Regarding 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 considering 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".¹²⁴

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*.¹²⁵

In February 2014, 15 migrants drowned 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*. Since then, the so known "*El Tarajal*" case was decided and removed from the register in different occasions, until in June 2022 the Supreme Court (*Tribunal Supremo*) rejected the cassation appeals lodged by different

¹¹⁹ Ibid.

¹²⁰ 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/3dmLyywW>.

¹²¹ 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>.

¹²² Netflix, 'The Gourougou Trial', November 2022, available at: <https://bit.ly/3FqKoAr>.

¹²³ 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 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>.

¹²⁴ 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/ShYjliih>.

¹²⁵ 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>.

NGOs against the decision to remove the case from the register taken by the Provincial Court of Cádiz.¹²⁶ Previous updates of this report provide more details on the case. (See AIDA Country Report on Spain – 2021 and 2020 Updates).

Since the event in *El Tarajal*, each year many NGOs, groups of activists and other stakeholders join in **Ceuta** at the border, in order to commemorate the deaths and strive for justice.

Throughout 2022, and at the beginning of 2023, pushback practices continued to be reported.

The Dutch Council for Refugees started to work, in collaboration with the NGO *Caminando Fronteras*, on advocating against and exposing pushbacks practices at Spain's southern borders and the Canary Islands, as well as in improving asylum policies in the country, by training their staff in project management and fundraising.¹²⁷

- In February 2022, a judge in Ceuta (*Juzgado de lo Contencioso Administrativo número 1*) ordered the Government to bring back to Spain the children who were returned to Morocco in August 2021, establishing that the repatriation was not in line with Spanish legislation and that it generated a serious risk for the children involved.¹²⁸ In fact, in mid-May 2021, in a 36-hours' time span, around 8,000 migrants - a quarter of them minors - entered the city of **Ceuta** swimming. One man died in the attempt, and the police immediately expelled at least 4,000 persons,¹²⁹ without any clarity on the procedure put in place by the Minister of Interior for carrying out such expulsions.¹³⁰ Different human rights organisations denounced collective pushbacks of migrants,¹³¹ including children, as well as the lack of legal assistance.¹³²
- In August 2021, the Ministry of Interior announced having started returning the children who entered Ceuta in May to Morocco.¹³³
- In June 2022, the Public Prosecutor Office denounced the Government-Delegate in Ceuta and the Vice-president of the City for malfeasance in the illegal expulsion of Moroccan children.¹³⁴ In July 2022, a Senegalese man who was pushed back in the same occasion denounced Spain at the European Court of Human Rights for being expelled to Morocco without any personal identification, nor legal support, interpretation and identification of his needs.¹³⁵
- In August 2022, two organisations (*Red Española de Inmigración y Ayuda al Refugiado* and *Asociación para el Desarrollo Integral L'Escola AC*) formally required to the Instruction Judge nº

¹²⁶ El Correo, 'El Supremo confirma el archivo de la causa sobre la tragedia de El Tarajal', 2 June 2022, available at: <https://bit.ly/3BQrJNc>.

¹²⁷ Dutch Council for Refugees, 'Working together against pushbacks in Spain', 19 May 2022, available at: <https://bit.ly/3A8GTW7>.

¹²⁸ El Diario, 'Un juzgado de Ceuta ordena al Gobierno retornar a España a los menores devueltos a Marruecos en agosto', 17 February 2022, available at: <https://bit.ly/41puQ8S>.

¹²⁹ El Faro de Ceuta, '*España y Marruecos frenan un nuevo 'salto a la valla' en Ceuta y devuelven en caliente, al menos, a un joven subsahariano*', 13 April 2021, available at: <https://bit.ly/3CnhnRG>; El Faro de Ceuta, '*Organizaciones de Derechos Humanos denuncian la devolución en caliente de un joven subsahariano en la valla de Ceuta*', 13 April 2021, available at: <https://bit.ly/3wTyf1b>; El Faro de Ceuta, '*Devueltos a Marruecos unos 30 jóvenes migrantes que llegaron a nado a Ceuta el domingo*', 27 April 2021, available at: <https://bit.ly/3AkceRG>.

¹³⁰ El País, '*Interior devuelve a Marruecos a miles de migrantes sin aclarar el procedimiento*', 19 May 2021, available at: <https://bit.ly/3oARJ74>.

¹³¹ El Salto Diario, 'Las organizaciones de DD HH denuncian que el Gobierno está incumpliendo la ley con las expulsiones colectivas de Ceuta', 19 May 2021, available at: <https://bit.ly/3nmUiKq>; Al Jazeera, 'As migrants continue to reach Ceuta, Spanish pushback hardens', 19 May 2021, available at: <https://bit.ly/3DaSVU1>; RTVE, 'Las ONG piden acabar con las devoluciones en caliente de menores en Ceuta y recuerdan que son ilegales', 19 May 2021, available at: <https://bit.ly/3DiSTcF>; Asociación Pro derechos Humanos de Andalucía - APDHA, 'APDHA exige el cese de las vulneraciones de derechos humanos contra las personas migrantes en Ceuta', 19 May 2021, available at: <https://bit.ly/31lwqyk>.

¹³² Stick Noticias, 'ONG denuncian la devolución de menores, la falta de asistencia letrada y la persecución de migrantes en Ceuta', 21 May 2021, available at: <https://bit.ly/31dN5UZ>.

¹³³ Cadena Ser, 'Interior ordena la devolución a sus países de origen a los menores migrantes que cruzaron a Ceuta en mayo', 13 May 2021, available at: <https://bit.ly/3GXhSoh>.

¹³⁴ Público, 'La Fiscalía denuncia a la delegada del Gobierno y a la vicepresidenta de Ceuta por las expulsiones de menores marroquíes', 10 June 2022, available at: <https://bit.ly/3VLzIYp>.

¹³⁵ El Pueblo de Ceuta, 'El senegalés que abrazó a la voluntaria de Cruz Roja lleva a España ante Estrasburgo por su devolución', 14 July 2022, available at: <https://bit.ly/3QCUukM>.

2 of Ceuta to exercise the private prosecution (*acusación particular*) in the criminal proceeding against the Government Delegate and the First Vice President of Ceuta for the crime of perversion of the course of justice, for their involvement in the return of 55 unaccompanied Moroccan children in August 2021.¹³⁶ The *Red Española de Inmigración y Ayuda al Refugiado* was finally admitted to the criminal proceedings.¹³⁷ In addition, the disclosure of email exchanged between different Ministers and the Government of Ceuta showed that the Chief of the Area of Minors of Ceuta had informed the Government of the illegality of the repatriations of the children to Morocco as contrary to international, European and national laws.¹³⁸

- In October, the Council of Ministers decided to remove the Government Delegate of Ceuta from her position, due to her involvement in said criminal proceedings.¹³⁹

As previously mentioned, on 24 June 2022, around 2,000 persons attempted to enter **Melilla** from Morocco by jumping the fence, resulting in 37 persons dead and hundreds injured, and in 133 persons who achieved to enter the Spanish enclave.¹⁴⁰ Reports of pushbacks have been presented by Amnesty International¹⁴¹ and through the testimonies of the migrants and asylum seekers who were subjected to pushbacks.¹⁴²

The Jesuit Migrant Service and the Moroccan Association for Human Rights (AMDH) denounced that, since 2020, migrants reaching the **Chafarinas Islands** (a Spanish archipelago in the Mediterranean, located at around 4 km from Morocco) are systematically pushed-back to Morocco instead of being transferred to Melilla.¹⁴³ At the beginning of 2022, a case regarding the pushback of around 50 persons, who arrived at the archipelago in August 2021, was unadmitted and dismissed by the Court of Melilla, which accepted that the Spanish “Guardia Civil” had the right to issue refusals of entry (*rechazo en frontera*) in these cases.¹⁴⁴

Bilateral agreements with third countries

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

Since 2019, **Mauritania** has become the main country to receive deportation flights from Spain (chartered by Frontex), *inter alia* due to the increase of arrivals to the **Canary Islands**. This is based on a bilateral

¹³⁶ El Faro de Ceuta, ‘Dos entidades piden ejercer la acusación popular contra Mateos y Deu, 8 August 2022, available at: <https://bit.ly/3SlqKEL>.

¹³⁷ El Foro de Ceuta, ‘La Red Española de Inmigración admitida como acusación popular en la denuncia por la devolución de menores’, 22 August 2022, available at: <https://bit.ly/3dVdc92>.

¹³⁸ Público, ‘El Gobierno ordenó las devoluciones ilegales de niños marroquíes pese a la advertencia de la jefa de menores de Ceuta’, 24 August 2022, available at: <https://bit.ly/3haeOcf>.

¹³⁹ Público, ‘Cesan a la delegada del Gobierno en Ceuta, imputada por las devoluciones ilegales de menores marroquíes’, 31 October 2022, available at: <https://bit.ly/3XJdq5o>.

¹⁴⁰ El País, ‘El masivo salto de migrantes en la valla fronteriza de Melilla, en imágenes’, 24 June 2022, available at: <https://bit.ly/3QgDMHU>; ECRE, ‘Atlantic Route and Spain: Deadly Tragedy at Melilla Border Causes Local Protests and International Outcry – More Deaths on the Atlantic’, Weekly Bulletin, 8 July 2022, available at: <https://bit.ly/3A9951S>; Melting Pot, ‘Almeno 27 migranti muoiono in Marocco nel tentativo di superare le barriere verso Melilla’, 25 June 2022, available at: <https://bit.ly/3bNzgBW>.

¹⁴¹ Amnistía Internacional, ‘Amnistía Internacional expresa gran preocupación por los graves hechos ocurridos hoy en Melilla y en la frontera entre Marruecos y España, y pide una investigación independiente y exhaustiva’, 24 June 2022, available at: <https://bit.ly/3pb2D41>; Amnistía Internacional, ‘Carta al presidente Sánchez por las ocho violaciones de derechos humanos cometidas en la valla de Melilla y la frontera marroquí’, 29 June 2022, available at: <https://bit.ly/3QFMeAt>.

¹⁴² Público, ‘Los refugiados devueltos en caliente desde Melilla: “Los españoles nos pegaban de un lado y los marroquíes del otro”’, 4 July 2022, available at: <https://bit.ly/3SKzOJt>; El País, ‘Immigration to Europe: Beni Mellal, Morocco’s city of exile for migrants pushed back from Europe’s borders’, 2 August 2022, available at: <https://bit.ly/3PvpdsdH>.

¹⁴³ Público, ‘Denuncian devoluciones en caliente en las islas españolas de Chafarinas’, 27 January 2022, available at: <https://bit.ly/3IVKHCC>.

¹⁴⁴ El Faro de Melilla, ‘El Defensor del Pueblo responde sobre la devolución de inmigrantes a Marruecos tras llegar a Chafarinas’, 5 September 2022, available at: <https://bit.ly/3FNHkPn>.

agreement signed back in 2003.¹⁴⁵ In January 2020, 72 persons from **Mali**, out of which at least 14 were asylum seekers, were returned to Mauritania in the framework of a bilateral agreement with Spain, as **Mauritania** accepts returned migrants who have transited through its territory.¹⁴⁶ 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.¹⁴⁷ This case of return takes part as one of the seven flights that the Spanish Ministry of Interior has been carrying carried out since June 2019. As denounced by different organisations, these practices amount to indirect pushbacks, are in violation with the *no-refoulement* principle and are contrary to UNHCR's call not to return Malians to their country of origin.¹⁴⁸

In November 2020, Spain further resumed the expulsion of migrants, which had been suspended following the COVID-19 spread. Reports of repatriations of migrants without guarantees (i.e. legal assistance, the possibility to apply for asylum, etc.) from the **Canary Islands** were made also in 2022.¹⁴⁹

In December 2020, **Algeria** joined Morocco and Mauritania as third countries accepting repatriations of migrants.¹⁵⁰ Thus, Algerian migrants were returned from Spanish CIEs.¹⁵¹ In the same month, Spain increased the deportation of Moroccan migrants arriving to the Canary Islands.¹⁵² In November 2020, Spain had also reached a similar agreement with **Senegal**.¹⁵³ Consequently, the Government announced in February 2021 that it would resume deportation flights to **Senegal** by the end of the month.¹⁵⁴ 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.¹⁵⁵ The flight that the Minister of Interior organised at the end of February for repatriating migrants from the Canary Islands to Senegal was finally cancelled due to a COVID-19 outbreak at the CIE of Hoya Fría. It was then rescheduled to 10 March, but it was once more suspended.¹⁵⁶ Apparently, the difficulties experienced in the organisation of the deportation flights were also due to Senegal's resistance to carry them out in practice.¹⁵⁷

¹⁴⁵ 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>.

¹⁴⁶ 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>.

¹⁴⁷ 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>.

¹⁴⁸ Europapress, 'SJM denuncia que España repatría a personas malienses a Mauritania, "devoluciones indirectas" a un país en conflicto', 24 January 2020, available at: <https://cutt.ly/wtqES5g>; La Provincia, 'Las devoluciones indirectas de migrantes a Mali contravienen directrices de la ONU', 3 February 2020, available in Spanish at: <https://cutt.ly/3tqW6Ew>.

¹⁴⁹ El Diario, 'Grupos semanales de 20 migrantes y sin derecho a un segundo abogado, así son las deportaciones de Canarias al Sáhara', 23 April 2023, available at: <https://bit.ly/3IT7xvX>.

¹⁵⁰ 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>.

¹⁵¹ Público, 'Interior retoma las deportaciones de migrantes argelinos desde los CIE', 2 December 2020, available in Spanish at: <https://bit.ly/2XXlhP7>.

¹⁵² 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>.

¹⁵³ El Confidencial, 'España alcanza un acuerdo con Senegal para repatriar a los migrantes irregulares', 22 November 2020, available at: <https://bit.ly/3IORSMt>; El Salto Diario, 'El plan de España en Senegal: extractivismo para empobrecer pero migración criminalizada', 10 April 2021, available at: <https://bit.ly/32I2ZCC>.

¹⁵⁴ Público, 'España retomará los vuelos de deportaciones de migrantes a Senegal', 5 February 2021, available at: <https://bit.ly/37mAPkJ>.

¹⁵⁵ El País, 'La ministra de Exteriores cierra en Senegal un acuerdo para reactivar las repatriaciones', 22 November 2020, available at: <https://bit.ly/2Zvt87p>.

¹⁵⁶ Diario de Avisos, 'Un macro vuelo recoge hoy en las Islas a decenas de senegaleses para deportarlos', 10 March 2021, available at: <https://bit.ly/3G8Gb1C>; El Día, 'Interior mantiene las deportaciones a Senegal pese a las revueltas en el país', 10 March 2021, available at: <https://bit.ly/3HkiuVq>; Canarias7, 'Interior suspende por segunda vez el vuelo de repatriación a Senegal', 10 March 2021, available at: <https://bit.ly/3KR9k53>.

¹⁵⁷ El País, 'Senegal se resiste a garantizar los vuelos de repatriación de migrantes desde España', 9 April 2021, available at: <https://bit.ly/3ujCP9T>.

It should be further noted that the Government addressed a tender of €10 million to airlines, aiming exclusively at fund exclusively deportation flights.¹⁵⁸ Moreover, in 2020, the Minister of Interior announced that it was tripling financial support to African countries with the aim of stop irregular migration.¹⁵⁹ In November 2020, the Government also adopted a plan aimed at providing third countries (e.g. **Senegal**, **Mauritania** and **Morocco**) with equipment such as vessels, helicopters and airplanes in order to stop migration and increase expulsions of rejected applicants for international protection.¹⁶⁰

In September 2022, Spain and **Senegal** started negotiations to resume deportations of migrants irregularly staying in the Spanish territory.¹⁶¹ During the same month, the Directorate-General of the National Police announced the decision to send six systems for the identification of forged documents to **Gambia**, with the aim of fighting smuggling rings.¹⁶²

According to a report published in 2022 by the European Migration Network (EMN), Spain has readmission agreements with some African countries (Cape Verde, Gambia, Guinea-Bissau, Guinea Conakry, Mali, and Niger).¹⁶³ No information has been found on how widely they are applied nor how many persons are readmitted through such agreements.

1.2 Arrivals by sea

In 2022, 28,930 persons and 1,704 boats reached Spain via sea routes.¹⁶⁴

Out of the total number of persons arriving by sea, more than a half (15,682 persons) disembarked on the **Canary Islands**, which became one of the main destinations for boats since the last months of 2019, while 12,955 persons arrived on **mainland** and the **Balearic Islands**. Only a few migrants disembarked in **Ceuta** (124 persons) and **Melilla** (169 persons).¹⁶⁵

Regarding the number of deaths in the Mediterranean, several figures have been reported. The NGO *Caminando Fronteras* (Walking Borders) estimated that 2,390 persons died while reaching Spain in 2022, being 1,784 those who lost their life in the Canary route.¹⁶⁶ It further reported that 288 of victims were women, 101 were children, and that a total of 64 vessels disappeared with all persons on board. In addition, according to the organisation, 11,522 persons died at the Euro-African Western border from 2018 to 2022; that means an average of 6 deaths per day.¹⁶⁷ In the annual report on the assessment of the migratory situation at the Spanish Southern borders, the *Asociación Pro Derechos Humanos de*

¹⁵⁸ 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>.

¹⁵⁹ 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>.

¹⁶⁰ 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>.

¹⁶¹ Público, 'España y Senegal negocian para retomar las deportaciones de migrantes', 19 September 2022, available at: <https://bit.ly/3WfP4z1>.

¹⁶² El Confidencial Digital, 'Interior proporcionará material policial a Gambia para frenar la inmigración irregular', 15 September 2022, available at: <https://bit.ly/3kBTJgV>.

¹⁶³ European Migration Network (EMN), 'Bilateral Readmission Agreements', September 2022, available at: <https://bit.ly/3ZtO37o>.

¹⁶⁴ Ministry of Interior, 'Inmigración Irregular 2022. Datos acumulados del 1 de enero al 31 de diciembre', available in Spanish at: <https://bit.ly/3iNv1tp>.

¹⁶⁵ Ministry of Interior, 'Inmigración Irregular 2022. Datos acumulados del 1 de enero al 31 de diciembre', available in Spanish at: <https://bit.ly/3iNv1tp>.

¹⁶⁶ Caminando Fronteras, 'Monitoring the Right to Life - Year 2022, January 2023, available at: <https://bit.ly/3HktowO>.

¹⁶⁷ Caminando Fronteras, 'Informe víctimas de la necro frontera 2018-2022, diciembre 2022', December 2022, available at: <https://bit.ly/3WqG0GV>.

Andalucía indicated that 1,901 persons disappeared in 2022, and that the Canary route continues to represent the deadliest journey to reach Spain.¹⁶⁸

In November 2022, more than 100 organisations proposed to introduce a set of measures for a respectable treatment for migrants dead and disappeared in the sea and for their families. Among other measures, the proposal foresees the creation of an information office of the Ombudsman, that would oversee providing comprehensive assistance to families of the dead and disappeared, as well as of managing a DNA database connected with Interpol. The proposal, led by the Asociación Pro Derechos Humanos de Andalucía (APDHA), is part of the campaign #VidasSinRastro (lives without track), and was sent to the Spanish Ombudsman, the Government and to different parliamentary groups.¹⁶⁹

The dismantlement of a smuggling and drug trafficking network brought to light the 'boats' business', definition referring to the high costs migrants are required to pay to reach Spain by boat. The prices that the smuggling network requested migrants to pay ranged between 4,000 and 7,500 Euros, depending on the services provided (including accommodation in caves).¹⁷⁰

An investigation published in 2021 by the trade union of journalists in Andalucía and the producer *EntreFronteras* revealed the obstacles that media face when covering migration related issues at places where migrants mainly arrive by boat.¹⁷¹ The report refers to the deterioration in press freedom that could be observed in relation to the lack of possibilities for journalists access to information and sources in at least 6 of the 7 main ports, which includes the different denounces of prior censorship in the Canary Islands, and the closure of the ports to journalists in Alicante and Murcia.¹⁷²

In 2021, the Spanish Bar Association published a practical guide for providing legal assistance during arrivals by sea, with the aim of guaranteeing migrants the best service and protecting them in the framework of their rights and liberties.¹⁷³

In 2022, the Spanish Red Cross implemented a pilot project in the Canary Islands, directed at identifying the persons who disappeared during the migratory maritime route to the archipelago. After investigating 45 shipwrecks, the organisation identified 101 persons disappeared.¹⁷⁴

In the 2022 annual report, the Spanish Ombudsman underlines the increase of women with children in arrivals by sea in the last years, especially to the Canary Islands. The report also indicates that such change in the profile of newcomers has been the object of special interest and analysis by the institution, and that the necessity to improve the coordination among relevant stakeholders as well as the protocol for the humanitarian assistance with an age and gender perspective has been transmitted to the administration.¹⁷⁵

¹⁶⁸ Asociación Pro Derechos Humanos de Andalucía, 'Balance Migratorio Frontera Sur 2022', 7 February 2023, available at: <https://bit.ly/3Ze5oSK>.

¹⁶⁹ Asociación Pro Derechos Humanos de Andalucía (APDHA), 'Más de un centenar de organizaciones proponen medidas para el trato digno a las personas migrantes muertas y desaparecidas en el mar y sus familias', 2 November 2022, available at: <https://bit.ly/3VwJGHP>; Asociación Pro Derechos Humanos de Andalucía (APDHA), 'APDHA publica un documento informativo para las familias de personas desaparecidas en la frontera sur', 28 July 2022, available at: <https://bit.ly/3JnFIOF>.

¹⁷⁰ El Español, 'El negocio criminal de las pateras en España: entre 4.000 y 7.500€ por migrante para dormir en cuevas', 6 August 21, available at: <https://bit.ly/3KleBBs>.

¹⁷¹ El Faro de Ceuta, 'El 86% de los puertos españoles ponen trabas a la prensa durante la llegada de migrantes', 15 March 2021, available at: <https://bit.ly/3nJmkzz>.

¹⁷² Entre Fronteras, Sindicato de Periodistas de Andalucía (SPA), 'Informe periodismo y migraciones la cobertura periodística sobre los procesos migratorios en los puertos españoles durante el estado de alarma', March 2021, available at: <https://bit.ly/3gdkZwJ>.

¹⁷³ Consejo General de la Abogacía Española, Fundación Abogacía Española, 'Asistencia jurídica en llegadas marítimas. Guía práctica para la abogacía', August 2021, available at: <https://bit.ly/3GLQFoR>.

¹⁷⁴ Nius Diario, 'Cruz Roja implanta un proyecto de identificación de personas desaparecidas en ruta migratoria por vía marítima', 29 August 2022, available at: <https://bit.ly/3QkUYvI>; El Diario, 'Cruz Roja identifica a más de 100 personas desaparecidas en la ruta migratoria hacia Canarias', 29 August 2022, available at: <https://bit.ly/3KQK4vV>.

¹⁷⁵ Defensor del Pueblo, 'Informe anual 2022 – Volumen I', March 2023, p. 171, available at: <https://bit.ly/42x1Ehf>.

A report published by the *Programa Ödos*¹⁷⁶ in June 2022 indicates that the 61% of the children assisted were girls (mainly accompanied), mostly fleeing due to the risk of being subjected to female genital mutilation.¹⁷⁷

In June 2022, the Spanish Ministry of Foreign Affairs pushed to consider irregular migration as an 'hybrid threat' in the new NATO policy roadmap.¹⁷⁸

Situation on the Canary Islands

As demonstrated by the figures above, boats arrivals to the **Canary Islands** continued in significant numbers throughout 2022. It is very likely that the Canary Island will continue to be one of the main point of entry to Spain for migrants and refugees throughout 2023, especially given the increased 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.¹⁷⁹ This is also due to the change of position of Spain in relation to the Western Sahara in 2022 and the consequent negative reaction of Algeria toward Spain.¹⁸⁰

The 'Canary route' continues to be the deadliest route to reach Spain, with 1,330 out of 1,901 registered deaths of migrants trying to reach Spain in 2022 recorded on this route.¹⁸¹ In the 2022 annual report, the Spanish Ombudsman acknowledges the 1,532 deaths registered by the OIM in the western African-Atlantic route and informs about the claims he continues to receive by family members of persons disappeared. For this purpose, the body reports the intention to adopt a resolution aiming at improving the action protocols in such context.¹⁸² A report published in October 2022 by the organisation Sir[a]¹⁸³ details that the journey via the Canary route can last from 24-40 hours to 11-12 days according to the departure points (Morocco and Senegal, respectively).¹⁸⁴

Nevertheless, while the focus has continuously been on the Canary Island during the last years, the so-called 'Algerian route' has also recorded many arrivals during 2022, especially to the **Balearic Islands**, **Murcia** and **Alicante**. Such a route registered an increase also in deaths and disappearances in 2022.¹⁸⁵

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](#)). Regarding access to the asylum procedure, several shortcomings were reported in 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.¹⁸⁶

¹⁷⁶ Programa Ödos, see: <https://programaodos.org/>.

¹⁷⁷ Programa Ödos, 'Mujeres y niñez africana en movilidad. La llegada a España a través del Mediterráneo', June 2022, available at: <https://bit.ly/40bMJY7>.

¹⁷⁸ ECRE, 'Atlantic Route and Spain: Push for Inclusion of Irregular Migration as Threat to NATO, Old Routes Remain Deadly and New Deadly Routes Emerge Amid Tensions Over Western Sahara', 24 June 2022, available at: <https://bit.ly/3o3s9Lm>.

¹⁷⁹ 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>.

¹⁸⁰ Euro News, 'El cambio de posición de España respecto al Sáhara provoca la reacción de Argelia', 20 March 2022, available at: <https://bit.ly/3K1qzRF>.

¹⁸¹ Asociación Pro Derechos Humanos de Andalucía, 'Balance Migratorio 2022: APDHA alerta de la peligrosidad de las rutas con la segunda cifra más alta de muertes de la historia en 2022', 7 February 2023, available at: <https://bit.ly/40xIlgl>.

¹⁸² Defensor del Pueblo, 'Informe anual 2022 – Volumen I', March 2023, p. 163, available at: <https://bit.ly/42x1Ehf>.

¹⁸³ Sir[a], see: <https://www.psicosocial.net/sira/>.

¹⁸⁴ Sir[a], 'Laberintos de Tortura. Violencias e impactos del tránsito migratorio desde África hasta España', October 2022, available at: <https://bit.ly/3zm9wlf>.

¹⁸⁵ Asociación Pro Derechos Humanos de Andalucía, 'Derechos Humanos en la Frontera Sur 2023 – 35 años de vidas sin rastro', 20 March 2023, p. 75, available at: <https://bit.ly/3K58GCD>.

¹⁸⁶ 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>.

According to a thematic report published by the organisation *Irídia*¹⁸⁷ in May 2022, the discrimination in accessing rights, the lack of procedural guarantees and the permanent incompliance with existing norms at the borders are the main human rights violations identified by the organisation.¹⁸⁸

As mentioned, to support the authorities in the early identification of international protection needs, in capacity building, in registration and assistance to newcomers, UNHCR deployed a team in the archipelago since January 2021. Similarly, EUAA (former EASO) deployed a team of experts to the Canary Islands in March 2021 with the aim of supporting the Spanish authorities to manage the reception centres, in light of the increase in arrivals of migrants and asylum seekers.¹⁸⁹ The EUAA 2022-2023 operation plan for Spain aims at supporting national authorities in designing and implementing a new reception model, and to ensure that standardised reception processes and procedures are adopted across the country.¹⁹⁰ Spain has received operational support by the EASO/EUAA since 2021. The 2022-2023 plan was amended in May 2022 to take into account the changes in the operational context in light of the invasion of Ukraine.¹⁹¹

Throughout 2022, the EUAA deployed a total of 53 different experts in Spain,¹⁹² half of which were temporary agency workers. This included 27 administrative assistants, 4 intermediate asylum and reception programme and project management experts, 3 intermediate asylum information provision experts, 3 intermediate vulnerability experts, 3 operations officers, and other monitoring, legal and administrative staff (e.g. reception experts, asylum and/or reception statistics experts, etc.). As of 20 December 2022, there were still 47 EUAA experts present in Spain, mainly administrative assistants (26).¹⁹³

In August 2021, the Government of the Canary Islands, together with the Bar Association and in collaboration with UNHCR, started to implement a project to provide legal assistance to detained persons, migrants and asylum seekers,¹⁹⁴ which was continued throughout 2022.¹⁹⁵

Following a needs assessment realised at the end of 2020, IOM started its operations in the Canary Islands at the beginning of 2021, aiming at addressing the significant increase in arrivals. IOM's operation is based in **Tenerife**, where the organisation managed a facility with 1,100 reception places (reduced to 1,054 due to COVID-19 prevention measures). With a staff of 53 employees, IOM provided for humanitarian reception places and direct assistance to migrants reaching the archipelago. The organisation's work includes provision of legal assistance as well as the identification of vulnerabilities and addressing protection needs.¹⁹⁶ In June 2022, the organisation finalised its operations in the Canary Islands.

The renewal of agreements between Morocco and Spain in 2022 and the increasingly positive relations among the two countries are considered as one of the factors determining a decrease in the arrivals to the Canary Islands.¹⁹⁷

¹⁸⁷ Irídia, see: <https://iridia.cat/es/>.

¹⁸⁸ Irídia, 'Nuevas vulneraciones de derechos humanos a las personas migrantes en Canarias, May 2022, available at: <https://bit.ly/3Zf2cW7>.

¹⁸⁹ EASO, 'EASO support to Spain becomes fully operational', 10 March 2021, available at: <https://bit.ly/3GpBGzC>.

¹⁹⁰ EUAA, 'Operating Plan 2022-2023 agreed by the European Asylum Support Office and Spain', 14 December 2021, available at: <https://bit.ly/3wVy5aD>.

¹⁹¹ EUAA, *Operational Plan 2022-2023 agreed by the European Union Agency for Asylum and Spain*, May 2022, available at: <https://bit.ly/3F92GWz>.

¹⁹² EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

¹⁹³ Information provided by the EUAA, 28 February 2023. In the figures above, the same persons may have been included under different profiles, if a change of profile took place in the course of 2022.

¹⁹⁴ El Periódico de Canarias, 'Gobierno y abogados inician un proyecto de orientación jurídica para personas presas, refugiadas y migrantes', 1 August 2021, available at: <https://bit.ly/35CwUSL>.

¹⁹⁵ Gobierno de Canarias, 'El Gobierno gasta 25 millones al año en mantener un buen servicio de asistencia jurídica gratuita en Canarias', 4 May 2022, available at: <https://bit.ly/3K5bNdN>.

¹⁹⁶ Information provided by the IOM on 4 March 2022.

¹⁹⁷ Canarias7, 'Los acuerdos con Marruecos inciden en el descenso de la inmigración en Canarias', 13 January 2023, available at: <https://bit.ly/3n6konh>.

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.¹⁹⁸ The Police (*Guardia Civil*) usually participates along with the personnel of Maritime Rescue in **Almería**, but not in **Algeciras**. The Maritime Rescue always informs the Spanish Red Cross (Cruz Roja Española)¹⁹⁹ of arrivals. The Spanish Red Cross notifies its Emergency Immediate Response Teams (*Equipos de Respuesta Inmediata en Emergencia*, ERIE) that operate in Almería, Motril, Málaga, Tarifa and Ceuta, where migrants are taken upon their arrival.

In December 2021, the Government approved the new Plan for Security and Maritime Rescue 2021-2024, with a budget of more than 173 million Euros.²⁰⁰

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

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

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

One such example was the persecution of the Spanish activist Helena Maleno, founder of the NGO *Caminando Fronteras*, accused in 2020 by *Salvamento Marítimo* of being responsible of the deaths of migrants,²⁰¹ even after the charges of migrant smuggling and human trafficking held against her, which were dropped in March 2019 by the Appeal Court of Tangier.²⁰² In April 2021, while entering Morocco through Tangier, where she has been living with her family for 20 years, she was expelled from the country. In an urgent press conference organised after the incident, she has explained the reasons for which these charges were held against her, and urged the Spanish and the Moroccan Governments to stop criminalising her as human rights defender²⁰³. Following the incident, 700 organisations and 10,000 persons asked the Spanish Government to protect Helena Maleno.²⁰⁴ In November 2021, the World

¹⁹⁸ CEAR, 'Refugiados y migrantes en España: Los muros invisibles tras la frontera sur', December 2017, 8.

¹⁹⁹ Cruz Roja Española, see: <https://www2.cruzroja.es/>.

²⁰⁰ Ministerio de Transportes, Movilidad y Agenda Urbana, 'El Gobierno consolida el sistema de respuesta ante accidentes en la mar con el nuevo Plan de Seguridad y Salvamento Marítimo 2021-2024', 7 December 2021, available at: <https://bit.ly/34yvUOW>.

²⁰¹ 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>.

²⁰² 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>.

²⁰³ Cadena Ser, 'La defensora de derechos humanos Helena Maleno, expulsada de Marruecos', 12 April 2021, available at: <https://bit.ly/2Z02lDO>.

²⁰⁴ El Salto Diario, 'Más de 700 organizaciones y 10.000 personas exigen a Pedro Sánchez protección para Helena Maleno', 20 April 2021, available at: <https://bit.ly/3Crs9WO>.

Organisation against Torture included Helena Maleno among those activists in Europe who are criminalised for their solidarity with harassment, assault and torture.²⁰⁵

In January 2021, the Mayor of **Barcelona** expressed instead solidarity with NGOs involved in Search and Rescue activities. In the same month, the Municipality announced the intention to intervene as civil party in the criminal procedure in process in **Palermo** (Italy) against the former Italian Minister of the Interior Matteo Salvini, for impeding the disembarkation of the Open Arms boat in Italy. The Open Arms was carrying 130 migrants and refugees during the summer of 2019.²⁰⁶ The judgement started in Palermo in October 2021.²⁰⁷ The judgment is still pending at the time of writing of this report, with some hearings already held during 2022 and the beginning of 2023.²⁰⁸

In September 2022, a senator of the political party Vox asked the Government to investigate those NGOs collaborating with mafias in smuggling migrants. The Minister of Interior expressed doubts regarding this statement, and responded he should present a formal report if he possessed evidence pointing in that direction.²⁰⁹

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.²¹⁰ The Minister of Interior accepted the recommendations, but the new instructions have not been published so far.²¹¹ In April 2022 the Minister of Interior reverted its decision and refused to adopt the changes proposed by the Ombudsman.²¹²

The role of Moroccan authorities in migration and border control

According to official data, the Moroccan Government declaring having impeded the arrival of almost 15,000 migrants to Spain during the first 3 months of 2022, thanks to the deployment of its security forces, and that during 2021 it had prevented 63,121 attempts to enter Spain.²¹³ The decrease of arrivals of almost 26% in 2022 compared to 2021 has been connected also to the renewal of the cooperation between Morocco and Spain.²¹⁴ See the [2021 update of the AIDA report](#) for more details on the issue on previous years.

²⁰⁵ Caminando Fronteras, 'La Organización Mundial contra la Tortura señala a España y Marruecos por criminalizar a Helena Maleno', 15 November 2021, available at: <https://bit.ly/3pOe2b5>.

²⁰⁶ 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>.

²⁰⁷ La Vanguardia, 'Arranca el juicio contra Salvini por bloquear el desembarco del Open Arms', 23 October 2021, available at: <https://bit.ly/34BeKR2>.

²⁰⁸ La Notizia, 'Processo Open Arms, nuova udienza a Palermo per Salvini. Il vicepremier: "Rischio 15 anni di carcere"', 13 January 2023, available at: <https://bit.ly/3ym0o2o>; Il Sicilia, 'Salvini a palermo per il processo Open Arms, incontrerà i dirigenti del partito', 1 March 2022, available at: <https://bit.ly/3ztnu2z>.

²⁰⁹ Diario Siglo XXI, 'Vox pide investigar ONG que "colaboran" en tráfico de migrantes y Marlaska responde: "Si tiene datos formalice denuncia"', 20 September 2022, available at: <https://bit.ly/3BhgpLL>.

²¹⁰ 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>.

²¹¹ Defensor del Pueblo, 'Polizones extranjeros. Tratamiento de solicitudes de asilo', available in Spanish at: <https://bit.ly/3L2Cpue>.

²¹² Público, 'Interior cambia de criterio y se niega a mejorar la protección de los polizones que piden asilo en España', 21.4.22, available at: <https://bit.ly/3lYVDkn>.

²¹³ La Razón, 'Marruecos evitó la llegada a España de 15.000 inmigrantes durante los tres primeros meses del año', 7 May 2022, available at: <https://bit.ly/3BSJtYq>.

²¹⁴ Atalayar, 'El acuerdo entre España y Marruecos hace descender la inmigración irregular en un 26%', 4 January 2023, available at: <https://bit.ly/3GSnwe5>; Público, 'La nueva relación con Marruecos atenúa la migración hacia Canarias', 3 September 2022, available at: <https://bit.ly/3kA7ool>.

In 2020, Morocco reinforced its controls to prevent migrants from entering Spain,²¹⁵ and the two countries strengthened their alliance during the pandemic in the field of migration control.²¹⁶ Regardless, some tensions between Spain and Morocco were reported throughout 2020 because of the situation in Ceuta and Melilla.²¹⁷ Tensions between the two countries newly increased in May 2021 following the hospitalisation of the Sahrawi leader in a Spanish hospital. Therefore, the Moroccan government eased border controls, and around 8,000 persons entered Ceuta, swimming from Moroccan shores.

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

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

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

Following the XII High Level Meeting between Spain and Morocco held at the beginning of February 2023, the two countries issued a joint declaration establishing the renewal and reinforcement of the cooperation in the fight against irregular migration, border management, the fight against smuggling and the readmission of migrants in irregular situations.²²² Additional information on the details of such an agreement were not available at the time of writing of this report.

The closure of the Moroccan borders, along with the COVID-19 pandemic and the Spanish migration policy in the Mediterranean,²²³ are probably the main reasons for the notable increase in arrivals on the **Canary Islands** registered since the end of 2019, despite the higher risks that such a route involves. In November 2020, the Spanish Government further announced a joint mission with Frontex aimed at limiting arrivals and closing the ‘Canary migratory route’.²²⁴ In January 2021, Frontex and Spain agreed on renewing the activities of the EU agency for one more year, with 257 officers deployed covering the Gibraltar Strait and the Alborán Sea, as well as the Canary Islands.²²⁵

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

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

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

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

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

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

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

²²² La Moncloa, ‘XII reunión de alto nivel Marruecos-España. 1-2 febrero 2023. Declaración conjunta’, February 2023, available at: <https://bit.ly/3L2NOFz>.

²²³ ECSaharaui, ‘Covid-19 cambia la ruta de la inmigración ilegal procedente de Marruecos; del estrecho de Gibraltar a Gran Canarias’, 19 July 2020, available in Spanish at: <https://cutt.ly/nhLoOE1>.

²²⁴ El País, ‘España y Frontex negocia una operación para cerrar la ruta migratoria canaria’, 7 November 2020, available at: <https://cutt.ly/lhLemcp>.

²²⁵ El País, ‘Frontex renueva un año más sus operaciones en España’, 29 January 2021, available at: <https://bit.ly/3LbMQvy>.

On 17 June 2022, Frontex launched the operation 'Minerva 2022' in Algeciras, Tarifa and Ceuta; it lasted until mid-September, with 101 officers deployed by participant States.²²⁶

In addition, Morocco (together with Algeria) became the new route for Sudanese refugees migrating to Europe, due to the serious political instability in Libya, the violence in such country and the militias controlling its territory.²²⁷

In March 2022, the President of the Spanish Government changed the historical position of Spain in relation to the auto determination of Western Sahara, by announcing to support Morocco's proposal of granting a regime of autonomy to such area, that entails recognition of the Moroccan territorial sovereignty over said territories.²²⁸ The Association for Human Rights in Andalucía lamented the policy change adopted by the Spanish Government, and called for an immediately rectification of the declaration.²²⁹ Numerous gathering and demonstrations have been organised in various Spanish cities to support the Sahrawi population and to protest against the new Government's position.²³⁰ Consequently, in June 2022 Algeria suspended the friendship treaty and froze trade with Spain.²³¹

In April 2022, an agreement on security cooperation and fight against crime reached between Spain and Morocco in February 2019 entered into force, in coincidence with the visit of the Spanish President of the Government to Rabat. The agreement, in force for an indefinite term, provides for the collaboration of the two countries in the fight against different forms of crime, including irregular migration.²³² Migreurop and EuroMed Rights denounced its content for linking migration to border security and to criminality, with the risk of leading to more rights violations at the borders.²³³

In August 2022, the EU announced the intention to allocate more than 500 million Euros to Morocco for the period 2021-2027, a budget that is 50% higher than the previous one, including for border management and police cooperation.²³⁴

In October 2022, the Council of Ministers authorised a granting of 30 million Euros to Morocco within the international police cooperation framework, with the aim of supporting its deployment of personnel in the fight against smuggling and the migration management.²³⁵

²²⁶ Cadena Ser, 'Arranca la Operación Minerva '22 en los puertos de Algeciras y Tarifa', 17 June 2022, available at: <https://bit.ly/3vQFDuW>; El Mundo, 'Interior destina más policías de plantilla para la Frontera del Tarajal en Ceuta', 17 June 2022, available at: <https://bit.ly/3dbiXu5>.

²²⁷ François Fois, 'Le Maroc, nouvelle voie migratoire pour les Soudanais en route vers l'Europe', 29 July 2022, available at: <https://bit.ly/3C6BHU9>.

²²⁸ El Diario, 'Sánchez apoya la propuesta de Marruecos para la autonomía del Sáhara', 18 March 2022, available at: <https://bit.ly/3DkGbAl>; Melting Pot, 'La Spagna approva il piano di autonomia marocchino nel Sahara Occidentale', 2 June 2022, available at: <https://bit.ly/3deloRg>.

²²⁹ Asociaición Pro Derechos Humanos de Andalucía (APDHA), 'APDHA califica de "miserable" el cambio de posición del Gobierno respecto al Sáhara', 21 March 2022, available at: <https://bit.ly/3DfX4aE>.

²³⁰ El Diario, 'Concentraciones en apoyo al Sáhara Libre: "Han creído que podrían imponer su voluntad sobre un pueblo soberano"', 24 March 2022, available at: <https://bit.ly/35fHO0W>; RTVE, 'Unas 2.000 personas se manifiestan frente a Exteriores contra el giro del Gobierno: "Sánchez, el Sáhara no se vende"', 26 March 2022, available at: <https://bit.ly/3iEQAZy>.

²³¹ Cadena Ser, 'Argelia suspende el Tratado de Amistad y Cooperación con España tras el "injustificable" giro de su postura en el conflicto del Sáhara', 9 June 2022, available at: <https://bit.ly/3QeYcRS>.

²³² Boletín Oficial del Estado (BOE), 'Convenio entre el Reino de España y el Reino de Marruecos sobre cooperación en materia de seguridad y de lucha contra la delincuencia, hecho en Rabat el 13 de febrero de 2019', 7 April 2022, available at: <https://bit.ly/3BMrxii>; La Vanguardia, 'El BOE publica un acuerdo España-Marruecos en seguridad coincidiendo con el viaje de Sánchez a Rabat', 7 April 2022, available at: <https://bit.ly/3P40ZvG>.

²³³ El Faro de Ceuta, 'Las ONG creen que el acuerdo España-Marruecos vincula delincuencia e inmigración irregular', 29 April 2022, available at: <https://bit.ly/3A6ONG3>; El Pueblo de Ceuta, 'España y Marruecos renuevan su cooperación en materia de seguridad', 29 April 2022, available at: <https://bit.ly/3A5a5nF>; Andalucía Acoge, 'España y Marruecos renuevan su cooperación en materia de seguridad vinculando delincuencia organizada e inmigración "irregular"', 28 April 2022, available at: <https://bit.ly/3zl3MoG>.

²³⁴ News EsEuro, 'Inmigración ilegal: La UE prevé destinar más de 500 millones de euros a Marruecos (Medios españoles)', 15 August 2022, available at: <https://bit.ly/3A1CxW6>.

²³⁵ Europa press, 'España destina 30 millones de euros a Marruecos contra el tráfico de personas y gestión de flujos migratorios', 18 October 2022, available at: <https://bit.ly/3Fcs0eC>.

In January 2023, the Civil Guard complained for the non-repayable 120 million Euros that the Spanish Government granted to Morocco for the management of borders during 2019 and 2022, and denounced the shortage of the resources received for the same purpose.²³⁶

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. 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.²³⁷ 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.²³⁸ A high number of negative decisions was issued throughout 2020.²³⁹

By November 2020, the Spanish government had granted international protection to only 9 persons out of 374 who applied for asylum, while 49 of them were denied any form of protection and 300 of them are still waiting an answer on their application after 2 years and a half.²⁴⁰ The same situation persisted during 2021.²⁴¹ According to available information, in June 2022, just 58 persons out of 629 had received asylum, 200 applications were denied, and 93 are still pending of a decision.²⁴²

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.²⁴³

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) to proceed with the expulsion. Most migrants who are sent there are eventually not removed from the country,²⁴⁴ 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. The 2022 annual report of the Spanish Ombudsman confirms such challenges and shortcomings.²⁴⁵

²³⁶ Voz Populi, 'Indignación en la Guardia Civil por los 120M de Sánchez a Marruecos: "Pedimos los mismos medios"', 13 January 2023, available at: <https://bit.ly/3ZZMOyn>; Vox Populi, 'Sánchez ha dado al menos 120 millones a Marruecos a fondo perdido solo en gestión de fronteras', 12 January 2023, available at: <https://bit.ly/3JeXR0H>.

²³⁷ El País, 'El Gobierno deniega el asilo a rescatados por el 'Aquarius'', 28 September 2020, available in Spanish at: <https://cutt.ly/FtT2CT3>.

²³⁸ El País, 'España deniega el 94% de las solicitudes de asilo del 'Aquarius'', 13 March 2020, available in Spanish at: <https://cutt.ly/ttUJdTn>.

²³⁹ La Vanguardia, 'Siete denegaciones de asilo a refugiados del 'Open Arms'', 27 October 2020, available at: <https://bit.ly/2OU0k6E>.

²⁴⁰ Las Provincias, 'El Gobierno se olvida del Aquarius', 15 November 2020, available in Spanish at: <https://cutt.ly/khMwBrt>.

²⁴¹ Las Provincias, 'El fiasco del Aquarius', 21 May 2021, available at: <https://bit.ly/33NYRWY>.

²⁴² Cadena Ser, 'Cuatro años después los migrantes de la flotilla del 'Aquarius' se sienten abandonados', 15 June 2022, available at: <https://bit.ly/3Q0GYqV>.

²⁴³ Ibid, 10.

²⁴⁴ El País, 'España expulsa 30 inmigrantes por día desde 2013', 7 January 2019, available in Spanish at: <https://bit.ly/2QvIvqC>.

²⁴⁵ Defensor del Pueblo, 'Informe anual 2022 – Volumen I', March 2023, available at: <https://bit.ly/3FQgoxY>, 169.

Despite certain improvements put in place by the Government of the **Canary Islands**, a thematic report published by the organisation *Irídia* in May 2022 confirms the challenges that migrants still face in accessing legal assistance and asylum.²⁴⁶

In August 2021, the General Council of the Spanish Bar Association published guidelines on legal assistance during maritime arrivals, that contains practical guidance for lawyers on how to guarantee a quality legal assistance to newcomers, including information on how to access the asylum procedure, and the right to defence.²⁴⁷

In addition, in order to respond to the increasing number of arrivals, from 2018 the Spanish Government put in place resources in order to manage arrivals and to carry out the identification of persons' vulnerabilities in the first days of arrival. Specific facilities for emergency and referral have been created: these are referred to as Centres for the Temporary Assistance of Foreigners (*Centros de Atención Temporal de Extranjeros*, CATE) and Centres for Emergency Assistance and Referral (*Centros de Atención de Emergencia y Derivación*, CAED).²⁴⁸

- **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 2022, there were CATE in all the main points of sea arrivals: **San Roque-Algeciras** in Cádiz, **Almería**, **Motril** in Granada, in **Málaga**, **Cartagena**, **Balearic Islands**, **Barranco Seco** in Las Palmas de Gran Canarias, **Tenerife**, **Arrecife** in Lanzarote, **Fuerteventura**. CATE are usually large facilities; the one in **San Roque** has a capacity of about 600 places, for example. The one in **Málaga** has a capacity for 300 persons, with a space of 2.3m² per person, which is 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.²⁴⁹ The construction of a new CATE in **Cartagena**, announced in 2020, was due to be finalised in 2021, but its construction was finalised in September 2022.²⁵⁰ The Government further announced the construction of two additional CATEs in 2021, namely in **Motril** (Granada),²⁵¹ which constructions work finalised in October 2022, but it still didn't open at the time of writing of this report,²⁵² and in **Las Palmas** on the Canary Islands, which was opened in **Barranco Seco** with a capacity of 1,000 places.²⁵³

Based on available information, the Government has not adopted (or at least not yet published) any legal instrument defining and regulating these centres created to manage sea arrivals.²⁵⁴ The same was highlighted also by the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture in its 2022 annual report, which underlines that such facilities are

²⁴⁶ Irídia, 'Nuevas vulneraciones de derechos humanos a las personas migrantes en Canarias, May 2022, available at: <https://bit.ly/3Zf2cW7>.

²⁴⁷ Consejo General Abogacía Española, Fundación Abogacía Española, 'Asistencia jurídica en llegadas marítimas Guía práctica para la abogacía', August 2021, available at: <https://bit.ly/3hWYda>.

²⁴⁸ 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>.

²⁴⁹ 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>.

²⁵⁰ La Opinión de Murcia, 'El CATE provisional de Cartagena abrió sin luz ni Internet y carece de zona de desembarco', 9 October 2022, available at: <https://bit.ly/41WDRqE>; La Verdad, 'La apertura del CATE de Cartagena depende ahora de una prórroga sobre el suelo', 4 February 2022, available at: <https://bit.ly/3sr4uUK>.

²⁵¹ Andalucía Información, 'El Nuevo CATE de Motril entrará en funcionamiento en 2022, según Gobierno', 23 September 2021, available at: <https://bit.ly/3tfkxEz>.

²⁵² Ideal, 'Las obras del centro de inmigrantes de Motril terminan en octubre después de tres años de polémica y retrasos', 4 October 2022, available at: <https://bit.ly/3yocpEs>.

²⁵³ APDHA, *Derechos Humanos en la Frontera Sur 2021, March 2021*, available at: <https://bit.ly/3poRtJn>, 60.

²⁵⁴ Irídia, 'Nuevas vulneraciones de derechos humanos a las personas migrantes en Canarias, May 2022, available at: <https://bit.ly/3Zf2cW7>.

considered as an “extension” of the National Police stations on which they depend. Thus, they are subject to the same regime as police stations.²⁵⁵

- **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*, DGI AH) Ministry of Inclusion, Social Security and Migration, and are usually large centres where certain assistance services are provided, including information, social and legal assistance.²⁵⁶ 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.²⁵⁷

As of February 2022, there was a total of eleven CAED managed by NGOs (i.e. CEAR, Red Cross, etc.).²⁵⁸ In 2023, the Directorate-General for Humanitarian Assistance and Social Inclusion of Migrants plans to reduce the number of such facilities as well as the number of reception places due to the decrease in the occupancy. The plan is to reduce the capacity from 1,410 to 1,060, and the number of facilities to 9.²⁵⁹

In April 2021, the Minister of Interior received 13.5 million Euros for improving the police capacity to respond to migrants’ arrival. Such budget will be used to improve the conditions and infrastructure of the CATE in Barranco Seco, create two additional mobile CATEs, as well as to provide services and other necessary assistance.²⁶⁰

The 2022 annual report of the Spanish Ombudsman acknowledges the improvements made at the CATEs of Barranco Seco, Lanzarote and Fuerteventura, while highlighting the necessity to adopt other measures to improve the infrastructures and the functioning regime of the last two. While regarding the centre in Barranco Seco, the institution considers it a model in terms of infrastructures and functioning regime, and it judged such CATE a model that could be copied by other similar facilities.²⁶¹ As a good practice the institution refers also to the fact that migrants can use their mobile phones and that they can go to open air in an appropriate space of the facility.

Police officers working at the CATE in Cartagena reported that it lacked of electricity and internet when it was opened in September 2022.²⁶²

In September 2022, the Spanish Ombudsman denounced the serious deficiencies of CATEs and called the Government to adopt a regulation for them, including also guarantee for migrants to denounce mistreatments.²⁶³

²⁵⁵ Defensor del Pueblo, ‘Informe anual – Volumen I - Anexo A Informe Completo del Mecanismo Nacional de Prevención (MNP)’, March 2023, available at: <https://bit.ly/3ZXvRmP>.

²⁵⁶ 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>.

²⁵⁷ APDHA, *Derechos Humanos en la Frontera Sur 2019*, February 2019, 36-37.

²⁵⁸ CEAR, ‘Libro blanco del sistema de protección internacional en España una propuesta desde la experiencia de CEAR’, February 2022, available at: <https://bit.ly/3Kyxm4b>, 207.

²⁵⁹ Ministerio de Inclusión, Seguridad Social y Migraciones, ‘Resolución de 14 de noviembre de 2022, de la Dirección General de Atención Humanitaria e Inclusión Social de la Inmigración, por la que se establece la planificación de prestaciones, actuaciones y servicios que deben atenderse dentro del programa de atención humanitaria mediante acción concertada para los ejercicios 2023-2026’, 14 November 2022, available at: <https://bit.ly/3zgGrus>.

²⁶⁰ Ministerio del Interior, ‘Interior obtiene 13,5 millones de euros de la UE para el refuerzo de las capacidades de atención policial a los migrantes’, 16 April 2021, available at: <https://bit.ly/3vQ9Zib>.

²⁶¹ Defensor del Pueblo, ‘Informe anual 2022 – Volumen I’, March 2023, available at: <https://bit.ly/3FQgoxY>, 170.

²⁶² La Opinión de Murcia, ‘El CATE provisional de Cartagena abrió sin luz ni Internet y carece de zona de desembarco’, 9 October 2022, available at: <https://bit.ly/42EH5PW>.

²⁶³ Europa Sur, ‘El Defensor del Pueblo urge a crear un protocolo para los CIE y CATE’, 13.9.22, available at: <https://bit.ly/3JJZwtB>.

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

Legal access to the territory

At the end of 2021, the Government approved the National Refugees Resettlement Program for 2022, which foresaw the resettlement in Spain of 1,200 refugees during the year. A total of 1,112 refugees were finally resettled in 2022, mainly Syrians coming from Lebanon (but also Iranians, Eritreans, Nigerians, Sudanese and Afghans).²⁶⁵ In May 2022, 201 Syrian refugees were transferred to Spain from Lebanon, of which 95 were women, 21 men and 85 children.²⁶⁶

Newly resettled families were also channelled into the regional community sponsorship programmes and positive integration outcomes were registered for those families who completed the programmes, especially related to language learning, rapid access to employment and local inclusion. UNHCR supported the resettlement programme through its participation in the national resettlement coordination group and the community sponsorship initiative through a specific consultancy, which informed discussions on the way forward for these programmes in the future.²⁶⁷

In February 2023, the Council of Ministers approved the National Programme for Resettlement of Refugees in Spain for 2023, foreseeing a quota of up to 1,200 persons.²⁶⁸ At the beginning of March 2023, a total of 89 Syrian refugees living in Turkey and affected by the earthquake were resettled to Spain.²⁶⁹ Very few cases of humanitarian visa have been issued by Spain for Afghans after the evacuation, but it is not a commonly applied measure.

As specified in the section on [Differential treatment](#), after the Taliban takeover in Afghanistan, Spain started to transfer persons fleeing the country, also by issuing visa to Spain to Afghans at the embassies and consulates in Iran and Pakistan.

[Family reunification](#) is another complementary pathway offered by Spain for legal access to territory.

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

²⁶⁴ Asociación Pro Derechos Humanos de Andalucía, 'Mujeres y frontera sur. Derechos humanos en la frontera sur 2022', 7 March 2022, available at: <https://bit.ly/3vX7IBC>.

²⁶⁵ El Derecho, 'Aprobado el Programa Nacional de Reasentamiento de Refugiados en España', 22 February 2023, available at: <https://bit.ly/3Zfg3fo>.

²⁶⁶ Ministerio de Inclusión, Seguridad Social y Migraciones, 'Inclusión recibe en Barajas a 201 refugiados sirios procedentes de Líbano en el marco del Programa Nacional de Reasentamiento', 6 May 2022, available at: <https://bit.ly/3BIOqCV>.

²⁶⁷ Information provided by UNHCR in March 2023.

²⁶⁸ La Moncloa, 'Referencia del Consejo de Ministros', 21 February 2023, available at: <https://bit.ly/3YXn1pF>.

²⁶⁹ IOM Spain, 'OIM y ACNUR dan la bienvenida al reasentamiento acelerado de refugiados sirios de Turquía en España tras el terremoto', 5 March 2023, available at: <https://bit.ly/3yiAzQV>.

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.²⁷⁰ 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.²⁷¹ When this time limit is not respected, the law foresees the possibility to apply the urgent procedure,²⁷² 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.

In January 2022, nine persons were detained for forging “red cards” and selling them for 300-400 Euros.²⁷³

According to the Asylum Act, all registered asylum applications are communicated to UNHCR, which will be able to gather information on the application, to participate in the applicant’s hearings and to submit reports to be included in the applicant’s record.²⁷⁴ UNHCR shall receive notification of an asylum application within a maximum period of 24 hours, which is applied in practice.²⁷⁵

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.²⁷⁶ In 2021, a telematic system to request an interview was put in

²⁷⁰ Article 4(1) Asylum Regulation.

²⁷¹ Article 17(2) Asylum Act.

²⁷² *Ibid.*

²⁷³ Avila red, ‘Nueve detenidos por falsificación de tarjetas de asilo, que vendían a entre 300 y 400 euros’, 19 January 2022, available at: <https://bit.ly/3AdPYmc>.

²⁷⁴ Articles 34-35 Asylum Act.

²⁷⁵ Article 6(4) Asylum Regulation.

²⁷⁶ 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>.

place; some problems affecting such system were reported, due in particular to the limited places available for interviews, and to technical problems encountered when operating such system.²⁷⁷ As mentioned below, the same problems persisted in 2022.

In 2021, the Fundamental Rights Agency (FRA) reported on the long waiting times to obtain first appointments to apply for asylum in Spain, indicating that, for example, in Girona or Lugo waiting times can take even more than one year. In addition, it highlighted that applicants faced difficulties in renewing their documentation due to COVID-19 restrictions, and were generally unaware of their rights.²⁷⁸

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.²⁷⁹ 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. The Government partially accepted the recommendation.²⁸⁰ In February 2023, the Minister of Interior informed that the body started to examine new internal coordination mechanisms aiming at reducing the waiting time between the lodging and the registration of the asylum application.²⁸¹

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) to access the asylum procedure.²⁸²

The average waiting time for an appointment 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 suggests that they can vary from one month to another or even one week to another, depending on the workload for asylum interviewers have. In 2021, waiting times generally decreased also thanks to the telematic system put in place to ask for the appointment. Even so, in some cases there were no free places for the appointment for the asylum interview, which made waiting times longer for those specific cases.²⁸³

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

In May 2022, the UNHCR Representative for Spain expressed concerns for the long waiting time for obtaining an asylum interview appointment, especially in certain provinces, and affirmed that the resources allocated to ensuring access asylum in Spain are not adequate.²⁸⁴

²⁷⁷ Information provided by the legal service of Accem in March 2022.

²⁷⁸ Fundamental Rights Agency, 'Migration: key fundamental rights concerns. Quarterly Migration Bulletin', 25 February 2021, available at: <https://bit.ly/3pYJfbj>, 14.

²⁷⁹ 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>.

²⁸⁰ Defensor del Pueblo, 'Dificultades para concertar cita previa a fin de solicitar asilo', 3 August 2020, available in Spanish at: <https://cutt.ly/JjaWEia>.

²⁸¹ Cope Melilla, 'Grande-Marlaska anuncia que Interior estudia «nuevos mecanismos internos de coordinación» para reducir el tiempo que media entre la solicitud y la formalización de la petición de asilo', 15 February 2023, available at: <https://bit.ly/3ZcShAC>.

²⁸² 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>.

²⁸³ Information provided by Accem's legal service in March 2022.

²⁸⁴ El País, 'La representante de Acnur en España: "Los recursos para pedir asilo no están a la altura"', 16 May 2022, available at: <https://bit.ly/3PwSxFr>.

Due to a computer mistake, all asylum applications lodged from the end of January to the end of March 2022 in the province of **Valencia** went lost.²⁸⁵

In 2022, it was reported that asylum appointments were sold on the black market, with offers published also in Wallapop.²⁸⁶ In June, some asylum seekers gathered in front of the Government Delegation in Valencia and presented a statement with 200 signatures, asking for more police stations to formalize asylum applications. They also denounced that, due to the blockage at the offices, the price of appointments in the black market increased up to four times.²⁸⁷ The UNHCR Representative for Spain affirmed that the practice of selling asylum appointments is dangerous and weakens the system, and asked the Government to allocate more resources to solve the problems experienced by individuals wanting to access asylum.²⁸⁸ In November, the Provincial Public Prosecutor Office started an investigation on the issue, following a denounce lodged by SOS Racismo and Extranjeristas en Red.²⁸⁹ In December, a group of asylum seekers gathered in front of the Minister of Interior to protest against the violation of their rights due to the lack of asylum appointments. They also lodged a claim in front of the Spanish Ombudsman.²⁹⁰ In the same month, the organisation *Murcia Acoge* reported the same situation for the Autonomous Community of Murcia, and sent a complaint to the Government-Delegation in the region.²⁹¹ In order to improve the access to the asylum procedure through the prior appointment, and to assess the possibility that the waiting time does not exceed 1 month, the Commission of Internal Affairs at the Congress approved a legislative proposal.²⁹²

In January 2023, obstacles and long waiting times to apply for asylum in Burgos was also reported.²⁹³

In February, around 50 persons gathered in front of the Ministry of Inclusion, Social Security and Migration to ask for accommodation while waiting to obtain an appointment for registering their asylum application.²⁹⁴ In addition, some NGOs lodged different claims in front of the Ombudsman, asking to intervene with the competent institutions regarding the situation.²⁹⁵ The UNHCR's Representative defined access to asylum in Spain as critical.²⁹⁶

According to practices observed by Accem, asylum seekers have to request an appointment to express their intention to apply for asylum; only after the appointment, they can register their asylum application. Obtaining an appointment resulted however extremely complicated in practice, especially for what concerned long waiting times:

²⁸⁵ El Periódico de Aragón, 'Un error informático provoca que se pierdan todas las solicitudes de asilo desde el 28 de enero en València', 29 March 2022, available at: <https://bit.ly/3SI12mm>.

²⁸⁶ Diario Siglo XXI, 'CEAR denuncia "el mercado negro de citas" para el proceso de asilo, con "ofertas hasta en Wallapop"', 16 June 2022, available at: <https://bit.ly/3SF3szL>; EL Salto Diario, 'Personas migrantes y solicitantes de asilo sin cita para acceder a derechos', 23 November 2022, available at: <https://bit.ly/3VASplf>.

²⁸⁷ Levante, 'El mercado negro de citas sube los precios por el atasco en Extranjería: "Ahora pagas hasta cuatro veces más"', 27 June 2022, available at: <https://bit.ly/3w079Gs>; Levante, 'Los solicitantes de asilo protestan por la falta de citas: "Estamos en un limbo migratorio"', 26 June 2022, available at: <https://bit.ly/3pdetKX>.

²⁸⁸ El Diario, 'Sophie Muller, representante de Acnur en España: "El fraude de las citas para pedir asilo es peligroso y debilita el sistema"', 20 June 2022, available at: <https://bit.ly/3bNsonY>.

²⁸⁹ Valencia Plaza, 'La Fiscalía investiga el mercadeo de las citas para pedir asilo en València', 17 November 2022, available at: <https://bit.ly/3EOZhMN>; El Diario, 'La Fiscalía investiga el mercadeo de citas previas para pedir asilo en València', 17 November 2022, available at: <https://bit.ly/3XmruBE>; levante, 'Denuncian ante fiscalía el colapso de las citas de asilo en València', 2 November 2022, available at: <https://bit.ly/3FbELpN>.

²⁹⁰ Tercera Información, '«Sin citas no hay derechos»: Solicitantes de protección internacional sin derecho a serlo registran quejas dirigidas al defensor del Pueblo y se concentran frente al Ministerio del Interior', 13 December 2022, available at: <https://bit.ly/3jj2XOK>.

²⁹¹ Onda Regional, 'Murcia Acoge denuncia que no hay citas para pedir la ayuda de asilo', 18 December 2022, available at: <https://bit.ly/3hLgazk>.

²⁹² Cope, 'El Congreso pide reformar la cita previa para las solicitudes de asilo', 19 December 2022, available at: <https://bit.ly/3FFqvVm>.

²⁹³ Diario de Burgos, 'Atasco en Comisaría para pedir asilo', 9 January 2023, available at: <https://bit.ly/3WxWWWV>.

²⁹⁴ Heraldo, 'Unos 50 solicitantes de asilo reclaman acogida ante la falta de citas', 17 February 2023, available at: <https://bit.ly/3Zk3EGW>.

²⁹⁵ The Objective, 'Un año casi sin citas para pedir asilo: ONG e inmigrantes piden a Interior el fin del bloqueo', 25 February 2023, available at: <https://bit.ly/3kza3zv>.

²⁹⁶ Europa Press, 'Sophie Muller, representante de ACNUR: "El acceso a la protección internacional en España está en una situación crítica"', 26 February 2023, available at: <https://bit.ly/41z3LjQ>.

WAITING TIME TO OBTAIN THE APPOINTMENT FOR THE MANIFESTATION OF THE INTENTION TO APPLY FOR ASYLUM		
PROVINCE	MECHANISM TO ACCESS THE APPOINTMENT	WAITING TIME
ALBACETE	Internet	1 month
ALICANTE	Internet	1-2 months
ALMERÍA	Internet	1-2 months
BARCELONA	Internet	1 month
BURGOS	Internet	1 week
CÁCERES	Internet	1 week
CÁDIZ	Internet	3 months
CARTAGENA	Internet	1 month
CASTELLÓN	Internet	1 month
HUELVA	Internet/in presence	-
LEÓN	Internet	Few days
MADRID	Internet	It depends on each police station
MÁLAGA	Internet	1 month
MURCIA	Internet	1 month
OVIEDO	Internet	1-2 weeks
SALAMANCA	Internet	1 month
SEVILLA	Internet	1 month
TOLEDO	Internet	3-6 months
VALENCIA	Internet	1 month
VALLADOLID	Internet	2-3 weeks
VITORIA	Internet	2-3 months
GUADALAJARA	Email	Few days
LA CORUÑA	Email	1-2 months
LUGO	Email	2 months
CÓRDOBA	By phone	Few days
GIJÓN	By phone	Few days
VIGO	By phone	Few days
CIUDAD REAL	In presence	The same day

Source: Accem, February 2023.

WAITING TIME FOR REGISTRATION (SINCE THE OBTAINEMENT OF THE MANIFESTATION OF INTENTION TO APPLY FOR ASYLUM)	
WAITING TIME	PROVINCES
More than 1 year	ALBACETE, TOLEDO, SALAMANCA, ALICANTE, LA CORUÑA
1 year	GUADALAJARA, LEÓN Y VALLADOLID.
10-12 months	LUGO
9 months	MÁLAGA
8-10 months	VIGO
7 months	CÓRDOBA
6 months	ALMERÍA
6-10 months	BURGOS
5-6 months	OVIEDO Y CIUDAD REAL
5 months	CASTELLÓN
4 months	CÁCERES
3-4 months	VITORIA
2-3 months	VALENCIA

2 months	CÁDIZ Y MURCIA
1 month and a half	BARCELONA
3 weeks	CARTAGENA
1 week	ZARAGOZA
It depends from each police station, but it can vary from 1 to 9 months	MADRID

Source: Accem, February 2023.

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](#). Since November 2014, the Ministry of Interior established asylum offices at the borders' crossing points in Ceuta and Melilla,²⁹⁷ and UNHCR guaranteed its presence in such areas starting from mid-2014.

Since its establishment, the border checkpoint in **Melilla** became one of the main registration points for asylum applications in Spain.²⁹⁸ 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](#)).²⁹⁹

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.³⁰⁰ In this regard, the Spanish Ombudsman recommended the General Commissariat for Foreigners and Borders to adopt instructions to establish an appropriate system for registration of asylum applications in CIE in accordance with the law.

In particular, the Ombudsman highlighted the difficulties faced by detainees in applying for asylum at CIEs. In particular, in **Madrid**, individuals are instructed to put their written intention to apply for asylum in a mailbox and to wait until the mailbox has been opened for the asylum procedure to start, and the fact that many persons have been expelled without having had access to the asylum procedure.³⁰¹ 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.³⁰² This included establishing a register and provide applications with a receipt of their application for international protection. The Ombudsman thus reiterated its recommendation to the General Commissariat for Aliens and Borders of the National Police. It seems that

²⁹⁷ 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>.

²⁹⁸ 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>.

²⁹⁹ El Diario, 'Migrantes que solo pueden pedir asilo si saltan la valla en contra de lo que dice Marlaska', 6 December 2022, available at: <https://bit.ly/3BgroCa>.

³⁰⁰ Human Rights Watch, *Spain: Migrants held in poor conditions*, 31 July 2017, available at: <https://goo.gl/maQ2V7>.

³⁰¹ 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>.

³⁰² 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>.

the access to the procedure has slightly improved since then, and that detainees are provided information on the right to asylum by the Spanish Red Cross.

Access to the procedure on the Canary Islands

As already explained in the [Arrivals by sea](#) section, the Canary Islands were under significant pressure also in 2022 following the increase of arrivals and the lack of available resources. This hindered the access to registration and to the asylum procedure. Some individuals further seem to decide not to apply for asylum because they believe that receiving a pre-expulsion order will facilitate their onward travel to the mainland, as the order contains an identification number that allows access to the irregular migrant reception system and can be used as an identifying document in travel.

An important issue reported in 2020 was the lack of registration of the nationality of people who arrived on the Canary Islands. For more detailed information, see [AIDA 2020 Update](#). No similar issues were reported in 2021, and it did not appear to be a concern in 2022.

In a report on the human rights violations in the Canary Islands published by the NGO *Irídia* on May 2022, the organisation denounced the practice of detaining migrants who go to police stations to request information on asylum.³⁰³

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | 6 months |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | ☐ Yes ☒ No |
| 3. Backlog of pending cases at first instance at the end of 2022: | 92,152 ³⁰⁴ |
| 4. Average length of the first instance procedure in 2022: | From 3 months to 3 years |

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.³⁰⁵ 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 significantly depending on the nationality of applicants, and can last from 3 months to 2 years, and can even reach 3 years in certain cases.

³⁰³ Irídia, 'Nuevas vulneraciones de derechos humanos a las personas migrantes en Canarias', May 2022, available at: <https://bit.ly/3bOrUy1>.

³⁰⁴ Ministerio del Interior, 'AVANCE de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022', available at: <https://bit.ly/3mA8HVQ>.

³⁰⁵ Article 24(3) Asylum Act.

During 2021, the OAR expedited the decision-making of certain applications, also in light of certain nationalities (i.e. Colombia, Venezuela, etc.), and the average time decreased (i.e. 4-6 months). Anyway, it should be underlined that this has not necessarily to be seen as a positive improvement, as in many cases the speed up of the procedure is aimed at denying applications.³⁰⁶

The backlog of asylum applications in Spain has been an important concern in recent years. As stated by the Spanish Ombudsman in previous annual reports, 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.³⁰⁷ In its 2022 annual report, the body continued to express concerns on the delays in deciding the asylum applications and the impacts this has on the lives and rights of asylum seekers.³⁰⁸ Despite the Government announced that the Annual Budget of the Ministry of Interior would be doubled in 2021,³⁰⁹ the number of pending cases in the last year continues to be concerning. As indicated below, the number of pending cases increased from around 35,000 cases in 2017 to more than 111,740 cases in 2019. A decrease was registered in 2021, but a significant number of cases (72,271) were still pending at the end of the year. In 2022 the number of pending cases continued to increase.

Backlog of pending cases: 2018-2022				
2018	2019	2020	2021	2022
68,779	111,740	N/A	72,271	122,035 ³¹⁰

Source: OAR.

In its 2022 annual report, the NGO CEAR highlighted the challenges that the Spanish asylum system continues to face, both in terms of access to the territory and access to the procedure.³¹¹ While acknowledging the increase of the recognition rate in 2021 (10.55% compared to 5.01% in 2020), the organisation views with concern the very low international protection recognition rate in Spain compared to the average rate at EU level (35% in 2021).³¹²

In February 2021, the Spanish Congress asked the Government to acknowledge “climate refugees” among those persons in need of international protection, and to put in place strategies and plans to foster the protection of persons displaced for environmental reasons.³¹³ The political party *Ciudadanos* submitted a proposal to the plenary session of the Congress to update the Asylum Act, with the aim of including the protection of persons fleeing their countries for ground connected to the environmental change.³¹⁴ A report published in October 2021 by the NGO CEAR and Greenpeace also urged the Spanish Government to recognise the refugee status to those persons fleeing their countries for such

³⁰⁶ Information provided by Accem’s legal service on March 2022.

³⁰⁷ Defensor del Pueblo, ‘Informe Anual 2019. Volumen I – Informe de Gestión’, 2020, available in Spanish at: <https://cutt.ly/njaEHwL>, 170.

³⁰⁸ Defensor del Pueblo, ‘Informe Anual 2022. Volumen I’, March 2023, available at: <https://bit.ly/3mpE6uo>, 53.

³⁰⁹ 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>.

³¹⁰ This figure includes both pending cases for resolution (92,152) and pending cases for admission (29,883). Ministerio del Interior, ‘AVANCE de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022’, 2023, available at: <https://bit.ly/3lO49ej>.

³¹¹ CEAR, ‘Informe 2022: Las personas refugiadas en España y Europa’, June 2022, available in Spanish at: <https://bit.ly/3L7cC6M>.

³¹² Ibidem, 74.

³¹³ Tercera Información, *El Congreso pide al Gobierno el reconocimiento de la figura de Refugiado climático y medidas para la protección de las personas desplazadas por los impactos del cambio climático*, 27 February 2021, available at: <https://bit.ly/3j6EwBp>; Ecoticias, *El Congreso pide al Gobierno el reconocimiento de la figura de Refugiado climático y medidas para la protección de las personas desplazadas por los impactos del cambio climático*, 1st March 2021, available at: <https://bit.ly/3jaEGrC>.

³¹⁴ El Diario, ‘Cs pide que la Ley de asilo reconozca al refugiado por causas climáticas’, 12 June 2021, available at: <https://bit.ly/3FkZmoN>; Europa Press, ‘Ciudadanos lleva al Congreso una propuesta para proteger a los migrantes y desplazados por el cambio climático’, 12 June 2021, available at: <https://bit.ly/3chJU0j>.

reason, and to grant them a residence permit for humanitarian reasons.³¹⁵ On February 2022, the political party *Unidas Podemos* claimed the Government at the Congress to assess and define a juridical framework aiming at guaranteeing protection to climate refugees.³¹⁶

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.³¹⁷

The urgent procedure is applicable in the following circumstances:³¹⁸

- (a) The application is manifestly well-founded;
- (b) The application was made by a person with special needs, especially unaccompanied minors;
- (c) The applicant raises only issues which have no connection with the examination of the requirements for recognition of refugee status or subsidiary protection;
- (d) The applicant comes from a safe country of origin and has the nationality of that country or, in case of statelessness has residence in the country;
- (e) The applicant applies after a period of one month, without justification; or
- (f) The applicant falls within any of the exclusion grounds under the Asylum Act.

The urgent procedure is also applied to applicants who have been admitted to the in-merit procedure after lodging a claim at the border or within the CIE.³¹⁹ Recent statistics on the use of the urgent procedure 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.³²⁰

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.³²¹ 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.

³¹⁵ COPE, 'CEAR y Greenpeace exigen al Gobierno que reconozca al "refugiado climático"', 6 October 2021, available at: <https://bit.ly/3kH5Nuz>; CEAR, Greenpeace, "'Huir del Clima. Cómo influye la crisis climática en las migraciones humanas'", 29 October 2021, available at: <https://bit.ly/3cmffPe>.

³¹⁶ Europa Press, 'Unidas Podemos pide al Gobierno que avance para reconocer la figura del refugiado climático a la hora de conceder asilo', 24 February 2022, available at: <https://bit.ly/3ZKE98>.

³¹⁷ Article 25(4) Asylum Act.

³¹⁸ Article 25(1) Asylum Act.

³¹⁹ Article 25(2) Asylum Act.

³²⁰ Article 25(3) Asylum Act.

³²¹ Information provided by Accem's legal service in March 2023.

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

When applicants go to their registration appointment with the OAR, they undergo a first interview, with or without a lawyer, given that the assistance of a lawyer is mandatory only for applications lodged at borders and CIE. The interview is held in private offices which generally fulfil adequate standards with regard to privacy and confidentiality, but this situation can vary from one region to another. For example, in Córdoba, Almería, Zaragoza, and Albacete spaces adequate to guarantee the necessary privacy are not available. One of the offices in Barcelona was also considered as not appropriate in this respect. Similarly, in certain police stations in Madrid, Castellón, Valladolid, Alicante, Cartagena and Murcia adequate privacy standards are not granted.³²²

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.³²³

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 they consider the information in the case file to be insufficient.³²⁴ The case examination reports do not systematically refer to whether a second interview is necessary, although the law states that the decision to hold further interviews must be reasoned. However, since March 2020, second interviews are not held due to health measures taken in response to the COVID-19 pandemic.³²⁵ They have been resumed in person in 2021 and the situation was still similar to pre-pandemic years.³²⁶ 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,³²⁷ given that the person conducting the interview might not be sufficiently trained.³²⁸

These observations remained valid in 2022, since arrangements vary according to the province where the interview takes place. In the 2022 Annual Report, the Spanish Ombudsman provided information on the main complaints received throughout the year. First of all, on the role of National Police in carrying out the asylum interview and the necessity to avoid that members of the Police force are involved in the

³²² Information provided by Accem's legal service in March 2023.

³²³ Ombudsman, 'El asilo en España: La protección internacional y los recursos del sistema de acogida', June 2016, available in Spanish at: <https://bit.ly/3zi0bxC>.

³²⁴ Article 17(8) Asylum Act.

³²⁵ OAR, 'Important notification', March 2020, available in Spanish at: <https://cutt.ly/gtU1eKT>.

³²⁶ Information provided by Accem in March 2023.

³²⁷ 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>.

³²⁸ *Ibid.*

assessment of the asylum claim. Some concerns emerged also regarding the place where interviews are held (i.e. lack of privacy, appropriate interpretation, etc.) and the fact that asylum applicants are in some cases requested to present documentation (i.e. registration of residency) that is not required by the law as a prerequisite to submit an application.³²⁹

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

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

Some provinces can still face difficulties in providing interpreters for some languages (such as, among others, Persian, and Fula) 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.

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.

³²⁹ Defensor del Pueblo, 'Informe Anual 2022. Volumen I', March 2023, available in Spanish at: <https://bit.ly/43uCoZt>, 53.

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
 - ❖ If yes, is it automatically suspensive

☒ Yes

☐ No

☒ Judicial

☒ Administrative

☐ Yes

☐ Some grounds

☒ No
2. Average processing time for the appeal body to make a decision: 1 to 2 years

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.³³⁰

The first type of appeal should be submitted before the OAR under the Ministry of Interior, within 1 month from the notification of refusal.³³¹ 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 increase of administrative appeals has been registered in the last couple of years, as it allows for the application of cautionary measures and for the request of the suspension of the expulsion order, as foreseen by the administrative procedure.³³²

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.³³³ 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.

The success rate of appeals is generally low (an average of 90% of cases has been rejected in 2019, 2020 and 2021). During 2021, a total of 27,431 appeals were lodged: this refers both to administrative

³³⁰ Article 29(2) Asylum Act.

³³¹ Article 29(1) Asylum Act.

³³² Information provided by Accem's legal service on March 2023.

³³³ Article 29(2) Asylum Act; Article 46 Law 29/1998 of 13 July 1998 concerning the regulation of jurisdiction of administrative courts.

(15,002) and judicial (12,429) appeals.³³⁴ Figures for 2022 are not available at the time of writing, as the OAR usually publish them in the second half of the year.

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*),³³⁵ which in case of a positive finding has the power to grant the applicant with an international protection status.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

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

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

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

In March 2021, the organisations *Sira* and *Red Acoge* published a guide containing advice on how to draft reports to support asylum claims addressed to the different professionals providing support to asylum seekers (i.e. social workers, teachers, psychologists, etc.).³³⁶

In a decision taken in November 2022, the High Court (*Tribunal Supremo*) set a jurisprudential precedent in relation to legal assistance during the asylum procedure, by establishing that, as far as the applicant has been informed in a complete and correct manner on their rights and on the supports required, and the information sheet has been signed by them, the fact that the applicant does not tick certain boxes means that they have renounced to such a support, unless legal assistance is compulsory.³³⁷

³³⁴ Ministerio del Interior, Subdirección General de Protección Internacional, Oficina de Asilo y Refugio, 'Informe de actividad 2021', 2022, available at: <https://bit.ly/3IXEQhz>.

³³⁵ Article 29(2) Asylum Act.

³³⁶ Sira, Red Acoge, 'Organizar ideas para documentar el asilo Claves para la elaboración de informes', March 2021, available at: <https://bit.ly/3tKFt6z>.

³³⁷ Tribunal Supremo, Sala de lo Contencioso, STS 4002/2022, 2 November 2022, available at: <https://bit.ly/3FF22Ao>.

1.5.1. Legal assistance at first instance

Shortcomings in access to legal aid have been registered in the last years for persons arriving by sea.³³⁸ 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.³³⁹ In 2022, the Government of the archipelago started to work together with the UNHCR, with the aim of improving the provision of legal assistance to migrants and asylum seekers. In addition, the Government of the Canary Islands increased the budget for the provision of legal assistance and decrease the number of persons assisted by each lawyer of the legal aid roster.³⁴⁰

Besides, in terms of capacity building, in 2021 the Council of Europe, together with the Bar Association of Tenerife (ICATF) and Spain's General Council of Lawyers, launched a free online course on 'Asylum and Human Rights'.³⁴¹

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

In 2022, the Bar Association of **Madrid** and UNHCR agreed to improve the service to provide legal assistance to persons in need of international protection, as well as to refugees and statelessness persons. In light of such agreement, the Bar Association of Madrid has created a specialised unit on international protection, which foresees to attend more than 2,000 persons and facilitate access to their rights, including the right to be documented, the freedom of movement, as well as the rights to reception, employment, health, education and any other rights fostering their protection in Spain³⁴². A similar agreement was established between the Bar Association of **Murcia** and UNHCR, including through the creation of a specialized Legal Guidance Service on International Protection within the Bar Association.³⁴³ The same initiative was implemented with the Bar Association of **Almería**.³⁴⁴ Thanks to the agreements, 1,436 refugees, asylum seekers and stateless persons were assisted.³⁴⁵

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".³⁴⁶ 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.³⁴⁷

Since 2018, no information was provided by the OAR on the number of requests.

³³⁸ CEAR, 'Informe 2021: Las personas refugiadas en España y Europa', June 2021, available at: <https://bit.ly/3l3bzj3>.

³³⁹ 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>.

³⁴⁰ Diario de Visos – El periódico de Tenerife, 'Canarias trabaja con ACNUR para mejorar la asistencia jurídica a los migrantes', 10 March 2022, available at: <https://bit.ly/3J8BnfZ>.

³⁴¹ EUAA, 'Asylum report 2022', 2022, available at: <https://bit.ly/3T4x7ml>.

³⁴² El Imperial, 'La Abogacía de Madrid y ACNUR refuerzan la atención legal a solicitantes de protección internacional', 15 July 2022, available at: <https://bit.ly/3L4OsrD>.

³⁴³ La Verdad, 'El Colegio de Abogados de Murcia y Acnur impulsan la atención legal a solicitantes de protección internacional', 21 September 2022, available at: <https://bit.ly/3JjLhx6>.

³⁴⁴ La Vanguardia, 'Acnur y Abogados de Almería crearán Oficina Protección Internacional', 24 June 22, available at: <https://bit.ly/3kLNVl4>; Diario de Almería, 'ACNUR y el Colegio de Abogados de Almería renuevan su colaboración en favor de una atención especializada en protección internacional', 2 March 2023, available at: <https://bit.ly/3STEuNj>.

³⁴⁵ Information provided by UNHCR in March 2023.

³⁴⁶ Supreme Court, Decision STS 3186/2013, 17 June 2013, available in Spanish at: <http://bit.ly/2n8tDAJ>.

³⁴⁷ Supreme Court, Decision STS 4316/2015, 19 October 2015, available in Spanish at: <http://bit.ly/2DB9y16>.

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.³⁴⁸ Legal aid is generally granted during appeal proceedings in practice.

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

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

2. Dublin

2.1. General

Dublin statistics: 1 January – 31 December of 2022:

Incoming procedure		
	Requests	Transfers
Total	11,873*	N/A
France	5,014	-
Germany	3,362	-
Belgium	925	-
Netherlands	855	-
Switzerland	552	-

Source: Ministerio del Interior, Subsecretaría del Interior, *Dirección General de Política Interior, Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022*, January 2023, available at: <https://bit.ly/3KC9Feg>.

* In relation to the figures above, it should be noted that 8,004 out of the total 11,873 requests received were accepted, while 2,898 out of the total were denied.

The OAR rarely applies the Dublin Regulation. It only issued 10 outgoing requests in 2016, 11 in 2017, 7 in 2018³⁴⁹, and 120 in 2019.³⁵⁰ 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.³⁵¹ Figures on the number of outgoing requests in 2022 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”.³⁵² More details on that are contained in the [2021 update](#) of this report.

³⁴⁸ Audiencia Nacional, Decision SAN 3274/2017, 21 July 2017, available in Spanish at: <http://bit.ly/2n8b5Rf>.

³⁴⁹ Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.

³⁵⁰ OAR, *Oficina de Asilo y Refugio, 'Asilo en cifras 2019'*, July 2020, available at: <https://bit.ly/2PIG4eg>, 62.

³⁵¹ Ibidem, 61.

³⁵² The agreement is available at: <https://bit.ly/2G2IZ7E>.

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 604/2013.³⁵³ The other leaflet contains information for applicants for international protection found in a Dublin procedure, pursuant to article 4 of Regulation (EU) No 604/2013.³⁵⁴ The OAR's edited leaflet providing information to asylum seekers on the Dublin Regulation states that having family members living in a country is one of the factors that will be taken into account for establishing the Member State responsible for the processing of the asylum application.

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

2.1.2. The discretionary clauses

In Spain the sovereignty clause is applied on rare occasions, for vulnerable people or to guarantee family unity. According to the European Commission's evaluation of March 2016, Spain also undertakes responsibility for unaccompanied children, even where there is evidence that the Dublin family criteria could apply.³⁵⁵ However, the sovereignty clause was not applied in 2017.³⁵⁶ There is no information available on the application of the sovereignty clause in 2022.

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.³⁵⁷ There is no information available on the application of the humanitarian clause in 2022.

No specific procedure is applied in the cases of vulnerable individuals.

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.

³⁵³ 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>.

³⁵⁴ 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>.

³⁵⁵ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 20.

³⁵⁶ Information provided by OAR, 2 March 2018.

³⁵⁷ Information provided by OAR, 28 February 2017; 2 March 2018.

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.³⁵⁸

2.2.1. Individualised guarantees

There are very few outgoing requests made by Spain. No specific guarantees have applied to these cases.³⁵⁹

2.2.2. Transfers

According to the OAR an average duration of the Dublin procedure is not available for 2017. The OAR implemented 2 transfers in 2016, 2 in 2017, 2 in 2018,³⁶⁰ and 5 in 2019.³⁶¹ Figures on the number of transfers in 2022 are not available at the time of writing.³⁶²

2.3. Personal interview

The same rules as in the [Regular Procedure: Personal Interview](#) apply. According to the authorities, the interview is never omitted.³⁶³ In practice, during the registration of the application, the OAR official or the Police ask the person questions about identity and travel route.

2.4. Appeal

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

2.5. Legal assistance

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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

2.7. The situation of Dublin returnees

The number of incoming procedures to Spain is far higher than the number of outgoing procedures. In 2022, Spain received 11,873 requests, mainly from France (5,014) Germany (3,362) and Belgium (925).³⁶⁴

³⁵⁸ 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>.

³⁵⁹ Information provided by OAR, 20 August 2017.

³⁶⁰ Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.

³⁶¹ OAR, 'Asilo en cifras 2019', July 2020, available at: <https://bit.ly/2PIG4eg>, 62.

³⁶² It has to be noted that Public data just refer to requests received, those accepted and those refused. See: Ministerio del Interior, 'AVANCE de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', 2022, available at: <https://bit.ly/3vWg9gD>.

³⁶³ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 12.

³⁶⁴ Ministerio del Interior, 'AVANCE de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', available at: <https://bit.ly/3vWg9gD>.

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.³⁶⁵ Nevertheless, civil society organisations have witnessed particular difficulties with regard to victims of trafficking returning to Spain under the Dublin system, mainly from **France**. These are due to different factors, i.e. the fact that victims of trafficking are not effectively identified as such, the lack of an effective mechanism to register and identify trafficked persons before return, as well as to identify victims among Dublin returnees once they arrive in Spain. The lack of coordination among the Spanish competent authorities (Dublin Unit, OAR, Ministry of Inclusion, Social Security and Migration in charge of reception) is another factor.

In recent years, including in 2019 and 2020, there have been reports of Dublin returnees not being able to access reception conditions due to a lack of places in asylum reception facilities (see [Reception Conditions: Criteria and Restrictions](#)). This has resulted in a homelessness and destitution in certain cases. In a series of rulings, the Superior Court (*Tribunal Superior de Justicia*, TSJ) of Madrid condemned the Spanish Government for denying reception to asylum seekers returned to Spain within the Dublin procedure.³⁶⁶ 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.³⁶⁷

In practice, Dublin returnees face the same obstacles in accessing the procedure and reception conditions as any other asylum applicant.

The organisation “Neighbours Coordinator” (*Coordinadora de Barrios*) has been supporting Dublin returnees in Spain since 2015. During the summer of 2020, they supported and documented at least 15 cases of Dublin returnees in **Madrid** that were not able to access reception as a result of a lack of available places, thus resulting in homelessness.³⁶⁸ The NGO also reported that the situation worsened during the first months of the COVID-19 pandemic, when the capacity of shelters was reduced in order to comply with physical distancing and quarantine measures. This issue persisted in Spain throughout 2022 as the Spanish Ombudsman confirmed in its 2022 annual report, by expressing concerns on many asylum seekers living on the streets or in precarious situations, as a consequence of the delays in the appointments for the formalisation. Especially worrying, according to the Ombudsman, was the situation in **Madrid**.³⁶⁹

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 lodging an asylum application. If their previous asylum claim has been discontinued, they have to apply again for asylum. However, that claim is not considered a subsequent application.

2. Admissibility procedure

3.1. General (scope, criteria, time limits)

The asylum procedure in Spain is divided into two phases: an admissibility procedure, followed by an evaluation on the merits in case the claim is admitted. For claims made on the territory, the admissibility assessment must be conducted within one month of the making of the application and 2 months for Dublin

³⁶⁵ Information provided by OAR, 20 August 2017.

³⁶⁶ 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>.

³⁶⁷ 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>.

³⁶⁸ Information provided by Coordinadora de Barrios, 22 January 2021.

³⁶⁹ Defensor del Pueblo, ‘Informe anual 2022 – Volumen I’, March 2023, available at: <https://bit.ly/3KA18GS>, 54.

cases.³⁷⁰ When these deadlines are not met, the applicant will be automatically admitted to the asylum procedure in territory.

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

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

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

3.2. Personal interview

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

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☒ Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?

❖ If yes, is it

❖ If yes, is it automatically suspensive

☒ Yes

☐ No

☒ Judicial

☒ Administrative

☐ Yes

☐ Some grounds ☒ No

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.

³⁷⁰ Article 20(2) Asylum Act.

3. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Where is the border procedure mostly carried out? ☒ Air border ☒ Land border³⁷¹ ☐ 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 CIEs.³⁷² 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*.³⁷³

In 2021, a total of 1,589 persons applied at a border post or transit zone and 639 at CIEs.³⁷⁴ This marked 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 2022, a total of 2,714 persons applied at a border post and 932 at a CIE.³⁷⁵ Border procedures represented around 2.53% of the total caseload of the Office for Asylum and Refuge (OAR) in 2021, and around 3.06% in 2022. 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 jumped the fence.³⁷⁶ 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 arbitrarily to the different persons.³⁷⁷ This practice has not been reported during 2020. This also likely to be due to the fact there were only a few attempts to jump over the fences due to the COVID-19 pandemic. As previously indicated, the Asylum Law foresees the application of the border procedure to asylum claims lodged at airports, maritime ports, land borders and expulsion centres (CIE),³⁷⁸ but it had never been applied before in such a situation. Discretionality in the application of such practice was observed also in 2022. For example, the border procedure was applied for people jumping the fence in Melilla at the beginning of March, but that was not the case for a similar occurrence in June of the same year.

³⁷¹ 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.

³⁷² See e.g. Audiencia Nacional, Decision SAN 1908/2019, 23 May 2019; SAN 1282/2019, 13 February 2019.

³⁷³ 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>.

³⁷⁴ Subdirección General de Protección Internacional - Oficina de Asilo y Refugio "Informe de actividad 2021", available at: <https://bit.ly/422sRrz>.

³⁷⁵ Ministerio del Interior, 'Avance de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022', 2023, available at: <https://bit.ly/3JtFggW>.

³⁷⁶ 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>.

³⁷⁷ CEAR, *Informe 2020. Las personas refugiadas en España y en Europa*, June 2020, available at: <https://bit.ly/2XvcNyl>, 85.

³⁷⁸ Articles 21 and 25 Asylum Act.

It should also be noted that since January 2020, Spain started to require a transit visa for nationals originating from Yemen.³⁷⁹ The measure is still in place as of March 2023. In addition, Spain requires such a transit visa also for nationals from Palestine and Syria.³⁸⁰ 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 entry to access the asylum procedure. As provided in Article 20(1) of the Asylum Act, applications can be considered inadmissible on the following grounds:

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

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

Nevertheless, in the border procedure, additional grounds to those mentioned under the [Admissibility Procedure](#) are applied to establish the so-called reasons for denial of the application on the merits. In fact, applications at borders can be denied as manifestly unfounded in the following circumstances.³⁸¹

- (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

³⁷⁹ 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>.

³⁸⁰ Information provided by Accem's legal service on March 2023.

³⁸¹ Article 21(2)(b) Asylum Act.

contradicted by country of origin information or where UNHCR has issued a positive report supporting the granting of protection.³⁸²

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,³⁸³ 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.³⁸⁴ 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](#)).³⁸⁵

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.³⁸⁶ 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.³⁸⁷

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, computing computed as 96 hours from the moment the application is made.

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 was highlighted in the past by several organisations in Spain,³⁸⁸ 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.³⁸⁹ Since 2020, the Office for Asylum and Refuge (OAR) did not provide statistical information on the outcome of the border procedure (for information on the years 2015 to 2019, see [AIDA Country Report on Spain – 2020 Update](#)).

³⁸² 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.

³⁸³ Article 21(2) Asylum Act.

³⁸⁴ Article 21(4) Asylum Act.

³⁸⁵ Ombudsman, *Recomendación a la Secretaría General de Inmigración y Emigración para adoptar las medidas que procedan para prestar un servicio de asistencia social a los solicitantes de asilo en el puesto fronterizo*, 7 October 2015, available in Spanish at: <http://bit.ly/1QCeRaH>.

³⁸⁶ Article 21(3) Asylum Act.

³⁸⁷ Article 21(3) Asylum Act.

³⁸⁸ CEAR, *Las personas refugiadas en España y Europa 2015*, Capítulo IV: La admisión a trámite, available at: <http://bit.ly/1JZFqai>.

³⁸⁹ Supreme Court, Decision 4359/2012, 22 November 2013, available in Spanish at: <http://bit.ly/21zAFty>.

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?
 - ❖ 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.³⁹⁰ In practice, an additional interview is conducted in cases where there are doubts or contradictions resulting from the first interview or from the documentation submitted. If everything seems clear, however, the OAR caseworker can examine the application and take a decision on the merits solely on the basis of the interview that has been conducted with police offices.

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

4.3. Appeal

Indicators: Border Procedure: Appeal

☐ Same as regular procedure

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

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

The border procedure foresees the possibility to ask for the re-examination (re-examen) of the application for international protection when the latter has been declared inadmissible or rejected from examination (*'denegar la solicitud'*). This type of administrative appeal is only foreseen in the context of border procedures. The request for re-examination has automatic suspensive effect and must be requested in front of the Minister of Interior within 2 days from the notification of the decision to the applicant.³⁹¹ The National High Court has clarified that this time limit must be calculated in hours rather than in working days.³⁹²

In May 2019, the Supreme Court ruled 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

³⁹⁰ Article 17 Asylum Act.

³⁹¹ Article 21(4) Asylum Act.

³⁹² Audiencia Nacional, Decision SAN 2591/2017, 8 June 2017; Decision SAN 2960/2017, 30 June 2017.

office of the Ministry of Interior. Moreover, the Court stated that the calculation of the two-day deadline starts at the moment of receipt by the competent authority of the request for re-examination.³⁹³

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. For figures on previous years, please see the [2020 update 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.³⁹⁴ As opposed to the regular procedure, applicants for international protection are thus always assisted by a lawyer during their interviews with the border police and the OAR in the context of border procedures, as well as during appeal proceedings. The National High Court (*Audiencia Nacional*) further held that the mandatory nature of legal assistance at the border entails an obligation to offer legal aid to the applicant that is in the process of lodging the application for international protection, even if he or she does not ask for it or rejects it.³⁹⁵ The same rules as in the [Regular Procedure: Legal Assistance](#) apply. The Asylum Act provides reinforced guarantees in this context, however, as it states that legal assistance is mandatory for applications lodged at the border.³⁹⁶

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

³⁹³ Spanish Supreme Court, Decision STS 1682/2019, 27 May 2019, available in Spanish at: <https://cutt.ly/he9AZAZ>.

³⁹⁴ Article 16(2) Asylum Act, citing Article 21.

³⁹⁵ Audiencia Nacional, Decision SAN 5389/2017, 28 December 2017.

³⁹⁶ Article 16(2) Asylum Act, citing Article 21.

borders.³⁹⁷ 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 intensified in areas such as **Almería**, **Tarifa** and **Motril** in 2017. Access to legal assistance improved since then, with some Bar Associations issuing specific guidance in this regard. In 2020, the increase of arrivals to the **Canary Islands** posed many challenges in terms of legal assistance. At the moment, there are different organisations providing legal assistance to migrants and asylum seekers in the different islands belonging to the archipelago of the Canary Islands (i.e., CEAR, Accem, Spanish Red Cross, Cáritas,³⁹⁸ Fundación Cruz Blanca,³⁹⁹ etc.). In addition, the Service for Equal Opportunities and Gender Violence of the town hall of Gran Canaria provides legal counselling; similar support is offered by the seven Commissions for Free Legal Aid of the Government of the Canary Islands, which also offer support and counselling on the asylum procedure.⁴⁰⁰

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.⁴⁰¹ 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. Concerns continued to be raised by the Spanish Ombudsman, in its capacity as National Prevention Mechanism against Torture in its 2022 annual report.⁴⁰² The body highlighted the deficiencies in terms of lack of individual and private interviews with newcomers, limited information provided on their rights, lack of interpreters, and impossibility to contact with the assigned lawyer due to lack of their contact information.

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](#).

³⁹⁷ CEAR, 'Informe 2022: Las personas refugiadas en España y Europa', June 2022, available at: <https://bit.ly/3Llx9V2>, 95. US Department of State, '2022 Country Reports on Human Rights Practices: Spain', 20 March 2023, available at: <https://bit.ly/3mpsNCI>.

³⁹⁸ Cáritas, see: <https://bit.ly/42hMMTE>.

³⁹⁹ Fundación Cruz Blanca, see: <https://www.fundacioncruzblanca.org/>.

⁴⁰⁰ Information provided by Accem -Tenerife in April 2022.

⁴⁰¹ CEAR, La odisea de solicitar asilo en fronteras españolas, 15 October 2019, available in Spanish at: <https://bit.ly/3tnjoty>.

⁴⁰² Defensor del Pueblo, 'Informe anual 2022 - Anexo A - Informe Completo del Mecanismo Nacional de Prevención (MNP)', March 2023 available at: <https://bit.ly/406FEqO>, 48.

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.⁴⁰³ 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 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.⁴⁰⁴ 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.

The framework of Migrant Temporary Stay Centres (CETI) in Ceuta and Melilla might be regarded as a missed opportunity for early identification of vulnerable profiles within mixed migration flows. These centres manage the first reception of undocumented newly arrived migrants and non-identified asylum seekers, before they are transferred to the Spanish peninsula. For this reason, CETI could provide an opportunity for the establishment of a mechanism of early identification of most vulnerable collectives.

⁴⁰³ Article 46(2) Asylum Act.

⁴⁰⁴ Articles 34-35 Asylum Act.

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

The lack of a protocol for the identification and protection of persons with special needs in CETI has always been criticised and continues to be a concern in 2022. Vulnerable groups such as single women, families with children, trafficked persons, LGBTI+ people, and religious minorities, cannot be adequately protected in these centres.⁴⁰⁵ 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.

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](#)). 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, and since 2022 also in the Canary Islands. The organization also has a child friendly space at the land border in Melilla since 2014.⁴⁰⁶

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.⁴⁰⁷ Guidelines to guarantee equal treatment and no discrimination of asylum seekers, statelessness applicants, refugees and stateless people with disabilities were published in May 2021.⁴⁰⁸

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. These positive improvements continued in 2022.

Human trafficking victims

Major shortcomings regard victims of trafficking. Despite the adoption of two National Plans against Trafficking of Women and Girls for the purpose of Sexual Exploitation,⁴⁰⁹ and of a Framework Protocol on Protection of Victims of Human Trafficking,⁴¹⁰ aiming at coordinating the action of all involved actors for guaranteeing protection to the victims, several obstacles still exist. The fight against trafficking is focused on girls and women trafficked for the purpose of sexual exploitation. In addition, not only is early identification of victims of trafficking very difficult, and their assistance and protection still challenging, but they also face important obstacles in obtaining international protection. The low number of identified victims of trafficking who have been granted refugee status in Spain highlights this fact. The first successful asylum claim on trafficking grounds was reported in 2009.

⁴⁰⁵ CEAR, *Informe 2020, Las personas refugiadas en España y en Europa*, June 2020, available in Spanish at: <https://bit.ly/3nyl3bM>, 89.

⁴⁰⁶ Information provided by Save the Children on March 2023.

⁴⁰⁷ 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>.

⁴⁰⁸ Comité Español de Representantes de Personas con Discapacidad – CERMI, '¡Tengo derechos humanos! Garantías para la igualdad de trato y no discriminación de las personas refugiadas, apátridas y solicitantes de asilo y apatridia con discapacidad', May 2021, available at: <https://bit.ly/3HWmRp4>.

⁴⁰⁹ 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>.

⁴¹⁰ 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>.

A report published by Accem in November 2019 underlined that the identification of trafficked persons is one of the main challenges existing in Spain, and that the procedure relies *inter alia* on the auto-identification by the victim as well as on his or her collaboration to the investigation and prosecution of the crime.⁴¹¹ A report published by CEAR-Euskadi in June 2019 acknowledged that improvements have been made since 2016 for what concerns granting of international protection to trafficked persons, thanks to a change of policy of the OAR. Regardless, the NGOs estimates that the recognition rate is still too low considering the dimension of the phenomenon in Spain.⁴¹² A report published in December 2022 by the organisation 'Diaconía' underlines the challenges that trafficked persons continue to face in Spain in accessing the information on asylum and the asylum procedure itself.⁴¹³ In his 2022 annual report, the Spanish Ombudsman continues to highlight the challenges in identifying trafficked persons and in the granting them international protection.⁴¹⁴

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.⁴¹⁵ 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 such as **Barcelona** and **Málaga**, but the Protocol was finally not formally extended.⁴¹⁶ Despite the lack of a formal protocol, guidelines on detection, identification, referral and coordination are in place at the airport of Barcelona among relevant actors.⁴¹⁷

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.⁴¹⁸

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,⁴¹⁹ and the Council of Europe Group of Experts on Action against Trafficking in Human

⁴¹¹ Laura Carrillo Palacios and Teresa De Gasperis (Accem), 'La otra cara de la trata', November 2019, available in Spanish at: <https://cutt.ly/htwldsc>.

⁴¹² 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>.

⁴¹³ Diaconía, 'Informe de análisis de la situación de las víctimas de trata de personas en necesidad de protección internacional en España', December 2022, available at: <https://bit.ly/406qceN>.

⁴¹⁴ Defensor del Pueblo, 'Informe anual 2022 – Volumen 1', March 2023, available at: <https://bit.ly/3ZJ4U7p>, 194; Europa Press, 'España carece de herramientas ágiles para identificar a víctimas de trata, según el Defensor del Pueblo', 13 March 2023, available at: <https://bit.ly/3JEwFZ0>.

⁴¹⁵ 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>.

⁴¹⁶ Information provided by Fundación Cruz Blanca, 11 January 2021.

⁴¹⁷ Information provided by Fundación Apip-Acam in March 2023.

⁴¹⁸ CEAR, *Informe 2020. Las personas refugiadas en España y en Europa*, June 2020, available in Spanish at: <https://bit.ly/3ny3OaG>, 81.

⁴¹⁹ 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.

Beings (GRETA).⁴²⁰ They also stressed the need of providing the staff working in CETI with training on the identification of victims of trafficking in human beings and their rights.

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

Since the start of 2017, the OAR started considering Nigerian women as being part of a “particular social group” according to refugee law, and as such as possible beneficiaries of international protection due to individual persecution suffered as connected to trafficking. This continues to be positively observed since then; the OAR also granted asylum to a Colombian man victim of trafficking in 2021. No relevant cases were reported in 2022.

In April 2021, the Government launched a public consultation for the adoption of a law on trafficking, focusing on the sexual exploitation of women and girls.⁴²¹ In 2022 the Government, through the Minister of Justice, designed and approved a proposal for a comprehensive law to address trafficking in all its forms and in relation to all victims. The proposal is following the parliamentary procedure for its approval at the time of writing of this report.⁴²²

In December 2021, the Minister of Interior adopted the National Strategic Plan on Trafficking in Human Beings and Exploitation for the period 2021-2023, aimed at guaranteeing adequate protection and assistance to all victims of trafficking and exploitation.⁴²³ The Plan makes reference to the Asylum Act, specifically for what concerns the differential treatment foreseen by Article 46 for certain groups – among which trafficking victims - in the asylum procedure. Additionally, the plan addresses the topic of international protection needs as regards certain trafficked persons.

Another relevant instrument adopted in the same month is the ‘National Action Plan against Forced Labour: compulsory labour relations and other forced human activities’.⁴²⁴ Even though it does not explicitly refer to asylum, the Action Plan represents an important step forward in tackling forms of trafficking different from trafficking for sexual purposes, and in addressing all victims.

In 2021, the Group of Experts on Action against Trafficking in Human Beings (GRETA) of the Council of Europe started its third evaluation round of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain. The country visit has been carried out in July 2022.⁴²⁵

⁴²⁰ 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>.

⁴²¹ Ministerio de Igualdad, ‘Consulta pública previa a la elaboración de un proyecto normativo consistente en una ley integral contra la trata’, April 2021, available at: <https://bit.ly/34lxT3S>.

⁴²² Ministerio de Justicia, ‘El Gobierno aprueba el Anteproyecto de Ley Orgánica Integral contra la Trata’, 29 November 2022, available at: <https://bit.ly/3JC3nuH>.

⁴²³ Gobierno de España, Presidencia del Gobierno, ‘Interior presenta el Plan Estratégico Nacional contra la Trata y la Explotación de Seres Humanos 2021-2023’, December 2021, available at: <https://bit.ly/35t9u2k>.

⁴²⁴ Boletín Oficial del Estado (BOE), ‘Resolución de 20 de diciembre de 2021, de la Secretaría de Estado de Empleo y Economía Social, por la que se publica el Acuerdo del Consejo de Ministros de 10 de diciembre de 2021, por el que se aprueba el Plan de Acción Nacional contra el Trabajo Forzoso: relaciones laborales obligatorias y otras actividades humanas forzadas’, 20 December 2021, available at: <https://bit.ly/3hdxY22>.

⁴²⁵ Council of Europe, ‘GRETA carries out third evaluation visit to Spain’, 4-8 July 2022, available at: <https://bit.ly/3Y3I5K6>.

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.⁴²⁶ 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,⁴²⁷ but it also sets out the exceptions to this rule and the cases in which the child can be considered undocumented, and accordingly be subjected to medical age assessment. These circumstances are the following:

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

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

Medical methods and consideration of documentary evidence

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

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

These tests have resulted in very problematic age determinations and have attracted many criticisms from international organisations, NGOs⁴²⁸, academics, the UN Committee on the Rights of the Child, as well as administration officers and the Spanish Ombudsman.⁴²⁹ The main concerns regard the inaccurate nature of the tests, their lack of accuracy if applied to persons with different ethnicities mainly due to the

⁴²⁶ Framework Protocol of 13 October 2014 on actions relating to foreign unaccompanied minors, available in Spanish at: <http://bit.ly/1WQ4h4B>.

⁴²⁷ Chapter II, para 6 Protocol on Unaccompanied Minors.

⁴²⁸ Plataforma de Infancia, "El informe de aportaciones a la Lista de Cuestiones Previa a la Presentación de Informes (LOIPR) en el marco del VII Ciclo del procedimiento de informes periódicos a España ante el Comité de Derechos del Niño", October 2022, available at: <https://bit.ly/3Jd40sF>, 25.

⁴²⁹ Defensor del Pueblo, 'Informe anual 2022 – Volumen 1', March 2023, available at: <https://bit.ly/3ZJ4U7p>, 166.

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.⁴³⁰ The most criticised aspect of the practical application of the tests for the determination of age is the lack of legislative coherence and the excessive discretion of the authorities.

The Law on the protection of children from violence adopted in 2021 establishes the obligation to apply the presumption of minor age when age cannot be determined, and that integral nudes, genital explorations or other invasive examinations cannot be carried out under any circumstances.⁴³¹

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".⁴³²

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

The United Nations Committee on the Rights of the Child granted interim measures in cases concerning medical age assessments of unaccompanied children in 2017.⁴³³ In February 2019, the Committee adopted a decision condemning Spain for the illegal practice and establishing the obligation to compensate the applicant.⁴³⁴

On 27 September 2018, the Committee on the Rights of the Child issued an opinion in *N.B.F. v. Spain*,⁴³⁵ providing relevant guidance on age assessment, stressing 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.

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.*⁴³⁶ and *J.A.B.*,⁴³⁷ in Spain, thus providing relevant elements on the age assessment procedure carried out by Spanish authorities.⁴³⁸

⁴³⁰ 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>.

⁴³¹ Diario La Ley, 'La nueva ley de la infancia prohíbe los desnudos integrales a menores migrantes para determinar su edad', 13 May 2021, available at: <https://bit.ly/3i7tsCM>.

⁴³² 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>.

⁴³³ 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>.

⁴³⁴ 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>.

⁴³⁵ 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>.

⁴³⁶ 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>.

⁴³⁷ 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>.

⁴³⁸ See EDAL summary at: <https://bit.ly/2NN5u0X>.

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

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

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.⁴³⁹ It affirmed that, in 14 cases assessed and decided by the Committee, Spain failed to carry out a proper age assessment procedure. It also recalled UNHCR's information according to which the method (i.e. radiography) used in Spain presents a margin of error of four years. In addition, the Committee underlined that identity documents, if available, should be considered valid unless there is proof of the contrary, and that the best interests of the child must be a primary consideration throughout the age determination process.

In 2021, once more the UN body condemned Spain for how age assessment are carried out and for violating unaccompanied children rights, when obliging a girl to go under genital examination for assessing her age.⁴⁴⁰ The decision referred to the case of a 16-year-old Cameroonian girl who escaped forced marriage and sexual abuses.

In practice, medical age assessment procedures are used as a rule rather than as an exception, and are applied to both documented and undocumented children, no matter if they present official identity documentation or if they manifestly appear to be minors; the benefit of the doubt is also not awarded in practice. Children are also not given the benefit of the doubt if they present documentation with contradictory dates of birth.

In 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.⁴⁴¹

⁴³⁹ 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>.

⁴⁴⁰ Consejo General de la Abogacía Española, *La ONU condena a España por someter a una niña a una exploración genital para determinar su edad*, 25 February 2021, available at: <https://bit.ly/3gn7gUw>.

⁴⁴¹ 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/3ozvJlh>.

With three decisions issued in May and June 2021, the Supreme Court (*Tribunal Supremo*) established the validity of the documentation of the child's country of origin to prove his/her minority of age, also when it's posterior to the Public Prosecutor's decree establishing the majority, as far as the documentation is not considered forged or manipulated. It is hoped that the jurisprudence set by the Supreme Court will finally revert the trend existing so far in Spain.⁴⁴²

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 centres managed by the police) until they are taken to the nearest hospital to have their age assessed through radiographies of their wrist, collarbone or teeth. The age assessment procedure (e.g. using X-ray examination) is subject to many criticisms both from scientific and civil society sectors as they are not reliable, with a margin of error of the age that can vary from down to up to 2 years.⁴⁴³

In addition, several NGOs denounce the discriminatory application of the procedure, which, for example, is always applied to Moroccan unaccompanied young migrants based solely on their nationality, and the only original documentation that is considered as valid is the one that states that the migrant has reached the major age. Some organisations have expressed their concerns and denounced the fact that most of the unaccompanied migrants are declared adults, following several applications of the tests until the result declares the person of major age.⁴⁴⁴ In this way, the Autonomous Communities would avoid taking charge of the children.

During a hearing at the Senate in July 2020, the Spanish Ombudsman reported about the persisting problems in relation to age-assessment and DNA tests at CETIs and CIEs.⁴⁴⁵ 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 the EUAA 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.⁴⁴⁶ 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.

In April 2022 the Government adopted the law proposal for the regulation of the age assessment procedure which provides, i.e., for the establishment of the presumption of minority age while the procedure is on-going, for the realisation of a civil judicial procedure instead of an administrative one, for guaranteed legal assistance during the procedure, and the prohibition of invasive methods, such as integral nudes and genital examinations.⁴⁴⁷ Civil society organisations welcomed the law proposal as it improves the existing situation, but they consider that some modifications should be made, for it to be fully in line with existing jurisprudence as well as with the recommendations made by the UN Committee on the Rights of the Child.⁴⁴⁸ Similarly, while welcoming the proposal, Save the Children stressed that

⁴⁴² Tribunal Supremo, STS 2164/2021, 24 May 2021, available at: <https://bit.ly/3IlgT1B>; Tribunal Supremo, STS 2400/2021, 21 June 2021, available at: <https://bit.ly/3AeH8E6>; Tribunal Supremo, STS 2551/2021, 18 June 2021, available at: <https://bit.ly/3nJg2jr>.

⁴⁴³ Information provided by Save the Children, 1 April 2020.

⁴⁴⁴ Fundació Raíces, *Solo por estar solos*, 2014, available in Spanish at: <http://bit.ly/211pBFo>.

⁴⁴⁵ Diario de Sesiones del Senado, Pleno, 1 July 2020, available in Spanish at: <https://bit.ly/2Xt1qqO>, 131.

⁴⁴⁶ Defensor del Pueblo, 'Determinación de la edad de menores extranjeros indocumentados', 15 January 2021, available at: <https://bit.ly/3bkLw8O>.

⁴⁴⁷ Ministerio de Justicia, 'El Consejo de Ministros aprueba el Anteproyecto de Ley por el que se Regula el Procedimiento de Evaluación de la Edad', 12 April 2022, available at: <https://bit.ly/3mMIXWi>.

⁴⁴⁸ Plataforma de Infancia, 'Organizaciones sociales proponemos modificaciones al Anteproyecto de Ley sobre el procedimiento de evaluación de la edad de los niños y niñas no acompañados', 10 May 2022, available at: <https://bit.ly/3JAhaAj>.

there it still raises some concerns, such as the provision regarding the urgency of the procedure which leads to tight deadlines, the lack of mandatory request of child documentation to consulates and embassy of origin, the impossibility to appeal and change the results of the evaluation. Additionally, it highlighted the possible obstacles to the application of the presumption of minority age when children have just arrived by sea and are detained within CATE where no lawyers nor guardians are appointed have been underlined.⁴⁴⁹

Within the reporting procedure of the UN Committee for the Rights of the Child, one of the questions presented to the Spanish Government in the List of Issues Prior to Reporting refers to the measures put in place to end with the human rights violations that occur with the age assessment procedure.⁴⁵⁰

Other obstacles in practice

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

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

Due to the increase of arrivals to the **Canary Islands**, the time needed to carry out age assessment procedures significantly increased in 2020.⁴⁵¹ 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.⁴⁵² The Government of Canarias had already urged the Autonomous Communities in November 2020 to relocate around 500 unaccompanied children; the first relocations were carried out from March 2021.⁴⁵³ Regardless, transfers carried out throughout 2021 have not been sufficient to solve the situation, as just 208 minors were transferred to mainland. At the beginning of 2022, 2,600 unaccompanied migrant children were still under the protection of the Canary Islands.⁴⁵⁴ In May 2022, 976 children (40% of the children under the guardianship of the Autonomous Community) continued to wait their age assessment.⁴⁵⁵

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.⁴⁵⁶ One of the main reasons for the delay in age assessment

⁴⁴⁹ Information provided by Save the Children in March 2023.

⁴⁵⁰ Plataforma de Infancia, 'El Comité de los Derechos del Niño insta al Gobierno de España a proporcionar información sobre medidas de apoyo a la crianza', 1 March 2023, available at: <https://bit.ly/3mPMa7A>.

⁴⁵¹ Fundamental Rights Agency (FRA), 'Migration: key fundamental rights concerns. 1.10.2020-31.12.2020. Quarterly bulletin', 2021, available at <https://bit.ly/3Hw89FC>.

⁴⁵² 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>.

⁴⁵³ Canarias7, 'Canarias comienza el traslado de menores extranjeros no acompañados a la Península', 11 March 2021, available at: <https://bit.ly/3i6uLBP>.

⁴⁵⁴ Europa Press, 'Torres pedirá "más compromiso" a las CCAA en la Conferencia de Presidentes con el traslado de menores migrantes', 28 January 2022, available at: <https://bit.ly/3t5phxA>.

⁴⁵⁵ Canarias7, 'El 40% de los menores sigue pendiente de las pruebas de edad', 30 May 2022, available at: <https://bit.ly/3JFcKcg>.

⁴⁵⁶ 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>.

procedures seems to be the lack of human resources.⁴⁵⁷ 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.

In May 2022, the UNHCR Representative for Spain expressed concern for the situation of the more than 2,300 unaccompanied children under the guardianship of the Autonomous Community of the Canary Islands, and on the challenges they face in accessing asylum, especially considering that many of them are fleeing conflict in their countries, such as Mali.⁴⁵⁸

Regarding unaccompanied children in need of international protection, UNHCR conducted trainings directed at more than 1,000 professionals from central and regional government and NGOs working in child protection centres, resulting in an increased sensitivity and attention to their specific needs and enhanced collaboration among relevant actors to speed up their referrals to the asylum procedure. UNHCR, with the support of the University of Comillas, developed a Practical Guide for Professionals working with Unaccompanied and Separated Refugee Children, a practical tool for professionals who play a role in the protection and assistance of refugee children arriving in Spain, and started its dissemination with the police, child protection services, the Office for Asylum and Refugee (OAR), NGOs and lawyers.⁴⁵⁹

As the 2021 Public Prosecutor's annual report underlined, despite the efforts put in place by the competent institutions, 1,064 decisions on age assessments were still pending in 2021.⁴⁶⁰ A report published by UNICEF informs that, at the beginning of July 2021, out of 2,528 presumed minors under the guardianship of the government of the Canary Islands, 1,753 children were still waiting for their age to be assessed.⁴⁶¹

In a hearing in front of the Senate in April 2021, the Spanish Ombudsman requested all the Autonomous Communities to collaborate and to show solidarity in the protection and reception of unaccompanied migrant children who arrived at the Canary Islands. Nine Autonomous Communities (Cataluña, Navarra, Cantabria, Valencia, Castilla y León, Extremadura, Galicia, Asturias and Aragón) accepted to take in 200 children⁴⁶². The Ombudsman also stressed the necessity for the Public Prosecutor Office to reform the age assessment procedure, in order to accelerate it.⁴⁶³

Statistics on age assessments are always published in the month of September of the following year: i.e. figures on 2022 will only be made available in September 2023. From 2016 to 2021, the Prosecutor concluded the following age assessment examinations:

⁴⁵⁷ 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>.

⁴⁵⁸ El País, 'La representante de Acnur en España: "Los recursos para pedir asilo no están a la altura"', 16 May 2022, available at: <https://bit.ly/3Pp9bXD>.

⁴⁵⁹ Information provided by UNHCR in March 2023.

⁴⁶⁰ Fiscalía General del Estado, 'Memoria de la FGE 2022 (Ejercicio 2021)', September 2022, available at: <https://bit.ly/3mSwiBn>.

⁴⁶¹ UNICEF, 'Canarias: Niños y niñas migrantes en una de las rutas más peligrosas del mundo', July 2021, available at: <https://bit.ly/3pUjYPK>, 20.

⁴⁶² Newtral, 'Canarias apela a la "solidaridad obligatoria" para repartirse la tutela de menores extranjeros no acompañados', 25 August 2021, available at: <https://bit.ly/3TewzKQ>.

⁴⁶³ Defensor del Pueblo, 'El Defensor pide a todas las administraciones que se impliquen en la acogida de los menores extranjeros no acompañados', 27 April 2021, available at: <https://bit.ly/3suhlba>.

Age assessments by outcome: 2016-2021						
Type of decision	2016	2017	2018	2019	2020	2021
Total assessments conducted	2,971	5,600	12,152	7,745	5,038	6,677
Determined as adult	1,243	2,205	3,031	2,477	1,562	1,654
Determined as minor	1,365	2,751	4,558	3,732	2,446	3,245
Cases filed	363	644	4,563	1,037	855	1,778

Source: Fiscalía General del Estado, 2017, 2018, 2019, 2020 and 2021 Activity reports: <https://bit.ly/2zN1VAB>, <https://cutt.ly/NrqsfgZ>, <https://bit.ly/3nDnGsF>, <https://bit.ly/3eMepwr>, and <https://bit.ly/3RuAXDV>.

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.⁴⁶⁴ The Ombudsman has also raised concerns in June 2019 regarding the inaccuracy of the register of unaccompanied minors and highlighted the deficiencies resulting from age assessment procedures, especially regarding girls.⁴⁶⁵

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.⁴⁶⁶

Although the law foresees that unaccompanied children must be granted a residence permit upon their arrival in Spain,⁴⁶⁷ at least 10,000 unaccompanied children falling under the protection of the Autonomous Communities were found to be undocumented in 2019.⁴⁶⁸

In October 2019, the Ombudsman highlighted the necessity to improve the protection of children who arrive in Spain irregularly and are accompanied by adults.⁴⁶⁹ 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.⁴⁷⁰

⁴⁶⁴ Audiencia Nacional, 'Sala de lo Contencioso-Administrativo, Sección Séptima, nº recurso 770/2017', 28 December 2018, available in Spanish at: <https://cutt.ly/brc1ryQ>.

⁴⁶⁵ 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>.

⁴⁶⁶ 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>.

⁴⁶⁷ Article 196 Aliens Regulation.

⁴⁶⁸ El País, 'España mantiene sin papeles a casi 10,000 menores inmigrantes tutelados', 19 November 2019, available in Spanish at: <https://cutt.ly/Urc0Gnr>.

⁴⁶⁹ 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>.

⁴⁷⁰ 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>.

In view of the reform of the Ruling of the Immigration Law, in early 2021 different organisations presented 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.⁴⁷¹ The reform was finally adopted in October 2021. It facilitates access to residence and work permits for unaccompanied migrant children, as well as those for who arrived as children and aged out and are between 18 and 23 years old, and allows access to work also for children turning 16.⁴⁷² The change is expected to improve living conditions and integration prospects for thousands of young people. Since the reform entered into force until November 2022, the Minister of Inclusion, Social security and Migration processed a total of 16,716 of residence and work permits have been issued.⁴⁷³

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

☐ Yes

☒ For certain categories

☐ No

❖ If for certain categories, specify which: Victims of trafficking, unaccompanied children

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

The OAR states that its staff is trained on EUAA training modules, but that there are no specialised units dealing with cases from vulnerable groups.⁴⁷⁴ The OAR did not have any caseworkers specialised in gender violence as of the start of 2022, as far as the author is aware.

A report published by Accem in 2019 on LGTBI+ asylum seekers investigates how their credibility is assessed during the international protection procedure. The publication underlines that the adoption of guidelines on the criteria to follow while assessing credibility during the asylum procedure represents an important measure in order to reduce and avoid discriminatory, unequal or prejudicial elements during such an assessment,⁴⁷⁵ but no common guidance was provided as of 2022.

Several concerns regarding the measures and provisions regarding identification, age assessment and protection of unaccompanied children are discussed in [Identification](#). In October 2022, UNHCR and Universidad Pontificia Comillas published guidelines addressed to professionals dealing with separated and unaccompanied migrant children.⁴⁷⁶

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, presumed trafficking victims, who are admitted to the territory.⁴⁷⁷

⁴⁷¹ 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>.

⁴⁷² PICUM, 'Spain adopts law to facilitate regularisation of young migrants', 18 November 2021, available at: <https://bit.ly/3mUBDrx>.

⁴⁷³ Ministerio de Inclusión, Seguridad Social y Migración, 'Inclusión registra casi 17.000 expedientes de jóvenes tutelados y extutelados que facilitan su inserción social y laboral', 8 November 2022, available at: <https://bit.ly/3mLiMPL>.

⁴⁷⁴ Information provided by OAR, 20 August 2017.

⁴⁷⁵ 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>.

⁴⁷⁶ ACNUR, Universidad Pontificia Comillas, 'Guía para profesionales que trabajan con niños y niñas refugiados no acompañados', October 2022, available at: <https://bit.ly/3JfJc3J>.

⁴⁷⁷ Information provided by Accem's legal service in April 2023.

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.⁴⁷⁸ 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.⁴⁷⁹

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.⁴⁸⁰

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

⁴⁷⁸ Article 24(2) Asylum Regulation.

⁴⁷⁹ Articles 37(b) and 46(3) Asylum Act.

⁴⁸⁰ Chapter VII, para 1(2) Protocol on Unaccompanied Minors.

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

Shortcomings and problems have been raised concerning the guardianship systems for unaccompanied minors, and mostly with regard to the excessively long duration of the procedures for issuing an identification document when children are undocumented. Moreover, serious concerns have been reported regarding children who have been under the guardianship of the Autonomous Communities and are evicted from protection centres once they turn 18 even if they have not been documented or have not yet received a residence permit. In these cases, children are left in streets, homeless and undocumented. As previously mentioned, in October 2021 the Regulation of the Immigration Law has been reformed and it facilitates access to residence and work permits for unaccompanied migrant children, as well as those for who arrived as children and "aged out" during the procedure, but are between 18 and 23 years old; moreover, it allows access to work also for children turning 16.⁴⁸¹ It is hoped that such reform will positively impact on the lives of children, by making sure they are not left undocumented, as well as to avoid situations of homelessness.

In its thematic report on the migration situation in the **Canary Islands**, Amnesty International denounced the lack of proper protection that unaccompanied migrant children face, including the delays in undergoing age assessment procedure and the risk of homelessness.⁴⁸² Similarly, different organisations had previously reported on problems faced by UAMs in Spain.⁴⁸³

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

Nevertheless, it should be highlighted that there are very few asylum applications made by unaccompanied children. In 2018, a total of 77 unaccompanied children applied for international protection,⁴⁸⁴ a figure that only slightly increased to 98 applications in 2019.⁴⁸⁵ In 2020, 45 unaccompanied migrant children applied for international protection,⁴⁸⁶ while in 2021 they were 50.⁴⁸⁷ Statistics on the year 2022 were not available at the time of writing.

In relation to the low numbers of asylum applications by UAMs, it is worth to mention that they are protected under the Law on Child Protection, and that the identification of their international protection needs has represented a significant challenge in Spain since many years. Thus, even though UAMs stay in Spain, the vast majority of them do not apply for asylum, due to multiple factors (i.e. lack of information of the right to asylum they have, lack of identification of their international protection needs by the

⁴⁸¹ PICUM, 'Spain adopts law to facilitate regularisation of young migrants', 18 November 2021, available at: <https://bit.ly/3mUBDrx>.

⁴⁸² Amnistía Internacional, 'Canarias; un año de análisis, décadas de fracaso de políticas migratorias', December 2021, available at: <https://bit.ly/35TiyOk>.

⁴⁸³ Newtral, 'De niño protegido a vivir en la calle en un solo día: así se hacen adultos los menores migrantes', 6 October 2020, available in Spanish at: <https://bit.ly/3shZArc>; Público, 'UNICEF llama a la acción ante el drama de los menores migrantes: "No se puede culpar a un niño de vivir en la calle"', 16 November 2020, available in Spanish at: <https://bit.ly/2LNg49N>; 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>; Servicio Jesuita a Migrantes, *Buscar salida. Informe Frontera Sur 2020*, 18 December 2020, available in Spanish at: <https://bit.ly/3bF2PD9>; El País, 'El bloqueo documental para expulsar a jóvenes extutelados de Melilla', 12 January 2021, available in Spanish at: <https://bit.ly/2LPcMTL>; 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>.

⁴⁸⁴ OAR, *Asilo en cifras 2018*, available in Spanish at: <https://cutt.ly/OrqdnUU>.

⁴⁸⁵ Oficina de Asilo y refugio (OAR), *Asilo en cifras 2019*, July 2020, available at: <https://bit.ly/3oEUQtI>.

⁴⁸⁶ Ministerio del Interior, 'Asilo en cifras 2020', 2020, available at: <https://bit.ly/3ZDcmRj>, 94.

⁴⁸⁷ Ministerio del Interior, 'Asilo en cifras 2021', 2021, available at: <https://bit.ly/3JeTHnN>, 88.

authorities competent on child protection, etc.). Even though among all the UAMs who arrive to Spain, some of them can decide to move to other countries, the lack of identification of their international protection needs represents the main reasons of such low numbers.

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

E. Subsequent applications

Indicators: Subsequent Applications		
1. Does the law provide for a specific procedure for subsequent applications?	☐ Yes	☒ No
2. Is a removal order suspended during the examination of a first subsequent application?		
❖ At first instance	☒ Yes	☐ No
❖ At the appeal stage	☐ Yes	☒ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?		
❖ At first instance	☒ Yes	☐ No
❖ At the appeal stage	☐ Yes	☒ No

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

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

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

According to Eurostat, 3,245 subsequent applications were presented in Spain in 2021, and 1,805 in 2022.⁴⁸⁸

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

Before the Taliban takeover, Afghans nationals were often denied asylum in Spain. After the evacuation, Afghans already living in Spain started receiving some form of international protection (most commonly subsidiary protection). Those arrived through the evacuation operation, are in general receiving refugee status.⁴⁸⁹

⁴⁸⁸ Eurostat, *migr_asyappctza*.

⁴⁸⁹ Information provided by Accem's legal service on March 2023.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | |
|--|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | ☒ Yes ☐ No |
| ❖ Is there a national list of safe countries of origin? | ☐ Yes ☒ No |
| ❖ Is the safe country of origin concept used in practice? | ☒ Yes ☐ No |
| 2. Does national legislation allow for the use of “safe third country” concept? | ☒ Yes ☐ No |
| ❖ Is the safe third country concept used in practice? | ☒ Yes ☐ No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | ☐ Yes ☒ No |

1. Safe third country

The concept of “safe third country” is defined with reference to Article 27 of the original Asylum Procedures Directive and where appropriate with an EU list of safe third countries, as a country where the applicant does not face persecution or serious harm, has the possibility to seek recognition as a refugee and, if recognised, enjoy protection in accordance with the Refugee Convention. The law also requires the existence of links in the form of a relationship with the safe third country, which make it reasonable for the applicant to be returned to that country.⁴⁹⁰ The applicability of the “safe third country” concept is a ground for inadmissibility (see section on [Admissibility Procedure](#)).

The OAR has increasingly applied the “safe third country” concept in recent years. In 2020, the concept was also applied to **Venezuelans**, as the authorities consider that any other South American country should be considered as a safe third country for the applicants coming from the country. The same situation continued to persist in 2022. The Government does not expressly refer to the “safe third country” concept, but the motivation of the dismissal of the application is essentially based on it. The concept has been applied in 2018 especially in cases of mixed marriage between Moroccan and Syrian nationals. In 2019, 2020 and 2021 it was 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*.⁴⁹¹ In a decision of 2018, the *Audiencia Nacional* refers to Morocco as a “safe third country”, indicating that the Court has reiterated this position on many occasions.⁴⁹²

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.”⁴⁹³ In principle, both the ratification and the application of the Geneva Convention are necessary conditions for the application of the safe third country concept.⁴⁹⁴

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.⁴⁹⁵ The

⁴⁹⁰ Article 20(1)(d) Asylum Act.

⁴⁹¹ 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.

⁴⁹² *Audiencia Nacional*, Decision SAN 1441/2018, 15 March 2018.

⁴⁹³ *Audiencia Nacional*, Decision SAN 428/2018, 2 February 2018.

⁴⁹⁴ *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.

⁴⁹⁵ *Audiencia Nacional*, Decision SAN 428/2018, 2 February 2018.

same reasoning was used in a case concerning **Algeria**.⁴⁹⁶ As far as the author is aware, the same situation persists in the case of Morocco, while no information is available with regards to Algeria.⁴⁹⁷

It is important to note, however, that although it has stressed several times the necessity for a third country to have ratified the Geneva Convention to be considered as safe, the *Audiencia Nacional* stated that **Lebanon** is a safe third country in a 2018 case.⁴⁹⁸

The majority of inadmissibility decisions in 2018 concerned nationals of Algeria and Morocco (see [Admissibility Procedure](#)). Statistics on 2021 were not available at the time of writing of this report.

1.2. Connection criteria

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

In a ruling of February 2018, 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.⁴⁹⁹

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.⁵⁰⁰ It seems that the concept is rarely used in practice.

However, it has to be underlined that in the last years, the Spanish Government is granting protection to Moroccan national in specific cases, such as when, political grounds (i.e. those coming from the Rif region), LGBTI+, and gender-based violence grounds of persecution are deemed to exist.

G. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☒ Yes ☐ With difficulty ☐ No

❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

The Asylum Regulation, which gives practical application to the previous version of the Asylum Act, makes specific reference to the provision of information to asylum seekers on their rights.⁵⁰¹ 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.

⁴⁹⁶ Audiencia Nacional, Decision SAN 3838/2016, 17 October 2016.

⁴⁹⁷ Information provided by Accem in March 2023.

⁴⁹⁸ Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.

⁴⁹⁹ Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.

⁵⁰⁰ Audiencia Nacional, Decision SAN 4076/2016, 17 October 2016; Decision SAN 3838/2016, 17 October 2016.

⁵⁰¹ Article 5(1) Asylum Regulation.

The Ministry of Interior has published a leaflet, available online and handed to all applicants at the moment they express the will to ask for international protection, so that they can contact any organisation that provides support and assistance.⁵⁰² 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.⁵⁰³

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.

During COVID-19, NGOs continued to support asylum seekers via remote tools such as phones or video calls. After the first lockdown, assistance in person was also ensured in accordance with COVID-19 measures. After the declaration of the State of Alarm in Spain, NGOs in Spain have been declared as essential activities and were allowed to continue their activities in person. In 2021, NGOs provided assistance both remotely and in person, in line with changes in COVID-19 measures in force and depending on the situation of each Autonomous Community.

On the International Woman Day, on March 2021, UNHCR launched a video to prevent gender-based violence against refugee and asylum seeker women. The video is available in 4 languages (Spanish, English, French and Arabic), and is aimed at preventing and identifying possible situations of gender-based violence, and informing refugee and asylum seekers women on what to do and where to refer in such cases⁵⁰⁴. In addition, in April 2021, UNHCR launched two animated videos to inform persons reaching Spain about international protection. The videos are available in Spanish, English, French and Arabic, and they explain to newcomers what is international protection and how to access the procedure in Spain, both at the borders and in territory.⁵⁰⁵

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

In general, asylum seekers at the borders are the ones that face most difficulties in accessing not only information, but the asylum process itself. Access of NGOs to border facilities is not foreseen by law. According to the OAR, NGOs are usually provided access to border facilities in order to assist vulnerable applicants, although there is no further information available on this. The NGOs CEAR⁵⁰⁶ and the Red Cross⁵⁰⁷ have presence at the airports of Madrid and Barcelona,⁵⁰⁸ and UNHCR conducts monitoring activities to several border facilities. UNHCR has established its presence in **Andalucía**, in order to

⁵⁰² The leaflet is available at: <https://bit.ly/2RCKcql>.

⁵⁰³ Article 5(2) Asylum Regulation.

⁵⁰⁴ UNHCR/ACNUR, *ACNUR presenta un vídeo para ayudar a prevenir la violencia de género en mujeres refugiadas y solicitantes de asilo*, 5 March 2021, available at: <https://bit.ly/3mqTjJm>.

⁵⁰⁵ UNHCR/ACNUR, *ACNUR lanza dos vídeos animados sobre protección internacional y asilo en España*, 19 April 2021, available at: <https://bit.ly/3gz6uE8>.

⁵⁰⁶ CEAR, see: <https://www.cear.es/>.

⁵⁰⁷ Cruz Roja Española, see: <https://www2.cruzroja.es/>.

⁵⁰⁸ Information provided by the OAR, 14 September 2020; Accem, 29 September 2020.

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**.⁵⁰⁹ As already mentioned, both organisations started to work in the archipelago at the beginning of 2021. The IOM's operations in the archipelago was finalised in June 2022.

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. For more information, please see the section on [Detention](#).

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?⁵¹⁰ ☐ Yes ☒ No
❖ If yes, specify which:

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

In 2018, the *Audiencia Nacional* provided additional guidance on the legal status of **Venezuelans** in Spain. According to the judgments, the socio-politic and economic crisis in Venezuela entitles Venezuelan asylum seekers to a residence permit in Spain under humanitarian reasons.⁵¹¹

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 2019.⁵¹² 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.

In 2022, out of a total of 20,924 first instance decisions, 20,580 Venezuelans obtained a residence permit on humanitarian grounds, while no information is available on how many Venezuelans obtained any form

⁵⁰⁹ 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>.

⁵¹⁰ Whether under the “safe country of origin” concept or otherwise.

⁵¹¹ Audiencia Nacional, Decisions SAN 2522/2018, 26 June 2018; SAN 4063/2018, 8 October 2018; SAN 4060/2018, 18 October 2018.

⁵¹² 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>.

of international protection at the time of writing, as Venezuela is not within the top 5 nationalities disaggregated in the available figures.⁵¹³

Lawyers have expressed deep concerns regarding the individual assessment of asylum claims lodged by **Venezuelans**, as some of them were granted a residence permit on humanitarian grounds despite being entitled to the refugee status (e.g. in the case of political opponents). In addition, it appears that some applications for international protection have been rejected because asylum seekers have a police record (not a criminal record).⁵¹⁴

In a decision taken in March 2021, the Supreme Court (*Tribunal Supremo*) established that the general situation of crisis in Venezuela does not amount to an individual persecution or to a serious harm justifying the recognition of international protection. Instead, the Court established that the severe economic conditions of the country – affected by food shortages and high unemployment rates – justify granting a residence permit for humanitarian reasons.⁵¹⁵

It has to be noted that the number of rejections for Venezuelans increased significantly in 2021, up to a rate of 18% compared to 2020, when they represented only 2% of total decisions.

Another non-official practice of differential treatment concerned, until 2020, applications presented by **Syrian** nationals, who were in their vast majority granted subsidiary protection, and no case-by-case assessment was realised on the requirement to receive international protection. It should be noted, however, how this trend seemingly inverted in 2021, when 460 refugee statuses were recognised to Syrian nationals, compared to 265 cases in which subsidiary protection was recognised.⁵¹⁶ The same trend continued in 2022, which might be partly due to the fact that very few Syrian applicants' cases were examined.

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**.⁵¹⁷ 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.⁵¹⁸ 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.

In different decisions adopted in July 2022, the *Audiencia Nacional* denied protection to asylum applicants from Honduras and El Salvador who fled their countries due to threats from the *maras*. The Court agreed with the criterion used by the Minister of Interior, considering that such threat is a matter of common criminality which does not amount to persecution, and recognising the efforts that the two countries are carrying out to fight against such violence.⁵¹⁹

⁵¹³ 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 2022', January 2023, available at: <https://bit.ly/3QP1xcN>.

⁵¹⁴ Information provided by the legal services of Accem on February 2021.

⁵¹⁵ Tribunal Supremo, Decision 352/2021 (STS 1052/2021), 11 March 2021, available at: <https://bit.ly/3qFWqNK>.

⁵¹⁶ Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)[migr_asydcfst], available at: <https://bit.ly/38yLNI9>.

⁵¹⁷ Audiencia Nacional, Decision SAN 5110/2017, 22 November 2017; SAN 5189/2017, 22 November 2017; SAN 3930/2017, 14 September 2017.

⁵¹⁸ Audiencia Nacional, Decision SAN 508/2018, 9 February 2018.

⁵¹⁹ Heraldo, 'La amenaza de las "maras" no es suficiente para lograr asilo en España', 9 August 2022, available at: <https://bit.ly/3QCKUmW>; Audiencia Nacional. Sala de lo Contencioso, SAN 3412/2022, 13 July 2022, available at: <https://bit.ly/3nlvyoi>.

Only some applicants from Honduras and El Salvador with specific profiles (i.e. former police officers, former staff of law enforcement agencies, human rights defenders, LGTBI+ individuals, gender-based violence victims) were granted protection.⁵²⁰

In the last years, asylum seekers from **Colombia** frequently received a differential treatment due to nationality, as they were systematically denied asylum as the situation in the country is considered to be critical only because of the widespread criminality, instead of acknowledging the presence of organised armed groups. In addition, similar cases of persecution (i.e. for political grounds) have received different outcomes (i.e. granting of international protection or denial).⁵²¹

After the withdrawal of US troops from **Afghanistan** in mid-August 2021, Spain started to evacuate Afghans who had worked with Spanish troops and aid workers. The plan (*Operación Antígona*), managed by the Ministers of Interior, Foreign Affairs and Defence, entailed their transfer from Kabul to Spain with different flights,⁵²² as well as their reception and granting of either refugee status or subsidiary protection.⁵²³

The Spanish military base in Torrejón (Autonomous Community of Madrid) worked as a hub for the Afghan refugees who were later to the US or other EU countries.⁵²⁴ Different Spanish Autonomous Communities offered places for the reception of Afghans, with a special concern for women and children. After the temporarily reception of maximum 72-hours at the Torrejón military base,⁵²⁵ Afghan refugees were referred to centres or apartments in the framework of the international protection reception system.⁵²⁶ At the Torrejón facility, the Spanish Red Cross provided the first temporary assistance to refugees. The organisation reported that Afghans often lacked information on their whereabouts and about what would happen to them in the future.⁵²⁷

By the end of August 2021, the Spanish Government transferred more than 2,200 Afghans to Spain. Around 1,700 applied for international protection, and many were referred to the reception asylum system.⁵²⁸ One-third of them is under 15 years of age.⁵²⁹

The NGO *CEAR* launched a campaign to ask the Spanish Government to foster a humanitarian corridor for Afghan refugees at EU level.⁵³⁰ In October 2021, the Spanish Government evacuated 80 Afghan

⁵²⁰ Information provided by Accem's legal service in April 2023.

⁵²¹ Information provided by the legal service of Accem on February 2022.

⁵²² Newtral, 'Un segundo avión procedente de Kabul trae a 110 afganos a España', 20 August 2021, available at: <https://bit.ly/3qHQUDN>; El Diario, 'Un tercer avión español con refugiados afganos llega este sábado a Madrid desde Kabul', 21 August 2021, available at: <https://bit.ly/3pOzc97>; Cadena Ser, 'Aterriza en Torrejón un nuevo vuelo con 292 afganos evacuados por España', 25 August 2021, available at: <https://bit.ly/3FPxCtf>; Cadena Ser, 'Aterriza el avión con los últimos evacuados de Afganistán en la base de Torrejón de Ardoz', 27 August 2021, available at: <https://bit.ly/32Y7xtu>.

⁵²³ El País, 'España prepara la evacuación de afganos que trabajaron para sus militares y cooperantes', 11 August 2021, available at: <https://bit.ly/3HpKZR2>.

⁵²⁴ Newtral, 'Así será la acogida de refugiados afganos que ha ofrecido España', 18 August 2021, available at: <https://bit.ly/3HulFcW>; Cadenaser, 'España acogerá en Rota y Morón a un máximo de 4.000 colaboradores afganos de EEUU durante dos semanas', 23 December 2021, available at: <https://bit.ly/3zmYJJv>.

⁵²⁵ ECRE, 'Afghans seeking protection in Europe. ECRE's compilation of information on evacuations, pathways to protection and access to asylum in Europe for Afghans since August 2021', December 2021, available at: <https://bit.ly/3pOTjUP>.

⁵²⁶ El Diario, 'El Gobierno acelera la acogida de refugiados afganos: "La prioridad es sacarles de Torrejón lo antes posible"', 23 August 2021, available at: <https://bit.ly/3zy3vUZ>.

⁵²⁷ El Diario, 'La Cruz Roja, desde el campamento de Torrejón: "No saben dónde están, qué va a pasar con ellos"', August 2021, available at: <https://bit.ly/3sOP25y>.

⁵²⁸ Público, 'Más de 1.700 personas evacuadas de Afganistán solicitan protección internacional en España', 27 August 2021, available at: <https://bit.ly/3JFoV7g>; Público, 'La mitad de los refugiados afganos llegados a España piden protección internacional en nuestro país', 23 August 2021, available at: <https://bit.ly/3HtgCJF>; The Objective, 'Más de 1.700 de los afganos que llegaron a España están en el sistema de acogida aprendiendo el idioma', 4 December 2021, available at: <https://bit.ly/3HuL3Pz>.

⁵²⁹ El Diario, 'Un tercio de los refugiados afganos evacuados y acogidos en España son menores de 15 años', 2 September 2021, available at: <https://bit.ly/3FPjRuH>.

⁵³⁰ CEAR, 'CEAR, Un corredor humanitario para las personas refugiadas de Afganistán', August 2021, available at: <https://bit.ly/3FPr5P3>.

refugees from Pakistan.⁵³¹ The Minister of Inclusion, Social Security and Migration together with the Spanish Federation of Municipalities and Provinces (*Federación Española de Municipios y Provincias*) put in place a pilot project to involve municipalities in the integration of Afghan population arrived to Spain in the framework of the Antígona Operation. According to the collaboration agreement, the MISSM will continue to provide for the expenses connected to their reception, maintenance, social support, legal assistance, language classes, and support for their integration through the international protection programme. The Municipalities that wish to join the initiative will put municipal house facilities at disposal of the MISSM.⁵³²

The MISSM concluded the referral of Afghans to different reception facilities across the countries by mid-November, so the military base of Torrejón has been dismantled.⁵³³ Afghans applicants in Spain have been required to make an asylum application through the usual channels.⁵³⁴ The Asylum Office (OAR) has prioritised the first interview with Afghans applicants for the formalisation of the international protection application. It has to be underlined that interviews were carried out in a complete and detailed manner, also taking into account different characteristics (i.e. belonging to a minority group) and vulnerabilities of applicants. Additionally, the assessment phase is quicker than usual.⁵³⁵

In January 2022 the National High Court adopted a decision granting subsidiary protection to the appellant,⁵³⁶ as it considered that, as far as the conflict in Afghanistan continues and it is not possible to find an internal flight alternative due to the total control of the country by the Taliban regime, the existing violence creates a real risk of suffering serious and individual threats against the life or security of civil population, and that sometimes this real risk may simply exist due to the presence of the applicant in the territory. Such a decision represents a change of criteria in relation to the international protection mechanisms for Afghan nationals in Spain, and has been adopted taken into consideration the UNHCR recommendations after the evacuation of August 2021.

In August 2022, Spain evacuated almost 300 Afghans who had collaborated with the Ministries of Defence and of Foreign Affairs.⁵³⁷ In the following year, the Government evacuated 3,900 former Afghan collaborators, and the Minister of Foreign Affairs announced more evacuation operations to come.⁵³⁸ According to available information, one third of the Afghans who reached Spain were out of the asylum reception system after one year, and around 700 Afghans evacuated to Spain moved to other EU countries (mainly Germany) to reach their family or friends.⁵³⁹ The main difficulty that Afghan refugees are facing in Spain is the access to housing, due to the high prices and the impact of COVID-19.⁵⁴⁰ In the same month, the professional associations of the Judges for Democracy and the Progressive Union of Public Prosecutors sent an open letter to the Spanish President, expressing their concern on the situation that female judges, public prosecutors and lawyers are facing in Afghanistan since August 2021,

⁵³¹ La Vanguardia, 'Llegan a España otros 80 afganos desde Pakistán', 11 October 2021, available at: <https://bit.ly/3ZlOfKx>; Cadena Ser, 'Exteriores y Defensa llevan a cabo una operación para la evacuación de colaboradores afganos', 9 October 2021, available at: <https://bit.ly/3JBpGp>.

⁵³² Ministerio de Inclusión, Seguridad Social y Migraciones, 'El Ministerio de Inclusión contará con los ayuntamientos en la acogida de familias refugiadas afganas', 11 October 2021, available at: <https://bit.ly/3HuH31v>.

⁵³³ El Confidencial Autonomico, 'La base aérea de Torrejón, despejada después de atender a los últimos 240 afganos', 16 November 2021, available at: <https://bit.ly/31I5X4h>.

⁵³⁴ ECRE, 'Afghans seeking protection in Europe. ECRE's compilation of information on evacuations, pathways to protection and access to asylum in Europe for Afghans since August 2021', December 2021, available at: <https://bit.ly/3pOTJUP>.

⁵³⁵ Information provided by the legal service of Accem on February 2022.

⁵³⁶ Audiencia Nacional. Sala de lo Contencioso, SAN 250/2022, 13 January 2022, available at: <https://bit.ly/405w2gR>.

⁵³⁷ El País, 'España evacúa a casi 300 excolaboradores afganos un año después de la caída de Kabul', 8 August 2022, available at: <https://bit.ly/3BRoRQ9>.

⁵³⁸ La Moncloa, 'El Gobierno ha evacuado a 3.900 colaboradores afganos desde hace un año con los 300 llegados hoy a Torrejón', 10 August 2022, available at: <https://bit.ly/3QFgJqk>; La Razón, 'Albares anuncia nuevas operaciones para evacuar a ciudadanos afganos', 11 August 2022, available at: <https://bit.ly/3ApDfhq>; Newtral, 'Refugiados afganos un año después de su llegada: sus expectativas se frustran ante la realidad del sistema de acogida', 13 August 2022, available at: <https://bit.ly/3C90bTi>.

⁵⁴⁰ Nius Diario, 'Refugiados afganos en España: dos tercios siguen en el sistema de acogida y su mayor problema es la vivienda', 15 August 2022, available at: <https://bit.ly/3PAcknC>.

and asking for more efforts by the Spanish Government to assure their protection. Concretely, the associations asked the President to include 32 female judges and public prosecutors - together with their families - in one of the flights that Spain had scheduled to transfer Afghans evacuees.⁵⁴¹

Due to the serious humanitarian situation that Afghanistan is experiencing since the Taliban take over, the NGO *CEAR* asked Spain and the EU to urgently provide for legal and safe pathways to Afghans, together with reinforcing the EU and national compromise to resettlement. It also called to speed up the family reunification procedure, to establish university scholarships and other programs for students, to suspend the application of the EU-Afghanistan Declaration on return and readmission, and to harmonise the protection granted to Afghans across the EU.⁵⁴²

At the end of 2022, a group of 27 Afghan female public prosecutors' arrived to Spain from Pakistan together with their families, in an action coordinated by the Spanish Minister of External Affairs and thanks to the initiative of a group of Spanish judges and public prosecutors.⁵⁴³

In December 2022, the political party *Unidas Podemos* presented a parliamentary request aimed at gathering more information and devising solutions in relation to the problems that Afghan nationals are facing at the Spanish embassies in Pakistan and Iran for applying for asylum.⁵⁴⁴

Following a parliamentary request, in March 2023 the Government informed that 1,500 Afghans arrived to Spain since August 2021 after applying for asylum at Spanish embassies in Iran and Pakistan.⁵⁴⁵

For what concerned the response to the outbreak of war in **Ukraine** in February 2022, please see chapter on [Temporary Protection Procedure](#).

⁵⁴¹ Lawyer Press News, 'Carta abierta al Presidente del Gobierno de España en relación a la situación de peligro que sufren las mujeres juezas y fiscalas afganas y la necesidad de que España les ofrezca protección internacional', 7 August 2022, available at: <https://bit.ly/3p7wiLm>.

⁵⁴² CEAR, 'Un año después del regreso al poder de los talibanes, urge poner a salvo a la población amenazada atrapada en el país', 12 August 2022, available at: <https://bit.ly/3SREddA>.

⁵⁴³ Epe, 'Las fiscales afganas objetivo de los talibanes y auxiliadas por Exteriores llegan a España', 27 December 2022, available at: <https://bit.ly/3vU0IV4>.

⁵⁴⁴ Mundo Obrero, 'UP alerta sobre los problemas de las personas huidas de Afganistán que solicitan asilo en las embajadas de Pakistán e Irán', 30 December 2022, available at: <https://bit.ly/3kFEK5Q>.

⁵⁴⁵ Europa Press, 'El Gobierno ha facilitado la llegada a España de 1.444 afganos que huían de los talibán desde Irán y Pakistán', 6 March 2023, available at: <https://bit.ly/3SUqXoU>.

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 and coordinates the Directorate General of Migration (*Dirección General de Migraciones*), the Directorate General for the Humanitarian Assistance and Social Inclusion of Migrants (*Dirección General de Atención Humanitaria e Inclusión Social de la Inmigración*) and the Directorate General for the International Protection and Temporary Protection Reception System (*Dirección General del Sistema de Acogida de Protección Internacional y Temporal*).⁵⁴⁶ The SEM is competent for developing the Governmental policy on foreigners, immigration and emigration. In addition, through the DGSAPIT, it develops and manages the comprehensive system for reception and integration of 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.⁵⁴⁷ During many years, and until 2022, detailed rules on the functioning of the Spanish reception system were provided through a non-binding handbook,⁵⁴⁸ as the Regulation implementing the Asylum Act was pending from 2009. Finally, on March 2022, the Government adopted the Royal Decree 220/2022 of 29 March, approving the Regulation governing the international protection reception system.⁵⁴⁹ The new Regulation entered into force on 31 March 2022. It provides that the 2021 Reception Handbook and its Annex on the procedure on managing the international protection reception plan will be applicable in case certain rules are not developed and detailed by the same Regulation.

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 (accommodation, assistance and financial support) should last 18 months, which can reach a maximum of 24 for vulnerable cases, following the exceptional authorisation by the competent authority. The reception system is currently divided into three phases: 1) initial assessment and referral; 2) reception; 3) autonomy.

On 15 December 2022, the SEM adopted an instruction detailing the requirements for accessing and staying in the international protection reception system.⁵⁵⁰ Among other issues, the instruction foresees that the phase of initial assessment and referral, despite being part of the reception system, does not count while calculating the 18-month (or 24-month) period of stay, and that just the other two phases are taken into consideration for the calculation of the duration.

The State Secretary for Migration of the Ministry of Inclusion, Social Security and Migration directly manages four reception facilities for asylum seekers, which are collective centres. In addition, 20 NGOs run reception centres for asylum seekers, through funds granted by the State Secretary for Migration. Many of these facilities are apartments. It has to be noted that in 2022 there has also been a change for

⁵⁴⁶ Ministerio de Inclusión, Seguridad Social y Migraciones, 'Organización Administrativa - Secretaría de Estado de Migraciones', available at: <https://bit.ly/3Xn56ry>.

⁵⁴⁷ Articles 30(2) and 31(1) Asylum Act.

⁵⁴⁸ The first version of the Reception Handbook was published in January 2016 and other four versions were published in the following years. Please refer to previous updates of this report for more information on this regard.

⁵⁴⁹ Boletín Oficial del Estado, 'Real Decreto 220/2022, de 29 de marzo, por el que se aprueba el Reglamento por el que se regula el sistema de acogida en materia de protección internacional', available in Spanish at: <https://bit.ly/3QR8SHo>.

⁵⁵⁰ Migrar con Derechos, 'Instrucción SEM de 15 de diciembre de 2022. Acceso y permanencia sistema acogida protección internacional', 15 December 2022, available at: <https://bit.ly/42A0pxQ>.

what concerns funding of reception facilities managed by NGOs, with the provision of direct funding to certain organisations.⁵⁵¹

To improve the asylum reception system, the Government established it would allocate a total of 190 million Euros between 2021 and 2023 within the Recovery and Resilience Plan.⁵⁵² In October 2022, the Government announced that 215 million Euros of the Plan would be used to build 17 reception facilities for migrants and asylum seekers, with a capacity of 6,100 places.⁵⁵³

UNHCR supported the Ministry of Inclusion, Social Security and Migrations (MISSM) and NGOs managing reception centres for refugees and asylum seekers in the implementation of national standard operating procedures to prevent and respond to gender-based violence in the reception system, enhancing the reception personnel capacity to adequately detect, refer, and intervene in GBV cases with a survival-centre approach. A few guidelines (data collection tool, pocket guide, a leaflet for professionals, and posters and leaflets for refugees, asylum seekers and stateless persons) were developed.⁵⁵⁴ A plan to disseminate the guidelines through targeted trainings will be rolled out in 2023.⁵⁵⁵

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Dublin procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Admissibility procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Border procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ First appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Onward appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Subsequent application	☒ Yes	☐ Reduced material conditions	☐ No
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

☒ Yes	☐ No
---	-----------------------------

Article 30(1) of the Asylum Act provides that if they lack financial means, “applicants for international protection will be provided a shelter and social services in order to ensure the satisfaction of their basic needs in dignified conditions”. The system has an integral character, which assists the applicant / beneficiary from the time of the submission of the application for asylum until the completion of the integration process.

1.1. Right to reception in different procedures

Material reception conditions under national legislation on asylum are the same for every asylum seeker, no matter the profile of the applicant nor the type of asylum procedure. According to the reception

⁵⁵¹ Ministerio de Inclusión, Seguridad Social y Migraciones, ‘Subvenciones de concesión directa en el área de protección internacional, aprobadas por el Real Decreto 590/2022, de 19 de julio’, 19 July 2022, available in Spanish at: <https://bit.ly/3kz7ZqY>; Ministerio de Inclusión, Seguridad Social y Migraciones, ‘Real Decreto 1059/2022, de 27 de diciembre, por el que se modifica el Real Decreto 590/2022, de 19 de julio, por el que se regula la concesión directa de subvenciones a determinadas entidades para la financiación del Sistema de Acogida de Protección Internacional’, 28 December 2022, available in Spanish at: <https://bit.ly/3GY9NkR>.

⁵⁵² Europa Press, ‘El Gobierno prevé invertir 190 millones hasta 2023 en la mejora del sistema de acogida a refugiados’, 5 May 2021, available at: <https://bit.ly/3HRpCIs>.

⁵⁵³ Gaceta, ‘El Gobierno gastará 215 millones del Plan de Recuperación en construir 17 centros de acogida de inmigrantes’, 14 October 2022, available at: <https://bit.ly/3R9CtvU>.

⁵⁵⁴ Ministerio de Inclusión, Seguridad Social y Migraciones, ‘Inclusión implementa junto a ACNUR el Protocolo de actuación sobre violencia de género en el sistema de acogida’, 23 February 2022, available at: <https://bit.ly/35sQNLV>.

⁵⁵⁵ Information provided by UNHCR in March 2023.

regulation, the reception system foresees an 18-month period of accommodation, assistance and financial support generally 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 following the exceptional authorisation by the competent authority (see [Special Reception Needs](#)).

For applicants under an outgoing Dublin procedure, reception conditions are provided until the actual transfer to another Member State. Reception is offered for no longer than one month after the notification of the inadmissibility decision, subject to a possible extension.

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.

According to the 2022 Regulation, 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) to be transferred to the Spanish peninsula are also entitled to reception conditions within such facilities. This provision represents a change of the previous situation as in practice persons applying for asylum in Ceuta and Melilla started benefitting the full services provided within the reception system only when transferred to mainland, but not during their stay in the CETI.

Shortcoming and delays in accessing the reception system have been reported during 2022.

In his 2022 Annual Report, the Spanish Ombudsman continued to highlight the inadequacy of the asylum reception system to assure the necessary places to all asylum seekers, also due to the delays in the appointments to express the will to apply for asylum and to the duration of the asylum procedure, which greatly exceed the duration legally foreseen.⁵⁵⁶

Cases of asylum seekers living on the streets because of the saturation of the reception system and the delays in the formalization of the asylum applications have been reported in 2022 and at the beginning of 2023.⁵⁵⁷ In January 2023, the EU Commission started an infringement procedure against Spain for not having transposed completely and correctly the EU norms on reception conditions, giving to Spain a 2 months deadline to address the deficiencies of its system.⁵⁵⁸

In a report published in February 2022, the organisation CEAR highlights the challenges experienced by the Spanish asylum reception system and proposes a set of suggestions on how to improve it.⁵⁵⁹

A report published by the organisation *Sira* describes the serious inadequacy of reception facilities in **Melilla** and the **Canary Islands** in terms of guaranteeing basic rights, such as food, water, hygiene, etc, and how this negatively impact on the psychological well-being of migrants and refugees.⁵⁶⁰

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,⁵⁶¹ the DGI AH issued instructions in January 2019 to ensure that asylum seekers returned under the Dublin Regulation are guaranteed access

⁵⁵⁶ Defensor del Pueblo, 'Informe anual 2021 – Volumen I', March 2023, available at: <https://bit.ly/3FDKFju>, 53.

⁵⁵⁷ El Diario, 'El colapso del sistema deja en la calle a familias solicitantes de asilo con niños a pesar del frío', 29 January 2023, available at: <https://bit.ly/3Llk34z>; Herald, 'Unos 50 solicitantes de asilo reclaman acogida ante la falta de citas', 17 February 2023, available at: <https://bit.ly/3FHjKmT>.

⁵⁵⁸ El Periódico, 'Bruselas expedienta a España por no aplicar reglas de la UE sobre condiciones de acogida de demandantes de asilo', 27.1.23, available at: <https://bit.ly/3FJVNet>.

⁵⁵⁹ CEAR, 'Libro Blanco del Sistema de Protección Internacional en España. Una propuesta desde la experiencia de CEAR', February 2022, available at: <https://bit.ly/42vpUQE>.

⁵⁶⁰ Sira, 'Las condiciones de acogida en Frontera Sur agravan el sufrimiento psíquico de las personas migrantes que llegan a España', January 2022, available at: <https://bit.ly/408iQlf>.

⁵⁶¹ 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>.

to reception (see [Dublin: Situation of Dublin Returnees](#)).⁵⁶² The Reception Handbook was amended accordingly.

In August 2022 the Government announced the plan to open a Migrant Temporary Stay Centre (CETI) in **Algeciras**, which has been opposed by the city's major, political parties, residents, etc.⁵⁶³ According to the NGO *Asociación Pro Derechos Humanos de Andalucía (APDHA)*, the main objection from the city's major is just due to the preoccupation that it would increase the presence of migrants in the city; notably, he did not oppose the Government's plan to build an additional CIE in the city.⁵⁶⁴ The organisation *Algeciras Acoge* instead highlighted that it would be more useful to invest in infrastructures necessary for all the population.⁵⁶⁵ In a letter sent to the Municipality, the Vice-Director General of Emergencies and Migration Centres of the Minister of Inclusion, Social Security and Migration explained that the assistance to asylum seekers is an obligation for the Government, and that one of the objectives of the Recovery, Transformation and Resilience Plan is the expansion of the national network for the reception of migrants and asylum seekers. To that purpose, the Vice-Director General of Emergencies and Migration Centres asked the Municipality of Algeciras to look for another space to build such centre.⁵⁶⁶

In January 2023, the Government announced the construction of a reception centre for asylum seekers in Vitoria (País Vasco), with a budget of 14.1 million Euros and a capacity of 350 places.⁵⁶⁷ The plan has encountered the opposition of the city major, as the decision appears to have been taken unilaterally by the central Government. By February 2023, however, an agreement was found.⁵⁶⁸

1.2. The assessment of resources

The latest publicly available Reception Handbook from 2021 and the Reception Regulation specifies that the lack of sufficient resources is one of the requirements for receiving reception conditions.⁵⁶⁹ 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.⁵⁷⁰

⁵⁶² DGI AH, *Instrucción DGI AH 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>.

⁵⁶³ El Mundo, 'El Gobierno plantea otro centro de inmigrantes para Algeciras', 19 August 2022, available at: <https://bit.ly/3AN9NCp>; Canal Sur, 'Rechazo unánime en Algeciras al nuevo CETI proyectado por el Gobierno', 24 August 2022, available at: <https://bit.ly/3KmmoPQ>.

⁵⁶⁴ La Vanguardia, 'APDH critica que el alcalde de Algeciras rechace el CETI al suponer inmigrantes "por las calles" del municipio', 20 August 2022, available at: <https://bit.ly/3QYLzDj>; La Voz del Sur, 'Landaluce busca con informes técnicos el rechazo del pleno al CETI del Gobierno para Algeciras', 21 August 2022, available at: <https://bit.ly/3dNLPgY>.

⁵⁶⁵ Europa Sur, 'Algeciras Acoge rechaza la apertura de un Centro de Estancia Temporal de Inmigrantes', 19 August 2022, available at: <https://bit.ly/3cfySMv>; Algeciras al minuto, 'Algeciras Acoge rechaza la construcción de un CETI', 19 August 2022, available at: <https://bit.ly/3dGFYtT>.

⁵⁶⁶ Europa Sur, 'Carta del Gobierno central al Ayuntamiento de Algeciras sobre la construcción del CETI', 22 August 2022, available at: <https://bit.ly/3clSVsV>.

⁵⁶⁷ El Diario, 'El Gobierno central construirá un centro de acogida internacional de refugiados en Vitoria que Urtaran dice que no se necesita', 16 January 2023, available at: <https://bit.ly/4OpD13Z>.

⁵⁶⁸ La Vanguardia, 'PNV y PSE pactan una enmienda sobre acogida de refugiados con la que confían en superar sus "diferencias y polémicas"', 16.2.23, available at: <https://bit.ly/42uyzTu>.

⁵⁶⁹ DGPIAH, *Reception Handbook*, June 2021, Boletín Oficial del Estado, 'Real Decreto 220/2022, de 29 de marzo, por el que se aprueba el Reglamento por el que se regula el sistema de acogida en materia de protección internacional', available in Spanish at: <https://bit.ly/3QR8SHo>.

⁵⁷⁰ *Ibidem*

1. “Initial assessment and referral phase” (*Fase de valoración inicial y derivación*): the aim of this phase is to assess the person’s profile and their needs, at to refer them to a suitable facility in the minimum time possible. The stay in such facilities should last the time necessary for carrying out the needs’ assessment and the referral to another facility, and should not exceed 1 month. This phase does not count for the calculation of the duration of reception conditions;
2. “Reception phase” (*Fase de acogida*): 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. The stay in such facilities should last until the end of the international protection’s or statelessness’ procedure (that according to the Asylum Law is 6 months). For vulnerable asylum seekers, such timeframe can be extended for another 6 months;
3. “Autonomy phase” (*Fase de autonomía*): applicants move out of reception centres and receive financial support and coverage of basic expenses to start their autonomous 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 duration of this phase is 6 months, that can be extended for another 6 in case of vulnerable applicants.

The total duration of reception phases cannot exceed 18 months, subject to a prolongation to 24 months for vulnerable persons.⁵⁷¹

In December 2022 the SEM issued a new instruction⁵⁷² regarding the access to and stay in the asylum reception system establishing, for example, that applicants whose asylum claim has been denied can access the reception system if they have lodged a second asylum application or have challenged the denial with an administrative appeal.

Since the 2015 increase of available places for refugees’ reception, the Spanish government has reformed the system regarding financing for NGOs service providers for asylum seekers and refugees. On January 2023, the asylum reception system counted 20 organisations, which were granted direct funding for the reception of asylum seekers⁵⁷³:

- Adoratrices Esclavas del Santísimo Sacramento y de la Caridad
- Asociación Columbares
- ACCEM
- Asociación para la Promoción y Gestión de Servicios Sociales Generales y Especializados Progestión⁵⁷⁴
- Asociación San Juan de Dios España (SJD)
- Comisión Española de Ayuda al Refugiado (CEAR)
- CESAL
- Coordinadora Estatal de Plataformas Sociales Salesianas (CEPSS)
- Cruz Roja Española
- Diaconía
- Federación Andalucía Acoge
- Federación Red Acoge

⁵⁷¹ Article 11.7 of the Reception Regulation.

⁵⁷² Migrar con Derechos, ‘Instrucción SEM de 15 de diciembre de 2022. Acceso y permanencia sistema acogida protección internacional’, 15 December 2022, available at: <https://bit.ly/42A0pxQ>.

⁵⁷³ Ministerio de Inclusión, Seguridad Social y Migraciones, ‘Subvenciones de concesión directa en el área de protección internacional, aprobadas por el Real Decreto 590/2022, de 19 de julio’, 19 July 2022, available in Spanish at: <https://bit.ly/3kz7ZqY>.

⁵⁷⁴ Asociación Progestión, see: <https://progestion.org/>.

- Fundación Apip-Acam
- Fundación CEPALM Acción Integral con Migrantes
- Fundación La Merced Migraciones
- Movimiento por la Paz el Desarme y la Libertad (MPDL)
- Provivienda
- Obra Social Santa Luisa de Marillac Hijas de la Caridad de San Vicente de Paul Provincia de Barcelona
- ONG Rescate Internacional
- YMCA

It has to be noted that such list can change often, as NGOs can enter or exit from the asylum reception system according to the funding available, to the decision taken by the Minister of Inclusion, Social Security and Migration, to the individual decision to be part of the system, etc. For the same reasons, the number of available places can vary accordingly. In addition, the MISSM does not offer public information neither the list of the NGOs involved, nor the number of places within the asylum reception system. In April 2022, such system counted around 10,000 places.⁵⁷⁵

The new Reception Regulation has introduced a new mechanism for funding NGOs' reception facilities, by establishing a concerted action between the SEM and NGOs for the duration of 4 years, both for the asylum reception system and for the humanitarian assistance.⁵⁷⁶

It should be noted that, in December 2020, EUAA launched a new operation plan aiming to support the Spanish authorities in developing and implementing a new model for the reception of asylum seekers.⁵⁷⁷ The Operating Plan follows a Joint Rapid Needs Assessment (JRNA) carried out by EUAA and the Spanish Ministry for Inclusion, Social Security and Migration, between mid-September and the end of October 2020. At the beginning of 2021, EUAA carried out a needs' assessment on the **Canary Islands** with the aim of quickly start implementing effective reception support.⁵⁷⁸

Following an additional mission conducted in May 2021, EUAA's Executive Director acknowledged Spain's commitment to reform its asylum reception system in line with EU standard. To support the country in achieving this objective, the EU Agency will provide support in reforming the reception system and in improving the reception capacity in the Canary Islands, it will assist in activities such as information provision, and will work on capacity building directed at reception personnel.⁵⁷⁹ Further details on the EUAA's operation in Spain are contained in the section on the [Situation on the Canary Islands](#).

As mentioned in the section [Access to procedure and registration](#), UNHCR also established a team dedicated to work on the Canary Islands, and focusing on the provision of support to the authorities in the early identification of the international protection needs of migrants arriving by boat and in fostering the access to the asylum procedure of those persons in need of international protection.

As previously stated, IOM also started its operations in the Canary Islands at the beginning of 2021, concretely in **Tenerife**, where the organisation manages a facility with 1,100 reception places (reduced to 1,054 due to the necessity to assure anti Covid19 measures). With a staff of 53 employees, IOM provides for humanitarian reception places and direct assistance to migrants reaching the archipelago.

⁵⁷⁵ Information provided by Accem's reception service on April 2022.

⁵⁷⁶ Europa Press, 'El Gobierno autoriza a CEAR, ACCEM y ACOGE, entre otras, a gestionar plazas de acogida a migrantes los próximos 4 años', 31 October 2022, available at: <https://bit.ly/3JsXaPS>; Derecho.com, 'Resolución de 8 de febrero de 2023, de la Dirección General de Atención Humanitaria e Inclusión Social de la Inmigración, por la que se modifica la de 14 de noviembre de 2022, por la que se establece la planificación de prestaciones, actuaciones y servicios que deben atenderse dentro del programa de atención humanitaria mediante acción concertada para los ejercicios 2023-2026', 8 February 2023, available at: <https://bit.ly/42tAW98>.

⁵⁷⁷ EASO, 'Spain: EASO launches new operation to support reception system', 18 December 2020, available at: <https://bit.ly/3aCfZ1r>.

⁵⁷⁸ 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>.

⁵⁷⁹ EASO, 'EASO Executive Director welcomes Spain's commitment to reform reception system', 17 May 2021, available at: <https://bit.ly/3rcxopU>.

The work includes also legal counselling, including on international protection, as well as identification of vulnerabilities and follow-up of protection needs.⁵⁸⁰ IOM's operations in the archipelago finalised in June 2022.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial individual allowance/vouchers granted to asylum seekers (out-of-pocket expenses) as of 31 December 2022 (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.

The Reception Regulation 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) legal and psychological assistance; (d) temporary accommodation until a place is available in the reception system; (e) translation and interpretation if needed.⁵⁸¹
2. Reception phase: Applicants receive, *inter alia*: (a) reception; (b) legal, psychological, cultural, and social support; (c) language course; (d) socio-labour counselling and access to vocational trainings; (e) translation and interpretation if needed; (f) schooling for children; etc.
3. Autonomy phase: Applicants receive, *inter alia*: (a) financial support for covering basic needs according to individual necessities; (b) legal, psychological, cultural, and social support; (c) language course; (d) socio-labour counselling and access to vocational trainings; (e) translation and interpretation if needed; etc.

Financial allowances and further details are decided on a yearly basis and published by the Minister of Inclusion, Social Security and Migration. These amounts are based on the available general budget for reception of the Directorate-General. It is worth to note that financial allowances have not been increased in the last years.

All asylum seekers hosted in the reception 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 autonomy 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.

⁵⁸⁰ Information provided by the IOM on 4 March 2022.

⁵⁸¹ Article 16 of the Reception Regulation.

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

Main obstacles for asylum applicants present after passing the reception phase, as the system foresees an initial degree of autonomy and self-maintenance which is hardly accomplishable in 6 months' time, and almost impossible in the case of applicants who have difficulties in learning and speaking the Spanish language, and thus face greater barriers to access to employment.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?
☒ Yes ☐ No
2. Does the law provide for the possibility to withdraw material reception conditions?
☒ Yes ☐ No

Article 33 of the Asylum Act provides that asylum seekers' access to reception conditions may be reduced or withdrawn in the following cases, where:

- a. The applicant leaves the assigned place of residence without informing the competent authority or without permission;
- b. The applicant obtains economic resources and could deal with the whole or part of the costs of reception conditions or has any hidden economic resources;
- c. The resolution of the application for international protection has been issued, and is notified to the interested party;
- d. By act or omission, the rights of other residents or staff of the centres are violated;
- e. The authorised programme or benefit period has finished.

Usually, asylum seekers are rarely expelled from reception facilities, unless they accumulate breaches to the rules of conduct of the centres, causing the necessary mandatory abandonment of the centre. In this case, the management authority will start a procedure which foresees the hearing of the subject, who can make allegations or give explanations within a 15-day period, after which a decision is taken. Legal assistance is not foreseen during this process, as this is an internal procedure.

According to the Reception Regulation, beneficiaries of protection and asylum seekers can have their reception conditions reduced in case they possess economic resources overcoming the limit foreseen by the law to access financial support, they abandon the facility without informing the managers, and in case of violation of the basic rules of the centre or the rights of other residents when they do not amount to cases of withdrawal. 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.⁵⁸²

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](#)).

Withdrawal of reception conditions is foreseen in case of lack of formalisation of the asylum application or in case of inadmission, denial or withdrawal of the asylum, statelessness or TP application; in case of cessation or revocation of refugee status or subsidiary protection; for the expiration of the duration of reception conditions; in case of abandonment of the facility without informing the managers; in case of violation of the basic rules of the centre or the rights of other residents when they amount to cases of

⁵⁸² Article 31 of Reception Regulation.

withdrawal; in case of accessing economic resources overcoming financial support that the applicant is receiving.⁵⁸³

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.⁵⁸⁴ Most of asylum seekers and refugees who are hosted in the official reception places live in **Andalucía, Madrid and Catalonia**.

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

A special case worth mentioning is the situation of asylum seekers that have made their asylum claim in **Ceuta or Melilla**. As a result of the special regime applied by the authorities to these two autonomous cities, applicants have to wait for the decision regarding the admissibility of their claim in order to be transferred to the Spanish peninsula and its asylum reception system, together with an authorisation issued by the National Police allowing them to be transferred to the mainland. Limitations are also applied to asylum applicants who pass the admissibility phase, and should be entitled to free of movement in the rest of the Spanish territory. These limitations are informally imposed on asylum seekers. The new Reception Regulation foresees the application of reception conditions also in the facilities in Ceuta and Melilla, so it is hoped that the situation will change in the future regarding access to the same rights and conditions for all asylum seekers no matter where they are.

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.⁵⁸⁵ By way of illustration, the limitation to the right to freedom of movement across Spanish territory has been declared unlawful by Spanish courts in more than 18 cases from 2018 to 2021.⁵⁸⁶ More recently, the TSJ of Madrid issued a decision in January 2020 according to which a

⁵⁸³ Ibidem.

⁵⁸⁴ Reception Regulation.

⁵⁸⁵ 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>.

⁵⁸⁶ 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.⁵⁸⁷

In practice, however, the authorities continued to restrict asylum seekers' access to the mainland up until 2020.

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.⁵⁸⁸ 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 ruling was not implemented in practice in 2020.

According to the information currently available, the practice started to change from November 2021, and asylum seekers admitted at 1st instance were transferred to the mainland.⁵⁸⁹ In mid-December, for example, 18 asylum seekers were transferred from **Melilla** to the mainland and referred to reception facilities in Cataluña, Andalucía and Castilla y León after their applications were admitted at first instance. The asylum seekers were authorized to leave the enclave thanks to the appeals lodged by three NGOs (CEAR, the Spanish Red Cross, and Cepaim). It is hoped that such practice will continue, and that legislation and jurisprudence will be finally correctly applied.

In August 2022 Amnesty International reiterated its call to not limit the freedom of movement of migrants and asylum seekers in Ceuta and Melilla, and to guarantee the transfer to mainland of vulnerable persons.⁵⁹⁰

Similar issues were also reported for what concerned 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.⁵⁹¹ He addressed "a reminder of legal duty" to the Directorate General of the Police, pointing to "its legal duty to prevent any limitation of the fundamental rights to free movement and residence of applicants for international protection who wish to move from the autonomous cities of Ceuta and Melilla or from the autonomous community of the Canary Islands to the mainland". The reminder responds to a complaint raised in early 2020 following the prevention of departure to the mainland of an asylum seeker in Gran Canaria. The Spanish Ombudsman also asked the National Police to provide information on the reasons to block migrants from reaching the **Canary Islands** as well as the impossibility to access flights and boats to mainland, even for persons holding identification documents and passports.⁵⁹² Following a judicial decision in the Canary Islands, according to which migrants with a passport or an application for international protection may travel to the mainland, UNHCR and NGOs reported improvements in relation to freedom of movement for migrants and asylum seekers who reached the archipelago. UNHCR reported, however, that NGOs managing the reception facilities are still required to ask for authorisation from police to transfer asylum seekers to the mainland.⁵⁹³

⁵⁸⁷ 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>

⁵⁸⁸ 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>.

⁵⁸⁹ Information provided by the legal service of Accem in November 2021. El Foro de Ceuta, 'Nueva salida del CETI: 40 personas parten a centros de acogida en la península', 20 October 2022, available at: <https://bit.ly/40vNyLf>; Ceuta Actualidad, 'Un sueño cumplido para 30 residentes del CETI', 25 August 2022, available at: <https://bit.ly/3lwBB90>.
⁵⁹⁰ La Voz del Sur, 'Amnistía Internacional exige que no se limite la libertad de movimiento de los inmigrantes en los CETI', 24 August 2022, available at: <https://bit.ly/3Kulf80>.

⁵⁹¹ 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>.

⁵⁹² 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>.

⁵⁹³ US Department of State, '2022 Country Reports on Human Rights Practices: Spain', 20 March 2023, available at: <https://bit.ly/3mpsNCl>.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

- | | |
|---|------------------------------|
| 1. Number of reception centres: ⁵⁹⁴ | Not available |
| ❖ CAR | 4 |
| ❖ CETI | 2 |
| ❖ NGOs participating in reception | 20 |
| 2. Total number of places in the reception system as of 31 December 2023: | Not available ⁵⁹⁵ |
| 3. Type of accommodation most frequently used in a regular procedure: | |
| ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other | |
| 4. Type of accommodation most frequently used in an urgent procedure: | |
| ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other | |

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

As already mentioned, shortcomings in the reception system are chronic and have been registered by various sources in recent years. The same problems persisted in 2022. The 2022 Annual Report of the Spanish Ombudsman denounced that many asylum seekers are obliged to live on the streets or in precarious conditions due to the challenges of the reception system as well as of the asylum procedure.⁵⁹⁶

As a response to the issue of overcrowding, as mentioned, EUAA started supporting Spain in the reform of its asylum reception system, including by increasing the number of reception places in the Canary Islands.⁵⁹⁷ Aiming at assessing and investigating the provision of material reception conditions, the EUAA launched the Assessment of Reception Conditions (ARC) tool. Spain was one of the Member States who started testing the tool in 2021.⁵⁹⁸

In addition, already in early 2020 the Ministry of Inclusion, Social Security and Migration started to negotiate with a private company (*Sociedad de Gestión de Activos procedentes de la Reestructuración Bancaria - Sareb*) the possibility of using empty apartments for the reception of asylum seekers and undocumented migrants.⁵⁹⁹

As previously mentioned, in the 2022 Annual Report, the Spanish Ombudsman called for additional resources to be allocated for the asylum reception system, and underlined that in many occasions asylum seekers are temporarily accommodated in emergency shelters and other kind of emergency accommodation (i.e. hotel) while waiting to be referred to a place within the asylum reception system⁶⁰⁰.

In August 2022, the Mayor of Madrid denounced that 318 asylum seekers were still accommodated in municipal temporary shelters instead of being referred to the asylum reception system. Thus, he called the Ministry of Inclusion, Social Security and Migration to assume his responsibility and to respect his

⁵⁹⁴ 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.

⁵⁹⁵ In April 2022, available places were around 10,000.

⁵⁹⁶ Defensor del Pueblo, *Informe anual 2022 – Volumen I*, March 2023, available at: <https://bit.ly/3LCx9jQ>, 54.

⁵⁹⁷ EASO, ‘EASO Executive Director welcomes Spain’s commitment to reform reception system’, 17 May 2021, available at: <https://bit.ly/3rcxopU>.

⁵⁹⁸ EUAA, ‘EUAA Asylum Report 2022’, 2022, available at: <https://bit.ly/42RbMkK>, 165.

⁵⁹⁹ 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/ftcg8m1>.

⁶⁰⁰ Defensor del Pueblo, ‘Informe anual 2021 y debates en las Cortes Generales Volumen I. Informe’, March 2022, available at: <https://bit.ly/3K3IPte>, 158.

compromise to refer them to the asylum facilities, also considering that the municipal resources are overcrowded⁶⁰¹.

Despite the increase in reception capacity, various asylum seekers were still left homeless in 2022. At the end of July, a family of Georgian asylum seekers with four underage children were sleeping on the streets of **Madrid** due to the challenging in accessing asylum and the lack of reception places at temporary shelters.⁶⁰²

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 2022 apart from what has been mentioned under [Access and forms of reception conditions](#).

1.2 Reception phase

Accommodation during the reception phase can take place in:

- Refugee Reception Centres (*Centros de acogida de refugiados*, CAR) managed by DGSAPIT;
- Reception facilities managed by NGOs, subcontracted by DGSAPIT.

The typologies of reception places vary depending on the institution or entity that manages the centre. The reception system relies on places within big reception centres and apartments, but some reception places are in urban neighbourhoods while other are located in rural areas. The different types of available accommodation also differ from the point of view of provided services and spaces.

The Ministry directly manages the Refugee Reception Centres (CAR), part of the first phase reception centres for asylum seekers. There is a total of 4 CAR on the Spanish territory:

Capacity of CAR in 2021	
CAR	Capacity
Alcobendas, Madrid	80
Vallecas, Madrid	96
Mislata, Valencia	120
Sevilla	120
Total	416

Source: Accem, March 2023.

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 has been a persisting problem in

⁶⁰¹ The Objective, 'Los centros de acogida en Madrid siguen colapsados pese al compromiso de Escrivá', 10 August 2022, available at: <https://bit.ly/3QxFlMj>.

⁶⁰² El Salto Diario, 'El colapso para pedir asilo político y la saturación de los recursos de acogida en Madrid deja a niños en la calle', 31 July 2022, available at: <https://bit.ly/3QS05n4>.

Spain, as explained in [Arrivals in the enclaves of Ceuta and Melilla](#) and below under [Conditions in CETI](#).⁶⁰³

Moreover, reception places for asylum seekers are available inside the reception centres and private apartments managed by NGOs, funded by the Ministry. At the beginning of 2023, the reception system counted 20 organisations, as listed [above](#).

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.

In 2022, the Government announced the creation of 17 new reception facilities for migrants, 7 out of them located in the Canary Islands. This will allow the reception system to increase with 5,700 additional places.⁶⁰⁴

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? Not available
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

While the increase in arrivals of asylum seekers throughout 2018 and 2019 has exacerbated difficulties in accessing reception, the actual conditions in reception facilities have not deteriorated since reception capacity was increased. The problem asylum seekers face on some occasions is the long waiting time before they can be placed in accommodation facilities.

2.1. Conditions in CAR and NGO accommodation

The majority of available places for asylum seekers in Spain are in reception centres, during the first phase of reception, which lasts for a maximum of 6 months. As stressed, during the second phase they are placed in private housing, as the final aim is their autonomy within the Spanish society.

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

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

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

⁶⁰³ 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>.

⁶⁰⁴ El Diario, 'Los Presupuestos de 2023 prevén la creación de 17 centros de acogida para migrantes, siete en Canarias', 10 October 2022, available at: <https://bit.ly/3TG4xly>.

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.

2.2. Conditions in CETI

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

The two CETI are reception facilities that receive the most criticism from organisations and institutions that monitor migrants' and refugees' rights, starting from 2016.⁶⁰⁵ Accommodation standards were described as inadequate and concerns were expressed regarding the exposure of women and children to violence and exploitation due to the continuous overcrowding have been highlighted.⁶⁰⁶ In light of this, the Council of Europe Special Representative of the Secretary General on Migration and Refugees expressed the necessity for the Spanish authorities to "ensure that CETIs in **Ceuta** and **Melilla** have the same standards in terms of living conditions, education, health care, language and training courses which asylum-seekers are entitled to and receive in mainland Spain".⁶⁰⁷ In 2020, IOM and UNHCR asked the Spanish authorities for an urgent coordinated response to the reception conditions at the CETI of Melilla, that they qualified as "alarming". Both organisations recommend to adopt a rapid assessment procedure and adequate measures which would facilitate the transfer of asylum seekers to the mainland, voluntary return, family reunification etc.⁶⁰⁸ 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.⁶⁰⁹ In his 2020 annual report, the Spanish Ombudsman indicated that, in April 2020, the CETI of Melilla was accommodating more than 1,600 migrants, despite counting just 800 places.⁶¹⁰ 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.⁶¹¹

The continuous problems of overcrowding especially at the CETI of **Melilla** worsened in 2020 following the COVID-19 outbreak. Since the beginning of the pandemic, many stakeholders, including the Spanish Ombudsman,⁶¹² have been asking the Minister of Interior to increase transfers to mainland, in order to relieve the centres.⁶¹³

⁶⁰⁵ 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>; Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: <https://goo.gl/G1YtPi>, 37; UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: <https://goo.gl/SaBZgo>; 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

⁶⁰⁶ 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.

⁶⁰⁷ *Ibid.*

⁶⁰⁸ 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>.

⁶⁰⁹ 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>.

⁶¹⁰ Defensor del Pueblo, 'Informe anual 2020. Volumen I. Informe de gestión', May 2021, available at: <https://bit.ly/3AbOBnx>, 212-213.

⁶¹¹ Human Rights Watch, *World report 2021. Spain – Events of 2020*, January 2021, available at: <https://bit.ly/39x7i8c>.

⁶¹² 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>.

⁶¹³ 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>.

Despite the transfers of vulnerable persons to mainland being carried out, following – among others - the Ombudsman's recommendations, the situation was far from being resolved.

In its 2020/2021 annual report on the situation of human rights worldwide, Amnesty International highlighted the continuous problems of overcrowding at the CETI of Melilla, as well as the use of facilities not in line with international standards. Because of this, the organisation launched a campaign to call for the urgent transfer of vulnerable persons to other reception facilities located on the mainland, aiming at guaranteeing decent reception and health conditions.⁶¹⁴

A policy note published by ECRE in July 2021, underlines that the CETIs are systematically overcrowded, present poor sanitary conditions, and health services, and that they are not adequate to accommodate families and vulnerable persons. These circumstances have worsened following the COVID-19 pandemic.⁶¹⁵

At the beginning of July 2021, the number of residents at the CETI of Melilla was 877 (mostly from Tunisia and Egypt). For the first time since 2017, it did not surpass the threshold of 1,000 hosts,⁶¹⁶ but still surpasses the actual capacity of the facility. During 2022 and at the beginning of 2023, the facilities registered very low numbers of residents, it seems it is due to the increase of transfers of asylum applicants to mainland following the decision of the High Court in 2020 (See [Freedom of movement](#)).⁶¹⁷

It can be noted that, on top of overcrowding, CETIs do not provide satisfactory conditions for family units and overall for families with minors. As a result, families are separated and children stay with only one of their parents. In both centres, the shortage of interpreters and psychologists has also been criticised.⁶¹⁸

2.3. Conditions in other reception facilities

Living conditions on the Canary Islands⁶¹⁹

In the last years, many challenges in providing adequate reception conditions to migrants and asylum seekers continued to be reported in particular on the **Canary Islands**. This is due to the significant increase of arrivals as described in [Arrivals by sea](#), but also because of the overall lack of reception facilities and the deficient humanitarian assistance system on the Canary Islands. Thus, already in 2020, different temporary reception options have been adopted on an *ad hoc* basis, such as encampments, hotels,⁶²⁰ using parts of the CIE as reception facility,⁶²¹ or using buildings belonging to the Ministries of Defence and Home Affairs for the purpose COVID-19 quarantine.⁶²²

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

⁶¹⁴ Amnesty International, 'Informe 2020/21 de Amnistía Internacional: La situación de los derechos humanos en el mundo. Human Rights in Spain', 7 April 2021, available at: <https://bit.ly/34qKSqG>.

⁶¹⁵ ECRE, 'Boosting asylum in Spain – Making the most out of AMIF funding', July 2021, available at: <https://bit.ly/3GFU4F>.

⁶¹⁶ El Faro de Melilla, 'La ocupación del CETI baja de los 1.000 residentes por primera vez desde 2017', 8 July 2021, available at: <https://bit.ly/3nCvZ15>.

⁶¹⁷ Melilla Hoy, 'El CETI, bajo mínimos: solo hay 3 migrantes acogidos', 13 March 2023, available at: <https://bit.ly/3Z8dwTF>; El Faro de Melilla, 'El CETI bate su récord histórico: cierra 2022 con solo 5 migrantes acogidos', 10 January 2023, available at: <https://bit.ly/407FgJn>.

⁶¹⁸ Sira, 'Las condiciones de acogida en Frontera Sur agravan el sufrimiento psíquico de las personas migrantes que llegan a España', January 2022, available at: <https://bit.ly/3lxGsQH>.

⁶¹⁹ It has to be noted that migrants and asylum seekers/persons in need of international protection can be hosted in the same facilities at the Canary Islands, and in many occasions the sources do not distinguish properly between the two categories. Maybe sources speak about migrants, but also asylum seekers/persons in need of international protection can be included in such label.

⁶²⁰ Canarias7, '¿Qué pasa con los inmigrantes cuando llegan a España en situación irregular?', 19 November 2020, available in Spanish at: <https://bit.ly/39I856n>.

⁶²¹ 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>.

⁶²² 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>.

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.⁶²³

After the calls for its closure by different human rights organisations and institutions, the Arguineguín encampment was finally dismantled at the end of November 2020 and newcomers were brought to a new encampment, located at a military site in **Barranco Seco** (Gran Canaria).⁶²⁴ In January 2022, the Provincial Court of Las Palmas ruled on the case lodged against the inhumane treatment of migrants at the Arguineguín camp. Despite acknowledging the terrible conditions of the encampment, the judge considers that the situation was not caused by a voluntary action of the authorities to violate migrants' rights.⁶²⁵ The NGO CEAR condemned the decision, in arguing that human rights violations should always be recognised as such.⁶²⁶

Already in 2020, many stakeholders, such as the Spanish Ombudsman or the NGO CEAR, repeatedly called upon the authorities to transfer migrants and asylum seekers from the Canary Islands to appropriate reception facilities on the mainland.⁶²⁷ 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 carried out to mainland.⁶²⁸

In his 2022 Annual Report, the Ombudsman warned about the deficiencies of some reception facilities for women with children arriving by boat to the Canary Islands, which resulted in the lack of identification of their needs, as well as of cases of international protection, trafficking, rapes, FGM, etc.⁶²⁹

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.⁶³⁰ Doctors of the World warned that the new facilities that the Government plans to build on the **Canary Islands** are likely to replicate the situation of the Arguineguín dock.⁶³¹

Since the end of 2020, different NGOs started to open reception facilities on the **Canary Islands** under the humanitarian programme funded by the Ministry of Inclusion, Social Security and Migration. Accem opened a reception facility in **Tenerife** under the humanitarian programme and within the *Plan Canarias*. It was initially planned that the facility would count 2,400 places, but it finally was created with 1,500 places, and employing 220 professionals. The organisation provides a comprehensive assistance to migrants (i.e. legal support, psychological assistance, interpretation, health assistance, etc.). The centre hosts solely men, the vast majority coming from Morocco and Senegal. In November 2021, Accem opened

⁶²³ 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>.

⁶²⁴ 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>.

⁶²⁵ El Diario, 'Archivada la denuncia contra el hacinamiento de personas en Arguineguín', 17 January 2022, available at: <https://bit.ly/355rfVa>.

⁶²⁶ El Diario, 'La Comisión Española de Ayuda al Refugiado critica el archivo del recurso sobre muelle de Arguineguín', 18 January 2022, available at: <https://bit.ly/3tDrrFp>.

⁶²⁷ 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>.

⁶²⁸ El Diario, 'Un gran campamento de migrantes llamado Canarias: "Quieren convertir las islas en Lesbos"', 21 November 2020, available in Spanish at: <https://bit.ly/3bOoZD5>; El Día, 'José Antonio Moreno Díaz: "Canarias es una válvula del Estado para medir el acceso de migrantes"', 14 November 2020, available in Spanish at: <https://bit.ly/2KuqURQ>; El Día, '"Están utilizando todas las herramientas para que nadie salga del Archipiélago"', 19 January 2021, available at: <https://bit.ly/34ojXvJ>.

⁶²⁹ Defensor del Pueblo, 'Informe anual 2021 y debates en las Cortes Generales Volumen I. Informe', March 2022, available at: <https://bit.ly/3Pu0Amr>; Cope, 'El Defensor del Pueblo alerta que la acogida de mujeres migrantes en Canarias falla', 14 May 2022, available at: <https://bit.ly/3PtaSmL>; Efe, 'La acogida falla con ellas: no detecta casos de trata o que merecen refugio', 13 May 2022, available at: <https://bit.ly/3QU8Kpn>.

⁶³⁰ El Diario, 'El Gobierno central abre el Canarias 50 con 442 plazas iniciales para albergar migrantes en la capital gran Canaria', 15 January 2021, available in Spanish at: <https://bit.ly/3quSkqf>.

⁶³¹ 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>.

also an emergency humanitarian assistance and referral centre in Lanzarote with 1,000 places, within the Plan Canarias and from August 2021 it started to manage four flats with a total of 18 places in Tenerife within the programme for the humanitarian assistance of migrants. The flats host women and women with children.⁶³²

The Fundación Cruz Blanca opened one centre in **Las Palmas de Gran Canaria** with 140 places for women and mothers with underage children, and another facility with a capacity of 400 places for men.⁶³³ The latter was closed at the end of December 2022, while the facility for women will be closed in June 2023.⁶³⁴ The organisation Fundación Cruz Blanca, which is specialised in the assistance to trafficked persons, has also opened two centres in **Las Palmas de Gran Canaria**. One centre has 40 places available and aims to provide comprehensive assistance to women and their children presumed to be victims of human trafficking; while the other centre had 25 places and is dedicated to women presumed to be victim of trafficking.⁶³⁵ As previously mentioned, IOM also started its operations on the Canary Islands at the beginning of 2021, more specifically in **Tenerife**, where it managed a facility counting with 1,100 reception places (reduced to 1,054 due to the necessity to assure anti COVID-19 measures).⁶³⁶ The IOM finalised its operation in the archipelago in June 2022.

In April 2021 the Administrative Court (*Juzgado de lo Contencioso Administrativo*) nº 5 of Las Palmas de Gran Canaria established that a migrant can fly from Canarias to the mainland using his/her passport or asylum application, and that this is compatible with the COVID-19 restrictions measures to movement.⁶³⁷ Transfers increased to mainland in April 2021, when the Government transferred 1,800 persons during 5 weeks,⁶³⁸ being 4,385 those transferred since the beginning of the year.⁶³⁹

In 2021, Amnesty International denounced that, despite the approval of the Canarias Plan, reception conditions continue to be inadequate.⁶⁴⁰ Thanks to the transfers to mainland, at the end of May 2021 the reception facilities at the Canary Islands consistently reduced the numbers of migrants hosted.⁶⁴¹ The organisation also called the Government to take measures in order to guarantee decent reception conditions, as well as access to the asylum procedure, the right to information and to legal assistance, together with fostering transfers of vulnerable persons to mainland.⁶⁴² Similarly, in a thematic report published that same year Amnesty International denounced the failure of the migration policy and of the asylum system at the Canary Islands, and alleged that Spanish authorities did not guarantee adequate reception conditions nor access to a fair and efficient asylum procedure to migrants and refugees reaching the archipelago by sea.⁶⁴³

The Canary Islands continue to lack the capacity to face the rapid increase in sea arrivals; this negatively impacts also centres for unaccompanied minors, that struggle to provide adequate reception conditions and services.⁶⁴⁴ It has been underlined that the emergency approach adopted in dealing with the situation on the islands leads to severe delays in procedures such as age assessment, access to residence permits

⁶³² Information provided by Accem-Canarias on 17 February 2022.

⁶³³ Information provided by Fundación Cruz Blanca on 11 February 2022.

⁶³⁴ Information provided by Fundación Cruz Blanca in March 2023.

⁶³⁵ Information provided by Fundación Cruz Blanca on 11 February 2022.

⁶³⁶ Information provided by the IOM on 4 March 2022.

⁶³⁷ Público, 'Un juez dictamina que un migrante puede volar desde Canarias a la Península con su pasaporte o una solicitud de asilo', 15 April 2021, available at: <https://bit.ly/3GMfrVC>.

⁶³⁸ Canarias 7, 'El Estado ha trasladado a la península a 1.800 inmigrantes en las últimas cinco semanas', 10 May 2021, available at: <https://bit.ly/3fBYQYD>.

⁶³⁹ El Diario, 'El Gobierno acelera los traslados de migrantes de Canarias a la Península: 4.385 en lo que va de año', 8 May 2021, available at: <https://bit.ly/33vTmwg>.

⁶⁴⁰ Amnistía Internacional, 'Canarias: la infinita espera', 4 May 2021, available at: <https://bit.ly/3GNYt9t>.

⁶⁴¹ El País, 'Los traslados bajan a mínimos las cifras de migrantes acogidos en Canarias', 31 May 2021, available at: <https://bit.ly/3GP08f8>.

⁶⁴² Amnistía Internacional, 'El gobierno está a tiempo de impedir que Canarias se convierta en otra frontera europea sin derechos para las personas migrantes y refugiadas', 27 July 2021, available at: <https://bit.ly/3FKahrW>.

⁶⁴³ Amnistía Internacional, 'Canarias: fracaso en las políticas migratorias', December 2021, available at: <https://bit.ly/3fRwXMF>.

⁶⁴⁴ El Confidencial, 'Canarias, sin plazas para acoger menores: el próximo niño deberá quedarse en comisaría', 1 February 2022, available at: <https://bit.ly/365KHBz>.

for children, enrolment in training and vocational courses.⁶⁴⁵ Lack of accommodations places targeting ageing out adolescents has caused a great vulnerability of youth migrants when leaving minors protection centres when aging out. Coordination with the other Spanish autonomous communities is needed, and support by the central government is vital to deal with the situation in the long term.

A report published by the Mixed Migration Centre, Save the Children and Médicos del Mundo found that the lack of standardized or comprehensive protocol for managing arrivals and screening often renders children difficult to identify for the authorities. Identification is a challenge as lawyers and interpreters are not systematically present when children arrive, so is common for refugees and migrants not to be properly counselled and informed. In addition, children do not receive adequate information about their rights, including the right to asylum. Furthermore, professionals at the reception centres are not trained to recognize those who could apply for asylum, resulting in a very few asylum requests. Access to specialized psychosocial support for children is also needed, considering the migration route's difficulty and that many of them have suffered violence on previous migratory phases.⁶⁴⁶

A thematic report published by the organisation *Irídía* in May 2022 denounced the human rights violations and the discrimination of migrants arriving at the Canary Islands in accessing their rights, as well as the general inadequacy of the reception facilities in terms of infrastructures and precarious conditions.⁶⁴⁷

Moreover, as already mentioned above, the EUAA started to support Spanish asylum authorities, after having agreed upon an operational plan mainly focused on support to reception. This includes providing enhanced capacity to reception services in the Canary Islands. In January 2021, the EUAA 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.⁶⁴⁸ The Operation Plan on Special Support to reception agreed between the EUAA and Spain foresees a set of areas where the EU agency can support the Spanish Government, including assessing 'the need for actions in support of emergency reception facilities with a specific focus on the Canary Islands'.⁶⁴⁹

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.⁶⁵⁰ The seriousness of the situation and the impact on the health of the children was also stressed by different UN Rapporteurs, asking *inter alia* to stop stigmatising migrants, Roma population and persons living in poverty.⁶⁵¹ The UN Special Rapporteur on extreme poverty and human rights stated that the poor living conditions faced by families is in violation of the conventions ratified by Spain and further criticised the politicisation of the

⁶⁴⁵ Information provided by Save the Children on 11 February 2022.

⁶⁴⁶ Mixed Migration Centre, Save the Children, Médicos del Mundo, 'A Gateway Re-opens: the growing popularity of the Atlantic route, as told by those who risk it', February 2021, available at: <https://bit.ly/3Jrw6yG>.

⁶⁴⁷ Irídía, 'Nuevas vulneraciones de derechos humanos a las personas migrantes en Canarias', May 2022, available at: <https://bit.ly/3K1hx8c>.

⁶⁴⁸ 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>.

⁶⁴⁹ EASO, 'Operating plan. Special support on reception agreed by EASO and Spain', 2021, available at: <https://bit.ly/32HvuFI>.

⁶⁵⁰ 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>.

⁶⁵¹ 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>.

situation on the **Cañada Real**, which is a shanty town in the Madrid Region composed of a succession of informal housing.⁶⁵² The Special Rapporteur reiterated in February 2021 the breach of international law by Spain in view of its inactivity for the protection of human rights.⁶⁵³

The case opened at the end of 2020 against the Autonomous Community of **Madrid** and Naturgy/Unión Fenosa (the company providing the service) is still ongoing at the time of writing.⁶⁵⁴ Detailed information on the issue can be found in the 2020 and 2021 updates of this report.

In December 2021, Amnesty International launched a campaign to collect signatures to request the Autonomous Community of Madrid and the Municipalities of Madrid and of Rivas Vacia-Madrid to urgently act to guarantee electricity and contracts at Cañada Real, where around 4,000 persons (including 1,812 children) are living in dire conditions since they were deprived of electricity.⁶⁵⁵

At the end of October 2022, the Committee on Social Rights of the Council of Europe urged the Spanish Government to restore the electricity in the area, and established a deadline on 15 December for the government to provide information on the measures implemented to comply with such requirement.⁶⁵⁶ The day after the expiration, Save the Children reported that national authorities had not respected their commitments.⁶⁵⁷

In December, Save the Children launched the campaign #LUZPARALACAÑADA, with the aim of collecting 60,000 signatures and of asking national and local institutions (i.e. the Spanish Government, the Autonomous Community of Madrid and the Municipality of Madrid) to restore immediately the energy supply, and to double the efforts to unblock the delay of Naturgy in the energy provision.⁶⁵⁸ In addition, many persons gathered in from of the Assembly of Madrid to protest against the lack of electricity in the settlement for two years.⁶⁵⁹

Living conditions in other informal settlements

The situation in informal settlements across Spain (especially in Andalucía) continued to be a concern in 2022. Many migrants, asylum seekers/refugees/persons in need of international protection and seasonal migrant workers live in these settlements in poor living conditions and with no access to basic services.⁶⁶⁰ Many of them are victims of trafficking, forced labour and forced prostitution.⁶⁶¹

In March 2022, a fire destroyed between 15 and 20 shacks in the informal settlement of Walili in the **Níjar** area (Almería), leaving 40 persons without shelter.⁶⁶² In April, a person died in a fire in an informal settlement in **Lepe** (Huelva),⁶⁶³ while in June another fire destroyed around 100 shacks in an informal settlement in **Palos de la Frontera**, resulting in a person injured with burns, and in five persons assisted

⁶⁵² 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>.

⁶⁵³ El País, ‘La ONU insiste: España incumple el derecho internacional en la Cañada Real’, 18 February 2021, available at: <https://bit.ly/2OX01rT>.

⁶⁵⁴ Cadena Ser, ‘El informe pericial de un juzgado concluye que Naturgy tiene limitadores eléctricos que provocan los cortes de luz en la Cañada Real’, 18 March 2022, available at: <https://bit.ly/3ZKo2lg>.

⁶⁵⁵ Amnistía Internacional, ‘Cañada real: 4.000 personas esperan la luz’, December 2021, available at: <https://bit.ly/3qwAzbl>.

⁶⁵⁶ El País, ‘El Consejo de Europa insta a España a garantizar luz y calefacción a los habitantes de la Cañada Real’, 27 October 2022, available at: <https://bit.ly/3WAPLSX>.

⁶⁵⁷ Tele Madrid, ‘Se incumple el plazo dado por Europa para devolver la luz a la Cañada Real madrileña’, 16 december 2022, available at: <https://bit.ly/3YPpem3>.

⁶⁵⁸ Save the Children, ‘¡Políticos, devolved la luz a los niños y niñas de la Cañada Real!’, December 2022, available at: <https://bit.ly/3wkvotm>.

⁶⁵⁹ El Salto Diario, ‘La Cañada Real pide luz y futuro’, 6 January 2023, available at: <https://bit.ly/3vNSXjo>.

⁶⁶⁰ Público, ‘Sin casa, sin trabajo y sin comida: migrantes al límite en Andalucía’, 22 May 2020, available in Spanish at: <https://bit.ly/3iD9xLj>.

⁶⁶¹ 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>.

⁶⁶² Almería Acoge, ‘Una parte del barrio que arde: asentamiento del Walili’, 30 March 2022, available at: <https://bit.ly/3A7ULGG>.

⁶⁶³ Público, ‘Muere una persona en el incendio en un asentamiento de chabolas en Lepe’, 21 April 2022, available at: <https://bit.ly/3zPh9Ue>.

for anxiety attacks.⁶⁶⁴ Again, in September another fire destroyed one hectare of shacks in the informal settlement in **Palos de la Frontera**, without provoking any injured or dead.⁶⁶⁵ At the end of December, a fire in the informal settlement in **Lepe (Huelva)** affected around 10 shacks with no casualties.⁶⁶⁶

A report developed by the organisations *Provivienda* and *Andalucía Acoge*⁶⁶⁷ and published by the Ministry of Equal Opportunities in March 2022 underlines that structural racism present in the country leads to housing exclusion, and that the situation and the living conditions in informal settlements result in a violation of fundamental rights.⁶⁶⁸

In its 10 points policy proposals for the 2022 regional elections in Andalucía, the organisation *Andalucía Acoge* put forward a set of measures to improve the conditions of people currently living in informal settlements in Andalucía.⁶⁶⁹ According to data collected by the organisation, around 5,600 persons live in about 50 informal settlements in Huelva and Almería.

In December 2022, the NGO *Andalucía Acoge* met with different Members of the European Parliament in Brussels, to address the violation of the rights that migrant workers living in the informal settlements in Huelva and Almería suffer, and to urge the Parliament to monitor compliance with the EU framework for the protection of migrants.⁶⁷⁰

A census carried out by the trade union *Comisiones Obreras (CCOO)* stated that in the city of **Albacete** around 800 persons were living in 10 settlements and 13 sub-settlements between April and September 2021.⁶⁷¹

A report published by ENAR (European Network against Racism) in February 2022 denounced the terrible living conditions that migrant workers in agriculture continue to face in Spain⁶⁷².

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.⁶⁷³ Despite it, the *Asociación Pro Derechos Humanos de Andalucía (APDHA)* and *Alianza por la Solidaridad-ActionAid* denounced the difficulties that migrants living in certain informal settlements are facing while trying to register at local municipalities, which in turn results in limitations in accessing rights and services.⁶⁷⁴

⁶⁶⁴ Cadena Ser, 'Un nuevo incendio acaba con un asentamiento de temporeros en Palos de la Frontera', 11 June 2022, available at: <https://bit.ly/3QpJDKA>.

⁶⁶⁵ Huelva Información, 'Un incendio arrasa una hectárea de chabolas en Palos de la Frontera', 17 September 2022, available at: <https://bit.ly/3PdkoMe>.

⁶⁶⁶ Público, 'Arden siete chabolas en un asentamiento en la provincia de Huelva', 27 December 2022, available at: <https://bit.ly/3C3HP5t>.

⁶⁶⁷ Andalucía Acoge, see: <https://acoge.org/>.

⁶⁶⁸ Provivienda, Andalucía Acoge, 'Discriminación racial en el ámbito de la vivienda y los asentamientos informales', March 2022, available at: <https://bit.ly/3dioaFm>.

⁶⁶⁹ Andalucía Acoge, 'Andalucía Acoge marca las prioridades en materia de inmigración del próximo gobierno andaluz en un decálogo de propuestas', 23 May 2022, available at: <https://bit.ly/3AanBXi>.

⁶⁷⁰ Andalucía Acoge, 'Andalucía Acoge se reúne con europarlamentarios en Bruselas para abordar la situación de los asentamientos en Huelva y Almería', 5 December 2022, available at: <https://bit.ly/3FDmaTK>.

⁶⁷¹ El Digital Albacete, '800 inmigrantes malviven en 10 grandes asentamientos en Albacete capital', 29 October 2021, available at: <https://bit.ly/3FBqYq7>.

⁶⁷² ENAR, 'The climate crisis is a (neo)colonial capitalist crisis: Experiences, responses and steps towards decolonising climate action', February 2022, available at: <https://bit.ly/3yBJDR4>.

⁶⁷³ 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>.

⁶⁷⁴ El Diario, 'Empadronarse, un procedimiento legítimo pero arduo para las personas migrantes de asentamientos chabolistas', 22 April 2022, available at: <https://bit.ly/3BOWimx>.

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?
❖ If yes, when do asylum seekers have access the labour market? | ☒ Yes ☐ No
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?
❖ If yes, specify which sectors: | ☐ Yes ☒ No |
| 4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year | ☐ Yes ☒ No |
| 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.⁶⁷⁵ 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.

Labour integration supportive schemes offered to hosted asylum seekers include services like personalised guidance interviews, pre-employment training, occupational training, active job seeking support.

However, asylum seekers face many obstacles to accessing the Spanish labour market in practice. Many of them do not speak Spanish at the time they receive the red card. In addition to that, the recognition of their qualifications is a long, complicated and often expensive procedure. Lastly, they face discrimination due to their nationality or religion.⁶⁷⁶

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.⁶⁷⁷

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.⁶⁷⁸ Many NGOs asked the Government to take a further step by regularising all

⁶⁷⁵ Article 32 Asylum Act; Article 13 Asylum Regulation.

⁶⁷⁶ Federación S.O.S. Racismo, ‘Informe anual sobre el racismo en el Estado español – 2022’, December 2022, available at: <https://bit.ly/3JiAvpo>.

⁶⁷⁷ 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>.

⁶⁷⁸ 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*

undocumented migrants in Spain.⁶⁷⁹ They denounced the inadequacy of measures to ensure access to employment to migrants and refugees, especially regarding the sectors of health and agriculture.⁶⁸⁰

During the same month of May 2020, the Council of Ministers adopted a Royal Decree,⁶⁸¹ 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.⁶⁸² 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.⁶⁸³

During 2020, domestic workers further called on the Spanish Government to ratify the 189 ILO Convention on domestic workers to guarantee their rights.⁶⁸⁴ 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.⁶⁸⁵ At the beginning of 2022, the Labour Inspectorate launched a campaign aiming at the regularisation of salaries and contributions of part-time domestic workers, by sending more than 35,000 letters to those employers who have been identified in committing possible irregularities in the contracts⁶⁸⁶ In June 2022, the Congress voted the ratification of the 189 ILO Convention.⁶⁸⁷

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | ☒ Yes ☐ No |
| 2. Are children able to access education in practice? | ☒ Yes ☐ No |

Children in Spain have the right to education, and the schooling of children is compulsory from age 6 to 16. This right is not explicitly regulated by the Asylum Act but it is guaranteed by other regulations concerning aliens and children.⁶⁸⁸

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>.

⁶⁷⁹ 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>.

⁶⁸⁰ 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>.

⁶⁸¹ 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>.

⁶⁸² 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/3oIHG2w>.

⁶⁸³ 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 decreto ley 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>.

⁶⁸⁴ 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>.

⁶⁸⁵ Pikara Magazine, 'Una victoria parcial para las trabajadoras del hogar', 3 February 2021, available in Spanish at: <https://bit.ly/3dsA9yh>.

⁶⁸⁶ El Diario, 'La Inspección de Trabajo inicia una nueva campaña contra los salarios por debajo del SMI a empleadas del hogar', 31 January 2022, available at: <https://bit.ly/40b6VZx>; Ministerio de Trabajo y Economía Social, 'Nueva campaña de actuación inspectora - servicio hogar', January 2022, available at: <https://bit.ly/3Jfn9u5>.

⁶⁸⁷ CTXT, 'Una victoria histórica para las trabajadoras del hogar', 9 June 2022, available at: <https://bit.ly/3R7bvoo>; UGT, 'Avance histórico para las trabajadoras del hogar', 6 September 2022, available at: <https://bit.ly/3R6F6P1>.

⁶⁸⁸ 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 enrolled in school, even during the first reception phase, during 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**.⁶⁸⁹ Following various denounces by the Ombudsman, UN bodies and NGOs, in February 2022 the Minister of Education changed the legislation with the aim of guaranteeing the access to education for all children residing in Ceuta and Melilla.⁶⁹⁰

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 2021.⁶⁹¹ A thematic report on the situation of children in the Canary Islands published by UNICEF in July 2021 underlines that, while some reception centres guarantee the immediate access to schooling for migrant children, the same cannot be said for other reception facilities; that is often due, among other reasons, to the lack of preparation for both reception centres and schools in managing such situations and to the lack of available places in schools.⁶⁹²

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.⁶⁹³ 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.

⁶⁸⁹ 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>.

⁶⁹⁰ El País, 'El Ministerio de Educación cambia su normativa para garantizar la plena escolarización de los niños en Melilla', 17 February 2022, available at: <https://bit.ly/3YPmSUc>.

⁶⁹¹ 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>.

⁶⁹² UNICEF, 'Canarias: niños y niñas migrantes en una de las rutas más peligrosas del mundo', July 2021, available at: <https://bit.ly/3wISZL6>.

⁶⁹³ Article 15 Asylum Regulation.

Since the 2012 reform of access to the Public Health System, which limited the previously guaranteed universal access to health care, asylum seekers had been facing problems in receiving medical assistance, even though it is provided by law. In particular, some asylum seekers were denied medical assistance, because medical personnel was not acquainted with the “red card” (*tarjeta roja*) that applicants are provided with, or they did not know that asylum seekers were entitled to such right.

In September 2018, the Government approved a decree reinstating universal access to the Public Health System, thus covering irregular migrants as well.⁶⁹⁴

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,⁶⁹⁵ and launched a public consultation.⁶⁹⁶ The project of law was sent to the Parliament by the Council of Minister on June 2022.⁶⁹⁷

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,⁶⁹⁸ specialised in disability and mental health. In 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 is dedicated to asylum seekers and beneficiaries of international protection in a situation of vulnerability. The purpose of the residential centre is to promote the highest level of mental and physical well-being to people whose mental illness hinders their integration process.

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)⁶⁹⁹ in Barcelona,⁷⁰⁰ Progestión,⁷⁰¹ Provivienda⁷⁰² and Pinardi. The NGO Valencia Accull (which is member of the Federación Red Acoge) has opened a reception facility in Valencia for single female asylum seekers/refugees. Federación Red Acoge also runs a new facility with 7 places for asylum seekers with addictions or dual pathology.⁷⁰³ Information on organisations providing such services in Spain is not public.

In April 2021, the *Fundación Cruz Blanca* opened a new reception facility in **Guadalajara**, dedicated to the assistance of migrants affected by mental health issues.⁷⁰⁴

⁶⁹⁴ El País, ‘El Congreso aprueba el decreto para recuperar la sanidad universal’, 6 September 2018, available in Spanish at: <https://bit.ly/2Nt140c>.

⁶⁹⁵ El País, ‘Sanidad quiere prohibir por ley nuevos copagos y asegurar la atención a inmigrantes’, 20 October 2020, available in Spanish at: <https://bit.ly/3bhV4Bl>.

⁶⁹⁶ 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>.

⁶⁹⁷ La Moncloa, ‘El Gobierno refuerza la equidad y la universalidad del Sistema Nacional de Salud’, 14 June 2022, available at: <https://bit.ly/3LtBrd8>.

⁶⁹⁸ See the dedicated website at: <http://www.accemarbeyal.com/>.

⁶⁹⁹ Federación Red Acoge, see: <https://redacoge.org/>.

⁷⁰⁰ Information provided by Federación Red Acoge on 1 March 2022.

⁷⁰¹ Asociación Progestión, see: <https://progestion.org/>.

⁷⁰² Provivienda, see: <https://www.provivienda.org/>.

⁷⁰³ Information provided by Federación Red Acoge on 1 March 2022.

⁷⁰⁴ Information provided by Fundación Cruz Blanca on April 2021.

During the COVID-19 pandemic, health professionals from the *Lavapiés* neighbourhood in **Madrid** asked for more interpreters in order to assist migrants.⁷⁰⁵

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.⁷⁰⁶ Such barriers are essentially due to the legislation that does not foresee the universal access to the National Health System, the insufficiency of adequate measures implemented by the Autonomous Communities, and the language barrier in order to access medical assistance by phone.

In May 2021, six NGOs called on the Minister of Inclusion, Social Security and Migration to reform the Regulation of the Immigration Law in a way that guarantees adequate protection to all migrants, especially in light of the COVID-19 pandemic, as more than half million persons cannot exercise their right to health due to their impossibility to fulfil administrative requisites, given their lack of valid documents.⁷⁰⁷

Various obstacles were registered regarding access to the vaccination campaign for migrants, generally due to linguistic barriers and lack of access to digital services. Even though the migrant population – comprising also undocumented migrants – was included in the Spanish vaccination strategy, the administration often delegated to NGOs the responsibility in terms of information provision and facilitation in access to the campaign.⁷⁰⁸ The NGO APDHA urged the Government of Andalucía to adopt a comprehensive vaccination strategy which includes undocumented migrants, including those persons who do not hold a healthcare card⁷⁰⁹. The call derives from the concern that the public vaccination strategies in Andalucía do not include specific plans to address the specific situation of undocumented migrants living in the Autonomous Community. In addition, Spain included stateless persons in vaccination plans.⁷¹⁰

In occasion of the World Health Day, the NGO *Kifkif* called for the right to health of LGTBI+ migrants and asylum seekers to be comprehensive and effective, including the support for mental health issues. The organisation highlights that, during the first quarter of 2021, 56% its beneficiaries indicated that bureaucratic processes and the discrimination impede to receive a quality health assistance.⁷¹¹

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.⁷¹² 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

⁷⁰⁵ 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>.

⁷⁰⁶ 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>.

⁷⁰⁷ Red Acoge, 'Seis ONG estatales instan a la Secretaría de Estado de Migraciones a reformar el Reglamento de Extranjería para garantizar la protección de las personas migrantes tras la pandemia', 25 June 2021, available at: <https://bit.ly/3NsmHda>.

⁷⁰⁸ Newtral, '¿Sanidad universal? La dificultad de que la vacunación llegue a toda la población inmigrante', 25 August 2021, available at: <https://bit.ly/2X295jb>.

⁷⁰⁹ Asociación Pro Derechos Humanos de Andalucía – APDHA, 'Exigimos al Gobierno andaluz una estrategia de vacunación integral que incluya a todas las personas en situación administrativa irregular', 9 April 2021, available at: <https://bit.ly/3FSOsY4>.

⁷¹⁰ EUAA, 'Asylum report 2022', 2022, available at: <https://bit.ly/3FvgydY>.

⁷¹¹ El Foro de Ceuta, 'KifKif exige atención sociosanitaria de calidad para las personas migrantes y solicitantes de protección internacional LGBTIQ+', 7 April 2021, available at: <https://bit.ly/34k9Ck6>.

⁷¹² DGIAH, *Reception Handbook*, November 2018, A, 6.

mechanism which takes into consideration the response to reception needs of each person concerning the mentioned profiles.⁷¹³

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 can reach a total of 24 months, following an exceptional authorisation from the competent authority.⁷¹⁴

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, and their number is not made public by the MISSM. The new Regulation on Reception specifically includes the prevention, detection and referral of victims of trafficking as one of the main principles governing any action within the reception system, and it also considers trafficking as a situation of vulnerability.

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.⁷¹⁵ In its 2022 Annual Report, the Ombudsman reiterated the concerns, formerly outlined in a thematic report of 2016,⁷¹⁶ regarding the deficiencies of the asylum reception system and its impossibility in assuring places for all those who need it.⁷¹⁷ In its 2022 annual report on asylum, the organisation CEAR highlighted some deficiencies of the Spanish asylum reception system, such as the lack of appropriate response to specific needs and vulnerabilities due to a lack of flexibility of the system in adapting and responding to such needs.⁷¹⁸

In 2021, Amnesty International called on the Spanish Government to reform its reception system, for it to be aligned with international human rights standards and adapted to asylum seekers' needs.⁷¹⁹

In July 2022, the Spanish Committee of Representatives of Persons with Disabilities (*Comité Español de Representantes de Personas con Discapacidad - Cermi*) published guidelines for providing an adequate assistance to women and girls with disability in situations of armed conflicts and humanitarian emergencies. The document provides practical guidance and suggestions on how to conduct actions directed at fostering social inclusion for women and girls with disability seeking asylum.⁷²⁰

⁷¹³ DGIAM, *Reception Handbook*, November 2018, G.2 (22), G.3 (24).

⁷¹⁴ Boletín Oficial del Estado, 'Real Decreto 220/2022, de 29 de marzo, por el que se aprueba el Reglamento por el que se regula el sistema de acogida en materia de protección internacional', available in Spanish at: <https://bit.ly/3QR8SHo>; Migrar con Derechos, 'Instrucción SEM de 15 de diciembre de 2022. Acceso y permanencia sistema acogida protección internacional', 15 December 2022, available at: <https://bit.ly/42A0pxQ>.

⁷¹⁵ 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>.

⁷¹⁶ 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.

⁷¹⁷ Defensor del Pueblo, *Informe Anual 2022. Volumen I'*, March 2023, available in Spanish at: <https://bit.ly/3M9WLVo>, 53.

⁷¹⁸ CEAR, 'Informe Anual 2022: Las personas refugiadas en España y Europa', June 2022, available at: <https://bit.ly/40radbM>.

⁷¹⁹ 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>.

⁷²⁰ CERMI, Fundación CERMI Mujeres, '¡S.O.S. por las mujeres y niñas con discapacidad! Guía para proporcionar una asistencia adecuada en situaciones de conflictos armados y emergencias humanitarias', July 2022, available at: <https://bit.ly/3psaU3U>.

On February 2022 the Minister of Inclusion, Social Security and Migration, together with UNHCR, started the implementation of an action protocol on gender-based violence within the reception system, with the aim of improving the prevention, risks mitigation and response for gender-based cases, in line with international and EU laws,⁷²¹ A leaflet explaining the protocol has been also published in different languages (i.e. Spanish, English, French, Arabic, Ukrainian),⁷²² together with a pocket guide for the professionals working in the asylum reception system.⁷²³ Thanks to the protocol, 90 victims of gender-based violence were identified within the asylum reception system between January and June 2022.⁷²⁴

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. In a report submitted to the Committee on the Rights of the Child in the occasion of the 7th cycle of assessment of the implementation of the Convention on the Rights of the Child, the Platform for Childhood (*Plataforma de Infancia*) underlined the necessity to create, especially in the Canary Islands, Andalucía, Ceuta and Melilla, appropriate reception centres to respond to migrant children's international protection needs. It adds that such centres should provide for legal assistance, interpreters with proper training, and to foster quick referral to other facilities if in the best interest of the child.⁷²⁵ (See also 4. Legal representation of unaccompanied children).

Due to the conditions of the Melilla's Centre of Protection of Minors in which they should live because they are under the administration's custody, children prefer living on the city's streets and try to reach the Spanish Peninsula hiding in boats. In December 2019, 93 children were in this situation, and 35 in February 2020. At the beginning of January 2021, 115 unaccompanied migrant children and 35 young adults (former UAMs who aged out in 2020) were living on the streets.⁷²⁶ In order to address issues concerning young adults, in April 2021 the City of Melilla and UNHCR agreed to ask the Minister of Inclusion, Social Security and Migration the transfer of former UAMs who apply for international protection to reception facilities for asylum seekers at the mainland.⁷²⁷ Information on whether such transfers were finally carried was not available at the time of writing.

At the beginning of January 2022, the police dismantled a child sexual trafficking network and detained 37 persons. The victims were girls under the protection and guardianship of the Autonomous Community of **Madrid** and accommodated at the Hortaleza facility.⁷²⁸ The Spanish Ombudsman requested information on the children rescued during said police operation to the Office for Family, Youth and Social

⁷²¹ ACNUR, 'Inclusión implementa junto a ACNUR el Protocolo de actuación sobre violencia de género en el sistema de acogida', 23 February 2022, available at: <https://bit.ly/3PZD0zO>.

⁷²² ACNUR, Ministerio de Inclusión, Seguridad Social y Migraciones, 'Protocolo de actuación ante la violencia contra las mujeres solicitantes y beneficiarias de protección internacional y temporal', available at: <https://bit.ly/3PWMQCA>.

⁷²³ ACNUR, Ministerio de Inclusión, Seguridad Social y Migraciones, 'Cómo actuar ante la violencia contra las mujeres solicitantes y beneficiarias de protección internacional y temporal. Guía de bolsillo para profesionales del SAPIT sobre la aplicación del protocolo de actuación ante la violencia contra las mujeres en el sistema de acogida de protección internacional, dirigida al personal técnico', available at: <https://bit.ly/3WBmylv>.

⁷²⁴ Europa Press, 'España detectó a 90 víctimas de violencia machista entre las refugiadas acogidas entre enero y junio de 2022', 24 November 2022, available at: <https://bit.ly/3znPKIW>.

⁷²⁵ Plataforma de Infancia, 'La situación de la infancia en España en 2022', November 2022, available at: <https://bit.ly/3KnfWK3>.

⁷²⁶ EuropaPress, 'Melilla contabiliza 115 menores extranjeros no acompañados y 35 extutelados viviendo en la calle', 29 January 2021, available at: <https://bit.ly/3HMaAUr>.

⁷²⁷ EuropaPress, 'Melilla y Acnur acuerdan solicitar a Inclusión el traslado a la Península de ex menores tutelados que piden asilo', 23 April 2021, available at: <https://bit.ly/3zAZb7h>.

⁷²⁸ Público, 'Las menores tuteladas en centros de acogida, desamparadas ante mafias de la prostitución por falta de voluntad política', 4 January 2022, available at: <https://bit.ly/3AcZgy6>; El Mundo, 'El sobrecogedor testimonio de las menores liberadas: "Me obligaron a tener sexo con tres personas y me pegaron"', January 2022, available at: <https://bit.ly/3ryMzK3>; Público, 'La Comunidad de Madrid desatendió a las menores que una mafia obligaba a prostituirse y que vivían en sus centros de acogida', 4 January 2022, available at: <https://bit.ly/3q2JsdQ>.

Services, but no official response was made public at the time of writing.⁷²⁹ Similar cases were investigated in 2019 and 2020 in **Baleares Islands** and the **Canary Islands**.⁷³⁰ Save the Children expressed concerns on the cases of sexual abuse and exploitation in different reception facilities for unaccompanied migrant children in Spain, and called the Government to urgently adopt protocols for the prevention and early detection of such cases, as well as trainings to professionals.⁷³¹

The situation of unaccompanied children in the **Canary Islands** started to raise concerns since 2020, when more than 2,000 children were reportedly not receiving adequate assistance and protection.⁷³²

Following the call by different stakeholders including the Government of the Canary Islands and the Spanish Ombudsman, the General Directorate for Children of the Ministry of Social Rights and the 2030 Agenda approved in 2022 a *Management Model for migration contingencies for unaccompanied children and adolescents*.⁷³³ The model is aimed at providing a tailored response for of migratory pressure on minors' protection systems at border territories such as the Canary Islands, Ceuta, Melilla or Andalucía. For these situations, the model foresees the possibility to activate different Response Plans for Children and Adolescents, with the aim of referring and distributing children at national level. The beneficiaries of such measures are unaccompanied migrant children and adolescents, who have entered Spain through an Autonomous Community whose child protection system is overwhelmed and thus are unable to comply with the best interests of these minors at that time. Several stakeholders advocated for this "solidarity or responsibility sharing mechanism" for many years.⁷³⁴ Following such a plan, the Government and the Autonomous Communities agreed to transfer 400 UAMs from Ceuta and the Canary Islands to reception facilities in mainland, due to the situation of overcrowding. In addition, other 374 UAMs will be transferred in 2023.⁷³⁵ In November 2022, the Government of the Canary Islands established a budget increase for the assistance to UAMs of around 1,4 million Euros.⁷³⁶

During the last years, problems and challenges in carrying out age assessment procedure to UAMs in the Canary Islands have been reported, with around 2,000 unaccompanied migrant children waiting to undergo such a procedure.⁷³⁷ In its 2022 annual report, the Spanish Ombudsman continued to express concerns on the issue, as hundreds of UAMs keep on waiting the Public Prosecutor Office to issue the decree determining their age.⁷³⁸

In June 2021, the Law on the protection of children against violence - an important step forward in guaranteeing children rights and protection against any form of violence -⁷³⁹ was approved.⁷⁴⁰ The Platform of Childhood published a guide to disseminate the content of the law to different stakeholders, as well as to identify the next steps necessary to assure the effective and practical implementation of the

⁷²⁹ Defensor del Pueblo, 'El Defensor del Pueblo solicita información sobre la situación de las menores liberadas en una operación contra la explotación sexual en la Comunidad de Madrid', 4 January 2022, available at: <https://bit.ly/3rxJ2fQ>.

⁷³⁰ Newtral, 'Qué está pasando con las menores tuteladas y los casos de explotación sexual', 17 January 2022, available at: <https://bit.ly/356901R>.

⁷³¹ El Faro de Ceuta, 'Save The Children, preocupada ante la vulneración de derechos de niñas y adolescentes tuteladas víctimas de explotación sexual', 14 January 2022, available at: <https://bit.ly/3rvSorP>.

⁷³² 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>.

⁷³³ Ministerio de Derechos Sociales y Agenda 2030, 'Modelo de gestión de contingencias migratorias para la infancia y adolescencia no acompañada', October 2022, available at: <https://bit.ly/3FzXrzp>.

⁷³⁴ Information provided by Save the Children in March 2023.

⁷³⁵ El Confidencial, 'El Gobierno y las CCAA acuerdan trasladar a la península a 400 menores de Canarias y Ceuta', 27 July 2022, available at: <https://bit.ly/3KoNKq4>.

⁷³⁶ Europa Press, 'El Gobierno aumenta en 1,4 millones el gasto para los dispositivos de emergencia de menores migrantes', 24 November 2022, available at: <https://bit.ly/3Knpuon>.

⁷³⁷ El Diario, 'Cómo son las pruebas de edad por las que desesperan "congelados" más de 1.700 migrantes en Canarias', 27 May 2021, available at: <https://bit.ly/3JQeT31>; Unicef, 'Canarias: niños y niñas migrantes en una de las rutas más peligrosas del mundo', July 2021, available at: <https://bit.ly/3fi8wYc>, 20.

⁷³⁸ Defensor del Pueblo, 'Informe anual 2022 – Volumen I', March 2023, available at: <https://bit.ly/3nzfYpt>, 166.

⁷³⁹ Unicef, 'Proteger a la infancia frente a la violencia es responsabilidad de todos. Se aprueba en el Congreso la nueva Ley de Protección de la Infancia', 20 May 2021, available at: <https://bit.ly/3GIK7wJ>.

⁷⁴⁰ Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia, 4 June 2021, available at: <https://bit.ly/3ra6wqG>.

law.⁷⁴¹ Among others, the law established the obligation for the personnel of certain centres/facilities (i.e. health centres, schools, sport and leisure centres, social services) to communicate situations of violence against children. Professionals working at protection centres for unaccompanied migrant children, asylum reception facilities and centres for the humanitarian assistance of migrants are subjected to such obligation. In addition, the law reiterates the obligation of the competent authorities to guarantee children in need of international protection access to territory and to the asylum procedure, independently of their nationality and of the means used to access the Spanish territory, in accordance with the Asylum Act. In November 2022 the Strategy to eradicate violence against children was adopted.⁷⁴²

As outlined by the Spanish Ombudsman in his 2022 annual report, the Autonomous Communities started to develop and put in place different actions aiming at implementing such a law (i.e. protocols on detection and reporting of cases of violence against children, trainings to professionals, etc.).⁷⁴³

In October 2021, the Government adopted the reform of the Regulation of the Immigration Law, aimed at fostering the integration of unaccompanied migrant children and young adults.⁷⁴⁴ Many stakeholders advocated for the reform of the Regulation of the Immigration Law, including many former UAMs,⁷⁴⁵ and they regarded it as an extremely positive development.⁷⁴⁶ The law will allow the regularization of around 8,000 young adults who arrived in Spain as UAMs.⁷⁴⁷ After one year of implementation, the reform allowed almost 17,000 UAMs and young adults to obtain a residence and work permit.⁷⁴⁸ In this respect, the Spanish Ombudsman acknowledged the positive impact of such a reform.⁷⁴⁹

In November 2022 the Government adopted the National Action Plan for the implementation of the European Child Guarantee for the period 2022-2030, which includes a set of measures addressing also refugee children, asylum seeking children and UAMs.⁷⁵⁰

Thanks to the opening of a reception facility for UAMs at **Rada de Haro** (Castilla La Mancha) three years ago, the almost abandoned town revived, together with its economy and the job market.⁷⁵¹

Discrimination and hate crime

Discrimination and hate crimes against migrants and refugees continued to be a reason of concern in 2022.

⁷⁴¹ Plataforma de infancia, Universidad Pontificia Comillas, 'Guía sobre la Ley Orgánica de Protección integral a la Infancia y la Adolescencia frente a la Violencia', September 2021, available at: <https://bit.ly/3tLd8b>.

⁷⁴² Ministerio de Derechos Sociales y Agenda 2030, 'Estrategia de erradicación de la violencia sobre la infancia y adolescencia', November 2022, available at: <https://bit.ly/3KnYbKQ>.

⁷⁴³ Defensor del Pueblo, 'Informe anual 2022 – Volumen I', March 2023, available at: <https://bit.ly/3nzfYpt>, 37 ss.

⁷⁴⁴ Ministerio de Inclusión, Seguridad Social y Migraciones – Prensa, 'El Gobierno aprueba la reforma del Reglamento de Extranjería para favorecer la integración de menores extranjeros y jóvenes extutelados', 19 October 2021, available at: <https://bit.ly/3q27zt9>; PICUM, 'Spain adopts law to facilitate regularisation of young migrants?', 18 October 2021, available at: <https://bit.ly/3zxw1G9>.

⁷⁴⁵ CEAR, 'Comunicado CEAR y otras ONG. Jóvenes que llegaron solos de menores urgen a reformar el Reglamento de Extranjería', 21 July 2021, available at: <https://bit.ly/3GkZp5b>; El País, 'Lógica reforma para los jóvenes inmigrantes', 23 July 2021, available at: <https://bit.ly/3qYcGtS>; El Diario, '400 migrantes extutelados se concentran frente a Interior para pedir el desbloqueo de la reforma del reglamento de Extranjería', September 2021, available at: <https://bit.ly/3zy6Ym8>.

⁷⁴⁶ CEAR, 'Entidades de migración e infancia celebran la reforma del Reglamento de Extranjería', 19 October 2021, available at: <https://bit.ly/3t2abt7>; El Diario, 'Jóvenes inmigrantes extutelados, tras el nuevo reglamento de Extranjería: "Ojalá podamos tener papeles y trabajar"', October 2021, available at: <https://bit.ly/3zlGpLm>.

⁷⁴⁷ El País, 'Jóvenes inmigrantes, extutelados y formados, pero sin papeles para vivir y trabajar', 21 July 2021, available at: <https://bit.ly/3q2jPtK>.

⁷⁴⁸ Herald, 'Tras un año de la reforma de extranjería los jóvenes migrantes con empleo suben del 28% al 51%', 13 November 2022, available at: <https://bit.ly/3M2Hw0B>.

⁷⁴⁹ Defensor del Pueblo, 'Informe anual 2022 – Volumen I', March 2023, available at: <https://bit.ly/3nzfYpt>, 165.

⁷⁵⁰ Ministerio de Derechos Sociales y Agenda 2030, 'Infancia con derechos: Plan de Acción Estatal para la Implementación de la Garantía Infantil Europea (2022-2030)', July 2022, available at: <https://bit.ly/3zk3hl1>.

⁷⁵¹ Cadena Ser, 'Rada de Haro, el pueblo "salvado por los chiquetes" de las pateras', 3 January 2022, available at: <https://bit.ly/3fdq7AG>.

In occasion of the 2022 World Migrants Day, several organisations denounced the increase of xenophobia and racism against migrants in different contexts (i.e. public transport, education, shops, etc.).⁷⁵²

In a press release published in occasion of the 2023 International Day for the Elimination of Racial Discrimination, Amnesty International highlighted the discriminatory practices occurring in the context of migration and especially in relation to border management, and denounced how such practices demonstrates the institutional racism existing in Spain.⁷⁵³

Several developments relating to discrimination and hate crime were reported throughout 2022 and at the beginning of 2023.

In February 2022 the National Federation of Lesbians, Gays, Trans, Bisexuals and Intersexuals+ (*Federación Estatal de Lesbianas, Gais, Trans, Bisexuales, Intersexuales y más - FELGTBI+*) launched a proposal, together with groups of LGTBI+ persons, homelessness people, migrants, Romas, and persons with disabilities to engage the government in the fight against hate crimes suffered by vulnerable groups.⁷⁵⁴

In April, the Government adopted the Second Action Plan to Fight against Hate Crimes for 2022-2024,⁷⁵⁵ while in July it approved the comprehensive law on equal treatment and discrimination,⁷⁵⁶ welcomed by the organisations forming the Alliance for the Law on Equal Treatment as a step forward in the fight against discrimination. Nevertheless, the Alliance highlighted that the law remained lacking in some areas, mainly due to the failure to introduce additional mechanisms - such as accompaniment and translation - to guarantee an effective and comprehensive protection of victims. In addition, the Alliance voiced concerns on the lack of measures to tackle discrimination in certain contexts, such as the action of law enforcement agencies and the education.⁷⁵⁷ The Spanish Ombudsman indicated to have initiated all the necessary steps to monitor the implementation of the law, and to foster access to the body to all those persons victims of discrimination in any public context.⁷⁵⁸

In December 2022, the organisation *Ecos do Sur* launched a photo exhibition to raise awareness on the racism and xenophobia that migrants face, using virtual reality.⁷⁵⁹

The 2022 annual report on the situation of racism in Spain of the organisation *SOS Racismo*, highlighted that institutional racism is widespread.⁷⁶⁰ In addition, a report published in March 2023 by *SOS Racisme* in Cataluña denounced that migrants are three times more likely to be identified by the police than Spanish nationals.⁷⁶¹

⁷⁵² Cadena Ser, 'Las entidades que trabajan con migrantes denuncian que persiste el racismo y la xenofobia gracias a los discursos de odio', 18 December 2022, available at: <https://bit.ly/42XwpMh>.

⁷⁵³ Amnistía Internacional, 'AI: En el Día Internacional para la Eliminación de la Discriminación Racial recordamos la masacre de Sharpeville y el racismo institucional', 21 March 2023, available at: <https://bit.ly/3nEocfR>.

⁷⁵⁴ Europa Press, 'Colectivo LGTBI, personas sin hogar, migrantes, gitanas y con discapacidad inician un pacto social contra el odio', 4 February 2022, available at: <https://bit.ly/3K8rT4S>.

⁷⁵⁵ Ministerio del Interior – Secretaría de Estado de Seguridad, 'II Plan de Acción de Lucha contra los Delitos de Odio, 2022-2024', April 2022, available at: <https://bit.ly/43c8gBY>.

⁷⁵⁶ Boletín Oficial del Estado, 'Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación', 13 July 2022, available at: <https://bit.ly/3ZAVtG7>.

⁷⁵⁷ Accem, 'La Alianza por la Ley de Igualdad de Trato celebra por fin su aprobación en el Congreso', 1 July 2022, available at: <https://bit.ly/3MjIhIM>.

⁷⁵⁸ Defensor del Pueblo, 'Informe anual 2022 – Volumen I', March 2023, available at: <https://bit.ly/40GEOIN>.

⁷⁵⁹ El País, 'Realidad virtual contra el odio en Galicia: ponerse unas gafas para sentirse en la piel de un inmigrante', 9 December 2022, available at: <https://bit.ly/3K3cyCY>.

⁷⁶⁰ SOS Racismo, 'Informe anual 2022 sobre el estado del racismo en el Estado Español', December 2022, available at: <https://bit.ly/40RhjXv>.

⁷⁶¹ SOS Racisme, '(In)Visibles. L'estat del racisme a Catalunya. Informe 2022', March 2023, available at: <https://bit.ly/3znYPIf>; Público, 'Los extranjeros tienen tres veces más probabilidades de ser identificados por la Policía que los españoles', 30 November 2022, available at: <https://bit.ly/3nFzgck>.

Racist attacks and hate speeches were also registered following the victory of Morocco against Spain during the 2022 Qatar World Cup.⁷⁶²

At the beginning of March 2023, a group of activists placed different banners on the external walls of the CIE of Aluche in Madrid to denounce the deprivation of liberty suffered by migrants, as well as the mistreatments and tortures.⁷⁶³

Following the announcement to build a facility for asylum seekers in **Azuqueca de Henares** (Guadalajara), around 200 personas gathered to protest the assignment of a parcel to that purpose.⁷⁶⁴

Unaccompanied children also continued to face serious discrimination in Spain in 2022. In November 2022, a Guardia Civil officer was sentenced to 15 months of prison and a fee of 1,620 Euros for a hate crime through social network against UAMs.⁷⁶⁵ During the same month, following a visit in Spain, the UN Rapporteur on Violence against Children stated that there an increased level of xenophobia and racism was registered in the country.⁷⁶⁶

In its 2022 annual report, the General Public Prosecutor denounced that hate crimes increased in 2021, with an increase of indictments of 44%, identifying political polarisation as one of the main causes of said increase. The report found that main motivations of hate crimes are racism and xenophobia (34,8%), and sexual orientation and gender identity (34,3%).⁷⁶⁷

To tackle hate and negative perceptions against unaccompanied migrant children, in February 2022, Accem launched the campaign 'Adolescents like everyone else, who need a family as everyone else', which aims at promoting foster care of unaccompanied migrant children and at the same time focuses on fighting discrimination against unaccompanied minors and existing prejudices regarding their situation.⁷⁶⁸ At the end of 2022, the journalist Nico Castellano directed the documentary 'M', which gathers the testimonies of 14 UAMs in different reception facilities in Spain, and describes their migration and integration pathways, as well as the racism they faced.⁷⁶⁹

Asylum seekers, refugees and migrants in Spain continue to suffer from financial exclusion and discrimination, because of the challenges often faced while trying to open bank accounts. In February 2022, different organisations urged the Government and the Bank of Spain (*Banco de España*) to adopt urgent measures to make banking institutions comply with the law and to end a practice that impede the financial and social inclusion of asylum seekers, refugees and migrants.⁷⁷⁰

In 2022, within the project 'Don't call out, claim' (*No clames, reclama!*), the Federation of Consumers and Users (*Federación de Consumidores y Usuarios – CECU*) published a practical guide for vulnerable users (including asylum seekers) on their rights regarding the opening of a bank account. The document is available in Spanish, English, French and Arabic.⁷⁷¹ A report published in March 2023 by the organisation

⁷⁶² Público, 'Los ataques racistas y los bulos (desmentidos) de la victoria de Marruecos ante España en el Mundial de Catar', 9 December 2022, available at: <https://bit.ly/3ZwhLZC>.

⁷⁶³ El Salto Diario, "Rompen" una de las paredes del CIE de Aluche para denunciar el racismo institucional', 20 March 2023, available at: <https://bit.ly/433a6om>.

⁷⁶⁴ El Confidencial, 'Los centros de refugiados llegan a ciudades de provincia, y con ellos los "no soy racista, pero"', 21 January 2023, available at: <https://bit.ly/3lVBMLz>.

⁷⁶⁵ Público, 'La Justicia condena a un guardia civil por un delito de odio hacia menores migrantes a través de bulos', 8 November 2022, available at: <https://bit.ly/3nld2H6>.

⁷⁶⁶ El País, 'La representante de la ONU sobre la violencia contra los niños: "En España hay un creciente problema de xenofobia y racismo"', 20 November 2022, available at: <https://bit.ly/3nlmw5f>.

⁷⁶⁷ Fiscalía General del Estado, 'Memoria elevada al gobierno de S. M. presentada al inicio del año judicial por el Fiscal General del Estado Excmo. Sr. D. Álvaro García Ortiz', 7 September 2022, p. 956, available at: <https://bit.ly/3eFPKGB>; El Plural, 'La teniente fiscal alerta de que la polarización política provoca un incremento de los delitos de odio', 7 September 2022, available at: <https://bit.ly/3xd6hid>.

⁷⁶⁸ Accem, 'Adolescentes como todos que necesitan una familia como todos', February 2022, available at: <https://bit.ly/3t6vckS>.

⁷⁶⁹ Radio Televisión Canaria, "M", el documental que da voz a las personas migrantes, en RTVC', 26 January 2023, available at: <https://bit.ly/40Mvj4e>.

⁷⁷⁰ CEAR, 'La exclusión financiera afecta a miles de personas migrantes y refugiadas en el Estado español', 15 February 2022, available at: <https://bit.ly/3t6OrKT>.

⁷⁷¹ No Clames, Reclama, 'Guía Cuentas de Pago Básicas. Consumidores Vulnerables', 2022, available in Spanish at: <https://bit.ly/3lZnthS>.

CEAR highlighted the challenges that asylum seekers face in opening a bank account, especially connected to the amount of documentation they are legally required.⁷⁷²

Similarly, migrants continued to face challenging in accessing health, especially pregnant women and children, despite the legislation guarantee them such a right.⁷⁷³

LGBTQI+

Discrimination and incidents against LGBTQI+ persons (including asylum seekers and migrants) increased in 2022. Amnesty International expressed concerns about such an increase and called for the urgent approval of the law on equal rights of LGTBI+ persons.⁷⁷⁴ Similarly, the 2023 ILGA report referred to an increase in the use of transphobic speech and anti-LGBTI hate crimes in Spain.⁷⁷⁵

A police raid in Madrid, Barcelona, Valencia and Alicante at the end of January 2022 led to the dismantlement of a neo-Nazi group who disseminated hate messages and, in one occurrence, attacked a LGTBI+ office near Alicante.⁷⁷⁶ In January 2023 the regional police of Cataluña *Mossos d'Esquadra* initiated an investigation on a homophobic aggression suffered by a trans person in Barcelona.⁷⁷⁷ The Municipal Office for No Discrimination of Barcelona denounced that hate crimes motivated by homophobia doubled in 2021, and they represented one third of all discrimination incidents in the city.⁷⁷⁸

In July 2022, the Minister of Interior also reported to have registered an increase of almost 70% in hate crimes against the LGTBI+ community.⁷⁷⁹

In June 2022, the Government approved a law on the equality of transgender individuals and on additional guarantees of LGTBI+ persons' rights. Such proposal, which is undergoing the parliamentary procedure at the time of writing of this report, foresees also the right self-determination and the possibility of gender rectification at the Civil registry.⁷⁸⁰ Amnesty International welcomed the proposal as a step to advance in guarantee LGTBI+ rights.⁷⁸¹ The National Federation of Lesbians, Gays, Trans, Bisexuals, Intersexuals+ (*Federación Estatal de Lesbianas, Gais, Trans, Bisexuales, Intersexuales y más - Felgtbi+*)⁷⁸² called the Government to guarantee the right to change gender at the register to all trans migrants, independently of their administrative situation.⁷⁸³

In occasion of the 2022 World Day against LGTBI-phobia, the organization CCAR called for safe and legal pathways for LGTBI persons to seek asylum, and that both in the asylum reception and procedure gender and sex perspectives are taken into account.⁷⁸⁴ Similarly, different Ministers adopted a joint

⁷⁷² CEAR, 'Sin barreras para nadie. Personas migrantes y refugiadas en el acceso a los Derechos Económicos, Sociales y Culturales (DESC)', March 2023, available at: <https://bit.ly/3Kv5dgW>.

⁷⁷³ Público, 'Racismo sanitario en España: así de complicado es para los migrantes el acceso a la atención médica', 29 November 2022, available at: <https://bit.ly/3ZwmaMd>.

⁷⁷⁴ Noticias de Navarra, 'Amnistía alerta del aumento de delitos de odio y urge a aprobar la ley LGTBI', 27 Juen 2022, available at: <https://bit.ly/3Md4CSi>.

⁷⁷⁵ ILGA, '2023 Annual review of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe and Central Asia', February 2023, available at: <https://bit.ly/411KYwL>.

⁷⁷⁶ El Salto Diario, 'Desarticulado un grupo neonazi que tenía manuales de fabricación de explosivos y llegó a atacar una sede LGTBIQ+', 28 January 2022, available at: <https://bit.ly/3vfhLIh>.

⁷⁷⁷ 20 minutos, 'Los mossos investigan la agresión a una joven trans en un parque de Barcelona al grito de "travelo de mierda"', 14 January 2023, available at: <https://bit.ly/3UeHp48>.

⁷⁷⁸ 20 minutos, 'La LGTBIfobia ya supone un tercio de los casos de discriminación en Barcelona', 10 March 2022, available at: <https://bit.ly/3nOEh2s>.

⁷⁷⁹ Ministerio del Interior, 'Informe sobre la evolución de los delitos de odio en España 2021', July 2022, available at: <https://bit.ly/3Ks5otb>, 14.

⁷⁸⁰ La Moncloa, 'El Gobierno aprueba el proyecto de ley para la igualdad de las personas trans y la garantía de los derechos LGTBI', 27 June 2022, available at: <https://bit.ly/3zvLEPi>.

⁷⁸¹ Amnesty International, 'AI: ley LGTBI, o cuando el DNI tiene que ver con los derechos humanos', 2 November 2022, available at: <https://bit.ly/40CTpyt>.

⁷⁸² FELGTBI+, see: <https://felgtbi.org/>.

⁷⁸³ La Vanguardia, 'La Felgtbi+ exige garantizar el cambio registral de género a las personas trans migrantes, al margen de su situación administrativa', 16 December 2022, available at: <https://bit.ly/436jzeE>.

⁷⁸⁴ La vanguardia, 'Comisión catalana de ayuda al refugiado pide vías legales de asilo para LGTBI', 17 may 2022, available at: <https://bit.ly/411yjJU>.

institutional declaration in commemoration of such a day, acknowledging the increase in homophobic indictments and crimes, as well as reaffirming the compromise of the Spanish Government in guaranteeing LGTBI persons' rights and the adoption of measures aiming at eradicating discrimination, aggressions and acts of violence against LGTBI community.⁷⁸⁵

In commemoration of the World AIDS Day, the National Federation of Lesbians, Gays, Trans, Bisexuals, Intersexuals+ (*Federación Estatal de Lesbianas, Gais, Trans, Bisexuales, Intersexuales y más - Felgtbi+*) requested the administration to guarantee free access to AIDS' treatments to all migrants, regardless of their administrative situation.⁷⁸⁶

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 they have access based on their status as applicants for international protection.

The provision of information on the reception system is given orally and in written copy at the moment of expressing the will to apply for asylum. The leaflet regarding asylum related issues and procedures also provides information on the right of the person to be hosted in reception places. At the same time, persons are informed on the codes of conduct and other details when they are welcomed in the reception places.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

☐ Yes

☒ With limitations

☐ No

Family members are not allowed to enter reception centres or apartments. Any external actor who wishes to visit any of the facilities within the official reception system must ask for authorisation from the managing authority. As mentioned in [Types of Accommodation](#), most of the centres are managed by NGOs, and for this reason this type of personnel is already inside the centres.

G. Differential treatment of specific nationalities in reception

Persons held within the CETI in **Ceuta** and **Melilla** are not free to move outside the two cities, also due to their geographical location. In order to be transferred to the peninsula applicants and migrants have to wait for the permission of the Ministry of Inclusion, Social Security and Migration, which manages the centres, 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.⁷⁸⁷ Despite the ruling, reports of asylum seekers denied to freely leave Ceuta and Melilla continued to be reported up until the beginning of 2021 (see [Freedom of Movement](#)). As above mentioned, two additional decisions the Supreme Court reaffirmed the existence

⁷⁸⁵ La Moncloa, 'Acuerdo por el que se aprueba la declaración institucional con motivo del 17 de mayo, Día Internacional contra la homofobia, la transfobia y la bifobia', 17 May 2022, available at: <https://bit.ly/40YvVnj>.

⁷⁸⁶ PR Noticias, 'FELGTBI+ reivindica el acceso gratuito a los tratamientos para todas las personas migrantes con VIH', 28 November 2022, available at: <https://bit.ly/3KbBeJu>.

⁷⁸⁷ 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>.

of this right in 2021.⁷⁸⁸ According to available information, it seems that the practice started to change at the end of 2021, to become more aligned with the jurisprudence on the matter.

There is a persisting general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly criticised by human rights organisations. In particular, organisations have persistently denounced discriminatory treatment based on countries of origin for the issuance of permits to allow transfer to the peninsula. For years, transfers to the mainland from **Ceuta** have been provided to nationals of Sub-Saharan countries who did not apply for asylum, whereas asylum seekers and nationals of countries such as Pakistan, Bangladesh and Sri Lanka often waited for more than a year in the enclave. In **Melilla**, on the other hand, nationals of Sub-Saharan countries and Syria benefitted from transfers to the mainland but Moroccans, Algerians and Tunisians did not.⁷⁸⁹ As previously mentioned, since the end of 2021 the practice of transfers to mainland seems to have changed. Asylum seekers have started to be transferred to mainland independently of their nationality. Such practice continued in 2022.

⁷⁸⁸ Tribunal Supremo, Sala de lo Contencioso-Administrativo, Decision nº 173/2021, 10 February 2021, available in Spanish at: <https://bit.ly/3qpUOqa>; Tribunal Supremo, Sala de lo Contencioso-Administrativo, Decision nº 508/2021, 14 April 2021, available in Spanish at: <https://bit.ly/3q79dbQ>.

⁷⁸⁹ 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 2022:	2,082
2.	Number of persons in detention at the end of 2022:	Not available
3.	Number of detention centres:	7
4.	Total capacity of detention centres:	N/A

In recent years, the following numbers of individuals have been subjected to immigration detention:

Immigration detention in Spain: 2016-2022							
Year	2016	2017	2018	2019	2020	2021	2022
Total of persons in detention	7,597 ⁷⁹⁰	8,814 ⁷⁹¹	7,855 ⁷⁹²	6,473 ⁷⁹³	2,224 ⁷⁹⁴	1,841 ⁷⁹⁵	2,082 ⁷⁹⁶

According to the 2022 Annual Report of the Spanish Ombudsman, 2,082 migrants were detained in 2022.⁷⁹⁷

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 to 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 2022, 932 persons applied for asylum from CIEs.⁷⁹⁸

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.⁷⁹⁹

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.

⁷⁹⁰ Servicio Jesuita a Migrantes, 'Informe CIE 2019. Diez años mirando a otro lado - Anexo', July 2020, available at: <https://bit.ly/3mQz36h>, 39.

⁷⁹¹ *Ibidem*.

⁷⁹² *Ibidem*.

⁷⁹³ Servicio Jesuita a Migrantes, 'Informe CIE 2019. Diez años mirando a otro lado', July 2020, available at: <https://bit.ly/3Ljijtn>.

⁷⁹⁴ Servicio Jesuita a Migrantes, 'Informe CIE 2020. Razón jurídica y sin razón política – Anexo', June 2021, available at: <https://bit.ly/3GXh451>, 5.

⁷⁹⁵ Servicio Jesuita a Migrantes, 'Informe CIE 2021. Territorio hostil. Formas diversas de hostilidad en los CIE – Anexo de Cifras', May 2022, available at: <https://bit.ly/40JQ5Sv>.

⁷⁹⁶ Defensor del Pueblo, 'Informe anual 2022 – Volumen I', March 2023, p. 168, available at: <https://bit.ly/3Kcqaf1>.

⁷⁹⁷ *Ibidem*.

⁷⁹⁸ Ministry of Interior, *Avance de solicitudes de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022*, available in Spanish at: <https://bit.ly/3XzxlgR>.

⁷⁹⁹ Articles 60(4) and 62(5) Aliens Act.

In practice, asylum seekers can also be detained if their international protection needs are not identified or if they have not access to the asylum procedure. By way of illustration, a former Algerian soldier and activist who arrived to Almería by boat in mid-February 2022, applied for asylum at the CIE of **Valencia** by claiming he was victim of torture in his country of origin. His two asylum applications were denied, so he lodged an appeal in front of the National Court (Audiencia Nacional), based *inter alia* on different reports issued by UNHCR, Doctors of the World and Phycologists without Borders which stated his delicate physical and psychological conditions, requesting his release. Despite the National Court ruling against his expulsion in mid-March, the expulsion order was executed. The director of the CIE informed that the deportation was carried out because of a mistake in the interpretation of the National Court's decision.⁸⁰⁰ Different organisations, such as Amnesty International, not to deport him, as he would be at risk of torture in case to return to Algeria. After his return, the applicant was sentenced to the death penalty and confined while in prison.⁸⁰¹ Amnesty International and the campaign 'CIEsNO' asked Spain to pressure Algeria to free the activist.⁸⁰² He finally obtained a visa to return to Spain.⁸⁰³

In Spain there are 7 CIEs which are under the responsibility of the Ministry of Interior. These facilities are located in **Algeciras, Barcelona, Las Palmas, Madrid, Murcia, Tenerife, and Valencia**, making up a total capacity of 1,288 places, according to available information.⁸⁰⁴ It has to be noted that the total capacity can vary according to possible improvements' works, temporary closures, maintenance works, etc. Between the end of 2017 and the beginning of 2018, a prison in **Archidona** (near Málaga) was provisionally used as a CIE in order to respond to the increase in sea arrivals, while the CIE of **Tarifa** was permanently closed in 2020.

There have been several developments in 2022 and beginning of 2023 regarding CIEs:

- In May 2022, the Supervising Judges of the CIE of Aluche in **Madrid** adopted a resolution establishing a set of measures aiming at reinforcing guarantees for inmates, such as the right to effective judicial remedies, access to the right to asylum, the activity of NGOs and social services, and the right to protection of health.⁸⁰⁵ Different organisations, such as *Pueblos Unidos* and *CIEsNO Madrid* requested other CIEs in Spain to adopt similar recommendations.⁸⁰⁶
- The situation of many migrants detained at the CIE of Barranco Seco in **Gran Canaria** for having received return orders signed in 2020 or 2021 was denounced for being contrary to the law. In fact, such orders were issued when migrants arrived at the Spanish borders in light of the return procedure, and thus they cannot legitimate detention and expulsion, because a proper legal procedure for that was never opened against them.⁸⁰⁷

⁸⁰⁰ El Periódico, 'Interior desobedece a la Audiencia Nacional y deporta desde Valencia a un argelino que denunció torturas', 23 May 2022, available at: <https://bit.ly/3JxneJq>.

⁸⁰¹ Cadena Ser, 'Un tribunal militar de Argel condena a pena de muerte al activista Mohamed Benhalima, que deportó España', 14 May 2022, available at: <https://bit.ly/3bwMD9o>; El Español, 'El disidente argelino que deportó Marlaska cumple 3 semanas en aislamiento "desnutrido y aturdido"', 6 June 2022, available at: <https://bit.ly/3vzEGqP>.

⁸⁰² Cope, 'Amnistía pide a España presionar a Argelia para liberar a condenado a muerte', 17 May 2022, available at: <https://bit.ly/3zVlsgy>; Levante, 'CIEs NO pide el retorno "urgente" del argelino deportado en contra de la Audiencia Nacional', 24 May 2022, available at: <https://bit.ly/3BFRkrV>.

⁸⁰³ Público, 'El argelino deportado por Interior en contra de la Audiencia Nacional consigue el visado para volver a España', 26 May 2022, available at: <https://bit.ly/3bABuEp>.

⁸⁰⁴ Ministerio de Inclusión, Seguridad Social y Migraciones, 'Marco Estratégico de Redacción del Programa Nacional de España en el Fondo De Asilo, Migración e Integración para el periodo 2021-2027', 2021, available at: <https://bit.ly/3lnWb2d>, 39.

⁸⁰⁵ Juzgados de Instrucción Números 6, 19 y 20 de Madrid (En Funciones de Control del Centro de Internamiento de Extranjeros de Madrid), Expediente Gubernativo, 2022, available at: <https://bit.ly/3d7NlKM>; Siglo XXI, 'Los Juzgados de Control del CIE de Aluche acuerdan conjuntamente medidas para reforzar las garantías de los internos', 13 May 2022, available at: <https://bit.ly/3vDvO3c>; La Vanguardia, 'Juzgados de control del CIE acuerdan un protocolo de tramitación de denuncias', 17 May 2022, available at: <https://bit.ly/3bxEq3>.

⁸⁰⁶ Europapress, 'ONG defensoras de derechos de migrantes piden a CIE de toda España "buenas prácticas" como las acordadas en el de Aluche', 17 May 2022, available at: <https://bit.ly/3zVNALg>.

⁸⁰⁷ El Diario, 'Migrantes con órdenes de devolución 'caducadas' son retenidos en el CIE de Gran Canaria para su expulsión', 9 May 2022, available at: <https://bit.ly/3Q19cSG>.

- In its 2021 Annual Report, the Spanish Ombudsman⁸⁰⁸ recommended to the Directorate-General of the National Police to provide appropriate instructions to CIEs so that they would facilitate certain data to the Ombudsman's office. In particular, the age of migrants detained at CIEs, the duration of their stay, and the identity of the asylum applicants, both of those applying for international protection while in detention and of those inappropriately detained for not being able to demonstrate their condition of asylum seekers.
- The *Asociación Pro Derechos Humanos de Andalucía (APDHA)* questioned the necessity of the existence of the CIE of Algeciras and the construction of a new facility, also considering that just eight expulsions were carried out from the centre in 2021.⁸⁰⁹
- In view of the regional elections in the Autonomous Community of Andalucía, the organisation *Andalucía Acoge* presented a 10-points policy proposal, which includes the closure of the CIEs and to block the construction of the new facility in Algeciras.⁸¹⁰
- In a report on the human rights violations of migrants in the **Canary Islands** published by the NGO *Irídia* on May 2022, the organisation denounced the practice of carrying out police raids based on ethnical profile against migrants.⁸¹¹
- The Jesuit Migrant Service defined the CIEs as 'hostile territory' in its 2021 annual report on CIEs, and asked for their definitive closure.⁸¹²
- In June 2022, the campaign 'CIEsNO' organised a protest in front of the CIE of **Algeciras**, ; one of the main objectives of the demonstration was to oppose the construction of a new CIE in the city, with a very high cost (which might be of around 26 million Euros).⁸¹³ It is worth to recall that in October 2020, the Government announced the construction of a new CIE in Algeciras with a capacity of 500 places, and the plan of opening it in 2022. The facility is still under construction at the time of writing, and the date of its opening is still not known.⁸¹⁴
- In September, the organisations *Caminando Fronteras* and *Coordinadora de Barrios* denounced that the Government had deported an Ivorian young migrant from the **Canary Islands** to Morocco, despite a judicial order had suspended his deportation.⁸¹⁵
- In October, the works to restructure the CIE in **Murcia** finished. The facility, after its closure in July 2021, was still not reopened at the time of writing of this report. The works aimed at improving security aspects, but also certain elements for ameliorating the living conditions of inmates, such as a prayer room, a laundry, a night living room, etc.⁸¹⁶
- In October the Government announced it would allocate 11 million Euros for the construction of the new CIE in Algeciras.⁸¹⁷
- In the same month, the Unified Association of Civil Guards (*Asociación Unificada de Guardias Civiles - AUGC*) requested the Government to authorise the construction of a CIE in Almería, as

⁸⁰⁸ Defensor del Pueblo, *Informe Anual 2021 – Mecanismo Nacional de Prevención*, May 2022, p. 66, available at: <https://bit.ly/3SnRdan>.

⁸⁰⁹ Asociación Pro Derechos Humanos de Andalucía (APDHA), 'APDHA Campo de Gibraltar cuestiona la necesidad del CIE, que el pasado año expulsó a ocho personas', 17 May 2022, available at: <https://bit.ly/3ORLwyl>.

⁸¹⁰ Europapress, 'Iniciativas sobre asentamientos, un Plan de Acogida Autonómico y cierre de los CIE, propuestas de Andalucía Acoge el 19J', 23 May 2022, available at: <https://bit.ly/3vB5ozs>; Andalucía Acoge, 'Propuestas políticas. Elecciones Autonómicas Andalucía 2022', 23 May 2022, available at: <https://bit.ly/3d3t60l>.

⁸¹¹ Irídia, 'Nuevas vulneraciones de derechos humanos a las personas migrantes en Canarias', May 2022, available at: <https://bit.ly/3bOrUy1>.

⁸¹² Europapress, 'El Servicio Jesuita a Migrantes denuncia que los CIE son "territorio hostil" y pide su "cierre definitivo"', 6 June 2022, available at: <https://bit.ly/3vBMjx3>.

⁸¹³ Andalucía Información, 'CIEs no' convoca para este sábado una concentración contra el CIE de Algeciras', 3 June 2022, available at: <https://bit.ly/3SjXCDE>.

⁸¹⁴ Diario Area, 'Así están las obras del nuevo CIE de Algeciras, que acogerá a 500 inmigrantes', 15 March 2023, available at: <https://bit.ly/3FrJEL4>.

⁸¹⁵ Público, 'El Gobierno deporta de Canarias a Marruecos a un migrante marfileño pese a una orden judicial que lo impedía', 9 September 2022, available at: <https://bit.ly/3kP8c9D>; El Diario, 'Dos organizaciones denuncian la deportación de un marfileño a Marruecos desde Gran Canaria', 9 September 2022, available at: <https://bit.ly/3H96ojb>.

⁸¹⁶ La Opinión de Murcia, 'Concluyen las obras del CIE de Murcia: tendrá un salón comunitario, una sala de rezos, aseos en las celdas...', 23 October 2022, available at: <https://bit.ly/3u5UUqy>.

⁸¹⁷ 8 Directo, 'El Gobierno destina 112 millones de los Presupuestos Generales al tramo Algeciras-Bobadilla', 6 October 2022, available at: <https://bit.ly/3HguPgl>.

well as to provide additional support to the Armed Forces due to the increase in migrants' arrivals.⁸¹⁸

- In occasion of the World Migrants Day on 18 December, a demonstration to call for the closure of the CIE in Algeciras was organised by the Coordinator of the CIEsNo campaign of Cádiz.⁸¹⁹
- Following a Parliament request made by the member of the Parliament Jon Iñarritu and a request made by the newspaper 'Newtral' to the Transparency Portal, during 16 years (from 2006 to 2022) a total of 9 persons died in CIEs. The majority (44%) committed suicide, while 36% deaths were caused by health reasons. The majority of deaths occurred at the CIEs of Barcelona and Valencia.⁸²⁰
- In January 2023, the reform of the Madrid CIE started, with an estimate budget of more than 800,000 Euros.⁸²¹ After the closure of the facility, inmates have been transferred to another CIE, returned to their countries of origin or freed.⁸²²
- During the same month, 21 out of the 22 migrants who fled from an airplane in Palma de Mallorca in November 2021 after the plane carried out an emergency landing in the island for an alleged medical urgency, will be transferred to the CIE of Barcelona. This is due to the decision taken by the Provincial Court of Baleares which ruled they should be freed after the reform of the crime of sedition.⁸²³ The migrant who faked the medical urgency was instead freed, as his deportation to Morocco cannot be carried out as he was charged with the crime of smuggling and is waiting for the result of the criminal proceeding.⁸²⁴ At least three among them applied for asylum at the CIE, alleging the risk of persecution (for political reasons and for sexual orientation) if returned to Morocco.⁸²⁵
- In February 2023, the unit for women at the CIE of **Barcelona** was opened despite the lack of prior announcements. Twelve women, coming from different parts of Spain, were detained in it at the time of its opening. More than 100 organisations denounced the lack of transparency regarding such an opening and asked for its closure.⁸²⁶
- During the same month, the General Council of Judiciary Power (*Consejo General del Poder Judicial – CGPJ*) in plenary endorsed unanimously the protocol for the forensic medical examination to be applied to persons in prison, as well as to persons detained at CIEs.⁸²⁷
- The right-wing party registered a law proposal at the Congress which aims at prohibiting the right to apply for asylum at the CIE.⁸²⁸
- In March 2023, the Platform *CIEsNO* denounced that a young Moroccan guy, who had been under the guardianship of the Autonomous Community of Madrid while underage, has been detained during 1 month at the CIE of Valencia, despite the High Court of Madrid (*Tribunal*

⁸¹⁸ ABC de Andalucía, 'Guardias civiles piden un CIE y el apoyo de las Fuerzas Armadas ante la llegada masiva de inmigrantes', 6 October 2022, available at: <https://bit.ly/3F3K1dP>.

⁸¹⁹ Europa Sur, 'Nueva concentración para pedir el cierre del Centro de Internamiento de Extranjeros de Algeciras', 17 December 2022, available at: <https://bit.ly/3BMmXzu>.

⁸²⁰ Newtral, 'Nueve personas han muerto en los Centros de Internamiento de Extranjeros (CIE) desde 2006 y cuatro de ellos por suicidio', 30 December 2022, available at: <https://bit.ly/3CTqjKW>.

⁸²¹ El Español, 'Interior gastará más de 800.000 € en remodelar el CIE de Madrid que Podemos pide cerrar', 5 January 2023, available at: <https://bit.ly/3Wg0mT9>.

⁸²² Tele Madrid, 'Cierra el centro de extranjería de Aluche cinco meses por obras', 17 January 2023, available at: <https://bit.ly/3XJDi0y>.

⁸²³ Europa Press, 'Los migrantes huidos de un avión en Palma serán trasladados este miércoles a un CIE de Barcelona', 18 January 2023, available at: <https://bit.ly/3GViaxc>.

⁸²⁴ Europa Press, 'El migrante que provocó la huida de otros 21 de un avión en Palma queda en libertad al no poder ser expulsado del país', 18.1.2023, available at: <https://bit.ly/3HdJaJM>.

⁸²⁵ Diario de Mallorca, 'Varios migrantes del avión patera de Son Sant Joan piden en el CIE asilo político en España', 21 January 2023, available at: <https://bit.ly/3WuE6Fi>.

⁸²⁶ Público, 'Denuncian la apertura por sorpresa del módulo de mujeres del CIE de Barcelona', 21 February 2023, available at: <https://bit.ly/3Kzohe8>.

⁸²⁷ La Vanguardia, 'El CGPJ pide aplicar el protocolo forense a los detenidos en prisiones y CIE', 23 February 2023, available at: <https://bit.ly/3INWUvA>.

⁸²⁸ Europa Press, 'Vox quiere prohibir que las solicitudes de protección o asilo se puedan pedir desde los CIE', 17 February 23, available at: <https://bit.ly/3Kuc986>.

Superior de Justicia de Madrid) had suspended his deportation.⁸²⁹ The political party *Unidas Podemos* denounced the issue at the Congress.⁸³⁰

- During the same month, the campaign *CIEsNO* denounced the risk for a homosexual guy from Kosovo detained at the CIE of Valencia to be subjected to degrading and inhuman treatment if deported to Serbia.⁸³¹ The man is detained despite he applied for international protection and is waiting for a decision on the claim.⁸³²

In its 2022 annual report, the Spanish Ombudsperson continued to express concern over the conditions at CIEs, especially in relation to the access of inmates to health assistance and to the access to complaint mechanisms for mistreatments.⁸³³

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.⁸³⁴ According to the Jesuit Migrant Service, only 17% of migrants detained at CIEs for irregular stay were returned to their countries in 2021, and more than one third of those detained had to be released from detention.⁸³⁵

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 2,714 persons applied at a border post or transit zone in 2022.⁸³⁶

In October 2022, the Constitutional Court upheld the appeal lodged by a Moroccan migrant who arrived in the Canary Islands in December 2020; the Court established that his fundamental rights had been violated by the Police and the Instruction judge nº 5 of Las Palmas de Gran Canaria, which did not grant him access to legal assistance while in the return procedure.⁸³⁷

A report published by *Migra Studium* in December 2022 denounced the lack of transparency and hostile environment at the CIE of Barcelona, as well as the difficulties for inmates in receiving visits by NGOs and family members.⁸³⁸ Similarly, the 2022 annual report on the situation of CIEs elaborated by the Jesuit Migrant Service denounced that they are unfair and hostile structures, and it called once again for their closure.⁸³⁹

⁸²⁹ Público, ‘Encierran un mes en el CIE de València a un joven marroquí extutelado a pesar de que un juez suspendió su expulsión’, 9 March 2023, available at: <https://bit.ly/3ZZ3QM3>; Europa Press, ‘CIEs NO denuncia el encierro durante un mes en Zapadores de un joven extutelado que tenía suspendida la expulsión’, 8 March 2023, available at: <https://bit.ly/3ZYINdl>.

⁸³⁰ La Vanguardia, ‘Unidas Podemos denuncia en el Congreso el caso del joven extutelado que estuvo un mes encerrado en el CIE de Zapadores’, 9 March 2023, available at: <https://bit.ly/3yFofdJ>.

⁸³¹ El Diario, ‘Un homosexual kosovar encerrado en el CIE de Valencia, en riesgo de “tratos inhumanos” si es deportado a Serbia’, 15 March 2023, available at: <https://bit.ly/3ThiCML>.

⁸³² Levante, ‘Ordenan la expulsión a un solicitante de asilo por su orientación sexual que no puede regresar a Kosovo’, 15 March 2023, available at: <https://bit.ly/3YMVlxf>.

⁸³³ Defensor del Pueblo, ‘Informe anual 2022 – Volumen I’, March 2023, available at: <https://bit.ly/3U9Dvt8>.

⁸³⁴ 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>.

⁸³⁵ Servicio Jesuita a Migrantes, ‘Informe CIE 2021. Territorio hostil. Formas diversas de hostilidad en los CIEs. Anexo de cifras’, October 2022, available at: <https://bit.ly/41jw6Ka>, 10-11.

⁸³⁶ 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 2022’, available in Spanish at: <https://bit.ly/3ISCP1i>.

⁸³⁷ El País, ‘El Constitucional ampara a un inmigrante que iba a ser devuelto a Marruecos sin la asistencia de un abogado’, 6 October 2022, available at: <https://bit.ly/3VongRU>; Epe, ‘El Constitucional recrimina a la Policía y un juzgado que vulneraran los derechos de un migrante’, 24 October 2022, available at: <https://bit.ly/3iDN1Gk>.

⁸³⁸ Migra Studium, ‘Opaci(e)tat. Què hi està passant’. Informe CIE 2021. Centre d’Internament d’Etrangers – Zona Franca’, December 2022, available at: <https://bit.ly/3Ywsp3b>.

⁸³⁹ Servicio Jesuita a Migrantes, ‘Informe CIE 2021. Territorio hostil. Formas diversas de hostilidad en los CIE’, September 2022, available at: <https://bit.ly/3PALHR0>; Huffington Post, ‘Radiografía de los CIE: escándalos, arbitrariedad y la negativa de la Policía a investigar’, 25 September 2022, available at: <https://bit.ly/3BOfosa>.

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;⁸⁴⁰
- (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;⁸⁴¹
- (3) When a notification for expulsion has been issued and the non-national fails to depart from the country within the prescribed time limit.⁸⁴²

In its 2021 Annual Report, the Spanish Ombudsman, in its capacity as National Prevention Mechanism against Torture, continued to highlight the necessity to shut down permanently the CIEs and to express concerns about the presence of unaccompanied migrant children not identified as minors in such facilities, and the ill-treatment and harassment to inmates at the CIE of Madrid.⁸⁴³

The Jesuit Refugee Service also underlined, in its 2022 Annual Report on the situation of CIEs, several elements which need to be significantly improved to ensure adequate conditions and guarantee the rights of detainees. Issues reported included the challenges experienced in reporting and investigating cases of aggression and mistreatment by the police, shortcomings in relation to medical assistance and obstacles for NGOs to visit inmates.⁸⁴⁴

Asylum seekers are not detained during the Dublin procedure. It should be recalled that Spain initiates very few Dublin procedures (see [Dublin](#)).

Where persons apply for asylum from CIE before their expulsion, or from penitentiary centres, they will also remain detained pending the asylum decision. If the application is admitted to in-merit proceedings, the asylum claim will be examined under the urgent procedure, for which the notification decision must be made within 3 months.

⁸⁴⁰ Articles 53-54 Aliens Act.

⁸⁴¹ Article 58(6) Aliens Act.

⁸⁴² Article 63(1)(a) Aliens Act.

⁸⁴³ Defensor del Pueblo, 'Informe anual 2020. Mecanismo Nacional de Prevención', June 2021, available at: <https://bit.ly/3IDpFZj>.

⁸⁴⁴ Servicio Jesuita a Migrantes, 'Informe CIE 2021. Territorio hostil. Formas diversas de hostilidad en los CIE', May 2022, available at: <https://bit.ly/3GhWNH0>.

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.⁸⁴⁵ 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](#)).

In its 2022 Annual Report, the Spanish Ombudsman, in its capacity as National Prevention Mechanism against Torture, denounced some deficiencies of the *ad hoc* space at the Madrid Barajas Airport, in terms of, *inter alia*, lack of maintenance and hygiene of the infrastructure, absence of natural light, lack of access to public telephones, the impossibility to change money and buy products to the automatic dispenser, etc.⁸⁴⁶

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,⁸⁴⁷ 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.⁸⁴⁸

Throughout 2020, many stakeholders called on the Government for the implementation of alternatives to migration detention, in particular following the closure of CIEs from March to September 2020 due to the

⁸⁴⁵ Article 22 Asylum Act.

⁸⁴⁶ Defensor del Pueblo, 'Informe anual 2022 – Anexo A - Informe Completo del Mecanismo Nacional De Prevención (MNP)', March 2023, available at: <https://bit.ly/439Ydgl>.

⁸⁴⁷ Article 61 Aliens Act.

⁸⁴⁸ Global Detention Project, *Country report Spain*, May 2020, available at: <https://bit.ly/3sruJaU>.

COVID-19 outbreak in Spain.⁸⁴⁹ 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.⁸⁵⁰

The same calls were made in 2021. In March, the Coordinator of the Platform “CIEs NO” called for the closure of the CIE in Algeciras, remarking that the closure of such facilities during the first phase of the pandemic did not produce any disorder nor relevant issue hindering social coexistence.⁸⁵¹ In a roundtable organised by the Jesuit Migrant Service in April 2021, the organisation stated that the programs funded by the public administration and run by NGOs are the real alternative to detention in Spain, as they demonstrated during the COVID-19 pandemic, when the CIEs were closed and migrants were referred to such programs.⁸⁵² The annual report on detention published by the Jesuit Migrants Service also highlights that the existence of CIEs is not necessary, has shown by their 5 months-closure during the COVID-19 pandemic.⁸⁵³ In the CEAR annual report on 2022, the organisation called for the use of alternative measures to detention as foreseen in the Immigration Law.⁸⁵⁴

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,⁸⁵⁵ but the Aliens Act foresees the possibility of detaining families with children.⁸⁵⁶

Although detention of asylum seekers or vulnerable categories is not explicitly allowed by law, in practice several exceptions have been reported concerning unaccompanied children and victims of trafficking. This is due to the lack of identification of the minor age of the person, or of his or her status of victim of trafficking. For example, according to the annual report issued by the Ombudsman in its capacity of National Prevention of Torture Mechanism, 11 persons were identified as minors at CIEs in 2021, the highest number being detained in the CIEs of Algeciras and Tenerife.⁸⁵⁷ In its 2022 report on CIEs, the Jesuit Refugee Service highlighted the persistent problem of a lack of identification of unaccompanied

⁸⁴⁹ 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>.

⁸⁵⁰ 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>, 26.

⁸⁵¹ Europa Sur, ‘La Coordinadora CIEs No exige una vez más el cierre del centro de Algeciras’, 27 March 2021, available at: <https://bit.ly/3DjVYZW>.

⁸⁵² Cope, ‘El Servicio Jesuita a Migrantes defiende los programas de ayuda humanitaria como alternativa a los CIE’, 14 April 2021, available at: <https://bit.ly/3sRBRi2>.

⁸⁵³ Info Libre, ‘La pandemia pone en evidencia el modelo de los CIE: estuvieron cerrados cinco meses y “España sobrevivió”’, 4 June 2021, available at: <https://bit.ly/3GlfvPv>; Servicio Jesuita a Migrantes, ‘Informe CIE 2020 «Razón jurídica y sinrazón política»’, 4 June 2021, available at: <https://bit.ly/3IGzA74>; Público, ‘Es posible vivir sin CIE’, 17 June 2021, available at: <https://bit.ly/3JJZxCW>.

⁸⁵⁴ CEAR, ‘INFORME 2022: Las personas refugiadas en España y Europa’, June 2022, available at: <https://bit.ly/410xT6P>, 136.

⁸⁵⁵ Article 62(4) Aliens Act.

⁸⁵⁶ 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.

⁸⁵⁷ Mecanismo Nacional de Prevención de la Tortura, Defensor del Pueblo, ‘Informe Anual 2021. Anexo B - Datos estadísticos de interés para la privación de libertad de media duración. Centros de internamiento de extranjeros (CIE)’, May 2022, available at: <https://bit.ly/3QhWHSu>.

children when already detained at CIEs, and informed that 38 age assessment procedures were carried out, being 11 the persons that were finally identified as minor and thus released.⁸⁵⁸

Nonetheless, when they are identified as minors or victims of trafficking while they are in detention, they are released and handled to the competent protection systems. In addition, applicants such as pregnant women or persons requiring assistance may be exempted from the border procedure and admitted to the territory in specific cases.

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | |
| ❖ CIE | 60 days |
| ❖ Border detention facilities | 8 days |
| 2. In practice, how long in average are asylum seekers detained? | Not available |

The maximum detention period that a person can stay in a CIE is 60 days, after which he or she must be released.⁸⁵⁹ 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 its 2022 annual report, the Jesuit Migrant Service indicated that in 2021, the average duration of detention was of 28.5 days; the duration at the CIE in Las Palmas was shorter (16.41 days), as more returns have been carried out - especially to Morocco - from the facility.⁸⁶⁰

The maximum duration of persons' *de facto* detention and their obligation to remain in border facilities is 8 days. When this time limit is not respected, the applicant is usually admitted to territory, and will continue his or her asylum claim through the regular procedure.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- | | | |
|--|------------------------------|--|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | ☐ Yes | ☒ No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | ☐ Yes | ☒ No |

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).⁸⁶¹ These facilities are located in **Madrid, Barcelona, Valencia, Murcia, Algeciras / Tarifa – Las Palmas, Barranquillo – 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 centre, even though no individual was detained in the facility

⁸⁵⁸ Servicio Jesuita a Migrantes, 'Informe CIE 2021. Territorio hostil. Formas diversas de hostilidad en los CIEs. Anexo de cifras', May 2022, available at: <https://bit.ly/41h2LzR>.

⁸⁵⁹ Article 62(2) Aliens Act.

⁸⁶⁰ Servicio Jesuita a Migrantes, 'Informe CIE 2021. Territorio hostil. Formas diversas de hostilidad en los CIEs. Anexo de cifras', May 2022, available at: <https://bit.ly/41h2LzR>.

⁸⁶¹ 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.

since May 2012.⁸⁶² Taking into consideration the high costs and the fact that it remained empty for 6 years, the CIE was closed in June 2018.⁸⁶³ However, as previously mentioned, the CIE of **Gran Canaria** was partially reopened in November 2019, and in November 2021 it was announced that the CIE of **Fuerteventura** would be reopened part as a CIE and part as a CATE after being used as a reception centre for migrants under the humanitarian programme from February to November 2021.⁸⁶⁴ The works for the partial reform of the facility as CIE are still ongoing at the time of writing.⁸⁶⁵

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 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.⁸⁶⁶

After the closure of the Arguineguín dock, which was used as the first place for reception of migrants reaching the Canary Islands, the CATE of Barranco Seco was opened. In its 2022 annual report, the Public Prosecutor office noted that some improvements could be observed in the conditions of the facility. On the contrary, in relation to the CATE of Lanzarote, the Public Prosecutor highlighted various shortcomings, especially for what concerned risks for the health of the individuals it hosted and general unpreparedness to host individuals.⁸⁶⁷

In its 2022 annual report, the Spanish Ombudsman reported that improvements were made for what concerned the detention conditions of persons arriving by sea to the Canary Islands, especially at the CATE of Barranco Seco,⁸⁶⁸ and made similar observations concerning the CATEs of Almería, Motril (Granada), Málaga and Cartagena (Murcia).⁸⁶⁹ It also remarked that the State Secretary for Security started developing an action protocol - targeting law enforcement agencies - dedicated to pregnant women and other persons in need of specific protection in detention. Information on observations and recommendations made by the institution to the CATEs are mentioned in the section on [Arrivals by sea](#).

UNHCR continued to highlight the need to improve the mechanisms at the CATEs, with the aim of ensuring the possibility for persons in need of protection to apply for asylum during their initial 72 hours in the country, which has so far been hindered.⁸⁷⁰

⁸⁶² 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>.

⁸⁶³ 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>.

⁸⁶⁴ Radio sintonía, 'Cierra el antiguo CIE de El Matorral', 25 November 2021, available at: <https://bit.ly/3EnXFXy>; Diario Fuerteventura, 'El campamento de inmigrantes de El Matorral cerrará a finales de noviembre', 26 November 2021, available at: <https://bit.ly/3EpgpGg>.

⁸⁶⁵ Servicio Jesuíta a Migrantes, 'Informe CIE 2021. Territorio hostil. Formas diversas de hostilidad en los CIEs. Anexo de cifras', May 2022, available at: <https://bit.ly/41h2LzR>.

⁸⁶⁶ Defensor del Pueblo, 'Informe anual 2019. Mecanismo Nacional de Prevención', October 2020, available at: <https://bit.ly/3p6qWxH>, 66.'

⁸⁶⁷ Fiscalía General del Estado, 'Memoria del Ministerio Fiscal de 2022 – Ejercicio 2021', September 2022, available at: <https://bit.ly/3ZVS98s>.

⁸⁶⁸ Defensor del Pueblo, 'Informe anual 2022. Volumen I', March 2023, available at: <https://bit.ly/3nYguNZ>.

⁸⁶⁹ Ibidem.

⁸⁷⁰ US Department of State, '2022 Country Reports on Human Rights Practices: Spain', 20 March 2023, available at: <https://bit.ly/3mpsNCl>.

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.⁸⁷¹

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**.⁸⁷² These rooms are owned by the public company AENA and are guarded by agents of the National Police.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | ☒ Yes | ☐ No |
| ❖ If yes, is it limited to emergency health care? | ☐ Yes | ☒ No |

2.1. Conditions in CIE

According to Article 62-bis of the Aliens Act, CIEs are public establishments of a non-penitentiary nature. Admission to and stay in these facilities shall be solely for preventive and precautionary purposes, safeguarding the rights and freedoms recognised in the legal system, with no limitations other than those applying to their freedom of movement, in accordance with the content and purpose of the judicial detention order of admission.

Article 62-bis of the Aliens Act further entails a list of rights recognised to the detained individuals. This includes the right to be informed and to have access to a lawyer, to an interpreter, to appropriate medical and health support as well as access to NGOs working with migrants. They also have the right to have their life, physical integrity and health respected, and to have their dignity and privacy preserved. The conditions for the access to NGOs as well as the access to adequate social and health care services must be laid down by way of regulation.

The CIE Regulation,⁸⁷³ 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,⁸⁷⁴ and by several organisations of the third sector, academic institutions⁸⁷⁵ and media. In addition, valuable information is

⁸⁷¹ Information provided by OAR, 8 March 2019.

⁸⁷² Ombudsman, *Mapa de los centros de privación de libertad*, 5 February 2018, available in Spanish at: <http://bit.ly/2EDjc30>.

⁸⁷³ 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.

⁸⁷⁴ See e.g. <http://bit.ly/1MgSHz2>.

⁸⁷⁵ Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018, 8.

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.⁸⁷⁶

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 2022 due to several incidents that took place throughout the year. The section below provides an overview of incidents recently reported in the CIEs between 2022 and the beginning of 2023.

Various issues emerged regarding the conditions in CIEs due to the Covid pandemic: for more information see AIDA reports [2020](#) and [2021](#).

Throughout 2022 and at the beginning of 2023, the following developments and incidents were registered:

- In January 2022, inmates at the CIE of **Valencia** denounced the lack of appropriate prevention and isolation measures in the facility, after one third of the 99 detainees resulted positive to COVID-19.⁸⁷⁷ The Platform *CIEs NO* denounced that the centre's director had not notified the situation to the Public Health System.⁸⁷⁸
- In the same month, different organisations informed the Supervising Judge of the improper management of a COVID-19 outbreak at the CIE of **Barcelona**, due to the lack of proper measures to isolate infected persons, what has also caused situations of conflict and tension in the facility.⁸⁷⁹
- In January 2022, an Algerian man escaped from the CIE of **Valencia** by climbing a wall and stole a bicycle to run away.⁸⁸⁰
- In February 2022, the UN Committee on the Rights of the Child asked the Government to release an Algerian 16-years-old boy detained at the CIE of **Algeciras**, stop his deportation and refer him to a minor protection centre.⁸⁸¹ Despite that, in March he was still held in the facility.⁸⁸²
- In March 2022, the Algerian former soldier and activist Mohamed Benhlime was detained in the CIE of **Valencia** and then deported to Algeria after his asylum application was denied, despite the calls by the CIEsNO campaign and by Amnesty International to avoid his deportation, for being at risk of inhumane treatment and torture in his country of origin.⁸⁸³

⁸⁷⁶ El País, 'El Supremo anula cuatro artículos de la norma de los Centros de Inetnamiento', 27 January 2015, available at: <http://bit.ly/1uAbrvf>.

⁸⁷⁷ El Salto Diario, 'El CIE de Zapadores de València, sin capacidad para aislar a los contagiados, registra 20 casos de covid entre los internos', 11 January 2022, available at: <https://bit.ly/34GskCt>; Levante, 'Un brote de covid afecta a un tercio de los 99 internos del CIE de Zapadores de València', 11 January 2022, available at: <https://bit.ly/3I45Qts>; Cadena Ser, 'La campaña CIEs NO denuncia la falta de medidas de prevención y aislamiento en el CIE de Zapadores', 10 January 2022, available at: <https://bit.ly/3zVQWTe>.

⁸⁷⁸ Levante, 'El CIE de Zapadores no notificó los contagios en el interior del centro a Salud Pública', 14 January 2022, available at: <https://bit.ly/33uh1gs>; El Salto Diario, 'CIEs No denuncia que la dirección de Zapadores en València no notificó los contagios de Covid a Salud Pública', 14 January 2022, available at: <https://bit.ly/3Acx66s>.

⁸⁷⁹ La Vanguardia, 'Una asociación denuncia la mala gestión de un brote de covid en el CIE de la Zona Franca', 26 January 2022, available at: <https://bit.ly/3SsjbC3>.

⁸⁸⁰ Las Provincias, 'Un joven argelino se fuga del CIE de Valencia tras trepar por un muro y robar una bicicleta', 15 January 2022, available at: <https://bit.ly/3KkvX1z>.

⁸⁸¹ Público, 'La ONU pide detener la expulsión de un menor internado el CIE de Algeciras pese a tener documentación que aclara su edad', 21 February 2022, available at: <https://bit.ly/3HicqvN>.

⁸⁸² Público, 'Un menor sigue en el CIE de Algeciras después de un mes y una resolución de la ONU que pide su puesta en libertad', 2 March 2022, available at: <https://bit.ly/370d84v>.

⁸⁸³ El Diario, 'El militar y activista argelino Mohamed Benhlime, encerrado en el CIE de Valencia y al borde de la deportación', 17 March 2022, available at: <https://bit.ly/3LiKryv>; Levante, 'CIEsNO pide a Interior

- During the same month, the campaign CIEsNO asked for the immediate release of all Algerian migrants detained at the CIE of **Algeciras**, considering that Algeria suspended indefinitely all the deportations to the country, as a consequence of the new political position of Spain regarding the Western Sahara. According to the CIEsNO campaign, as detention at the CIE is functional to carry out an expulsion, Algerian migrants have to be released for the impossibility to deport them to Algeria.⁸⁸⁴
- In April 2022, three NGOs denounced that Moroccan and Algerian migrants detained at the CIE of **Algeciras** had been lied to, and told they would obtain freedom if they renounced to their asylum application in writing. The case was brought to light after an activist from the Rif region (Morocco) started a 47-day hunger strike to protest against his expulsion, who was also misled in a similar fashion.⁸⁸⁵
- In mid-May 2022, a group of inmates tried to escape from the CIE of Barranco Seco in **Gran Canaria** but were stopped by the police. On the contrary, at the beginning of the same month a group of 20 migrants, who wanted to avoid expulsion, managed to escape. The police apprehended 11 of them, and 3 persons had to be referred to the hospital for the injuries provoked by jumping the facility's wall.⁸⁸⁶ A hunger strike of around 15 inmates was also reported as a form of protest for the lack of respect of their religious belief and the physical and psychological ill-treatment suffered at the facility.⁸⁸⁷
- In July 2022, an inmate at the CIE of **Valencia** denounced four police officers for beating him after he had asked for medical assistance.⁸⁸⁸ A witness confirmed the incident in court.⁸⁸⁹
- During the same month, four Moroccan inmates escaped from the same centre by breaking the bars and using bed sheets as cords.⁸⁹⁰ In addition, the campaign 'CIEsNO' exposed the National Police at the Instruction Judge nº 3 of Valencia for spying on the inmates and thus for violating their right to privacy while receiving visits.⁸⁹¹ In September 2022, detainees at the CIE of Zapadores in **Valencia** started a hunger strike to protest against the quality of food (including due to the presence of worms in the food served) and lack of drinkable water at the facility.⁸⁹² After said protests, the Office for Public Health decided to carry out an inspection on food security at the facility.⁸⁹³
- In the same month, an inmate at the CIE of **Valencia** alleged having been assaulted and beat by four police officers after complaining for a toothache.⁸⁹⁴

que paralice la expulsión de un activista argelino que denunció la corrupción de su país', 17 March 2022, available at: <https://bit.ly/387wENO>; El Diario, 'El Gobierno deniega la protección internacional al activista y exmilitar argelino encerrado en el CIE de Valencia', 22 March 2022, available at: <https://bit.ly/3IL5F6x>; La Opinión de Murcia, 'España deporta a Argelia al activista Mohamed Benhalima', 25 March 2022, available at: <https://bit.ly/3LmBowE>.

⁸⁸⁴ Cadena Ser, 'CIEs No solicita la inmediata puesta en libertad de los argelinos internos en Algeciras', 31 March 2022, available at: <https://bit.ly/3Q4o7vf>.

⁸⁸⁵ El Diario, 'Tres ONGs denuncian "chantajes" en el CIE de Algeciras a marroquíes y argelinos: libertad por renunciar al asilo', 15 April 2022, available at: <https://bit.ly/3BN8tQD>.

⁸⁸⁶ El Diario, 'La Policía Nacional frustra un nuevo intento de fuga en el CIE de Gran Canaria', 19 May 2022, available at: <https://bit.ly/3vASNw1>.

⁸⁸⁷ Radio Televisión canaria (RTVC), 'Somos Red informa de una huelga de hambre en el CIE de Barranco Seco por el trato a un grupo de migrantes', 2 May 2022, available at: <https://bit.ly/3PY7UHT>.

⁸⁸⁸ El Salto Diario, 'Un interno del CIE Zapadores denuncia a cuatro policías por darle una paliza al pedir asistencia médica', 28 July 2022, available at: <https://bit.ly/3cVmktQ>.

⁸⁸⁹ El Diario, 'Un testigo corrobora ante el juez que cuatro policías apalizaron a un interno en el CIE de València que se quejó de un dolor de muelas', 11 August 2022, available at: <https://bit.ly/3QCjgZ>.

⁸⁹⁰ La Provincias, 'Cuatro internos se fugan del CIE de Valencia tras romper un barrote y hacer una cuerda con sábanas', 21 July 2022, available at: <https://bit.ly/3bsE9jG>.

⁸⁹¹ Cadena Ser, 'La campaña 'CIE's No' denuncia a la Policía Nacional por espionaje en el CIE de València', 20 July 2022, available at: <https://bit.ly/3OSAut3>.

⁸⁹² Levante – El Mercantil Valenciano, 'Los internos del CIE de Zapadores se declaran en huelga de hambre', 8 September 2022, available at: <https://bit.ly/3B3ngEP>; Levante – El Mercantil Valenciano, 'Comida en mal estado en el CIE de Zapadores', 8 September 2022, available at: <https://bit.ly/3Rz7fNS>; El Diario, 'Huelga de hambre de internos del CIE de Zapadores por gusanos en la comida y falta de agua durante las olas de calor', 9 September 2022, available at: <https://bit.ly/3HaaalX>.

⁸⁹³ 20 minutos, 'Salud Pública envía inspección al CIE de Zapadores ante la huelga de hambre de internos al hallar gusanos en la comida', 9 September 2022, available at: <https://bit.ly/3wDklAN>.

⁸⁹⁴ El Diario, 'Segunda denuncia en poco más de un mes por agresión de cuatro policías a internos del CIE de València', 14 September 2022, available at: <https://bit.ly/3R3WkfG>.

- In October 2022, a senator of the political party *Compromís* declared that the Government had not adopted appropriate measures following the beating of an inmate at the CIE of Zapadores (**Valencia**) by four police officers. The Government answered to the parliamentary questions presented by the senator affirming that supervising judges have competence to investigate such matters.⁸⁹⁵
- In November 2022, the Minister of Interior expelled two Islamic activists, Mohamed Said Badaoui and Amarouch Azbir, after detaining them at the CIE of **Barcelona**⁸⁹⁶ for allegedly carrying out pro-jihadist activities, without sufficient evidence, according to some sources. The activists were legally residing in Cataluña for 30 and 20 years respectively.⁸⁹⁷
- In December 2022, the family of a Moroccan inmate who died while detained in the CIE of Valencia in 2019 accused the Government for his death; while according to prison authorities he committed suicide, the family alleged suffered violence and could not access medical assistance while in detention.⁸⁹⁸
- In February 2023 the supervising judge of the CIE of **Valencia**, following the reports made by NGOs on the lack of privacy of inmates during the meetings with the same organisations, and on the spying of conversations by the police.⁸⁹⁹

Information on the conditions within detention centres is available in the reports from the CIE visits conducted by the Spanish Ombudsman, including those within its responsibilities as National Prevention Mechanism against Torture. The findings, facts and recommendations concerning the CIE visited by the Ombudsman are available in the Annual Report of 2021, published in 2022,⁹⁰⁰ as well as in the report issued by the Spanish Ombudsman in his capacity of National Prevention Mechanism against Torture.⁹⁰¹

In its 2021 annual report, the Spanish Ombudsman in his capacity of National Prevention Mechanism against Torture informed that the Directorate-General of the National Police rejected the recommendation made by the body to adopt a protocol so submit and manage claims and reports of abuses and mistreatments by inmates at CIE.⁹⁰² As already mentioned, the supervising judges of the CIE of Madrid adopted a set of measures in 2022 providing for the obligation of the authorities in, establishing a protocol for the processing of claims and reports of mistreatments suffered by inmates, as well as the obligation to transfer the complainant at the supervising judge in order to guarantee his/her right to effective remedies.⁹⁰³ In its 2022 annual report, the Spanish Ombudsman acknowledges that such decisions are

⁸⁹⁵ El Diario, 'El Gobierno se desentiende de la agresión denunciada en el CIE de València: "Corresponde al juez visitar los centros"', 4 October 2022, available at: <https://bit.ly/3F65jrl>; La Razón, 'Compromís denuncia que el Gobierno no haya tomado medidas tras la paliza a un interno en el centro de Zapadores (Valencia)', 2 October 2022, available at: <https://bit.ly/3UwEX7q>.

⁸⁹⁶ El Salto Diario, 'El caso Badaoui agita el debate sobre la islamofobia de estado', 25 October 2022, available at: <https://bit.ly/3UiydtE>; ABC, 'Badaoui recurre su internamiento en el CIE por un informe policial «carente de fundamento»', 27 October 2022, available at: <https://bit.ly/3VxCrPe>; El País, 'En libertad el activista Amarouch Azbir, detenido por su radicalización y pendiente de expulsión', 22 October 2022, available at: <https://bit.ly/3VfdOas>; El Mundo, 'El juzgado ordena el internamiento en el CIE del extremista islámico arropado por el soberanismo', 21 October 2022, available at: <https://bit.ly/3in8dAj>.

⁸⁹⁷ El Día de Valladolid, 'Expulsado de España un líder islamista acusado de proyahadismo', 19 November 2022, available at: <https://bit.ly/3u4tl0z>; Público, 'Interior expulsa a Marruecos al activista musulmán Mohamed Badaoui, acusado sin pruebas de ser islamista radical', 19 November 2022, available at: <https://bit.ly/3GSTIE2>; Europa Press, 'Mohamed Said, el líder islámico de Reus, desde Casablanca: "Nos han expulsado en un avión solo para nosotros dos"', 20 November 2022, available at: <https://bit.ly/3UmdN3i>.

⁸⁹⁸ El Salto Diario, 'Khadija Abouobaida: "Lo que le pasó a mi hermano es responsabilidad del Estado"', 12 December 2022, available at: <https://bit.ly/3XFI8fE>.

⁸⁹⁹ El Diario, 'Un juez abre un expediente de control al CIE de Valencia por las denuncias de "espionaje" de las ONG', 14 February 2023, available at: <https://bit.ly/3xPQwhm>; Cadena Ser, 'Un juzgado de València pide al CIE de Zapadores que informe sobre un supuesto espionaje de policías a internos', 14 February 2023, available at: <https://bit.ly/3m5jK8Z>.

⁹⁰⁰ Defensor del Pueblo, 'Informe anual 2021 y debates en las Cortes Generales. Volumen I. Informe', March 2022, available at: <https://bit.ly/3d2UcVv>.

⁹⁰¹ Defensor del Pueblo, 'Informe Anual 2021 – Mecanismo Nacional de Prevención', May 2022, available at: <https://bit.ly/3SnRdan>.

⁹⁰² *Ibidem*, p. 68. El Salto Diario, 'La Policía se niega a regular un protocolo de quejas de malos tratos y torturas en los CIE', 13 September 2022, available at: <https://bit.ly/3WGCxEy>.

⁹⁰³ Público, 'Los jueces del CIE de Madrid acuerdan un protocolo para investigar las agresiones a internos', 18 May 2022, available at: <https://bit.ly/3GARw2i>.

in line with the recommendations made by the body in the past years and with the main claims it received in 2022.⁹⁰⁴

Moreover, the annual report of the Jesuit Migrants Service on CIEs in Spain provides relevant information on conditions and their situation, based on visits carried out by the organisation.⁹⁰⁵ In its 2022 report, the NGO continued to highlight the serious deficiencies of living conditions and the lack of guarantees within those facilities. Concretely, the organisation denounced the impact on the mental health of inmates due to prolonged isolation following COVID-19 contagion. It also highlighted the challenges that inmates faced in reporting ill-treatment by the police, among which isolation following the realisation of the report, presence of the police during the medical examinations, the speeding-up of the forced returns, harassments of complainants, etc. Visits to the CIE of Aluche in **Madrid** are regularly carried out by the organisation SOS Racismo, with the objective, among others, of providing legal and psychological support to detainees.⁹⁰⁶

Additionally, the annual report of the Public Prosecutor office informs about the conditions at the CIEs, in light of the visits that the institution carries out. According to the last report published, the Public Prosecutor informs about the unhealthy conditions of the CATE in **Lanzarote**.⁹⁰⁷

The Spanish Government admitted its responsibility for the death of Samba Martine, a migrant detained at the CIE of **Madrid** who died in 2011 for the first time in November 2020. The decision taken by the Government determined that the death was linked to the malfunctioning of the CIE of Madrid, the CETI of Melilla and the private company SERMEDES S.L. in charge of providing medical assistance at the CIE. After 8 years of litigation, the Ministry of Interior, the Ministry of Inclusion, Social Security and Migration, and SERMEDES S.L. accepted to compensate Samba Martine's family.⁹⁰⁸ No further information regarding whether the compensation was received by the family was actually made at the time of writing.

Activities, health care and special needs

The CIE Regulations governs the provision of services for sanitary assistance,⁹⁰⁹ 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.⁹¹⁰ 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 hours,⁹¹¹ and have access to open air spaces.⁹¹²

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.

⁹⁰⁴ Defensor del Pueblo, Informe Anual 2022 – Volumen I, March 2023, available at: <https://bit.ly/3ZZLB9d>, 168.

⁹⁰⁵ Servicio Jesuita a Migrantes, 'Informe CIE 2021 - Territorio hostil. Formas diversas de hostilidad en los CIEs', May 2022, available at: <https://bit.ly/3KPkfhu>.

⁹⁰⁶ SOS Racismo, see: <https://sosracismo.eu/sos-racismo-madrid/>.

⁹⁰⁷ Fiscalía General del Estado, 'Memoria del Ministerio Fiscal de 2022 – Ejercicio 2021', September 2022, available at: <https://bit.ly/3UsHocS>.

⁹⁰⁸ 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>.

⁹⁰⁹ Article 14 CIE Regulation.

⁹¹⁰ Articles 39-47 CIE Regulation.

⁹¹¹ Article 42 CIE Regulation.

⁹¹² Article 40 CIE Regulation.

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.

Concerning the situation in 2022, the Spanish Ombudsman recalled the necessity for the CIE of Madrid to ensure access to psychological support for inmates.⁹¹³ Similarly, in its 2022 annual report on the situation of CIEs, the Jesuit Migrant Service highlighted deficiencies in the provision of medical services, such as the fact that medical examinations were often carried out in the presence of police officials, the lack of mental health assistance, the isolation regime for COVID-19 cases, the lack of interpreters during medical assistance, etc.⁹¹⁴

In November 2022, the Supervising Judges of the CIE of Aluche (**Madrid**) agreed on a set of measures to improve the health assistance provided to inmates, such as allowing the use of the infirmary also during the night, the provision of psychological assistance and the digital health record. Such judicial decision obliges the Directorate-General of the Police, who oversees the CIE's management, to improve these aspects.⁹¹⁵

In September 2022, the Municipality and the Bar Association of Barcelona signed an agreement on the provision of legal assistance to inmates at the CIE of **Barcelona**.⁹¹⁶

2.2. Conditions in police stations

Migrants detained in police stations after arriving in Spain by sea face dire conditions.

During 2022, the Spanish Ombudsman, in its capacity as National Mechanism for Prevention of Torture, visited 4 CATEs and continued to call for the necessity to establish a regulation of such facilities. In addition, the body highlighted certain deficiencies of the facilities visited (i.e. lack of ventilation in the cells, of basic furniture, of curtain in the showers, etc.)⁹¹⁷

A thematic report published in May 2022 by the organisation *Irídia* expressed concerns about the conditions at the CATEs in the **Canary Islands** and the reiterated human rights violations occurring in such facilities.⁹¹⁸

2.3. Conditions in border facilities

Border facilities have been visited and monitored by the Spanish Ombudsman, also in its capacity as National Prevention Mechanism against Torture.

The situation of the “non-admission room” in **Madrid Barajas Airport** has raised serious concerns in recent years because of its deplorable conditions. Concerns continued to be raised in 2022 by Spanish

⁹¹³ Defensor del Pueblo, Informe Anual 2022 – Volumen I, March 2023, available at: <https://bit.ly/3ZZLB9d>.

⁹¹⁴ Servicio Jesuita a Migrantes, 'Informe CIE 2021 - Territorio hostil. Formas diversas de hostilidad en los CIEs', May 2022, available at: <https://bit.ly/3KPkfhU>.

⁹¹⁵ Europa Press, 'Jueces del CIE de Aluche requieren asistencia sanitaria 24h a internos, atención psicológica e historia clínica digital', 22 November 2022, available at: <https://bit.ly/3gHc7mZ>; La Vanguardia, 'Los jueces de control del CIE de Madrid piden subsanar sus "graves deficiencias sanitarias"', 22 November 2022, available at: <https://bit.ly/3UcTZiw>.

⁹¹⁶ Metropoli Abierta, 'Abogados de Barcelona darán orientación jurídica a los extranjeros del CIE', 16 September 2022, available at: <https://bit.ly/3R4WlUs>.

⁹¹⁷ Defensor del Pueblo, 'Informe anual 2022. Volumen I. Anexo A - Informe Completo del Mecanismo Nacional de Prevención (MNP)', March 2023, available in Spanish at: <https://bit.ly/3MAU4ww>.

⁹¹⁸ Irídia, 'Nuevas vulneraciones de derechos humanos a las personas migrantes en Canarias', May 2022, available at: <https://bit.ly/3UyKbBh>, January 2021, available in Spanish at: <https://bit.ly/3qxFIEp>.

Ombudsman in its capacity as National Prevention Mechanism against Torture, who underlined the deficiencies of the facility in terms of maintenance and hygiene, the lack of natural light, the lack of access to public phones, the lack of improvements in the conditions of stay, the impossibility to change money, the inexistence of a medical service, etc.⁹¹⁹

3. Access to detention facilities

Indicators: Conditions in Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|------------------------------|---|-----------------------------|
| ❖ Lawyers: | ☐ Yes | ☒ Limited | ☐ No |
| ❖ NGOs: | ☐ Yes | ☒ Limited | ☐ No |
| ❖ UNHCR: | ☐ Yes | ☒ Limited | ☐ No |
| ❖ Family members: | ☐ Yes | ☒ Limited | ☐ No |

Article 62-bis of the Aliens Act provides that civil society organisations defending migrants and international bodies can visit CIE under the conditions foreseen by way of regulation.

The seventh section of the CIE Regulation thus concerns participation and cooperation of NGOs. In particular, Article 58 foresees the possibility to contract NGOs for the provision of services of social assistance inside the centres. Following the adoption of the Regulation in 2014, a contract was signed in 2015 between the Spanish Red Cross and the Ministry of Interior. In 2022, the Spanish Red Cross continued to receive funding for the provision of assistance at the CIE.⁹²⁰ 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 are also allowed to contact an organisation they want to receive support from. Before the agreement, the CIE had a stronger penitentiary character and social assistance to detainees was significantly more limited.

These provisions were welcomed by Spanish civil society organisations committed to migrants' rights protection, as they enabled their regular access to the centres, which can make a significant difference in improving conditions of detention for third-country nationals. In particular, a better identification of the most vulnerable groups or persons with particular needs can be assured, as no specific mechanism with this aim has been established by the state.

In recent years, the Ombudsman reiterated several recommendations aimed at improving social, legal and cultural assistance in CIEs, as well as the necessity for a deeper reform of such facilities. In its 2022 Annual Report, the Ombudsman continued to express concerns on the health assistance provided to inmates at the CIEs.⁹²¹

The Jesuit Migrant Service denounced the same deficiencies, as well as the obstacles that inmates face in receiving visits by NGOs and family members.⁹²²

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | ☒ Yes | ☐ No |
| 2. If yes, at what interval is the detention order reviewed? | Ongoing | |

⁹¹⁹ Defensor del Pueblo, 'Informe anual 2022. Volumen I. Anexo A - Informe Completo del Mecanismo Nacional de Prevención (MNP)', March 2023, available in Spanish at: <https://bit.ly/3MAU4ww>.

⁹²⁰ Asociación Progestión, 'Programas asistenciales en CIEs', 26 December 2022, available at: <https://bit.ly/3o1whLN>.

⁹²¹ Defensor del Pueblo, Informe Anual 2022 – Volumen I, March 2023, available at: <https://bit.ly/3ZZLB9d>.

⁹²² Servicio Jesuita a Migrantes, 'Informe CIE 2021 - Territorio hostil. Formas diversas de hostilidad en los CIEs', May 2022, available at: <https://bit.ly/3KPkfhU>.

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 to impose detention by reasoned order, assessing the personal circumstances of the person and the lack of domicile or documentation, and the existence of previous convictions or administrative sanctions and other pending criminal proceedings or administrative proceedings.⁹²³

Against decisions on detention, the third-country national can lodge appeals of reform, appeal and complaint⁹²⁴ under the Criminal Procedure Act.⁹²⁵ Reform and appellation appeals will be lodged before the same judge of the Provincial Court (*Audiencia Provincial*) that issued the detention order. Conversely, the judicial appeal of complaint would be lodged before the competent High Court (*Tribunal Superior de Justicia*) within a 2-month time limit.

The judge responsible for monitoring the stay of foreigners in detention centres and in “areas of rejection at borders” will also be the first instance judge of the place they are located in. This judge takes decisions over requests and complaints raised by detainees where they affect their fundamental rights.⁹²⁶ These decisions may not be appealed. Persons in detention remain available for the judge or court that authorised or ordered the detention.⁹²⁷

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
☐ Yes ☒ No

Free legal assistance is provided by law to both detained persons and asylum seekers in general. Nonetheless, several obstacles faced by lawyers and interpreters to access the CIE have been reported. This is mainly due to shortcomings regarding social and legal assistance and difficulties in external communications as stated in the section regarding [Access to Detention Facilities](#).

The adoption of the CIE Regulation in 2014 has improved the situation, however, as it defines the rules and modalities for access of lawyers and NGOs into the centres. The provisions regarding the collaboration of NGOs in the provision of social and assistance (including legal) services inside the centres also goes in the same direction. In different parts of the territory, collaboration contracts have been issued for free legal assistance of detained persons with the Red Cross and the Spanish Bar Association.

The main reported criticisms on legal assistance and access to international protection for third-country nationals who have been issued a removal order (and wait for the procedure within detention) concern the lack of information on the asylum procedure at the time the person enters the centre, and the short 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

⁹²³ Article 62(1) Aliens Act.

⁹²⁴ Articles 216 and 219 Code of Criminal Procedure.

⁹²⁵ Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal.

⁹²⁶ Article 62(6) Aliens Act.

⁹²⁷ Article 60(3) Aliens Act.

persons detained in 2018, 2,801 (36%) were from **Morocco** and 2,511 (32%) from **Algeria**.⁹²⁸ More recent statistics were not available at the time of writing of this report. In its annual report on the situation of CIEs, the Migrant Jesuit Service continued to denounce the lack of transparency by the Government in publishing and providing statistics on immigration detention.⁹²⁹

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. The discriminatory attitude and incidents within the Spanish territory have been the subject of several reports and critiques, which persisted in 2021 and at the beginning of 2022.⁹³⁰

⁹²⁸ SJM, *Informe CIE 2018: Discriminación de origen*, June 2019, available in Spanish at: <https://bit.ly/2MLncE3>, 20.

⁹²⁹ Servicio Jesuita a Migrantes, 'Informe CIE 2021 - Territorio hostil. Formas diversas de hostilidad en los CIEs', May 2022, available at: <https://bit.ly/3KPkfhu>.

⁹³⁰ Liberties, "'Because You're Black': Spain Ethnic Profiling Case Goes to Strasbourg", 25 January 2018, available at: <https://bit.ly/2sBpiJG>; SOS Racismo, 'Parad de pararme', 25 January 2022, available at: <https://bit.ly/3ECBa2l>.

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.⁹³¹ 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:⁹³²

- 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.

Regarding 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 Tribunal, denying recognition of the refugee status to four Syrian refugees resettled to Spain in 2015, while granting them subsidiary protection.⁹³³

Regularisation of migrants

Following the COVID-19 outbreak, many NGOs called upon the Government to regularise all undocumented migrants in Spain, to guarantee their access to rights and services.⁹³⁴

Calls of civil society for regularisation of migrants continued throughout the following year. 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.⁹³⁵

⁹³¹ Article 34(3) Aliens Regulation.

⁹³² Article 126 Aliens Regulation.

⁹³³ 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>.

⁹³⁴ 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>.

⁹³⁵ 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>.

A report published in March 2021 remarked that the regularisation of the 500,000 undocumented migrants living in Spain would positively affect public finances, and would increase incomes up to 1,750 million Euros per year.⁹³⁶ Another report highlighted that the regularisation of 600,000 undocumented migrants fostered since 2004 by the Former Prime Minister José Luis Zapatero has produced annual incomes of around 2,300 million Euros for Social Security.⁹³⁷

Following different decisions of the Supreme Court, in June 2021 the Minister of Inclusion, Social Security and Migration adopted an instruction on the procedure for issuing of temporary residence permits for “labour roots” reasons (*arraigo laboral*).⁹³⁸ The instruction is aimed at regularising migrants, and especially former asylum seekers whose application for international protection was rejected, who lived and worked in Spain for at least two years.⁹³⁹

A report published in December 2021 by the Federation *Red Acoge* highlights that Spanish Immigration Law makes citizenship conditional to a set of criteria very difficult to meet for migrants, thus leaving many of them in a situation of social exclusion.⁹⁴⁰ With the aim of promoting a people’s legislative initiative to regularise 500,000 persons by collecting 500,000 signatures, a group of organisations (including a political party) joined to form the platform “*ESencialES*”.⁹⁴¹ In the framework of the campaign, a report highlighting the five good reasons to adopt an extraordinary regularisation of undocumented migrants in Spain was published in March 2022.⁹⁴² By September 2022, the campaign had obtained 400,000 signatures.⁹⁴³ In the same month, the Episcopal Conference expressed support to the regularisation of migrants.⁹⁴⁴ On December 2022, the campaign reached 700,000 signatures, that were submitted to the Office for the Electoral Roll, in order to start the Parliamentary procedure. A gathering in front of the Congress was also organised by the Platform *ESencialES*, with the aim of celebrating the great support received for this Popular Legislative Initiative.⁹⁴⁵ The parliamentary procedure foresees a maximum of 6 months to analyse the popular initiative and to submit it, if the case, to the Congress for its consideration.⁹⁴⁶

On June 2022, the NGO *Kifkif* called the Government for an extraordinary regularisation for all persons already living in Spain.⁹⁴⁷

⁹³⁶ Jesús Fernández-Huertas Moraga (Universidad Carlos III de Madrid), *Inmigración y políticas migratorias en España*, published by FEDEA (Fundación de Estudios de Economía Aplicada), March 2021, available at: <https://bit.ly/3kfiky>.

⁹³⁷ La Vanguardia, *La regularización de inmigrantes aportó 2.300 millones al Estado*, 15 March 2021, available at: <https://bit.ly/3D6USBY>.

⁹³⁸ Minister of Inclusion, Social Security and Migration, ‘Instrucción SEM 1/2021 sobre el procedimiento relativo a las autorizaciones de residencia temporal por razones de arraigo laboral’, June 2021, available at: <https://bit.ly/34J7ZNt>.

⁹³⁹ Público, ‘Varias sentencias del Supremo facilitarán la regularización por arraigo laboral de miles de personas migrantes’, 9 June 2021, available at: <https://bit.ly/3CKiH2L>.

⁹⁴⁰ Red Acoge, ‘Retos de la inmigración en España. Los derechos como base para la inclusión’, December 2021, available at: <https://bit.ly/3mFB3eA>.

⁹⁴¹ ESencialES, ‘¡500.000 firmas ESencialES para la Regularización Extraordinaria de 500.000 personas ESencialES en España!’, available at: <https://bit.ly/3JprwSF>.

⁹⁴² Por Causa, ESenciales, ‘Cinco buenas razones para aprobar una regularización extraordinaria de migrantes sin papeles’, MarCh 2022, available at: <https://bit.ly/3qGpCoR>.

⁹⁴³ Alfa y Omega, ‘La iniciativa legislativa popular para la regularización de migrantes supera las 400.000 firmas’, 29 September 2022, available at: <https://bit.ly/3P9fhvv>.

⁹⁴⁴ El Español, ‘La Conferencia Episcopal apoya la regularización de los migrantes sin papeles: “No son invasores”’, 20 September 2022, available at: <https://bit.ly/3vXMugn>.

⁹⁴⁵ El Salto Diario, ‘Más de 700.000 firmas llegan al Congreso para apoyar la ILP Regularización’, 21 December 2022, available at: <https://bit.ly/3vaLkTN>.

⁹⁴⁶ Público, ‘Más de 700.000 firmas por la regularización de migrantes: ¿y ahora qué?’, 21 December 2022, available at: <https://bit.ly/3Q2J1Mk>.

⁹⁴⁷ Diario Siglo XXI, ‘Kif-Kif reclama una regularización extraordinaria frente a la propuesta de arraigo laboral del Gobierno’, 23 June 2022, available at: <https://bit.ly/3F3TtxQ>.

In commemoration of the World Migrants Day on 18 December, Caritas called for the regularisation of all migrants living in Spain, in order to guarantee them access to rights.⁹⁴⁸

According to an estimation made by NGOs working with undocumented migrants, around 500,000 migrants live in an irregular situation in Spain.⁹⁴⁹

2. Civil registration

Beneficiaries of international protection follow the same civil registration procedure as Spanish nationals. The required documentation from the country of origin can be substituted by a certificate issued by the OAR.

Registration of child birth is made through a declaration in an official format duly signed by the person. To that end, the doctor or the nurse assisting the birth will prove the identity of the mother in order to include this information into the report. Parents make their declaration by filling the corresponding official format, and the officer at the Civil Registry proceeds to registration accordingly.

No obstacles to civil registration have been observed in practice.

3. Long-term residence

Indicators: Long-Term Residence

- | | |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2022: | 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:⁹⁵⁰

- 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.

⁹⁴⁸ La Razón, 'Cáritas pide la regularización de los inmigrantes que se encuentran en territorio nacional', 16 December 2022, available at: <https://bit.ly/3V77Xmz>.

⁹⁴⁹ The Objective, 'El Gobierno quiere regularizar a los inmigrantes irregulares que se formen en sectores en los que no hay trabajadores', 3 June 2022, available at: <https://bit.ly/3nXnnyQ>.

⁹⁵⁰ Article 148 Aliens Regulation.

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 2022:		Not available ⁹⁵¹

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

- ❖ Spaniards of origin: applicants born from a Spanish national mother or father, or applicants born from foreign parents but who have at least one parent was born in Spain.
- ❖ Residence in Spain: which vary depending on the nationality and status of the applicant. These are:
 - 5 years for **refugees** and 10 years for beneficiaries of **subsidiary protection**;
 - 2 years for nationals of Spanish American countries, Andorra, Philippines, Guinea, Portugal or Sephardi;
 - 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.

Costs foreseen under the whole procedure include around 100 € tax for naturalisation, plus €85 for the constitutional and socio-cultural test and €130 for the language exam.⁹⁵²

⁹⁵¹ In 2022, 122,236 persons were granted Spanish citizenship, but no breakdown indicating how many of these citizenship grants were for beneficiaries of international protection was made available by the authorities. See: Ministerio de Justicia, 'Datos estadísticos básicos de nacionalidad a 31/12/2022', available at: <https://bit.ly/3mYgLzV>.

⁹⁵² Instituto Cervantes, 'Exámenes', available at: <https://bit.ly/3TiyWfN>.

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.⁹⁵³

According to available information, the situation appears to have improved recently, as the tests have been simplified, and a preparatory handbook is available for candidates.

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. The Spanish Ombudsman has informed that between 2020 and March 2021 there were 289,846 pending applications for nationality.⁹⁵⁴ The Government launched a new plan for 2021,⁹⁵⁵ which resulted in granting nationality for residence to 163,946 persons in 2021.⁹⁵⁶ In 2022, a total of 122,236 persons were granted nationality, and there were 158,056 pending applications.⁹⁵⁷

In a decision taken in May 2022, the Provincial Court of Guipúzcoa (País Vasco) recognised for the first time the Spanish nationality to a child born during her mother's arrival to the Spanish coast. Due to the impossibility to obtain the nationality from Cameroon and Morocco, the child had restricted access to public municipal services and could not benefit from certain social benefits. The Court's decision on granting the Spanish nationality is based on the best interest of the child, and on the necessity to avoid the negative consequences that statelessness condition would create for the minor.⁹⁵⁸

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:⁹⁵⁹

- 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.

⁹⁵⁴ Defensor del Pueblo, 'solicitantes de nacionalidad por residencia', May 2021, available at: <https://bit.ly/3MKGdBn>.

⁹⁵⁵ Para Inmigrantes Info, 'Justicia ya trabaja en un Plan de Choque de Nacionalidad para 2021', 8 February 2021, available at: <https://bit.ly/3aqIL6w>.

⁹⁵⁶ Presidencia del Gobierno, 'El plan de choque de nacionalidad 2021 resuelve más 160.000 expedientes de nacionalidad por residencia', 14 December 2021, available at: <https://bit.ly/3lhKwjT>.

⁹⁵⁷ Ministerio de Justicia, 'Datos estadísticos básicos de nacionalidad a 31/12/2022', available at: <https://bit.ly/3mYgLzV>.

⁹⁵⁸ Audiencia Provincial de Guipúzcoa, Decision 341/2022, 2nd Section, 11 May 2022, available at: <https://bit.ly/3vPcslw>; Cadena Ser, 'La Justicia reconoce por primera vez la nacionalidad española a una niña nacida en "el camino" hacia España', 8 June 2022, available at: <https://bit.ly/3JHIsUH>.

⁹⁵⁹ Article 42 Asylum Act; Article 37 Asylum Regulation.

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**.⁹⁶⁰

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 to remain in Spain, which is granted without many problems in practice.

In 2021, the OAR adopted cessation decision in 3 cases, one regarding a refugee status and two related to subsidiary protection cases.⁹⁶¹

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.⁹⁶² 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.⁹⁶³ Finally, the OAR's decision is submitted to the CIAR, which is responsible for taking the final decision concerning withdrawal or cessation.⁹⁶⁴

The decision will have to be notified to the beneficiary in a time limit of 6 months since the start of the procedure.⁹⁶⁵ When this time limit is not respected, the process produces no effects on the beneficiary's protection status. If a decision is taken, the beneficiary can lodge an initial administrative appeal face to the Ministry of Interior or directly lodge a judicial appeal against the notified decision.⁹⁶⁶

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;

⁹⁶⁰ Article 43 Asylum Act.

⁹⁶¹ Ministerio del Interior, Subsecretaría del Interior - Dirección General de Política Interior, 'Avance de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', 2022, available at: <https://bit.ly/3l8rDzP>.

⁹⁶² Article 45(1) Asylum Act.

⁹⁶³ Article 45(2) Asylum Act.

⁹⁶⁴ Article 45(4) Asylum Act.

⁹⁶⁵ Article 45(7) Asylum Act.

⁹⁶⁶ Article 45(8) Asylum Act.

- 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.⁹⁶⁷

The process for the withdrawal of protection status is the same as that described in the [Cessation and Review](#) section.

Overall, withdrawal procedures are not applied in practice.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
☐ Yes ☒ No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?
☐ Yes ☒ No
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?
☒ Yes ☐ No

The right to family unity is established in Articles 39-41 of the Asylum Act. The law reflects two aspects which add to and comply with this right: “Extension” of the international protection status of the beneficiary to his or her family (*Extensión familiar del derecho de asilo o de la protección subsidiaria*),⁹⁶⁸ and “Family reunification” (*Reagrupación familiar*).⁹⁶⁹ 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.

Reunification can apply also for families created post-flight from the country of origin, especially if they have children, even though the assessment of the case and documentation is stricter. Spanish law does not establish a legal time limit for the administration to decide, and in practice the procedure lasts more than 9 months.

Regarding legal remedies foreseen in case of a negative decision, both an appeal before an administrative body and a judicial appeal are possible. In practice, there are difficulties to access such remedies, as in many cases there are challenges in obtaining the written decision of denial (i.e. long waiting time), which is necessary to lodge the appeal.

Free legal aid is foreseen, even though the Minister of Inclusion adopted an instruction at the beginning of 2023 which provides for new rules on reception conditions, and some clarifications still are needed regarding family reunification. At the time of writing such clarifications have not been provided.

⁹⁶⁷ Article 44(8) Asylum Act.

⁹⁶⁸ Article 40 Asylum Act.

⁹⁶⁹ Article 41 Asylum Act.

The procedure is initiated by the beneficiary of international protection and has to be presented at the OAR. The application for visa for family reunification at embassies or consulates does not entail the payment of any fee. In case of absence of travel documents, the Government usually issues a *lassaiz-passer*.

It should be noted that, during COVID-19, family reunification procedures were suspended from mid-March until beginning of May 2020. They were resumed after the lockdown and health restrictions were partially lifted.

In June 2022, the ECtHR issued a decision which ruled to strike out the application of a mother that claimed a violation of the right to family life and lack of effective remedy, due to the delay in the family reunification with his son after arriving in Spain. After she lodged her application, she in practice reunite with her son. For this reason, the Court considered that the reunification of the child with the applicant constitutes an adequate remedy under Article 8 of the Convention.⁹⁷⁰

1.1. Family extension

The “extension” applies to:⁹⁷¹

- 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.⁹⁷² Therefore, the requisite threshold is to prove that the ascendant depends economically on the beneficiary of international protection.

The requirements are: birth certificates, family book, family passbooks or other similar documents existing in the origin country. In addition, the initial information recorded in the asylum application, as well as the declarations presented during the asylum procedures and, if existing, photos, are also used as a proof for the family extension procedure and taken into consideration.

Such requirements apply also for family ties formed during the journey if the persons reached Spain together. On the contrary, it is necessary to follow the same procedure for proving the family ties foreseen for the other cases.

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.

⁹⁷⁰ European Court of Human Rights, Decision, Requête no 74048/17, Bahoumou Totopa contre l’Espagne, 2 June 2022, available in French at: <https://bit.ly/43qkBCB>.

⁹⁷¹ Article 40(1)(a)-(d) Asylum Act.

⁹⁷² Final Provision 3 Law 2/2014 of 25 March 2014.

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 children 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 unit together with underage siblings. In these cases, extension is granted to underage children but is denied to those who are over 18, thereby breaking not respecting the principle of family unit, and 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, and to adapt them to the socio-cultural realities of countries of origin and/or countries of residence of family members, as well as to their security conditions.⁹⁷³

Recently, the procedure for the family extension and reunification was slightly changed and simplified, so family members residing in another country have to go to the Spanish Embassy or Consulate just when they are convened to carry out a concrete formality related to the application.⁹⁷⁴

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.⁹⁷⁵

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

⁹⁷³ 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/>).

⁹⁷⁴ Ministerio del Interior, ‘Solicitudes de extensión o reagrupación familiar por parte de un beneficiario de protección internacional a familiares residentes fuera de España’, available at: <https://bit.ly/3BkSly0>.

⁹⁷⁵ Article 41(1) Asylum Act.

highlighted the favourable report issued by UNHCR supporting the case, on the basis of the fundamental right to family unity of refugees.⁹⁷⁶ Following this decision, the OAR finally reunited some mixed families (e.g. Palestinians and Syrians).

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.⁹⁷⁷

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 was dependent on them;
- 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 410 applications for family extension with a beneficiary of international protection in 2021,⁹⁷⁸ and 762 in 2022.

In 2021 the Ministry of Interior issued a note on family extension and reunification establishing that, when family members are in the country of origin, the beneficiary of international protection in Spain has to begin the procedure.⁹⁷⁹

2. Status and rights of family members

As explained in the section on [Family Criteria](#), 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.

⁹⁷⁶ Audiencia Nacional, Decision SAN 5372/2017, 15 December 2017.

⁹⁷⁷ 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>.

⁹⁷⁸ Ministerio del Interior, Subsecretaría del Interior - Dirección General de Política Interior, ‘AVANCE de solicitudes y propuestas de resolución de protección internacional Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2022’, January 2023, available at: <https://bit.ly/3wunyCU>.

⁹⁷⁹ Ministerio del Interior, ‘Solicitudes de extensión o reagrupación familiar por parte de un beneficiario de protección internacional a familiares residentes fuera de España’, 2021, available at: <https://bit.ly/3mtvuCV>.

Once the extended family members obtain their visa they will be able to travel. Once they are in Spain, the recognition of their extended international protection status is automatic. They go to the OAR to receive their temporary “red card” (*tarjeta roja*) while they wait for the residence permit to be issued.

C. Movement and mobility

1. Freedom of movement

Beneficiaries of international protection have freedom of movement around the entire Spanish territory. In practice, they generally reside in the area where the procedure has been conducted, unless they have family members or networks in other cities. As with asylum seekers, the majority of refugees are accommodated in **Andalucía**, **Madrid** and **Catalonia** (see [Reception Conditions: Freedom of Movement](#)).

2. Travel documents

Article 36(1)(d) of the Asylum Act governs the issuance of travel documents for refugees and, where necessary, for beneficiaries of subsidiary protection. The validity of these documents is 5 years for both types of protection. The travel documents have similar format, but only the refugee travel document refers to the 1951 Refugee Convention.

The beneficiary has to go personally to request the expedition of the document to the OAR or to the competent provincial police department of foreigners. There are no formal limitations to the permitted area of travel except the country of origin of the person benefitting from international protection.

Travel documents for beneficiaries of international protection issued by other countries are accepted in Spain. Spain has also ratified the Council of Europe Agreement for Transfer of Responsibility for Refugees.

The number of travel documents issued in the years between 2018 and 2022 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 2022 | Not available |

The three-phase reception and integration process is available for all persons who ask for asylum, even in the case they are granted with international or subsidiary protection during the 18-month period. In case a person receives a negative response during the process, usually the person is allowed to complete at least the first period within the reception phase. In any case, the Ministry of Inclusion, Social Security and Migration must give permission for the rejected applicant to continue the on-going phase and the following ones, also accessing financial support foreseen within the second and third phases. It should however be noted that usually applicants receive their asylum decision after 1 year or more from the moment of the asylum claim.

Therefore, beneficiaries follow the same process as described in [Reception Conditions: Criteria and Restrictions](#). They are hosted within the asylum reception centres during the first 6 months. The typologies of reception places vary depending on the institution or entity that manages it: the system relies on places within big reception centres and apartments, some reception places are in urban neighbourhoods while other are located in rural areas. The different types of available accommodation also differ from the point of view of provided services and spaces.

After this first phase of accommodation inside the reception system, beneficiaries are granted financial support to help them pay rent in private accommodation. Due to the rigidity which characterises the Spanish three-phase reception process, they must complete their stay inside the reception places in order to have access to the following foreseen financial support for private housing, also because the participation to initial integration activities developed during the first reception phase is considered is well evaluated and relevant at the time of asking for other financial support available in the last 2 phases.

This factor obviously causes obstacles for those beneficiaries that can either pay their own housing since the beginning or for those who have relatives or personal contacts that can host them. In case they decide to go and live by themselves, they would be renouncing to the entire assistance and support foreseen under the reception system.

The lack of social housing alternatives, the insufficient financial support allocated for rent expenses, high requirements (i.e. payslips, high quantities for deposit, etc.) and criteria in rental contracts and discrimination exposes many beneficiaries of protection to economic vulnerability and in some cases leads to destitution.⁹⁸⁰ 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. Even in cases in which NGOs act as intermediaries, asylum seekers face serious discrimination in renting apartments. Some of them face homelessness and are accommodated in homeless shelters.⁹⁸¹ The NGO *CEAR Euskadi* denounced the discrimination that asylum seekers face in renting flats, and that 7 out of 10 real estate-agencies admit to implement explicit forms of discrimination, while the other 3 apply more subtle forms of it.⁹⁸²

Such challenges continue also in 2022. The lack of houses for rent and high prices in certain cities (i.e. Zaragoza) are also an impediment to the integration of refugees.⁹⁸³ Similarly, the lack of sufficient public housing for persons at risk of exclusion has been described as another barrier that asylum seekers and refugees face in Spain.⁹⁸⁴ The lack of private and public housing options makes refugees dependent to the asylum reception system while limiting their opportunities to have an independent life.⁹⁸⁵

A report launched by the NGOs *Provivienda* and *Andalucía Acoge* underlines the obstacles and the discrimination that racialised persons face in accessing housing. It also indicates that access to housing in Spain is the field in which persons face more racial discrimination.⁹⁸⁶

Following the Government's announcement of an upcoming law on the right to a state-sponsored house, around 50 stakeholders among NGOs, trade unions, and other groups joined to promote the "Initiative for a Law guaranteeing the Right to Housing".⁹⁸⁷ In February 2022, the law was approved by the Government and it has to undergo the parliamentary procedure to be approved.⁹⁸⁸ The parliamentary procedure is still ongoing at the time of writing.

⁹⁸⁰ Provivienda, 'Una casa como refugio: itinerarios residenciales de las personas solicitantes de protección internacional en Madrid y Vigo', 28 October 2019, available in Spanish at: <https://cutt.ly/BtR8WUN>.

⁹⁸¹ 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>.

⁹⁸² Cadena Ser, 'Siete de cada diez inmobiliarias admiten implementar formas explícitas de discriminación', 31 October 2021, available at: <https://bit.ly/3PF63H3>.

⁹⁸³ Heraldo, 'La falta de vivienda de alquiler en Aragón frena la integración de los refugiados de Ucrania y de otros países', 31 July 2022, available at: <https://bit.ly/3wilmh6>.

⁹⁸⁴ Diario de Navarra, 'Refugiados que no encuentran casa en Navarra', 28 September 2022, available at: <https://bit.ly/3HNoOYK>.

⁹⁸⁵ La Gaceta de Salamanca, 'Las reticencias a alquilarles un piso atan a los refugiados a los centros de acogida', 25 September 2022, available at: <https://bit.ly/3j4JlXo>.

⁹⁸⁶ Provivienda, Andalucía Acoge, 'Discriminación racial en el ámbito de la vivienda y los asentamientos informales', March 2022, edited by the Ministerio de Igualdad, available at: <https://bit.ly/3ceNuMh>.

⁹⁸⁷ UGT, *UGT promueve la Iniciativa por una ley que garantice el derecho a la vivienda*, 17 February 2021, available at: <https://bit.ly/3sCBTKG>; Afectados por la Hipoteca, *Manifiesto de la Iniciativa por una Ley que garantice el Derecho a la Vivienda*, 18 February 2021, available at: <https://bit.ly/2XPGxK7>.

⁹⁸⁸ Presidencia del Gobierno, 'El Gobierno aprueba la Ley por el Derecho a la Vivienda', 1 February 2022, available at: <https://bit.ly/3J2bayz>.

In March 2021, the Autonomous Community of **Valencia** created the Commission of Migration and Housing, with the aim of studying the problems faced by persons in situation of vulnerability, especially migrant and racialized population, to access housing in the Comunitat Valenciana.⁹⁸⁹ A report published in November 2022 by the same Commission, together with the organisation València Acull and the Observatorio del Hábitat y la Segregación Urbana (OHSU) underlines that the 86% of migrants in the Autonomous Community of Valencia faces problems in accessing a decent house, mainly due to rent prices and the bureaucratic problems in the registration of the residency.⁹⁹⁰

A report published by the Municipality of **Barcelona** in November 2021 brought to light the problem of “property racism”; among the report’s findings, resulted that as 9 out of 10 agencies admit to deny renting houses to persons due to ethnic discrimination.⁹⁹¹

Following a visit carried out in Spain, the Council of Europe Commissioner for Human Rights called on the Government to improve the human rights of migrants and asylum seekers, especially in relation to accessing social rights, including housing and health.⁹⁹²

In occasion of the 2023 International day for the Elimination of Racial Discrimination, the organisation Accem warned about the obstacles that migrants and asylum seekers face in renting an apartment.⁹⁹³

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.

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 include personalised schemes, employment orientation, vocational trainings, support in drafting CV, etc. In general, the same NGOs who provide for reception conditions and have an employment service continue to support beneficiaries who require or need it. For example, Accem runs

⁹⁸⁹ El Periòdic, *La Comunitat estudia los problemas de acceso a la vivienda de la población migrante y racializada*, 16 March 2021, available at: <https://bit.ly/3j9OZw0>.

⁹⁹⁰ Levante, ‘El 86 % de los migrantes tiene problemas para acceder a una vivienda digna’, 2 November 2022, available at: <https://bit.ly/3XCgUqv>.

⁹⁹¹ Ajuntament de Barcelona, Direcció de Serveis de Drets de Ciutadania, ‘Discriminació a la carta Exclusió per motius ètnics del mercat de lloguer d’habitatge de Barcelona’, November 2021, available at: <https://bit.ly/3sHVs7>.

⁹⁹² Council of Europe, ‘Spain should advance social rights, better guarantee freedoms of expression and assembly and improve human rights of refugees, asylum seekers and migrants’, 29 November 2022, available at: <https://bit.ly/3GgzJbF>.

⁹⁹³ Europa Press, ‘Accem advierte de las “trabas” que encuentran los migrantes y refugiados para alquilar una casa’, 21 March 2023, available at: <https://bit.ly/3UackVG>.

an employability program with IKEA since 2017, which foresees the provision of vocational trainings as well as internship opportunities at its shops. The organisation also manages a program with the *Fundación Tent*, which consists in a mentorship program with women and carried out by professionals from companies, with the aim of supporting and empowering them in defining their skills for the job search in a concrete sector and in developing such professional competencies. Similarly, Accem collaborates with the *Grupo Northius*, a platform for digital education, which has granted 20 scholarships for the participation of beneficiaries in different vocational trainings aiming at improving the employability of participants.⁹⁹⁴

Even when they are granted with refugee or subsidiary protection status, in the practice many beneficiaries face obstacles entering the labour market due to language, qualifications, and discrimination-based obstacles. This situation is made worse by the fact that the Spanish economy went through a long economic crisis, which led the country to high levels of unemployment, affecting both migrants and Spanish citizens. In addition, many companies lack of information on labour laws and permits on their applicability in the cases of asylum seekers and refugees, which in turn hinders their access to the job market.⁹⁹⁵

In April 2021 a group of Syrian refugee journalists created the bilingual digital media *Baynana* (in Spanish and in Arabic) with the support of the Foundation *por Causa*.⁹⁹⁶ The NGO CEAR and the *Casa Árabe* (a centre promoting Arabic culture, art and language) launched in Madrid the initiative '*Acoge un Plato Catering*' during the summer of 2021. It aims at promoting Arabic gastronomy, as well as social and labour inclusion for refugees in Spain.⁹⁹⁷ The project, which employs 14 between refugees and migrants, continued to be implemented in 2022.⁹⁹⁸ In addition, within such an initiative, CEAR published a cookery book in September 2022, which gathers the recipes and histories of the refugees who participated in *Acoge un Plato*.⁹⁹⁹

The recognition of diplomas and degrees in Spain has always been a challenge for migrants and refugees due to bureaucratic burdens, with waiting times ranging from 9 months to 2 years. In March 2021, the Ministry of Universities announced the intention to adopt a new procedure for the recognition of diplomas, that aims at reducing the length of the procedure.¹⁰⁰⁰ A proposal for a Royal Decree modifying the previous legislation has been launched on October 2021.¹⁰⁰¹ The new law has been approved in October 2022, establishing the deadline of 6 months for the administration to decide on diploma recognition.¹⁰⁰²

In July 2022, a reform of the Regulation of the Immigration Law was adopted, aiming at widening the possibilities of employment for foreign persons in Spain.¹⁰⁰³ Among others, the reform introduces the residence permits for 'training roots' reasons (*arraigo por formación*), that means that any undocumented person living in Spain for 2 years can access a vocational training and thus employment. The reform also

⁹⁹⁴ Information provided by Accem's employment service in March 2023.

⁹⁹⁵ Newtral, 'La falta de información dificulta el acceso al mercado de trabajo a los solicitantes de asilo y protección internacional', 13 January 2022, available at: <https://bit.ly/3Kk4RHV>.

⁹⁹⁶ Baynana, available at: <https://bit.ly/3eOZGky>.

⁹⁹⁷ CEAR, 'Acoge un Plato inaugura restaurante en la terraza de la Casa Árabe de Madrid', 24 June 2021, available at: <https://bit.ly/3mYrO9l>.

⁹⁹⁸ Cadena Ser, '"La cocina es la manera más fácil de integrar": así funciona el proyecto más sobroso de la Comisión de Ayuda al Refugiado', 18 August 2022, available at: <https://bit.ly/3AxOOSL>; CEAR, 'Acoge un Plato', available at: <https://bit.ly/3F1qHOo>.

⁹⁹⁹ CEAR, 'Recetario de celebraciones Acoge un Plato', September 2022, available at: <https://bit.ly/3W1s2vB>.

¹⁰⁰⁰ El País, 'Miles de inmigrantes podrán homologar su título universitario en seis meses para ejercer en España', 24 March 2021, available at: <https://bit.ly/3DgaL9H>.

¹⁰⁰¹ El Economista, 'Universidades abre en audiencia pública el Real Decreto de homologaciones de títulos', 13 October 2021, available at: <https://bit.ly/36xuTrX>.

¹⁰⁰² Cope, 'Gobierno limita a seis meses el plazo para homologar los títulos extranjeros', 18 October 2022, available at: <https://bit.ly/3XDWbCn>.

¹⁰⁰³ El Periódico, 'El Gobierno aprueba la reforma de extranjería para sumar a miles de migrantes al mercado laboral', 25 July 2022, available at: <https://bit.ly/3pDUrcM>; República, 'Entra en vigor la reforma que facilita la incorporación de extranjeros al mercado de trabajo', 15 August 2022, available at: <https://bit.ly/3AjrYr>; Boletín Oficial del Estado, 'Real Decreto 629/2022, de 26 de julio, por el que se modifica 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, aprobado por el Real Decreto 557/2011, de 20 de abril', 27 July 2022, available at: <https://bit.ly/3c94J1H>.

modifies the already existing figure of residence permit for 'social roots' reasons (*arraigo social*), by easing the requirements requested for obtaining it. While acknowledging the improvements that the reform introduces, different organisations (i.e. Andalucía Acoge, Cáritas, CEAR, Convive Fundación CEPAM and Red Acoge) regret its limited scope and underline the necessity to continue in its improvement in order to tackle other relevant issues (i.e. family reunification, the issuing of visa for job search, a better synergy between the immigration and asylum laws, etc.).¹⁰⁰⁴

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.

Throughout 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.¹⁰⁰⁵ 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.

Despite that, the situation remained unsolved 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 in the course 2020-2021, due to bureaucratic obstacles that seem to indicate institutional racism.¹⁰⁰⁶ Following a parliamentary request raised by the Parliament's member Jon Iñárritu 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.¹⁰⁰⁷

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.¹⁰⁰⁸ At the time of writing of this report, the Ombudsman's requests remained unanswered.

The problem of access to education for migrant children in Melilla persisted throughout the 1st semester of 2021. In June, the UN Committee on the Rights of the Child affirmed that Spain violated a child right

¹⁰⁰⁴ Andalucía Acoge, 'Reglamento de extranjería: una reforma necesaria, aunque limitada', 27 July 2022, available at: <https://bit.ly/3wqWdlw>; Andalucía Acoge, 'Resumen reforma ley extranjería', August 2022, available at: <https://bit.ly/3PctCAo>.

¹⁰⁰⁵ 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>.

¹⁰⁰⁶ 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>.

¹⁰⁰⁷ 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>.

¹⁰⁰⁸ Defensor del Pueblo, *Inmediata escolarización de unos menores y acreditación de su residencia efectiva en Melilla*, 2 October 2020, available Spanish at: <https://bit.ly/2MohqII>; Defensor del Pueblo, *Escolarización de un menor residente en la Ciudad Autónoma de Melilla en situación irregular*, 3 December 2020, available in Spanish at: <https://bit.ly/3pCL3ew>.

when impeding his access to education in **Melilla**, and especially in taking two years before A.E.A. could access schooling in March 2021. The UN body also urged Spain to guarantee compensation to A.E.A, a boy born in Melilla on 2013 from a Moroccan citizen.¹⁰⁰⁹ Following such decision, the Spanish Ombudsman requested the Ministry of Education to provide for the means necessary to guarantee that no child residing in Melilla, independently of their origins, is excluded from education next school year.¹⁰¹⁰ The Spanish Commissioner against Child Poverty also accused the city of Melilla to violate children rights.¹⁰¹¹

At the beginning of the new academic course in September 2021, 160 children obtained access to schooling.¹⁰¹² It is hoped that this is a definitive achievement. In February 2022, the Minister of Education changed the procedure for the admission of students in Ceuta and Melilla with the aim of guaranteeing all children residing in the two cities access to education.¹⁰¹³

In 2020 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 2030.¹⁰¹⁴

On November 2022, the Council of Ministers adopted a Royal Decree establishing the granting of direct subsidies for a total of 2.65 million Euros to 27 public Universities and to the Conference of Rectors of Spanish Universities in the framework of the Action Plan University-Refuge. The aim is to fund different kind of actions, i.e. linguistic support, cultural and psychological support, academic guidance, support and access to academic services and social services, awareness-raising on the conflict in Ukraine and on the international protection, etc.¹⁰¹⁵

In 2022, UNHCR supported NGO *Rescate* to implement the mentoring project *Contigo* addressed to children and young refugees between 15 and 24 years old, which benefited 47 refugees and 93 local volunteers, improving the integration prospects of beneficiaries while raising awareness on the role of the civil society and local communities.¹⁰¹⁶

In addition, UNHCR supported refugee communities through three small grant agreements with refugee-led organizations working on refugee empowerment and integration. The projects implemented aimed to support refugee communities through capacity building activities including a course and mentoring sessions on entrepreneurship, roundtables on active refugee participation and language courses.¹⁰¹⁷

F. Social welfare

Refugees and subsidiary protection beneficiaries have access to social welfare under the same conditions as Spanish nationals.¹⁰¹⁸ The same rules apply to refugees and subsidiary protection beneficiaries. They

¹⁰⁰⁹ Naciones Unidas, Noticias ONU, *España viola el derecho a la educación de un niño marroquí en Melilla, afirma Comité de la ONU*, 14 June 2021, available at: <https://bit.ly/2WkoOcl>.

¹⁰¹⁰ Europapress, *El Defensor del Pueblo pide que ningún niño de Melilla quede sin escolarizar el próximo curso*, 15 June 2021, available at: <https://bit.ly/2XOHltf>.

¹⁰¹¹ MSN, 'El Comisionado contra la Pobreza acusa a Melilla de violar derechos de infancia', 21 April 2021, available at: <https://bit.ly/3sWOpXt>.

¹⁰¹² El Salto Diario, *Después de tres años de peticiones rechazadas, 160 niños de Melilla han vuelto esta semana a la escuela*, 9 September 2021, available at: <https://bit.ly/2W43Sai>.

¹⁰¹³ El País, 'El Ministerio de Educación cambia su normativa para garantizar la plena escolarización de los niños en Melilla', 17 February 2022, available at: <https://bit.ly/3ZSYH91>.

¹⁰¹⁴ 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>.

¹⁰¹⁵ Europa Press, 'El Gobierno destina 2,6 millones de euros a 27 universidades públicas para el Plan Universidad-Refugio', 22 November 2022, available at: <https://bit.ly/3XEV3yQ>.

¹⁰¹⁶ Information provided by UNHCR in March 2023.

¹⁰¹⁷ Information provided by UNHCR in March 2023.

¹⁰¹⁸ Article 36(1)(f) Asylum Act.

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 between the situation of asylum seekers and beneficiaries of international protection for what concerns access to health care were reported. See the section on [Reception Conditions: Health Care](#).

In May 2022, the organisation *CEAR* and the *Fundación Sanitas* signed an agreement to provide comprehensive health assistance to refugees. Concretely, more than 75 refugees will be provided with mental healthcare, dental assistance and support for their emotional well-being.¹⁰¹⁹

¹⁰¹⁹ Seguros News, 'Fundación Sanitas y Ayuda al Refugiado acuerdan cuidar de la salud de los refugiados', 23 May 2022, available at: <https://bit.ly/3QviaaC>.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Spain has not yet transposed the recast Qualification, Asylum Procedures and Reception Conditions Directive.

Pending transposition and reforms into national legislation

Directive / Regulation	Deadline for transposition	Stage of transposition / Main changes planned	Participation of NGOs
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	☒ Yes ☐ No
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	☒ Yes ☐ No
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015 29 March 2022	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) Real Decreto 220/2022, de 29 de marzo, por el que se aprueba el Reglamento por el que se regula el sistema de acogida en materia de protección internacional.	☒ Yes ☐ No
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	☒ Yes ☐ No