

INPUT BY CIVIL SOCIETY TO THE EASO ANNUAL REPORT 2020

Fundación Cepaim

1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards).

Access to territory

The European Court of Human Rights issued a landmark decision on collective expulsions on 13 February 2020 (Grand Chamber, *N.D. and N.T. v. Spain*) allowing for pushbacks at the Spanish border in the enclave of Melilla (link 1). Although recognizing the hurdles for migrants to seek asylum at that border and the fact that the Spanish authorities warn Moroccan authorities about prospect arrivals to prevent migrants from reaching the designated place to seek asylum, it nevertheless found that Spain is not to blame for this; it is actually the applicants' 'culpable conduct' in trying to climb the border fences in large numbers what determines that pushbacks and collective expulsions are not against the law.

This worrying judgement which rejects the Court's own views on the case (Chamber, *N.D. and N.T. v. Spain*, 3 October 2017) has been somehow backed by the Spanish Constitutional Court in a decision from 19 November 2020 dealing with the constitutionality of the so-called Law on Public Safety, which includes a specific section legally enabling police officers to automatically reject migrants at the border without any procedure in place (link 2). The Court found that this section is not unconstitutional as long as each case is considered individually, there is full judicial control and the agents involved fulfil Spain's international obligations. However, as the dissenting opinion of Judge María Luisa Balaguer Callejón expresses, "the contested provision, if anything, makes it impossible for both the judicial control of refoulement and the possibility of compliance with international human rights treaties signed and ratified by Spain". It further added that the Court is widening the scope of the pushbacks permitted by the ECtHR as it allows rejecting even individuals at the border, and not just those who try to jump in high numbers. Finally, she states that "owing to the lack of a procedure and the possibility of individualizing each act of refusal at the border, it is not possible to make the fundamental right to effective remedy (Art. 24 Spanish Constitution -SC-) real and effective, by means of a subsequent judicial control of that specific action. Nor is it possible to guarantee either the principles of responsibility and prohibition of arbitrariness of the public authorities (Art. 9.3 SC) or judicial control of the legality of an administrative action, as well as its submission to the purposes that justify it (Art. 106.1 SC). Therefore, the provision should have been declared fully unconstitutional and null and void".

With the closure of the Spanish-Moroccan border, nationals from Middle Eastern countries can no longer access Spain through the border post and sometimes swim to Melilla and Ceuta or in small boats, risking their lives at sea.

There have been recent potential push-backs from Spain to Morocco as reported in different news outlets:

- 19, January 2021: 87 migrants entered the Spanish territory through the Melilla fence, while 12 were rejected and expelled by the Spanish Guardia Civil (link 3).
- August 2020: 300 persons from sub-Saharan countries tried to jump the Melilla fence. Among them only 30 persons of them managed to access to the Spanish territory. One of these migrants passed away when trying to jump the fence (link 4).
- April 2020: 55 persons (most of them from Mali) out of 260 persons - who tried to jump the Melilla fence - accessed the Spanish territory. 38 of them were expelled by the Spanish authorities to the Moroccan authorities (link 5).
- January 2020: Push-backs of persons from Sub-Saharan countries from the Chafarinas Islands back to Morocco (link 6).
- January 2020: 400 migrants from Sub-Saharan countries tried to jump the Spanish fence in Ceuta (link 7)

Access to the procedure

Access to the procedure has also been affected during 2020 due to the outbreak of COVID-19. On the onset of the pandemic, the figures showed growing trends in applications at the beginning of 2020 as they were during the same period in 2019. However, the state of emergency was declared on March 14 and the number of applications dropped dramatically. By 31 of March 2020, 37,236 people had applied for asylum in Spain (26,679 did so in the same period in 2019), but only 130 managed to submit an application in the months of April and May (19,952 in April and May 2019) (links 8, 9, 10 and 11). In sum, 2020 witnessed a sharp decrease in the number of applications (88,762 v. 118,446 from 2019) despite the record-breaking first quarter of the year.

There is another problem related to the lodging of applications. When people express their willingness to apply for asylum to the competent authorities, they are summoned for an interview on a later date. However, as this is not an immediate procedure, it is often the case that these people are transferred or referred to another location in a place in a reception center. Sometimes, these people face obstacles in lodging their application through an interview in the place where they are, as the authorities require them to go to the location where they expressed their willingness to apply. While it is true that sometimes it is sufficient to communicate the change of address for the interview to take place in the new city, in other cases it is not so simple and there are numerous difficulties in accessing the procedure.

Finally, the growing trend of inadmissibility of asylum applications issued at the border or within immigration detention centers (known as CIE), contrary to the recommendations of the UNCHR, is a matter of concern.

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Link 1 – ECtHR, Grand Chamber (13 February 2020). Case of N.D. and N.T. v. Spain: <https://bit.ly/3bDCzHB>.

Link 2 – Ruling of the Constitutional Court (no. 172/2020, 19 November 2020): <https://bit.ly/3kkjAG6>.

Link 3 - ElPaís.com (19 January 2021). Cerca de un centenar de inmigrantes salta la valla de Melilla: <https://bit.ly/3c9xhWg>.

Link 4 - RTVE.es (20 August 2020). Un migrante muerto y once heridos, tres de ellos guardias, en el salto simultáneo de la valla de Melilla por 300 personas: <https://bit.ly/3qUIKh0>.

Link 5 - El Faro de Melilla (6 April 2020). Un total de 55 inmigrantes consiguen saltar la valla: <https://bit.ly/39DtizH>.

Link 6 – Cadena Ser (3 January 2020). La Guardia Civil expulsa ‘en caliente’ a Marruecos a las 42 personas que habían llegado esta madrugada a las Islas Chafarinas: <https://bit.ly/3suFRDJ>.

Link 7 - 20minutos (19 January 2020). La policía marroquí impide el asalto de 400 subsaharianos a la valla de Ceuta: <https://bit.ly/2MqdQxM>

Link 8 – Asilo en cifras 2019: <https://bit.ly/3ss0bpk>.

Link 9 – Avance trimestral de datos de protección internacional (septiembre): <https://bit.ly/2ZOHcJt>.

Link 10 – Avance trimestral de datos de protección internacional (diciembre): <https://bit.ly/2ZRUHbn>.

Link 11 – Avance trimestral de datos de protección internacional (mayo): <https://bit.ly/3pMGMxO>.

2. Access to information and legal assistance (including counselling and representation).

It is common for information regarding the right to legal aid not to be provided or to be provided in a superficial manner in the offices where people can apply for international protection. Proof of this is the fact that a large proportion of asylum seekers are not linked to any social organization that can offer help to vulnerable people through various means such as free legal aid. In this way, many asylum seekers lack this assistance during asylum interviews, reducing the quality of the interviews and, therefore, limiting the effectiveness of their application.

Likewise, in territories such as the autonomous city of Melilla, there is evidence of the existence of limitations on the right to freely appoint a lawyer, recognized by Article 5 of Law 39/2015 on the Common Administrative Procedure of Public Administrations.

3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters).

There are long-standing problems regarding interpretation services during asylum applications. We believe that there is room for improvement in the contracting of interpretation services, as the conditions required are debatable. Specifically, because economic criteria are given priority over other criteria that could promote a better service (specialized training, good working conditions that allow for less temporary work and greater permanence in the job and thus more experience, etc.). This has a direct impact on the quality of international protection interviews, so that it is not unusual for some situations to arise that are not contemplated in the procedure, such as, for example, some interpreters assessing the viability or suitability of the application, making a mistake with the interpreting because they do not know the subject matter, being judgmental and questioning the applicant's credibility, or even having a conversation that is not strictly professional. Moreover, many minority languages lack interpreters and interviews must be done in similar languages or non-native languages such as French in case of sub-Saharan applicants. At the border this is even more problematic, where the lack of training and neutrality is even more noteworthy. Often, when interpretation cannot be provided, the person concerned is documented as an asylum seeker who has already been interviewed, and whose case has been declared admissible by the Office of Asylum and Refuge (OAR), but no interview has in fact ever been conducted because of lack communication between the interviewer and the asylum seeker. There is no case to be processed nor reviewed by the OAR, so their right to due process is curtailed, as no facts or arguments to base their claim were ever made. Such interviews and, therefore, the whole process, is automatically void, unless a second interview is granted in due time by the OAR.

Furthermore, the personal characteristics of the interpreter are not taken into account in interviews, meaning that, for example, in cases where the asylum seeker alleges persecution on trafficking for the purpose of sexual exploitation or gender-based violence, the interpreter is often a man, or in cases of Sahrawis fleeing from Moroccan territory, Moroccan interpreters are used, which generates, to say the least, discomfort for the asylum seeker.

Finally, due to the pandemic, the use of telephone interpreting is widely common, which reduces understanding and considerably reduces the quality and effectiveness of the interview.

4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures).

In 2020, Spain has not asked other EU countries to take responsibility for international protection applications, except at the request of the interested party (e.g., minors with family members in another EU country).

On the other hand, Spain has been responsible for applications from other countries, receiving asylum seekers who, according to the Dublin Regulation, should have been examined by Spain. However, there have been recent situations in which persons who have been transferred to Spain have not been admitted to the reception system for asylum seekers (link 12), despite two November 2018 judgments of the Madrid High Court of Justice (Administrative Chamber, 1st Section) establishing that denying access to the reception system to these persons (asylum seekers) violates Article 24 of the Spanish Constitution (link 13).

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Link 12 – ElSalto (8 September 2020). Solicitantes de asilo devueltos por Gran Bretaña son abandonados en Barajas: <https://bit.ly/2MoNqwB>.

Link 13 ElSalto (4 February 2019). Un litigio estratégico sobre el sistema de acogida de solicitantes de asilo: <https://bit.ly/2Nu2xFD>.

5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads).

In practice, applications for international protection of certain nationalities are being processed through the emergency procedure provided for in Article 25 of the Asylum Law, but the persons concerned are not being notified of this extent (procedural defect) when it is a matter that is detrimental to them, as Article 25.1 of the aforementioned law obliges the authorities to do so.

Regarding the special border procedure applied, among others, in Immigration Detention Centers (known as *Centros de Internamiento de Extranjeros* or *CIE*), there has been a recent judgement of the Court of Justice of the European Union in response to a preliminary question raised by a judge on the Canary Islands, which allows persons to apply for asylum before the investigating courts that can issue detention orders, avoiding this way their detention in the aforementioned CIE (link 14). This was first put into practice in September 2020, also on the Canary Islands. 31 Malian nationals expressed their will to apply for asylum before the judge and, therefore, were not transferred to the CIE pending their removal (link 15).

That special procedure lacks specific safeguards for vulnerable persons. Without any guarantees in place for persons in a vulnerable situation seeking asylum at the border (e.g., children on the Canary Islands, alleged victims or survivors of human trafficking for the purpose of sexual exploitation). Besides this, legal assistance is provided for by public defenders who are called on the same day of the interview and who are not properly trained on international protection, neither on counselling or identifying persons in vulnerable situations (e.g., victims of human trafficking, etc.). Moreover, applications within this special procedure (applied at the border and in case of applications submitted

inside detention centers) are likely to be refused or dismissed as inadmissible compared to those made on the territory, thus increasing the vulnerability of the applicants concerned.

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Link 14 – CJUE ruling (C-36/20 PPU, 25 June 2020): <https://bit.ly/3qYqZ0c>.

Link 15 – elDiario.es (28 September 2020). Una jueza aplica por primera vez la sentencia europea sobre solicitantes de asilo y evita el CIE a 31 malienses: <https://bit.ly/3kkkqCK>.

6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement).

The reception system remains insufficient to cope with the number of applicants and beneficiaries of international protection and/or the stateless status. The number of bed places is around 10,000, while the number of applicants during 2020 reached almost 90,000, a number that would have been far exceeded had there not been a global pandemic.

Stateless persons continue to be denied access to the initial assessment and referral phase of the reception system. This system, moreover, has been susceptibly modified through an instruction of the Ministry of Inclusion, Social Security and Migration of December 2020 with effect for 2021, which limits access to the second phase of the system to persons who have been granted international protection. Taking into account the administration's failure to meet the deadlines for a decision, it is highly likely that there will be applicants whose applications have not been accepted or have been rejected who will not be able to access the second phase if the system is finally implemented in this new way.

It is also worth highlighting the situation of vulnerability to which persons who make a second or subsequent application for international protection in Spain are subjected and who, for this reason, are prevented by the Reception Handbook from entering the reception system. This guideline is detrimental, in particular, to people in a situation of vulnerability whose asylum application has been processed through the fast-track border procedure and/or to people whose asylum application was rejected, but who have subsequently applied for international protection again because the situation in their country of origin has changed during their stay in Spain. In this regard, Fundación Cepaim has dealt with cases of people of Malian nationality, whose application was denied through the border procedure when they were in the border city of Melilla, and who, once in the peninsula, were not allowed access to the reception system when they applied for asylum again as a result of the recent events in the country. This is also the case of many other asylum seekers whose application was processed through the regular procedure, and to applicants of the stateless status whose application have been closed because they have not responded promptly to OAR's requests for more information (as reported in last year's

survey, stateless persons face many obstacles accessing housing, they must move around on a regular basis and they cannot always communicate their new address in a timely manner).

Applicants of the stateless status continue facing hindrances in terms of integration, as they lack access to the labor market. Neither has this been facilitated to asylum seekers or refugees either during the pandemic, despite labor shortages in certain areas. Employment is also limited for those asylum seekers staying in the Spanish enclaves of Ceuta and Melilla. In complete disregard with numerous court decisions, the authorities continue issuing documentation that is “only valid in Ceuta/Melilla”, denying these applicants their freedom of movement and the possibility to find jobs in mainland Spain.

During the state of alarm declared in Spain because of the COVID-19 pandemic, several NGOs working in the city of Melilla submitted a complaint to the Spanish Ombudsperson alleging a lack of available reception facilities and social services for asylum seekers and migrants in the city. These organizations argued that hundreds of people were living with deficient minimum goods and services such as food, running water and were lacking access to health care services (link 16)

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Link 16: CEAR (4 June 2020). ONG denuncian la gestión de la acogida de personas en Melilla durante el estado de alarma: <https://bit.ly/3bDzWpd>.

7. Detention of applicants for international protection (including detention capacity – increase/decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention).

Applicants for international protection cannot be detained, although this provision is not entirely true for applicants for stateless status when they have not been granted a temporary residence permit or documentation to prove it. In any case, on the occasion of the pandemic, and following the state of alarm decreed on 14 March 2020, immigration detention was limited to the point of being eliminated for several months. From May to November, the CIEs remained empty.

Furthermore, and as highlighted in question 5 of this questionnaire, in September 2020, for the first time, it was allowed to apply for international protection before an examining court, thus eliminating any possibility of detention for applicants for international protection (link 9).

Despite the general situation described in the previous paragraphs, it is worth mentioning the limitation to freedom of movement that can be taken as a possible illegal detention of asylum seekers during the state of alarm in the autonomous city of Melilla, as well as of minors formerly under the protection of that city and migrants, both in the V Pino temporary shelter and, subsequently, in the bullring, where they continue to be sheltered and held for arbitrary periods as soon as a new case of COVID-19 is detected. These restrictions on freedom of movement were often arbitrary. The time and place of the restriction of movement was usually decided by reception technicians or security personnel from the security company Eulen (link 17, page 60).

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Link 17 – Servicio Jesuita a Migrantes – España (2020). Seeking a Way Out. Reporto n the Southern Border 2020: <https://bit.ly/2NWvLge>.

8. Procedures at first instance (including relevant changes in: the authority in charge, organization of the process, interviews, evidence assessment, determination of international protection status, decisionmaking, timeframes, case management - including backlog management).

As we have reiterated on previous occasions, there are several deficiencies that undermine the quality of asylum applications in Spain. We refer to problems of interpretation, the carrying out of interviews in inappropriate places, and the lack of training of the officers in charge of conducting interviews, as well as the systematic failure to meet the deadlines for deciding, among others. The latter is mainly due to the fact that the Asylum and Refugee Office (OAR) is understaffed. The lack of a larger number of decision-makers and the considerable steady increase in the number of applications in recent years makes it very difficult to manage the current workload. This lack of personal resources ultimately has an impact on the quality of the procedure, and means that the number of subsequent interviews, consisting of a second direct interview with the examiner to learn more about the history and the alleged grounds for persecution, an instrument that favors the quality of the decision, has been reduced.

Applicants have serious problems renewing their documentation, which is essential to protect them against refoulement, due to the existing appointment system. There are situations of great helplessness due to the difficulty in getting an appointment, so that many people are forced to turn to mafias, organized groups, call shops or websites that resell appointments for prices close to €100 (link 18). This insecurity is also transferred to the labor market, because the employer who hires the applicant fears that the situation of lack of documentation may cause problems before the Labor Inspectorate, despite the fact that the applicant is still an applicant because their application has not yet been decided upon.

Recently, the OAR has been refusing humanitarian reasons and even their renewal when the applicant has a criminal record (judgement issued) or a police record (no judgement issued). It should be noted that, in the case of family members or minors of a person with a "criminal record", this should not affect them negatively in the acquisition of a residence permit. However, that is not often the case. There are also cases of Venezuelans who have been in Spain for a long time and who are denied humanitarian reasons because it is believed that they have some kind of recognized protection or residence permit in a Latin American country. However, we believe that in these cases the "non-return" to Venezuela should be determined and humanitarian reasons should be granted, as this protection or authorization in that country may not be maintained over time.

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Link 18 – elDiario.es (16 August 2020). Venta en Wallapop de citas para comisarías de extranjería: “Te la consigo por 100 euros”: <https://bit.ly/3uwaPxd>.

9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management).

Apart from the fact that appeals do not have automatic suspensive effect, there are serious difficulties for interim measures to be granted to allow the appellant to remain in Spain, as well as to keep their right to work in the country until a final judgment is handed down, except in the case of extremely vulnerable persons in border proceedings at the border or who are detained in CIE whose deportation to their country of origin is imminent.

Moreover, judicial review is very strict and limited: applicants are not given the opportunity to produce statements and to include facts and evidence. Appeals take long to be decided upon.

10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders).

As we have stated in previous inputs to the EASO Annual Report, databases lack comprehensive, updated and multilinguistic country of origin information and they lack the accessibility and user-friendliness stakeholders require. Resources such as refworld.org and ecoi.net are adequate, but most of the information is only available in English. There is an imbalance between countries with a high volume of COI reports and those with little to no information. For instance, current Senegal COI reports are out-of-date in terms of persecution on sexual orientation grounds.

In terms of statelessness, and apart from the UNHCR's repository of protection policy and guidance on refworld.org, there are no COI reports whatsoever to be found.

11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children).

The Asylum Law states that the specific situation of people in a situation of vulnerability will be taken into account, adopting the necessary measures, but that these will be developed by an implementing regulation; however, there has been no regulation adopted and, therefore, this provision has no practical application. This is particularly serious in the area of reception, as there are not enough places for people in particularly vulnerable situations (victims of human trafficking for the purpose of sexual exploitation, people with mental health problems, people with addictions or dual pathology, etc.). Managing places of this type is a burden for civil society organizations, and in the absence of sufficient public funds, they cannot take charge of these places, so there is a clear lack of care for people with certain problems such as those referred to above. It is worth remembering that mental health problems can be caused by the very fact of fleeing one's country of origin due to persecution, an aggressive phenomenon in itself, and which has a serious impact on personal integrity and health. To this should be added those people who already had such problems in their country of origin.

Articles 20 and 21 of the Reception and Procedures Directives mandate States to carry out a screening to detect vulnerable persons and to adapt the reception and procedure to their needs. As has been noted, this is not specifically regulated, but it must be said that the organizations involved in the reception system informs the OAR and the Ministry of Inclusion, Social Security and Migration of these circumstances and on many occasions, we are ignored (not respecting requests to halt the procedure to obtain documentation or to complete medical treatments, etc. and not recognizing humanitarian reasons in very obvious cases). In fact, in 2020, only 330 authorizations (roughly 0,008%) for humanitarian reasons were given to non-Venezuelan nationals, half of whom are Colombians, many of whom are relatives of Venezuelans (link 10).

Stateless persons are also in a specific category of vulnerability (as the UNHCR has repeatedly stated), lacking the human right to a nationality, a key element that enables the enjoyment of all other human rights. Although the statelessness status in Spain is a good practice due to the content of its protection, the situation of stateless applicants is clearly deficient, even in comparison with that of applicants for international protection, mainly because they are not guaranteed a temporary stay in Spain (without being protected against refoulement), and because they can never obtain a work permit, despite the fact that the OAR does not respond within the three-month period it has to decide (sometimes it takes years to do so).

Regarding unaccompanied minors, the UN Committee on the Rights of the Child (CRC) has once again denounced the procedure for determining the age of minors in Spain because of its unreliability and because it violates their right to an identity, as well as being contrary to the principle of the best interests of the child. (links 19 to 21, among others). As in previous occasions, minors may be transferred to Immigration Detention Centers even if they produce documentation from their countries of origin stating their status as minors. Spanish authorities have a complete disregard for official documents from those countries and, instead decide to test those minors through a medical procedure that, as the CRC has many times stated, is not reliable and violates international human rights law. This situation persists despite the number of CRC decisions adopted in the past few years. Moreover, many asylum seekers arriving on the Canary Islands who tell the authorities they are minors are not registered by them and neither are they subjected to age determination procedures that comply with international human rights standards.

It should also be highlighted that many unaccompanied children arriving in Ceuta and Melilla 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 mainland, these children find it almost impossible to prove they are minors as they have already been registered and documented as adults.

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Link 19 – CRC (28 September 2020), communications no. 37/2017 and 38/2017 (CRC/C/85/D/37/2017 and CRC/C/85/D/38/2017): <https://bit.ly/3pS8gCd> and <https://bit.ly/3bHlfkY>.

Link 20 - CRC (28 September 2020), communication no. 40/2018 (CRC/C/85/D/40/2018): <https://bit.ly/37OgDsd>.

Link 21 - CRC (28 September 2020), communication no. 26/2017 (CRC/C/85/D/26/2017): <https://bit.ly/3aQlhHZ>.

12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training).

Beneficiaries of international protection

The government's handbook to manage the National Reception System restricts reception rights to refugees and persons who have been granted subsidiary protection. According to the new document, beneficiaries of international protection in Spain can enter the system in the following cases: (1) being already in the reception system; or (2) resettled refugees, reunited family members and persons to whom the refugee status of a relative has been extended (ref 1). That leaves many refugees out: those who entered Spain with enough economic resources to support themselves and their relatives, but whose financial means have been reduced significantly; persons who ignored the existence of this system upon applying for the statute, etc.

Asylum seekers

The protection granted to asylum seekers as well as for refugees and stateless persons is limited because of a lack of knowledge of the competent bodies responsible for providing basic social services (healthcare, training, education, etc.).

Employment and training: training courses are usually limited and access to the labor market is often difficult (discrimination against migrants, employers' distrust of documentation with limited validity); degree recognition involves meeting burdensome criteria, so persons are forced to be employed in unskilled work or unreported employment lacking job security.

Education: integration measures in the educative field are non-existent. Asylum seekers, as well as migrants in general, lack free and available Spanish courses for adults.

Housing: asylum seekers are victims of serious discrimination in this field. The price of rent has skyrocketed in Spain in recent years, and asylum seekers cannot afford adequate housing. When they do, they are sometimes prevented from renting by racist and xenophobic behavior of landlords.

Documentation: as it was aforementioned, the lack of proper documentation is a main concern that has been exacerbated during 2020. Before 2019, asylum seekers were issued an identification document (white sheet of paper) stating that their interviews had been conducted and that their case was pending admission. Once admitted (within one month),

they were issued a new document (known as red card) that recognized them as asylum seekers whose case was being examined by the OAR. However, applicants now receive that white document that expires in six months. Red cards are now issued six months after their applications have been lodged. If there were problems with red cards (cardboard IDs with personal information that resemble old IDs) because of the distrust such document generated, the situation is even worse now. Banks, public administrations and social services put up barriers against asylum seekers because of the weakness of their documentation. That has not improved with the new system. Also stated above, but worth stressing it again, is the fact that documentation renewals take long to be processed, leaving asylum seekers several weeks without a valid ID, becoming therefore de facto undocumented migrants with limited access to basic services and to the work market. New measures should be adopted to ensure that all asylum seekers have an updated ID at all times.

Freedom of movement: over the past few years, Spanish courts have been ruling against limiting the freedom of movement of those asylum seekers who applied in Ceuta or Melilla. Their documentation clearly indicates that it is only valid in those cities, meaning that they are useless and null in mainland Spain, thus severely restricting their freedom of movement. In 2020, the Supreme Court upheld all these lower court rulings and found that asylum seekers in Ceuta or Melilla have the right to free movement throughout Spanish territory once their application is admitted for processing (link 22).

Stateless persons are not protected in the same way as asylum seekers. They may be granted a stay permit (they are not entitled to it), are not protected against removal, and lack a work authorization during the process. Their integration is severely hindered and they often have no information on their case and nobody to contact at the OAR in that regard.

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Ref 1 (no link available) – Ministry of Inclusion, Social Security and Migration. Sistema de Acogida de Protección Internacional: Manual de Gestión (4.0, 7 February 2020).

Link 22 – Supreme Court ruling (no. 1128/2020, 29 July 2020): <https://bit.ly/3aPDO7u>.

13. Return of former applicants for international protection.

Appeals have no automatic suspensive effect and interim measures are often rejected (they are only admitted sometimes on grounds of urgency, such as an imminent enforcement of a removal decision, being held at an Immigration Detention Center (CIE), or being at a border crossing point). Therefore, appellants are not protected against removal and cannot exercise their right to due process if they are deported.

Stateless persons can be removed at any time, as there is no protection against refoulement for them. We have also reported cases where stateless persons who applied for the stateless statute had traveled abroad and were prevented from reentering Spain. Those persons were holders of the green card, the ID issued to those stateless persons seeking to be recognized as such. Even if their cards were valid and issued by a Spanish authority granting them the right to stay, the police officers at the border crossing points in the

airports of Valencia and Alicante implemented removal measures against these applicants.

Fundación Cepaim implements projects on voluntary assisted-return and reintegration (link 23) and we think they should be given priority and adequate budgetary allocation in order to promote the sustainability of these programs in the long run. With these projects, the integration measures and results are valued and can be used to share experiences, skills and good practices that can be used as tools in the migrants' countries of origin. That benefits not only them, but also their relatives, and the society of origin. The International Organization for Migration (IOM) offers similar programs in Spain (link 24).

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Link 23 – Fundación Cepaim (web). Retorno voluntario: <https://bit.ly/3skCwXU>.

Link 24 – Organización Internacional para las Migraciones (OIM) (web). Proyectos de Retorno Voluntario: <https://bit.ly/3dMBkIS>.

14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes).

Our casework indicates that resettled family units often leave the system in order to leave with relatives in Spain or abroad, and even after being informed of the consequences (Dublin Regulation, suspension of aid, etc.). It seems that these persons were not prepared and that the program did not properly address their different needs (family network in another city or country, lack of fellow nationals within the region they are, etc.). It is important to highlight challenges related to resettled families: they sometimes come with very high expectations of how the system works and offers (this should be addressed beforehand at origin).

Private or community-based sponsorship programs are a great initiative and they have already been implemented as pilot projects in the Basque Country (ongoing, link 25) and recently in Valencia (link 26) by the UNHCR.

It is worth noting that the Supreme Court, in a December 2020 ruling, determined that resettled persons must be granted refugee status, not subsidiary protection (link 27). This is good news, but there is speculation that, in practice, this may mean that the authorities will be more restrictive in selecting the people who will be resettled.

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Link 25 – UNHCR Spain (25 September 2019). La representante de ACNUR agradece al pueblo vasco el apoyo al primer proyecto piloto de acogida a refugiados bajo patrocinio comunitario: <https://bit.ly/38LgyTD>.

Link 26 – Ministry of Inclusion, Social Security and Migrations (20 October 2020). La secretaria de Estado de Migraciones Cierra el acto inaugural del programa de

reasantamiento de refugiados por Patrocinio Comunitario en Valencia: <https://bit.ly/2ZNY0Af>.

Link 27 – Supreme Court ruling (no. 1773/2020, 17 December 2020): <https://bit.ly/3kmpIgR>.

15. Relocation (*ad hoc*, emergency relocation; developments in activities organised under national schemes or on a bilateral basis).

The authorities claim to have relocated 200 people during 2020, with none from Lesbos since 2018 (link 28). The IOM announced the relocation of 15 asylum seekers from Italy to Spain in November, with the support of the EASO and the Spanish government (link 29), and 138 Syrian refugees were relocated from Lebanon (link 30). At the beginning of 2021, 77 people were relocated from Malta (link 31).

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Link 28 – EuropaPress (23 January 2021). España ha reasentado o reubicado a más de 3.900 refugiados en cinco años, 200 en 2020, según el Gobierno: <https://bit.ly/3ktYWn2>.

Link 29 – IOM (13 November 2020). Fifteen Asylum Seekers Relocated from Italy to Spain: <https://bit.ly/3uxqbS4>.

Link 30 – IOM (25 September 2020). Se reanudan los programas de reasantamiento con la llegada de 138 refugiados de Siria, que han viajado desde el Líbano con el apoyo de la OIM: <https://bit.ly/3aQMf2c>.

Link 31 – IOM (21 January 2021). @IOMSpain: “Esta mañana hemos asistido a la llegada en España de 77 personas solicitantes de asilo que han sido reubicadas desde Malta en una nueva muestra de solidaridad entre países europeos”: <https://bit.ly/3r6AM4B>.

16. National jurisprudence on international protection in 2020 (please include a link to the relevant case law and/or submit cases to the EASO Case Law Database (<https://caselaw.easo.europa.eu/Pages/default.aspx>)).

- Ruling of the Constitutional Court on pushbacks (link 2).

The Constitutional Court endorses rejections at the border as long as they are carried out individually, with judicial control and in compliance with international obligations. However, as mentioned in the first question of this questionnaire, this practice, which also lacks a procedure to regulate it, completely prevents any type of judicial control of the refoulement and to guarantee compliance with international standards.

See also link 1 (ruling of the ECtHR on pushbacks).

- Ruling of the Court of Justice of the European Union on the possibility of applying for asylum before investigating courts competent to order immigration detention (link 14).

The Court ruled that investigating judges competent to order immigration detention are also authorities before whom international protection can be sought, so that persons who

are at their disposal for possible transfer to an immigration detention center can apply for asylum without first having to be detained to do so.

This has already been put into practice in Spain, as mentioned in question 5 (link 15).

- Ruling of the Supreme Court on the freedom of movement of asylum seekers in Spain (link 22).

Already referred to in question 12 of this survey, this ruling stated that all asylum seekers enjoy freedom of movement within Spanish territory, including that of those staying in Ceuta and Melilla, whose movement has been severely restricted because they have been issued documentation as applicants that is only valid in Ceuta or Melilla.

- Ruling of the Supreme Court on the status of resettled persons in Spain (link 27)

This judgment (mentioned in question 14) establishes that persons resettled by Spain should enjoy refugee status, not subsidiary protection.

- Ruling of the Supreme Court on the right to seek asylum at Spanish Embassies (link 31).

Article 38 of the Asylum Law allows for international protection to be requested at embassies in cases where the applicant is not a national of the State in which the diplomatic representation is located. The same article determines that it will be the regulation implementing this law that will establish the conditions and the specific procedure to be followed. However, there are no implementing regulations and, in practice, it has not been possible to apply for international protection in Spanish embassies. The Supreme Court ruled that the lack of such a regulation does not prevent the application of this article and that the lack of a resolution by the authorities can be understood as a presumed act that can be challenged.

We do not know how far-reaching this ruling will be in practice. Civil society denounces the fact that in certain embassies (such as those located in Moroccan territory) people of certain nationalities (i.e., from sub-Saharan countries) do not have the possibility of approaching them and expressing their wish to request international protection, as the Moroccan security forces do not allow them to do so. This situation means that people of these nationalities do not have legal and safe ways to access Spanish territory and are forced to jump the fence of Ceuta and Melilla or pay to reach Spain in illegal boats.

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Link 31 – Supreme Court ruling (no. 1327/2020, 15 October 2020): <https://bit.ly/3bGnHbB>.

17. Other important developments in 2020.

- Asylum seekers have serious difficulties in opening bank accounts. This is not a new situation, but it is still a serious problem that continues in 2020 and early 2021.

- Although the Asylum Act only restricts family reunification (designed for family members of different nationality) in the sense that those who were reunited cannot further reunite, this is not the case in family extension (designed for relatives with the same nationality). However, it seems that family extension may be limited in the future so that no further extensions will be allowed.
- The OAR continues to consider the possibility of an Internal Flight Alternative in Colombia, despite international reports to the contrary.
- The OAR is now more willing to grant international protection to women victims of female genital mutilation or at risk of female genital mutilation and their babies.
- International protection is widely denied to Guinean nationals claiming politically motivated persecution.
- There are serious restrictions on freedom of movement since the declaration of the state of alarm in March 2020. There have been reports of possible unlawful detention of asylum seekers held in the bullring and in the V Pino temporary reception facility in the city of Melilla during the lockdown. They were not allowed to leave the premises or to carry out activities permitted by the authorities (banking, shopping in supermarkets and pharmacies, etc.). Several organizations also reported the situation experienced by the people inside the Centre for Temporary Stay of Immigrants (CETI) in Melilla, who, once the lockdown was over, were not allowed to leave their enclosure or the provisional facilities, in any case (link 17, pages 57 and 58).
- Separated families: There are asylum seeking families who, once all their members are in the autonomous city of Melilla, suffer the separation for several months between those who reside in the CETI and those who remain under the guardianship of the autonomous city in one of the centers for the protection of minors until they receive the results of the DNA tests that determine the kinship (link 17, page 1). This situation drastically affects the mental health of these persons and violates the right to family life as established in different international human rights instruments, including the UN Convention on the Rights of the Child.

Ref 1 (no link available) – Ministry of Inclusion, Social Security and Migration. Sistema de Acogida de Protección Internacional: Manual de Gestión (4.0, 7 February 2020).

Link 1 – ECtHR, Grand Chamber (13 February 2020). Case of N.D. and N.T. v. Spain: <https://bit.ly/3bDCzHB>.

Link 2 – Ruling of the Constitutional Court (no. 172/2020, 19 November 2020): <https://bit.ly/3kkjAG6>.

Link 3 - ElPaís.com (19 January 2021). Cerca de un centenar de inmigrantes salta la valla de Melilla: <https://bit.ly/3c9xhWg>.

Link 4 - RTVE.es (20 August 2020). Un migrante muerto y once heridos, tres de ellos guardias, en el salto simultáneo de la valla de Melilla por 300 personas: <https://bit.ly/3qUIKh0>.

Link 5 - El Faro de Melilla (6 April 2020). Un total de 55 inmigrantes consiguen saltar la valla: <https://bit.ly/39DtizH>.

Link 6 – Cadena Ser (3 January 2020). La Guardia Civil expulsa ‘en caliente’ a Marruecos a las 42 personas que habían llegado esta madrugada a las Islas Chafarinas: <https://bit.ly/3suFRDJ>.

Link 7 - 20minutos (19 January 2020). La policía marroquí impide el asalto de 400 subsaharianos a la valla de Ceuta: <https://bit.ly/2MqdQxM>

Link 8 – Asilo en cifras 2019 ([source](#))

Link 9 – Avance trimestral de datos de protección internacional (septiembre): <https://bit.ly/2ZOHCJt>.

Link 10 – Avance trimestral de datos de protección internacional (diciembre): <https://bit.ly/2ZRUHbn>.

Link 11 – Avance trimestral de datos de protección internacional (mayo): <https://bit.ly/3pMGMxO>.

Link 12 – ElSalto (8 September 2020). Solicitantes de asilo devueltos por Gran Bretaña son abandonados en Barajas: <https://bit.ly/2MoNqwB>.

Link 13 ElSalto (4 February 2019). Un litigio estratégico sobre el sistema de acogida de solicitantes de asilo: <https://bit.ly/2Nu2xFD>.

Link 14 – CJUE ruling (C-36/20 PPU, 25 June 2020): <https://bit.ly/3qYqZ0c>.

Link 15 – elDiario.es (28 September 2020). Una jueza aplica por primera vez la sentencia europea sobre solicitantes de asilo y evita el CIE a 31 malienses: <https://bit.ly/3kkkqCK>.

Link 16: CEAR (4 June 2020). ONG denuncian la gestión de la acogida de personas en Melilla durante el estado de alarma: <https://bit.ly/3bDzWpd>.

Link 17 – Servicio Jesuita a Migrantes – España (2020). Seeking a Way Out. Reporto n the Southern Border 2020: <https://bit.ly/2NWvLge>.

Link 18 – elDiario.es (16 August 2020). Venta en Wallapop de citas para comisarías de extranjería: “Te la consigo por 100 euros”: <https://bit.ly/3uwaPxd>.

Link 19 – CRC (28 September 2020), communications no. 37/2017 and 38/2017 (CRC/C/85/D/37/2017 and CRC/C/85/D/38/2017): <https://bit.ly/3pS8gCd> and <https://bit.ly/3bHlfkY>.

Link 20 - CRC (28 September 2020), communication no. 40/2018 (CRC/C/85/D/40/2018): <https://bit.ly/37OgDsd>.

Link 21 - CRC (28 September 2020), communication no. 26/2017 (CRC/C/85/D/26/2017): <https://bit.ly/3aQlhHZ>.

Link 22 – Supreme Court ruling (no. 1128/2020, 29 July 2020): <https://bit.ly/3aPDO7u>.

Link 23 – Fundación Cepaim (web). Retorno voluntario: <https://bit.ly/3skCwXU>.

Link 24 – Organización Internacional para las Migraciones (OIM) (web). Proyectos de Retorno Voluntario: <https://bit.ly/3dMBkIS>.

Link 25 – UNHCR Spain (25 September 2019). La representante de ACNUR agradece al pueblo vasco el apoyo al primer proyecto piloto de acogida a refugiados bajo patrocinio comunitario: <https://bit.ly/38LgyTD>.

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Link 27 – Supreme Court ruling (no. 1773/2020, 17 December 2020): <https://bit.ly/3kmpIgR>.

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Link 31 – Supreme Court ruling (no. 1327/2020, 15 October 2020): <https://bit.ly/3bGnHbB>.