

# Input by civil society to the EASO Annual Report 2018

Fields marked with \* are mandatory.

## Input by civil society to the EASO Annual Report on the Situation of Asylum in the EU+ 2018

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EASO has started the production of the 2018 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). [Previous reports are available at EASO's website](#)

While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries.

We would like to kindly invite you to take part in this process, by sharing your observations on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on the online survey. The topics listed there reflect the structure of Chapter 4 of the EASO Annual Report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. You can fill in all or only some of the points. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2018, including improvements and new/remaining concerns. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2017 Annual Report](#). If you do not consent on EASO making your submission available, please indicate so in the relevant part of the online survey.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as

many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input completing the online survey by **Thursday, 28 February 2019**.

## Instructions

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Within each area, please highlight the following **type of information**:

- **NEW positive developments; improvements and NEW or remaining matters of concern;**
- **Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.**

*You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.*

*Prior to completing the survey, please take a moment to review the list of areas and the types of information that needs to be included in each area.*

*Please contribute your feedback online or copy and paste your answers from an editable type document*

## Questions

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### **1. Access to territory and access to asylum procedure (including first arrival to territory and registration)**

The main obstacles regarding access to the Spanish territory are faced mostly at the Ceuta and Melilla borders and checkpoints. These obstacles are mainly due to the difficulties of asylum seekers to cross the border and exit Morocco. There are several reported cases concerning refusal of entry and push backs, including incidents involving thousand persons.

One of the ways used by migrants and asylum seekers to enter the territory is to attempt to climb border fences in groups. The increasing numbers of attempts to jump border fences occur because migrants and asylum seekers, and mostly Sub-Saharan nationals, face huge obstacles in accessing the asylum points at the Spanish border, due to the severe checks of the Moroccan police at the Moroccan side of the border. Data provided by the Spanish Government show that no asylum application was made at Ceuta's border checkpoint, and that persons from sub-Saharan countries are underrepresented between the nationalities of asylum seekers at Melilla's border.

Readmission agreement signed in 1992 between Spain and Morocco was recently applied at the border in Ceuta and Melilla. The implementation of this agreement has provoked a decrease of the arrivals in the border fences.

The situation at borders and regarding access to territory has also 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”, includes a specific regulation within the Aliens Act concerning the “Special regime of Ceuta and Melilla”.

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

The amendment aimed at legalising the push backs (*devoluciones en caliente*) practiced in Ceuta and Melilla, and has been criticised for ignoring human rights and international law obligations towards asylum seekers and refugees by several European and international organisations. 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.

Several cases have been brought to court to challenge the conduct of Spanish border control patrols and guards. CEAR has presented a third party intervention before the European Court of Human Rights (ECtHR) in a case that 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).

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

It is also important to note the lack of coordination and uniformity that has been seen in the response from the different parties involved towards group arrivals on Andalusian shores, as well as obstacles to accessing information to the international protection procedure. Access to this procedure often depends on the place of arrival. Asylum applications cannot be submitted through embassies or consular representations outside the Spanish territory, although the Asylum Act foresaw that possibility.

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

There is a good practice that should be mentioned regarding access to information. In July 2018 CEAR and UNHCR started a project to ensure the early identification of protection and other needs among sea arrivals at the main disembarkation points: Almería, Motril, Málaga, Algeciras and Tarifa. The objective of the project is to facilitate access to the asylum process and the referral to other protection mechanism by enhancing the provision and sharing of information on international protection.

Out of the three migration routes to Europe, the Western Mediterranean route to Spain was the one that registered a considerable proportional rise in numbers during 2018. 58.569 persons arrived to the Spanish coasts in 2018, almost tripling 2017's figures. Sea arrivals in Spain in 2017 and 2018 included individuals fleeing persecution, conflict, and protection risk situations, including women fleeing sexual and gender-based violence; persons in need of international protection due to their sexual orientation or gender identity; and unaccompanied or separated children with specific protection needs.

Despite the good practices, there are some obstacles that should be mentioned. It is important to note that in Spain there is a lack of information on international protection regarding unaccompanied minors. The small number of applications lodged for international protection is a consequence of this. Also children should be allowed minors to make asylum applications without the need of the consent of their legal tutor, to guarantee that foreign unaccompanied minors who are not recognized as such by the State, can access without obstacles the asylum procedure with all the guarantees corresponding to a minor.

#### **4. Providing interpretation services**

In Spain, article 18 of the Asylum Law provides the right of all asylum seekers to have an interpreter, but even if this is often respected, some obstacles should be mentioned. In Melilla, for example, there have been many difficulties in finding interpreters who speak Bambara and Soninké.

Disembarkation of people rescued in the Central Mediterranean route and the context of EU Relocation scheme where asylum seekers from Greece and Italy's hotspots have been transferred to Spain, has brought to Spain nationalities of asylum seekers who cannot count on a community in the country, such as Iraqis, Kurds and Eritreans. Due to the absence of a sizeable community, there have been many difficulties in finding interpreters who speak Tigrinya, Pashtu or Sorani. This fact has caused many shortcomings and obstacles not only to asylum authorities but also to NGOs providing services and accommodation to asylum seekers.

Difficulties also should be mentioned when finding interpreters of some languages in rural areas or medium-small size cities apart from Madrid, Barcelona, Valencia or Sevilla.

It has also been noticed that the translations in some arrival points in Andalusia done by the public translator is not always accurate. In addition, often the interpreter is not just limited to do translation but provides legal information, which is part of the functions of the lawyer. The interpreter is answering the questions and giving wrong information to the migrants regarding asylum/ immigration law without asking the lawyer what to say.

#### **4. Dublin procedure (including the organisational framework, practical development and suspension of transfers to selected countries, detention in the framework of Dublin procedures)**

Due to the lack of human, material and financial resources of the Asylum Office in Spain, Dublin procedure is not being applied and there have not been outgoing 'Dublin' transfers in the last year.

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

The increase in the number of arrivals of asylum seekers in Madrid Barajas Airport, resulted in overcrowding and inadequate conditions in border facilities at the airport and severe difficulties for the Asylum Office and police to regularly register and process the admissibility of applications, often resulting in allowing entry into the territory before taking a decision on the application under the border procedure. Also, the Spanish Ombudsman documented cases of persons who were kept in the airport facility longer than the prescribed time limit under the border procedure.

It is also important to mention the requirement of the airport transit visa to citizens from Palestina, Gambia and Cameroon. It has made it impossible for these nationals to access a border post at Spanish airports where they can formalize their asylum application. This measure is a serious contradiction since the Spanish authorities have been effectively recognizing the status of refugee to applicants of people from Palestine and this was the seventh country of origin of people who applied for asylum last year in Spain.

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

According to the Spanish Asylum Law, applicants for international protection, in the case they lack of own financial means, will be provided with needed shelter and social services in order to ensure the satisfaction of their basic needs. Material reception conditions under national legislation on asylum are the same for every asylum seeker, no matter the profile or the type of asylum procedure applicants are subject to. Recently, the Superior Court (Tribunal Superior de Justicia, TSJ) of Madrid has ordered the Spanish authorities to ensure that asylum seekers returning to Spain from other European countries under the Dublin Regulation are not excluded from access to the reception system. The Superior Court of Madrid found that the two appellants' right to judicial protection under Article 24 of the Constitution had been breached as they were denied accommodation in the reception system for asylum seekers upon return to Spain. The Ministry of Labour, Migration and Social Security withdrew reception conditions on the ground that applicants had renounced the right to reception by leaving the country. At least 20 people returned to Spain under the Dublin Regulation have been left destitute in Madrid due to the practice. To comply with the judgment, the Ministry of Labour, Migration and Social Security has adopted instructions guaranteeing returned asylum seekers' right to re-access the reception system and to benefit from an adequate standard of living. It has amended the Reception Handbook to clarify that reception conditions shall not been withdrawn for reasons of abandonment of the place of residence where the applicant has been returned to Spain under the Dublin Regulation.

In December, the Spanish Ombudsman has initiated an action before the General Commissariat for Foreigners and Borders as a reaction to long delays facing persons seeking to register an asylum application. These long delays had a negative impact in the access to the reception system in Spain playing as an obstacle.

The process begins with the presentation of the application, which the applicant shall present in person or, if this is not possible, with representation by another person. The formalisation ("lodging") of the application, which consists in an interview and the completion of a form, will be always be realised in the presence of a police official or an officer of the OAR. Due to the increase in asylum applications made in Spain in recent years, applicants are waiting long periods of time before being called to be interviewed by the OAR. This problem had already emerged in 2015, resulting in an intervention of the Spanish Ombudsman,<sup>31</sup> who reported delays of 4 months for an appointment with OAR and adverse consequences for asylum seekers left undocumented until they lodge their claim and obtain a red card which certifies their asylum seeker status and their right to remain in Spain and to access to the asylum reception system.

The Spanish Law requires a higher level of formalism than the Asylum Procedures Directive for the asylum seeker to have the right and access to the reception system. Asylum Spanish Law does not foresee the legal provision included in the European Directive allowing asylum seekers access to the reception system by the mere expression of willingness to seek asylum. This legal provision in the European directive should be directly applicable to asylum seekers and the mere expression of willingness should give the right to access to the Spanish asylum reception system.

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

In Spain, the state's capacity to detain irregular migrants has been increasing lately within the framework of rising migrant control and border surveillance capacity, especially during 2018. In another hand, detainee conditions present several shortcomings and unacceptable points, on which organized civil society has been taking position, so as, for example, the Servicio Jesuita a Migrantes -SJM- (Jesuite Migrant Service), having issued a report on the Centros de Internamiento de Extranjeros (CIE) (Spanish internment facilities for irregular migrants), entitled "Sufrimiento Inútil", (unnecessary suffering), in which it denounces the lack of access to an effective enjoyment of rights in this CIE. In addition, we are currently unaware of any eventual substantial gain, apart from the recent governmental announce stating that a reform of this CIE is foreseen (but yet to come).

Regarding the alternatives to detention, as a precautionary measure to ensure the expulsion, it is to be said that, contravening both international statements and civil society organisations recommendations, nowadays detention is not being used as the last precautionary measure but, just on the contrary, systematically in the majority of the cases. Lastly, the fact that most of the migrants interned in this facilities could finally not be removed from the national territory, this due to various reasons, discredits these detentions. With that in mind, we recall that, all in all, from a total of 8.645 departures from the CIE all throughout all the year 2017, only 3.287 (37,29%) were likely to be forced return, while the remaining 5.358 (61,98%) were released.

As for access to information within detention centres in Spain, this issue continues to be a matter of concern, as it keeps on being highly discretionary, depending, on the centre and, this, without valid justification. Information within the CIE has been a matter of concern for the Spanish Ombudsman. Moreover, the recommendations of this body include the need of providing information in several languages on gender based violence, human trafficking, sexual violence, habeas corpus or other relevant issues, altogether with the information related to the international protection.

The new naming for first reception centres of irregular migrants in Spain: "Temporary Attention Centres for Foreigners" (CATE in its acronym in Spanish) have not been exempted of dissent regarding how they can legally snap-in. There is not much information available about the funding of the 4 CATE that currently exist, and, the main critic to these centres, as they are under the direction of the Police Directorate, underlines that they are, in practice, just as extensions of police stations, where migrants do not have freedom of movements for up to 72 hours, though it is said that they are not detention centres. Furthermore, access to civil society organisations is denied. Supposedly created to accelerate the identification tasks of new arrivals, they are also seen as one more mechanism to speed up the expulsion of irregular migrants from Spanish territory.

**8. Procedures at First Instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, international protection status determination, decision making, timeframes, case management, including backlog management)**



In January 2019 there was more than 85.000 pending asylum applicants waiting for a decision of the Spanish authorities. Regardless of where the request is made, the asylum application in Spain is the start of a long and uncertain wait. It is calculated that asylum decisions can take between 18 months and two years and in some cases as long as three years. This depends on how saturated the Asylum and Refugee Office is, but also on the applicant's nationality. Applications by citizens of Venezuela or Nicaragua find themselves paralysed while waiting for the situation in their countries of origin to improve. In 2018, 76% of asylum applications ended in refusal.

Last available data show that the overall average processing time in 2017 was reported at 431 days or 14.4 months. In 2017, the average duration of the procedure was 9.2 months for Syrians, 16.8 months for Afghans and 20 months for Iraqis.

Also, obstacles regarding family extension should be mentioned. It is essential to guarantee physical secured access to Spanish embassies abroad of relatives to whom international protection is extended, as well as to ensure the proper treatment of all staff from embassies to applicants of family extension of international protection. There are enormous difficulties in accessing consular representation by family members due to appointments and exhaustive access controls and confusion on the part of the staff of the diplomatic representation between family reunification of aliens / extension of international protection status. A major difficulty faced in practice is the certification and proof of dependence, which becomes especially difficult in the case of some countries. As to economic dependence, the Spanish law does not establish a clear criterion. In practice, concessions are given as long as the beneficiary of protection sends money to the family which is in the country of origin. This, however, is a major problem for countries in conflict where money transfers, not possible. One of the main problems in practice concerns sons / daughters who are over 18 but depend on the beneficiary of protection. These are normally cases of 19 or 20-year-olds who still live in the family nucleus next to underage siblings. In these cases, extension is granted to underage sons / daughters but is denied to overage children, thereby breaking the nuclear family and consequently leaving these individuals in a vulnerable situation in their countries of origin.

## **9. Procedures at Second Instance (including organisation of the process, hearings, written procedures, timeframes, case management, including backlog management)**

It is important to note that in Spain there is a lack of training on asylum at Second Instance. New hearing rooms in the Spanish High Court have been opened and there is a need of training on asylum concerning new staff working in this new hearing rooms due to their generalist background.

Also, the violation of the right to an effective remedy in Spain should be highlighted. The European Court of Human Rights (ECtHR) has ruled that Spain violated the right to an effective remedy of 30 asylum seekers of Sahrawi origin who faced removal to Morocco before a thorough examination of their asylum application. The applicants, all of Sahrawi origin, arrived in and lodged applications for international protection. They had reached Spain's Canary Islands on makeshift boats between January 2011 and August 2012, having fled their camp in the Western Sahara after it was forcibly dismantled by Moroccan police. All the applications were rejected, as were the applicants' subsequent requests to have them reconsidered. The applicants then applied for judicial review of the decisions to reject their applications, at the same time seeking a stay of execution of the orders for their deportation. After ordering the administrative authorities to provisionally suspend the applicants' removal, the Audiencia Nacional rejected the 30 applications for a stay of execution. Following requests by the applicants for interim measures, the European Court indicated to the Spanish Government under Rule 39 of the Rules of Court that the applicants should not be removed for the duration of the proceedings before it. The Audiencia Nacional rejected the applications for judicial review lodged by some of the applicants, who then appealed on points of law to the Supreme Court.



**10. Availability and use of Country of Origin Information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

There exist a big variety of country of origin information -COI- sources, going from official sources that are commonly used so as for example the COI reports of Refworld or of the European Country Information Network, to different kinds of reports elaborated by NGO, as CEAR does.

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

From the very beginning of the arrivals by sea there exist in Spain a structured system of identification of vulnerable migrants. Spanish Red Cross is in charge, and do have standardized procedures to identify these possible profiles. Therefore, when a disembarkation occurs a triage is done. The main profiles are:

- Minors:

It is to be highlighted the problems of age determination, as a margin of error in the technique used is of 2-3 years, so minors of 15-16 years old can be taken as adults and, thus, not referred to the special centres where every single minors should be sent, no matter if he/she is an asylum seeker or not. These specialized centres are managed at a territorial level, at the regional level (Spanish autonomous communities); One weak point of this system is that minors are separated from their parents until the proof of DNA ends.

- Victims of human trafficking:

There also exists a special procedure in order to identify possible victims, and, when so is certified, they are subsequently referred to specialized organisations working in this field.

Concerning the Reception System for International Protection Seekers, there exists both general and specific centres, this, for minors for example. The identification and referral is done case per case. There exists as well a reservation of places for vulnerable profiles, which can be in the same reception facilities as for the rest of asylum seekers, or else in specialized facilities. These are the cases of trafficking victims, LGTBI asylum seekers, persons presenting some mental health problems and persons presenting functional diversity.

In every Autonomous Community in Spain it is a must to have a reservation of some places in each reception centre to properly attend the special needs of asylum seekers with functional diversity.

Special aid for persons with mental health problems in Spain is basically based in the familiar support. This represents a problem with asylum seekers as this familiar help is not available for them.

In the reception centres, professionals are specially trained in trafficking and gender base violence issues. In brief, we can state that, despite the existence of special procedures of identification of vulnerable profiles of potential asylum seekers, a proper conduction of this identification depends a lot on the number of arrivals occurring at the same moment, as when a bigger number of irregular happens to arrive, the identification is worse undertaken and this work goes downward.

Reception of migrants in vulnerable situation include the following elements: psychological, physical or social attention, funded by the AMIF fund from 2002, intended for refugees, forcibly displace, asylum seekers, statelessness and other beneficiaries of international subsidiary protection located in different points of the national territory. These persons make, altogether with the technical crew a personalised integration itinerary that takes into account their special needs from a comprehensive approach, this, in coordination with the rest of the professional stuff that intervene in the reception tasks. These itineraries have the purpose of promoting personal capacities development, which is, to gain the upper grade of autonomy and social inclusion that can be potentially achieved within a normalised environment. Thus, the persons attended, themselves they assume their own commitment and responsibility to properly advance in their own inclusion processes.

**12. Content of protection – situation of beneficiaries 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)**

In general terms, access to rights and protection services are well run in Spain, specially concerning social security, integration in the labour market and everything related to the different kinds of measures to enhance language skills, to improve attainment in schooling and the ones related to the education system and other special trainings. In spite of what has just been said, there exists some persisting problems or obstacles, as follows:

Housing: As the competence is transferred from the central government to the territorial administrations, some of them requires a minimal time of previous inscription in the city/census registration prior to have the right to access to the public-social housing system, as well as in order to access to other social benefits. This poses a problem when asylum seekers move within the territory from one administration to a different one (as the antiquity starts to be counted again from zero), and, in general terms, when they are recently new arrived asylum seekers.

Minimum income: the same situation described in the above mentioned point happens in relation to this component of protection.

All in all, the general objective of civil society actors working in this subject is to promote the active involvement of these persons so as they could be at the fore of their inclusion process from the very beginning of their asylum demand deposal to their ultimate integration itineraries

### **13. Return of former applicants for international protection**

Regarding the different kinds of outbound of the national territory, we are especially concerned about the persistence of the expulsions from the border after a tentative of entry, knowing that the European Court of Human Rights has sentenced against Spain for keep on practicing these “refoulements à chaud” that are proscribed by the international refugee law (concretely the condemnation has been regarding the expulsion of 2 young migrants from Mali and Ivory Coast that occurred back in august 2014 in the Spanish enclave of Melilla, which was, by the way, a collective expulsion without an accurate judicial remedy as it should have been though).

Recently, the United Nations Committee on the Rights of the Child has issued an Opinion, dated the 12th February 2019, regarding the refoulement from Spain to Morocco of a non-accompanied minor in 2014, condemning the Spanish state for this unappropriated practice, which is to be, from now on, an important precedent in defence of the migrants’ human rights and, as well, comes to strengthen the position of civil society organizations and other actors that have been strongly denouncing this unlawful practices and requiring from the state its immediate and definitive termination.

On another hand, it is of our concern the fact that the readmissions of migrants, in accordance with signed bilateral agreements signed with third states are being produces without the due respect to the corresponding obligations of both parts, specially, in this case and concerning Spain, its supervision responsibility (in vigilando) to be granted case per case whenever the physical return of migrants to these third countries takes place in order to ensure that they will not find themselves again in a perilous situation.

Otherwise, in general terms, there does not exist enough transparency regarding the migrants’ expulsion and return procedures in the national territory.

To note, that several cases of international protection denial affecting migrants being already part of the reception system, makes it compulsory for them to quit it in within 15 days. In some of these cases it is tried to operate the ways out as a voluntary return, but this not always the reality for migrants as they find themselves unwillingly in deportation flights.

Other asylum seekers decline their international protection demand in the course of their corresponding procedure, as they find their expectations not to be fulfilled, due to the implementation of Dublin system, restrictions to movement, or frustrated familiar reunification, and so, they decide to return.

#### **14. Resettlement and humanitarian admission programmes including EU Joint Resettlement Programmes; national resettlement programme (UNHCR); National Humanitarian Admission Programme; Private sponsorship programme/scheme and Ad-hoc special programmes)**

The vast majority of migrants resettled in Spain are Syrians, and do come from Turkey, Lebanon and Jordania. Resettlement operates case per case, but Spain has not always been so nimble with this issue. This program started in 2015 and was very active in 2016 and 2017 but not that much during 2018. As a perspective for the next future to come, this current 2019 it seems to regain remarkable activity. To be highlighted is the fact that around a 15% of resettled migrants decline to continue in this program in Spain as they move on to other member states, so as France, Belgium or Germany, in order, for example, to reunite with their relatives. Nonetheless, this is not as striking as the dropout rate in relocation programs, which is higher.

The main profile in resettlement in Spain, that poses real reception challenges is the large families, of 5 or more members, as they frequently present social and health problems (insufficient birth assistance, chronic diseases...), with minors and older persons which are highly dependents and in need of important social

services to be provided.

A positive point is the inter-territorial distribution within different administrations in Spain. Another positive element is the fact that, today, information regarding resettlement has increased. Regarding the resettlement, as recalls the Secretaría de Estado de Migraciones (National Secretariat on Migration issues), on the occasion of its appearance in the las working session (Nº 36) of the Commission on Work, Migration and Social Security (Comisión de Trabajo, Migraciones y Seguridad Social) in the Congress of Deputies, having taken place the past 19th of February 2019: “the resettlement obligations have been attended as an orderly way for the arrival of persons that are located in third countries outside the EU. The National Resettlement Plan includes 1.200 potential beneficiaries of international protection”. Notwithstanding these statement, CEAR has been vindicating a stable, permanent and long-lasting resettlement as a matter of saving lives.

Facing the externalization of border control, border closure and the various obstacles to demand international protection, including from the diplomatic dependences abroad, resettlement turns to be one of the few non deadly ways for migrants on the move to stabilize their situation.

As for the Humanitarian Visas, is it to be highlighted that this is a measure that, to date, has been used by some member states on a discretionary basis, certifying the chance for asylum seekers to legally move safe and sound within the Schengen area in order to depose their asylum demands. Nowadays the expedition of this kind of visa is up to each state, in compliance with their internal legislation following the criteria of their respective consulates.

Following the European Court of Justice, the Visa Code does not compel EU states to concede humanitarian visas, although this issue remains opened regarding the application of the European Convention on Human Rights before European Court of Human Rights in respect the Case of Mohamad Nahhas against Belgium. Spain, in the 38th article of the Ley 12 de 2009 (Act 12/2009 on the Right of Asylum and Subsidiary Protection), states literally that: “the consulate may grant humanitarian visas”; a statement which appears to be too vague and imprecise, and that, subsequently leaves a wide scope of discretion for ad hoc decision-making which does not assure the necessary legal certainty and protection.

Humanitarian Visas is an issue in which there exist a big uncertainty, as there is a lack of a specific regulation concerning the corresponding procedure to conduct. Despite of the lack of definition of what is to be considered “humanitarian reasons”, following both the customary law and statements of the European Court of Human Rights, it is arguable that Spanish authorities do have the obligation to fulfil their international liabilities regarding this topic. Thus, the facultative nature that the Asylum Spanish Law states concerning the possibility of conceding humanitarian visas, should, all the same, respect the international law. Furthermore, the principle of no return needs to be also respected also by embassies and consulates.

To conclude, considering the difficulties to set up a specific and detailed regulation on humanitarian visas, some alternatives have been proposed (and this, also on the occasion of a hearing before the LIBE Committee in July 2018), namely the visa exemption and the travel permits given by the UE.

## **15. Relocation (any relevant developments concerning persons transferred under the EU relocation programme and relocation activities organised under national schemes/on bilateral basis)**

Relocated refugees in Spain receive the same treatment as all other asylum seekers and refugees in Spain. Their asylum claims are not officially being assessed under the urgent procedure, although in the practice their applications are decided on immediately, receiving subsidiary protection a general rule. To date all relocated persons have received positive decisions on their applications.

Upon arrival in Spain, asylum seekers are referred to the Asylum Office for the registration of their asylum application. At the same time, they are immediately placed within the official reception system as all other asylum seekers, in equal conditions relating to duration of reception, conditions and level of financial allowances. It is important to note that only around 11% of refugees to be relocated have been finally transferred to Spain, which is around 2.000 people.

## \* 16. Other relevant developments

*1 character(s) minimum*

1. Border fences removal in the Spanish enclaves of Ceuta and Melilla in Africa, announced by the government during 2018. Though this is a good news, almost at the same time that we knew about this measure, Morocco announced that they will strengthen border control within their land-side of responsibility. One for the other.

2. Increased cooperation with third countries, especially on border control issues and especially with Morocco, as both states share the common goal of restraining migration flows to Europe. Spanish civil society organisations are concerned about the fact the recent agreement reached between Spanish and Moroccan authorities to enhance the cooperation in rescue activities on the Gibraltar Channel waters, could lead to conduct returns of migrants on the move to Morocco, where they could be potentially at risk as it has been confirmed to be a non-secure port, and with less opportunities to ask for international protection if this should be the case. As part of this process of bilateral cooperation, Spain will keep on training Moroccan bodies in charge of sea rescue, so that they could increase the number of cases that they will lead and, subsequently face less cases itself.

3. The Spanish external action in the African continent has been recently redefined in the so-called "III Plan Africa" (on the basis of previous I and II Plan Africa, the first one starting in 2006), containing, as one of its 4 overall objectives, the management of migratory flows, and crossing this issue with the international cooperation for development which reception by African third countries appears to be conditioned to the collaboration in this migration flows management (to be read as migration flows restraining).

4. Some Spanish actors concerned in migration and asylum issues are to claim within the EU a common shared asylum system and shared responsibility as proof of solidarity to temporary distribution of disembarked migrants in European southern coast borders in the meantime of the approval of an expected agreement for a more stable and predictable disembarkation and redistribution system. In this sense, Spanish Ministry of Interior does not oppose to these temporary agreements "as long as they stand for all the Mediterranean".

Nonetheless, critical voices have not been lacking as they distrust on the recent obstacles to rescue activity in Spanish ports.

## References and Sources

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\* 17. Please provide links to references and sources and/or upload the related material in pdf format using the following box

- 2016 Spanish Ombudsman Report: “El asilo en España, la protección internacional y los recursos del sistema de acogida” (International protection and reception means)  
[https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo\\_en\\_Espa%C3%B1a\\_2016.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo_en_Espa%C3%B1a_2016.pdf)
- 2019 CEAR’s input to Spanish National Plan of Human Rights
- 2018 CEAR’s Annual Report  
<https://www.cear.es/wp-content/uploads/2018/06/Informe-CEAR-2018.pdf>
- [https://www.cear.es/wp-content/uploads/2018/11/EXECUTIVE-REPORT\\_2018.pdf](https://www.cear.es/wp-content/uploads/2018/11/EXECUTIVE-REPORT_2018.pdf)
- 2017 CEAR’s Report on Spanish Southern Border: “Invisible walls beyond the southern border”
- <https://www.cear.es/wp-content/uploads/2018/03/REPORT-MUROS-FRONTERA-SUR.pdf>
- CEAR’s follow-up on Migration and asylum Spanish and European Agenda
- CEAR’s statement on relevant issues “what we say”  
<https://www.cear.es/category/noticias/>
- 2018 Servicio Jesuita de Migraciones’ Report on CIE 2017: “Unuseful suffering” (foreigner’s internment facilities)
- <https://sjme.org/wp-content/uploads/2018/06/Informe-CIE-2017-SJM.pdf>

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- Third party intervention at the Grand Chamber ECHR: "N.D. N.T. vs Spain"

## Contact details

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\* Name of the contributing stakeholder

Spanish Commission on Refugee Aid / Comisión Española de Ayuda al Refugiado CEAR

Contact person, Role



\* Email

\* I accept the provisions of EASO [Legal and Privacy Statements](#)

## Contact

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