

Refugees and migrants in Spain: The invisible walls beyond the southern border



CEA(R)

Comisión Española
de Ayuda al Refugiado

This report has been drawn up by the advocacy area of the Spanish Refugee Aid Commission (CEAR in Spanish) as part of the “Observatory on the right to asylum, forced migrations and borders” project funded by the Extremadura Agency for International Development Cooperation (AEXCID).

Within the context of this research and in order to identify the current situation on the Spanish southern border and coasts, particularly in Almeria, Malaga, Motril, Algeciras, Tarifa, the Canary Islands, Ceuta, Melilla and in Morocco, the CEAR team held interviews with *Salvamento Marítimo* (Spanish Maritime Safety Agency) in Almería and Tarifa, the Spanish Red Cross in Almería, Málaga and Tarifa, the Almería National Police, lawyers from the Almería Bar Association, UNHCR, the Malaga Bar Association, CEAR-Málaga, the National Police in Malaga, Andalucía ACOGE, Almería ACOGE, UCRIF (the National Police central illegal immigration and document forgery unit) in Algeciras, the Civil Guard police in Málaga and Algeciras, lawyers from the Algeciras Bar Association, Algeciras ACOGE, *Asociacion Pro-Derechos Algeciras* (the Algeciras Human Rights Association), *Antena Sur contra la Trata* (Antena Sur Radio against Trafficking), lawyers from the Granada Bar, CEAR in the Canary Islands, CEAR in Ceuta, CEAR in Melilla, *Association Marocaine des Droits Humains* (AMDH), UNHCR in Rabat, *Conseil national des Droits de l’Homme* (CNDH), *Groupe Antiracis d’Accompagnement et de Defense des Étrangers et Migrants* (GADEM) and the *Oriente Occidente* (East West) Foundation.

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The Spanish Refugee Aid Commission (CEAR) is a non-profit organisation founded in 1979 engaged in voluntary, humanitarian, independent and joint action. Our aim is to work together with citizens to defend the right to asylum. Our mission is to defend and promote human rights and comprehensive development for asylum applicants, refugees, stateless people and migrants in vulnerable situations or at risk of social exclusion. Our work takes a comprehensive approach based on temporary accommodation; legal, psychological and social assistance; training and employment; and social advocacy and participation.

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List of Acronyms

UNHCR: United Nations High Commissioner for Refugees

BRA (ORS): Bureau des Réfugiés et des Apatrides (Office of Refugees and Stateless persons)

CEAR: Spanish Refugee Aid Commission

CIE: Immigration Detention Centre (Spain)

CETI: Immigrant Temporary Stay Centre

CRE: Spanish Red Cross (*Cruz Roja Española*)

ERIE: Emergency Immediate Response Teams

FRONTEX: European Border and Coast Guard Agency

LOEx: Law on the Rights and Freedoms of Foreigners in Spain

MENA: Unaccompanied foreign minors (*Menores Extranjeros No-Acompañados*)

MEYSS: Spanish Ministry of Employment and Social Security

MNP: Spanish National Prevention Mechanism against Torture

OAR: Spanish Asylum and Refuge Office

SIVE: The Civil Guard police's Integrated Exterior Surveillance System

UCRIF: The National Police's Illegal Immigration Networks and Document Forgery Unit

UE: European Union

1. Introduction

Spain's southern border is today the third way for migrants to enter Europe over the Mediterranean Sea. The number of arrivals by sea tripled in 2017. This context throws up significant challenges as regards the procedure for international protection, reception, identification and specific treatment of people with special needs.

Given this context and within its objectives in defence of human rights and the right to asylum, CEAR has carried out a research mission in order to analyse the situation of asylum applicants, refugees and migrants at the southern border and in Morocco. The work has been carried out by direct observation on the ground and different interviews with the institutions responsible for this matter, as well as with organisations and people who work to defend the rights of refugees and migrants.

2. Context

Spain is the third European border in terms of the number of migrants and refugees arriving by sea, with a total of 22,103 arrivals doing so this way in 2017¹. This is far surpassed by Italy with 171,332² and Greece with 29,718³.

One of the reasons for the rise in arrivals to Spain is the instability in the main countries of origin and transit (Morocco, Algeria, Ivory Coast, Guinea Conakry and Gambia), along with the dismantling of camps where these people had settled in Morocco and Algeria, which has been a “push factor” encouraging more migrants and refugees to attempt to cross the strait so far this year. Another factor that may be contributing to this increase in arrivals is the fact that the Moroccan Gendarmerie (police) is allocating fewer officers to control the borders and more to control protests in the Rif region, the backdrop to continual demonstrations against the government that have led to ferocious repression against the civilian population, arresting and imprisoning demonstrators. Furthermore, the Moroccan government has expressed its discontent with the ruling by the Court of Justice of the European Union in December 2016, which excludes agricultural produce from Western Sahara from the EU-Morocco agreement. The ruling may be a precedent that could also be applied to agreements on fishing that are soon to be renegotiated. The Minister for Agriculture, Aziz Akhanouch, gave a clear warning last February: “Any obstacle in applying this agreement implies a real risk of the migration flows returning, which Morocco has managed to keep under control”⁴.

It should also be noted that the numbers of arrivals to Spain rose at the same time as they fell for Italy and Greece. Although Italy is still the most common destination by far, in 2017 the arrivals there fell by 34.5%⁵. The same happened in Greece, where the drop registered was 83%. The International Organization for Migration (IOM) believes this may indicate that Spain is suffering from what has happened on other occasions: the closure of one of the routes has intensified the traffic via another⁶.

The agreement signed between the European Union and Turkey in March 2016 has had a big impact on the number of arrivals to Greece from Turkey. The figures have fallen from 10,000 arrivals in a single day from Turkey before the agreement to an average of 84 people arriving per day. This means a drop of 97% in arrivals according to data from the European Commission⁷.

¹ Data on arrivals by sea to Spain taken on 10 January 2018: <http://data2.unhcr.org/en/situations/mediterranean/location/5226>

² Data on arrivals by sea to Italy taken on 12 January: <http://data2.unhcr.org/en/situations/mediterranean/location/5205>

³ Data on arrivals by sea to Greece taken on 8 January 2017: <http://data2.unhcr.org/en/situations/mediterranean/location/5179>

⁴ Why is Spain the main route again for migrants seeking to enter Europe across the Mediterranean? (*¿Por qué España vuelve a ser la ruta principal para los inmigrantes que buscan entrar en Europa por el Mediterráneo?*) BBC Mundo <http://www.bbc.com/mundo/noticias-internacional-40899919>. [Accessed on 11 November 2017].

⁵ Over 2016 the number of arrivals in Italy came to 181,463, whereas in 2017 there have been 118,874.

⁶ Why is Spain the main route again for migrants seeking to enter Europe across the Mediterranean? (*¿Por qué España vuelve a ser la ruta principal para los inmigrantes que buscan entrar en Europa por el Mediterráneo?*) BBC Mundo <http://www.bbc.com/mundo/noticias-internacional-40899919>. [Accessed on 11 November 2017].

⁷ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207_eu_turkey_statement_en.pdf

The Italian authorities also seem to have found the way to stop people coming from Libya, a country steeped in chaos that has become one of the main countries from which irregular immigration has been coming since the fall of the Gaddafi regime in 2011. Italy and Libya signed an agreement on 2nd February 2017 by which Italy gives ample resources to train and equip the Libyan coast guard in exchange for a commitment from Libya to pursue illegal human trafficking. Italian officers can hand over migrants and refugees rescued on the high seas to the Libyan authorities and patrol its territorial waters. This agreement has permitted joint surveillance within their territorial waters, and as a result the craft detected can be immediately returned to the African coast.

As a consequence of the agreement between Italy and Libya, NGOs rescuing people at sea have been accused of acting in compliance with human traffickers and of being financed by opaque means⁸. This has led to the criminalisation of these organisations and hindered their work. In July 2017, the European Commission published a plan of action with steps to support Italy and reduce the number of people arriving, in which it mentions the need to improve coordination among those working in the central Mediterranean⁹. It is in this context that Italy approved a code of conduct¹⁰ for the NGOs that carry out rescues in the Mediterranean. Different human rights organisations¹¹ have denounced that this code would imply a greater risk of deaths in the Mediterranean as well as criminalising the rescue organisations.

As for Libya, it vetoed the presence of NGOs operating in its waters. This brought about a dispute between the NGOs and the Italian authorities, who are blamed by bodies such as CEAR, Médicins Sans Frontières and Save The Children for having promoted an agreement that does not observe the right to asylum or guarantee the safety of migrants and refugees. It is in this context that some NGOs decided to abandon their sea rescue operations, which may discourage many people who were trying to enter Europe by this route and lead them to choose the one connecting Morocco with Spain.

With this new strategy, Italy is applying the same formula that Spain has been using since 2006, when hundreds of simple, medium-sized boats known as “cayucos” attempted to reach the Canary Islands from Mauritania and Senegal, leading the local press to call this the “cayucos crisis”. After managing to stop the flow arriving from Morocco, the route shifted to Mauritania. From there, cayucos were needed to reach the Canaries, since they are bigger than the boats known as pateras that had generally been used until then. During that time, Spain signed readmission agreements with Niger (2008) and other countries¹², and cooperation agreements with third countries such as Cape Verde (2008) and Gambia (2006). All of these agreements are characteristic for their security and policing approach, aiming to obstruct the arrival of migration flows to Spain. Similarly, detention centres were set up in those countries’ territories, giving instruments to the Official Aid for Development to help control borders¹³. Thus, the future of migrants and refugees was left in the hands of countries that did not comply with human rights.

These steps, based on externalising borders with military control and expensive high technology (Integrated Exterior Surveillance System, SIVE), are the pillars of the European migration policy.

SIVE is made up of fixed and mobile video and infrared cameras and radar sensors that control Spain’s southern coast. When it was installed, SIVE helped to change the migration route in 2002 from the Strait of Gibraltar to the

⁸ The Spanish Public Prosecutor investigates the NGOs that rescue immigrants in the Mediterranean (*La Fiscalía Italiana investiga a las oenegés que rescatan inmigrantes en el Mediterráneo*), El Periódico <http://www.elperiodico.com/es/internacional/20170227/la-fiscalia-italiana-investiga-a-las-oenegés-que-rescatan-inmigrantes-en-el-mediterraneo-5864134> [Accessed 11 December 2017].

⁹ European Commission Action plan on measures to support Italy reduce pressure on central Mediterranean route and increase solidarity. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170704_action_plan_on_the_central_mediterranean_route_en.pdf [Accessed on 9 December 2017].

¹⁰ Several NGOs denounce that the code of conduct being prepared by Italy restricts rescuing immigrants (*Varias ONG denuncian que el código de conducta que prepara Italia restringe los rescates de inmigrantes*). El Periódico. <http://www.elperiodico.com/es/noticias/internacional/hrw-denuncian-que-codigo-conducta-que-prepara-italia-restringe-los-rescates-inmigrantes-6164123>. [Accessed on 11 December 2017]. See the code of conduct via this link: <http://www.interno.gov.it/it/servizi-line/documenti/codice-condotta-ong-impegnate-nel-salvataggio-dei-migranti-mare>

¹¹ Organisations such as CEAR, Amnesty International and Human Rights Watch. EU: Draft Code for Sea Recues Threatens Lives. Amnesty International. <https://www.amnesty.ie/eu-draft-code-sea-rescues-threatens-lives/> [Accessed on 5 December 2017].

¹² Several re-admission agreements had previously been signed with Mauritania (2003), Guinea Bissau (2003), Ghana (2005) and others. CEAR (No date): Access to Protection: A Human Right.

¹³ One example is the creation of a detention centre in Nouadhibou by the Spanish army, financed by the Agency for International Development Cooperation with the express intention of returning migrants there who had been intercepted on the way to Spain.

Canary Islands. As a result, the number of arrivals to the islands more than doubled that year, as we have explained above, and SIVE was extended to the Canaries and later to the Spanish coast (Valencia and Alicante) and the Balearic Islands. Extending SIVE to the area of the Canary Islands helped shut off this migration route¹⁴ which was replaced by the Spanish enclaves of Ceuta and Melilla. With the increasing pressure on the land borders, Spain increased the number of agents guarding them and bolstered the border fences surrounding the enclaves. However, strengthening the Spanish land borders of Ceuta and Melilla is one of the reasons for the increase in arrivals by sea to the coasts of Andalusia. The number of arrivals in sea craft from Northern Africa to Spain across the Strait of Gibraltar and the Sea of Alboran is notably higher than the number recorded in 2016. As an example, here are the data on arrivals to Almeria and Tarifa in 2016 and 2017:

ALMERIA	2016	2017
No. of "patera" migrant boats	86	180
No. of people rescued	2058	4862
TARIFA	2016	2017
No. of "patera" migrant boats	131	332
No. of people rescued	951	4222

Source: Salvamento Marítimo (Spanish Maritime Safety and Rescue Agency)

As a consequence of the increase in arrivals by sea, the danger of the route has heightened with a significantly greater number of deaths recorded compared to 2016. The number of people dying at sea according to the IOM was 223 by 21st December 2017¹⁵ whereas in 2016 the number of deaths registered came to 169¹⁶.

The main routes to the Spanish coast are: Nador-Almería (Sub-Saharan), Cape Espar-tel-Tarifa (Sub-Saharan on toy craft) and Ashila-Barbate (Moroccans)¹⁷.

In July and August 2017, a drop in arrivals by Sub-Saharan to the coast of Almeria was detected, while there was an increase in Algerians and Moroccans. However, arrivals of both Sub-Saharan and Moroccans have continued at the same pace in Algeciras.

Women account for approximately 8% of the people arriving on Spanish coasts in groups by boat¹⁸. In Almeria, some of the parties involved who were interviewed have detected an increase in women arriving, some of whom are a few months pregnant, and a drop in arrivals of newly-borns. In Algeciras there has been an increase in Sub-Saharan women arriving with babies born during the journey.

Types of boat

The boats arriving in Almeria are precarious. They are normally inflatable craft with old motors taken from fishing boats. The people on board have no knowledge about the sea. Some of them have no phones and even if they do, there is no signal during the crossing if they cross the Sea of Alborán.

Inflatable craft known by the English word "toys" have been arriving in Algeciras and Tarifa for a couple of years with

¹⁴ Whereas more than 31,000 migrants came to the Canary Islands in boats in 2006, fewer than 300 people arrived on the islands' coasts in 2014. According to data from October 2015, there was an increase in arrivals to the islands, reaching 642 people, although the most notable increase in arrivals by sea was seen on the coasts of Andalusia, with over 130% more than in 2014. CEAR (2015): Morocco: Lack of protection and violation of migrants' and refugees' rights on Europe's doorstep. (*Marruecos: Desprotección y Vulneración de Derechos de las personas migrantes y refugiadas a las puertas de Europa.*)

¹⁵ Missing Migrants. Tracking Deaths along Migration Routes. IOM: <http://missingmigrants.iom.int/region/mediterranean>. [Accessed on 11 December 2017].

¹⁶ Mediterranean Updates Migration Flows Europe: Arrivals and Fatalities, IOM <https://www.iom.int/news/migrant-drownings-top-3000-4th-straight-year-despite-reduced-migrant-crossings-mediterranean>. [Accessed on 26 December 2017].

¹⁷ Although these are the main routes, it is worth noting that 45 patera boats carrying 473 people arrived in Murcia in November 2017. Throughout 2017, a total of 178 patera boats arrived on the coast of Murcia carrying 1,717 people. The Spanish Government's Delegate in Murcia calls the arrival of these boats an "attack on the EU". El Mundo. <http://www.elmundo.es/espana/2017/11/18/5a100d9a22601d181f8b4604.html>. [Accessed on 11 December 2017].

¹⁸ Data provided in an interview with UNHCR. More information at: <http://data2.unhcr.org/en/situations/mediterranean>

toy¹⁹ paddles, used by Sub-Saharan people. In fact, some of the most common injuries are burns and blisters on people's hands from rowing in salt water. Moroccans do not use these craft, but pay for the crossing in boats with a motor. Jet skis have also begun to be used to carry two migrants at a time; usually Moroccan minors who pay €3,000 each. They are usually boys aged from 12 to 15. Some human rights organisations have detected an increase in minors arriving²⁰.

The number of craft arriving in Almeria is lower than in Tarifa, but they usually carry a greater number of people. The boats carrying Algerians and Moroccans usually take about 20-25 people, but sometimes *patera* boats arrive with 3-4 people. The ones transporting Sub-Saharan people usually carry about 30-35 people, but sometimes boats have arrived with 40 to 50 people. The highest number of arrivals is seen in Tarifa.

3. Rescue

Salvamento Marítimo (Spanish Maritime Safety and Rescue Agency)²¹ is responsible for rescuing migrant boats. Among others, its mission is search and rescue to protect human life at sea. The rescue mechanism is triggered on receiving an alert, which may come from a third party such as a boat, plane, an NGO, relatives and in very exceptional cases from Frontex²².

They can also receive alerts from the people in the boat itself, though this is exceptional and more so in Almeria and Malaga given that in these cases the alerts are raised 10 to 12 hours after leaving Morocco, by which time they have reached Spanish waters and are in an area with no mobile phone signal. It is more common to receive these kinds of alerts in Tarifa, since there is a phone signal throughout the crossing. These alerts are received every day and sometimes more than once on the same day.

After receiving the alert, the rescue teams get to work immediately since they consider there is an imminent risk to people's lives, trying to narrow the possible search area down as much as possible. One of *Salvamento Marítimo*'s biggest difficulties in carrying out a search is the scarcity of information about the exact location of the boats spotted, which means they have to comb very large areas.

The searches are carried out in both the SAR region²³ belonging to Spain and the one belonging to Morocco. The latter carries out rescues through its merchant navy and the Maritime Royal Gendarmerie, whereas Spain does so together with the civil reception service. In keeping with international rescue law, the people rescued must be taken to the country nearest to the place where they are rescued.

In Tarifa, the rescue work is usually not as difficult as in Almeria and Malaga due to the shorter distance between the Spanish and Moroccan coasts, since this is a region with a lot of sea traffic and there is more possibility of sighting a boat. However, crossing the strait is dangerous in spite of the short distance separating the Spanish and Moroccan coasts (14 km)²⁴ since it is usually very windy and the boats can be easily blown in different directions. There are also strong currents and heavy traffic with ships that may hit the migrant boats. The strait is the second point in the world with the heaviest sea traffic after the English Channel.

¹⁹ *Asociación pro-Derechos Humanos de Andalucía* (Andalusian Pro-Human Rights Association) (2017): *Derechos Humanos en la Frontera Sur* (Human Rights on the Southern Border).

²⁰ Adpha and Andalucía warn of a rise in minors arriving on the coast (*Apdha y Andalucía Acoge alertan del incremento de menores llegados a las costas*). *El Mundo*. <http://www.elmundo.es/andalucia/2017/07/31/597f67f146163fb81c8b468e.html>. [Accessed on 11 December 2017].

²¹ This public body answering to the Spanish Ministry of Public Works and Transport (Fomento) has bases and twenty rescue coordination centres throughout Spanish territory and coastline, coordinated by a national centre in Madrid.

²² It has an aerial unit and two boats that patrol the designated area. The Civil Guard police has a Coordination Centre in the strait, which is Frontex's delegate in Spain.

²³ International Convention on Maritime Search and Rescue (SAR Convention). The 1979 convention, adopted in a conference in Hamburg, was intended to draw up an international search and rescue plan so that regardless of where an accident happens, people who need help can be rescued in a coordinated way by a search and rescue organisation and when necessary with cooperation between neighbouring search and rescue organisations.

²⁴ In terms of jurisdiction, half of the waters belong to Morocco so that for the rescue and reception there is a section shared with Morocco.

Together with the Sea Rescue staff in Almeria, Civil Guard police officers usually travel on these forays into the sea, since this is the body responsible for guarding the coast and controlling irregular immigration, with both bodies collaborating. However, in Algeciras the Civil Guard does not take part in the rescues.

Once all of the people from the boat are on board the *Salvamento Marítimo* ship, they are taken to the ports of Almeria, Motril or Malaga, depending on which detention modules have space. In Cadiz they are usually taken to the port of Tarifa and in very exceptional cases to the one at Barbate.

This protocol is the same for rescues in the strait and in the sea of Alboran.

On receiving an alert, *Salvamento Marítimo* informs the Seville Red Cross, which in turn warns the Immediate Response Emergency Teams (ERIE) in Almeria, Motril, Malaga and Tarifa.

4. Humanitarian aid

The ERIE teams of the Spanish Red Cross (CRE) are made up of CRE staff and volunteers who are normally medical doctors, nurses and one or two intercultural mediators²⁵. Arrivals in Almeria are dealt with in prefabricated modules in the port with air conditioning and heating. In one of these modules (humanitarian module), humanitarian aid is given by the CRE and there is another smaller module with an infirmary. The first action taken is a medical triage, with a health assessment made to check on the people's state of health and detect their medical needs, and a health file is drafted for each person who arrives, which contains their personal information. After this medical triage, food and drink is given out, as well as a protective coat, dry clothing and a hygiene kit.

The men are usually separated from the women. The medical triage is carried out on the men in the humanitarian module, and on the women in the infirmary. In Almeria they are asked or searched for objects. Then they are identified with a red or green bracelet depending on whether their state of health is good or if they need medical aid. The National Police, who are always present together with the CRE staff, carry out the search on the men. The women's search is carried out in the infirmary module by female CRE staff and they are given the possibility of a pregnancy test. Although there are showers in the port's modules, people recently arriving are not allowed to have a shower because humanitarian aid is the top priority followed by police identification, which are carried out as quickly as possible.

If anybody needs medical aid, they are usually assisted *in situ*, although on very rare occasions they are taken to hospital in an ambulance in serious cases.

The Almeria CRE's ERIEs have mediators who explain in English, French and Arabic to the new arrivals the procedure that the National Police is going to follow, i.e. identification and the start of the procedure for return or admission into the CIE. If the CRE's female staff detect signs of physical or sexual violence and human trafficking, they take note of this and inform the National Police and reception and accommodation centres to which they are referred or if applicable the CIEs.

For arrivals in the port of Malaga, the CRE does its work in a large tent that is set up and dismantled beside the *Salvamento Marítimo* ship every time a *patera* boat arrives. They must also take an electric generator to the port. In winter is very cold in the tent and in summer very hot. There are no showers or baths, so an attempt is made for the humanitarian aid to be given as quickly as possible, normally in 45 minutes. Pregnant women are taken to hospital.

²⁵ Communication between the majority culture of the receiving society and the minority culture of the recently arrived immigrants is affected by the burden of stereotypes and prejudices that the groups have towards one another due to the recent arrivals' lack of local language skill, etc. The intercultural mediator's role is to foster understanding between the people from different cultures.

Arrivals at Motril are received in an old fish market with very serious sanitation problems since the cesspit holding tank is full and is not emptied, so it overflows. Although there are showers, it is not possible to use them and the children play barefoot on the wastewater from the tank.

In Cadiz the arrivals are dealt with in the port of Tarifa and on very exceptional occasions in Barbate, where there are facilities ready to receive group arrivals. In the port of Tarifa, the people are received in the porch and taken to the CRE headquarters in Tarifa, which is next to the port. If there are very numerous arrivals, the CRE has an entire set of ERIE tents to give primary assistance.

UNHCR has a team of two people who work in Almeria, Malaga, Motril and Cadiz. The main purpose of UNHCR's presence in Andalusia is to work in identifying, referring and protecting the people who need international protection, as well as supporting the work of the Spanish authorities, civil society and different bodies that work in the sphere of asylum and international protection²⁶. As of 2018, the team will have four people. UNHCR's information pamphlet on the right to asylum and reasons for persecution is not handed out among the people recently arrived because the National Police has not authorised this to date.

5. Identification and procedures

All people arriving at ports on Spanish coasts, from the moment they get off the Salvamento Marítimo boats, are put at the disposal of the National Police or Civil Guard police depending on the territorial demarcation, as detainees. Therefore, all other procedures carried out, including humanitarian and health assistance by the CREs, must be done within 72 hours, which is the maximum time for preventive detention stipulated in Spanish legal regulations. As detainees, they must be informed of their rights and, according to some interviewees involved, sometimes the information about these rights is given to a group and not individually.

In the port of Almeria, the National Police have three detention modules with a capacity for 15 people. They also have cells and it is in one of these where the identification and fingerprinting is carried out. In most cases, the lawyers are called for notification about the agreement for a return. Many of them even sign it without seeing who they are representing. After dictating the order for return, if this cannot be implemented within 72 hours then a proposal for internment is taken to the judicial authority to approve the person's admission into a CIE. Moroccan nationals are normally return to Morocco within 72 hours.

That is the general rule. However, due to the increase in arrivals, the CIEs are sometimes full. If this happens, they are referred to a reception centre and/or other ad hoc facilities.

In keeping with current legislation, detentions and admissions in the CIEs before deportation should be a measure of last resort and implemented as quickly as possible. They are only justified if the authorities act with due diligence in processing efficient, safe returns. Automatic detention is not permitted as a means of deterrent. However, it is common practice.

There are alternatives to detention, and they must be used as efficiently as possible²⁷. Spanish law allows the authorities to apply measures that do not require deprivation of freedom, including retaining documents, the obligation to report to the authorities and the obligation to live in a specific place to ensure that the person can be located in order to carry out a return order.

These alternatives to detention and internment in the CIEs must especially be used in cases in which deportation will not foreseeably take place within a reasonable time or cannot be carried out. According to the Spanish State

²⁶ UNHCR has also been present in Melilla since July 2014, when there was an increase in arrivals of refugees to the autonomous city.

²⁷ <https://www.cear.es/cear-pide-el-cierre-y-desmantelamiento-inmediato-de-los-cie/>

Ombudsman (*Defensor del Pueblo*), out of the 7,597 people interned in the CIEs in 2016, only 2,205 were deported, meaning 29%²⁸.

Furthermore, it is important to point out that Spain has a network of humanitarian reception facilities funded by the Ministry of Employment and Social Security (MEYSS) and managed by different non-government organisations, for migrants in a vulnerable situation who have arrived on the coast or who have come out of the CETIs or have been released from the CIEs.

6. The Humanitarian Assistance Programme for Migrants

The Humanitarian Assistance Programme for Migrants began to be carried out towards the end of 2005 as an extraordinary measure due to the unprecedented increase in migratory pressure at the borders in Ceuta and Melilla. That year, over 5,500 migrants reached Spanish territory by crossing the fences in Ceuta and Melilla. After concertina wire was put on the fences in the autonomous cities, the migration route shifted to the Canary Islands, giving rise in 2006 to the so-called “Cayucos Crisis” in which more than 30,000 people reached the archipelago’s shores. This unexpected arrival of a significant number of migrants led to a crisis situation and the response was to create a programme to transport and accommodate migrants in a vulnerable situation.

Thus, the humanitarian assistance programme funded by MEYSS was passed via Royal Decree 441/2007 of 3rd April, which approves the rules regulating the direct concession of subsidies for entities and organisations that carry out humanitarian aid activities for migrants, and is managed by various NGOs. Its objective is to mitigate the vulnerable situation of the people participating, providing them with accommodation, subsistence and covering their basic needs, but also giving them minimal social tools (language learning, education, guidance) to prevent their possible personal deterioration and social exclusion, thus helping them to integrate in the society receiving them.

The people who can access this programme are migrants in a vulnerable situation due to physical deterioration and a lack of social and family support and economic means who arrive on Spanish shores or who are in settlements that entail serious social and health risks and who therefore need programmes for immediate action.

Within the context of the humanitarian aid programme, the people are transported from the point of origin, which generally means CIEs, police stations or CETIs, to the destination centre. Accommodation, upkeep and coverage for people’s basic needs are also given, as well as services to give them basic skills to help them integrate into the society receiving them: language-learning, education, guidance, psychological assistance, health care, etc.

Today, the humanitarian reception system has 2,080 stable places managed by different NGOs (CEAR, CRE, ACCEM, etc.), with the possibility of increasing this temporarily with places agreed in hostels to cover emergency situations.

The reception and accommodation programme lasts for 3 months, but can be extended in situations of great vulnerability, though under no circumstances can anyone stay longer than 18 months in the accommodation allocated. Access to this programme and therefore to the accommodation is generally carried out by referral from the Immigrant Integration General Sub-Directorate or in exceptional cases by the entities.

²⁸ The CIEs’ effectiveness fell in 2016: 70% of the migrants locked up have not been deported. (*La efectividad de los CIE cae en 2016: el 70% de los inmigrantes encerrados no han sido deportados.*) El Diario: http://www.eldiario.es/desalambre/Graficos-efectividad-CIE-encerrados-expulsados_0_637636602.html [Accessed on 11 December 2017].

7. Legal Assistance

7.1- Almeria

As regards legal assistance in Almeria, there are 180 duty solicitors for foreigners to assist those arriving.

As in Motril and Algeciras, the police call on the lawyers not when the immigrants arrive but to notify them of the decision to return them. The main problem is that there is no guarantee for the lawyers' right to interview these people before they make a statement to the National Police. This right should be guaranteed, as well as the right to interview them individually.

However, when the lawyers arrive to lend their aid, the police have often already taken a statement from the people and have dictated the corresponding orders to return them and the request for their internment addressed to the judicial authority. These requests are systematic (unless there is space in the CIE) since there is never an alternative detention measure agreed upon.

In cases where the lawyer is present during the statement, all of the questions made by the National Police are related to the person's entry into the country; in other words, whether they have entered illegally, whether they have been intercepted, how much they paid for the crossing etc. After the judicial authority has authorised the internment, the lawyers do get to interview their 12 defendants (the number assigned to each lawyer from the Almeria Bar Association), but these are group interviews and are carried out with no privacy in the presence of the police. When the lawyers have demanded to hold these interviews individually, the police have rejected this, alleging that they do not have enough officers to ensure security. Thus, security interests have priority over the protection of the foreigners' fundamental rights. Some lawyers have lodged a complaint with the Spanish State Ombudsman, pointing out this practice of group interviews, and the complaint is being processed.

The judicial orders authorising internment are not for groups, but are standard orders that have been drafted before taking the interested party's statement, and are filled in with the personal data of the person in question. This makes it clear that there is a need to have judges that are more specialised in migration and asylum matters.

Any application for asylum, regardless of when there has been a demonstrable intention or wish to make it, is processed once in the CIE. This practice is detrimental to the interested party because once a request for asylum has been accepted for processing in a CIE, even if it is processed via the border procedure, the urgent procedure is applied (art. 25 Law 12/2009), in which the deadlines are shortened to half of those applied in the ordinary procedure. It therefore provides less assurance.

7.2- Malaga

In Malaga, the new arrivals are identified in the port's embarkation or disembarkation halls. This means that when regular passenger boats arrive or leave, they must wait until the halls are empty in order to carry out the identification review, which has led to many complaints from the company that manages the port. The National Police in Malaga states that it has made several requests to build facilities similar to those in Almeria, but these requests have given no result.

After the identification review, the Malaga Bar Association is contacted to provide the relevant assistance from lawyers. Normally, there is one lawyer assigned for every 6-7 people. The Malaga Bar Association has created a specific duty shift to provide legal assistance for when patera boats arrive. Its purpose is to detect potential asylum applicants in the groups of migrants arriving by sea. It is made up of those who will provide legal aid, a head of the service shifts, the president of the Foreign Sub-Committee, the coordinator of the foreigners' Legal Guidance Service, specialists

in asylum and foreigners' matters, and the person responsible for the legal duty service. Lawyers with education in foreigners' matters and who are also trained in asylum, the return of immigrants, minors, human trafficking etc. may register in the duty service. There are currently 287 lawyers in the service²⁹. They have a WhatsApp group to organise themselves and support each other. When they get a call, they distribute the work and it is the female lawyers who assist women.

The existence of this specific duty service has meant that in Malaga the asylum applications are formalised, unlike in Almeria³⁰. According to data provided by the Malaga Bar Association, there were 16 asylum requests made in 2016 whereas in 2017 until the time of writing this report, 246 had been made.

The duty lawyers come to the port's facilities. There, they interview their defendants individually before the latter make a statement to the police. During the interview, they tell their defendants their rights, including the right to request asylum, as well as the procedures that are going to be carried out. However, these interviews are held in the presence of police, and given that they are held in the embarkation and disembarkation halls, the conditions are not ideal. For some time, the Malaga Bar has been demanding a suitable physical space where they may interview their defendants observing their privacy and the confidentiality of the interview between lawyer and client.

Sometimes, when there are uncommon languages involved, instead of finding an interpreter, another person that has travelled in the same craft is used. This practice may be dangerous, especially for women who may be victims of trafficking and may be travelling with their traffickers.

If during this interview the person expresses their wish to request asylum, this is subsequently recorded in the statement and the asylum request begins to be processed, applying the border asylum procedure provided for in Law 12/2009. This procedure was established in Instruction no. 20/2005 of 23rd September from the Secretariat of State for Security on Control of Irregular Immigration arriving in Spain by water craft³¹.

Although the asylum procedure applied is the border procedure, a succession of completely discretionary practices appear. For example, the border procedure is applied normally except when the CIEs are full. In this case, the asylum applications are processed as applications in the territory, giving them an appointment to formalise the asylum application and setting them free. These applications are not communicated to the Asylum and Refuge Office until they are formalised, which may be several weeks later. If they do not request asylum, after making a statement to the police and being notified of the order to return and the proposal for internment, the lawyer may meet their defendant again to explain to them that they are going to lodge an appeal against these rulings, if the defendant so wishes.

7.3- Motril

There is a duty service for foreigners in Motril and a specific shift similar to the one in Malaga if there are a high number of arrivals, though this is not institutionalised. For example, they work with a WhatsApp group, but it is created ad-hoc for each service shift, unlike in Malaga, where the service is permanent. The Granada Bar Association is studying the possibility of institutionalising this shift. It is voluntary to form part of this duty service and its members have been trained in asylum matters. Every day there is normally a duty lawyer as well as eight lawyers on standby in case a group arrives. One of the main problems faced in giving legal assistance is that the lawyers must travel from Granada to Motril. The procedure is very similar to the one in Almeria: group interviews and appearances before the judge, as well as group internment orders which, though there may be an appeal against them lodged via the Provincial Court (*Audiencia Provincial*) of Granada, are confirmed as legal by the latter.

²⁹ Information from December 2017.

³⁰ In Almeria until October 2017, only one asylum application was recorded to have been formalised.

³¹ This instruction was established in order to guarantee the coordination of all police and administrative activities enabling the data pertaining to irregular immigration to be gathered, managed, analysed, and assessed.

The Spanish State Ombudsman made a statement about this latter practice in its presentation to the parliament of its report on legal assistance for foreigners in Spain in 2005. Concluding on a complaint lodged in 2011 about this practice, this same institution sent a recommendation³² to the Sub-delegation of the Government of Granada in order to give the necessary instructions for the rulings confirming the return of foreigners to be made individually, making it clear that said practice should be eradicated. In spite of all of this, the practice continues.

The judge comes to the port of Motril with the orders approving the internment already drafted without having heard the interested parties. Faced with protests by the lawyers, he has indicated to them that said orders may be modified subsequently if necessary. However, it is very difficult for this to happen.

As for the interpreting staff, there are also irregularities. When there are uncommon languages, the statement is taken in English and French. These are languages that the detainees say they know, but not to a level sufficient to make a statement to the National Police.

The lack of material and staff resources in this National Police unit is greater than in the other places visited in our mission. Furthermore, ongoing training is needed for the National Police corps staff and the judges.

7.4- Tarifa

In Tarifa, after arriving at the port and receiving humanitarian aid from the CRE, all the people are generally taken to the Algeciras police station. Only when this station's cells are full are they taken to other stations in the province (the Algeciras police station has cells for 200 people). The National Police contact the Bar Association for the latter to assign the duty lawyers to provide the legal aid. The Algeciras Bar does not have a duty service for foreigners, so the assistance is provided by lawyers registered in the penal (criminal) duty service. The procedure is very similar to the one in Almeria. Each lawyer is assigned assistance for eight people. Once the lawyers have arrived at the police station, the detainees are taken out of the cells at the same time and in front of the lawyers an interpreter reads the detainees' rights to them as a group. The National Police have already drafted the orders for return before the lawyers have interviewed their clients. All of the people present—detainees and lawyers—are asked to sign the notification of said expulsion order. The help from lawyers ends there and then. Some lawyers demand to have individual interviews with the defendants and they carry them out, asking about the reasons for leaving their country, their age, and trying to detect if they are minors, victims of trafficking, persons in need of international protection, or people with different vulnerabilities.

Once the orders for return and the proposal for internment in a CIE have been dictated, the activity passes on to the judicial authority to authorise the internment. These internments are authorised in all cases, without taking into account the specific concurrent circumstances in each case as provided for in Art. 62.2 of the LOEx, and usually a maximum internment time of 60 days is set, unless this is done by the Criminal Investigations Judge no. 1 of Algeciras, who is also the Judge for Control of Stays in the CIE. There are currently no cases of group internment orders in Algeciras, unlike in Motril. They were given in the past, but some NGOs lodged several complaints that served to correct this practice. Nevertheless, there are cases of group appearances before the judge prior to authorisation for internment. This kind of judicial appearance does not occur when the authorisation for internment is dictated by the Criminal Investigations Judge no. 1, who also usually restricts the time for internment to 10 days at most, since most of the internments do not usually end in the detainees being returned. According to information given by some of the parties involved who were interviewed³³, only 15% of the people interned in the CIE at Algeciras are returned, and it should be noted that many of the people interned in this centre (90%) have a criminal record³⁴.

³² Communication from the Spanish State Ombudsman about the judicial practice as regards group judicial orders for internment of foreigners arriving on the shores of Motril. Migrarconderechos. http://www.migrarconderechos.es/legislacionMastertable/legislacion/Comunicacion_Defensor_del_Pueblo_17_03_2011.jsessionid=4CA18B137080AC58C90F49965C07554B. [Acceso 11 de diciembre de 2017].

³³ Only 15% of the detainees in the CIE at Algeciras are deported. (*Sólo el 15% de los internos en el CIE de Algeciras son expulsados.*) Europa Sur Algeciras http://www.europasur.es/algeciras/Solo-internos-CIE-Algeciras-expul-sados_0_1143485789.html [Accessed on 11 December 2017]

³⁴ The former director of the CIE says that 90% of those interned have a criminal record. (*El exdirector del CIE dice que el 90% de los internos tienen antecedentes penales.*) Europa Sur. http://www.europasur.es/algeciras/exdirector-CIE-dice-internos-antecedentes_0_809319715.html. [Accessed on 11 December 2017].

8. Detention conditions

Human Rights Watch has denounced that the conditions in the police facilities in Motril, Almeria and Malaga “do not meet standards compatible with human dignity”³⁵ As explained by that organisation, in the establishments in Motril and Almeria there are big cells with poor lighting and mattresses on the floor, while the police facilities in Malaga have an underground jail with no natural light or ventilation. In Motril, the women and children are located separately in a single cell with bunk beds. The cells in Malaga and Motril have thick vertical bars, whereas in Almeria the cells are separated from the corridor by a grille with very narrow spacing. The people detained remain shut in at all times and only come out for health check-ups, fingerprinting and interviews. In Almeria and Malaga they also come out to use the lavatory since there are none in the cells. Although there are enclosed outdoor spaces in Almeria and Motril, people detained for immigration reasons are not allowed to use them. The central police station in Malaga has underground cells whose state of maintenance is particularly deficient. There is no natural light or ventilation and the stench in this enclosed, humid space is unbearable. These cells are totally unsuitable even for short periods.

The Spanish State Ombudsman has expressed its concern about the port establishment in Motril³⁶ at least since 2009, and has pointed out that the cells should have suitable beds, air conditioning and the best sanitation conditions. Several police unions have also complained about the conditions: continual problems with piping, freezing temperatures in winter, mosquitoes in summer and the terrible stench due to insufficient ventilation when the cells are full. The Unified Police Union (*Sindicato Unificado de Policía*) stated at the beginning of July that the establishment should be temporarily closed³⁷.

9. Situation of the Algeciras-Tarifa CIE

The CIE at Algeciras was created in compliance with Order PRE/3483/2006 of 13th November. In addition to the facilities in this municipal area in Tarifa, specifically on Las Palomas Island about 30 km from Algeciras, there is another centre considered by the authorities as an annexe to the Algeciras CIE. However, the only legally constituted CIE is the one in Algeciras and not the one in Tarifa, whose legal status is very much undefined.

The CIE at Algeciras was created by reconvertng the old La Piñera prison, whose layout is a hexagon with barred modules extending from it. The extension in Tarifa was an old barracks. Different Annual Reports from the Public Prosecution Office for Foreigners and several reports from the State Ombudsman³⁸, have made it clear that the CIE in Algeciras looks like a prison intended for punishment and rehabilitation of delinquents, instead of a building designed to look after foreign people subject to sanctions of administrative law, thereby failing to comply with the provisions of Article 62 bis of the LOEx and 1.2 of Royal Decree 162/2014 of 14 March, which approves the regulations for operating the foreigners’ internment centre and the system within them³⁹ defining the CIEs as non-penitentiary public establishments.

Until recently, according to information given by parties involved who have been interviewed⁴⁰, 90% the people interned in the CIE in Algeciras were foreigners with criminal records. Among the people with no criminal record,

³⁵ Human Rights Watch (2017): Spain: Immigrants detained in precarious conditions (*España: Inmigrantes retenidos en condiciones precarias.*) <https://www.hrw.org/es/news/2017/07/31/espana-inmigrantes-retenidos-en-condiciones-precarias> [Accessed on 1 August 2017].

³⁶ The Spanish State Ombudsman maintains its “concern” for the conditions in the immigrant detention centre in Motril. (*El Defensor del Pueblo mantiene su “preocupación” por las condiciones del centro de inmigrantes de Motril*) Europa Press. <http://www.europapress.es/andalucia/noticia-defensor-pueblo-mantiene-preocupacion-condiciones-centro-inmigrantes-motril-20150215112503.html>. [Accessed on 4 October 2017].

³⁷ The SUP asks for the immigrant centre in Motril to be temporarily closed due to a lack of security and habitability. (*El SUP pide el cierre del centro temporal de inmigrantes de Motril por falta de seguridad y habitabilidad*) La Información. <http://www.europapress.es/andalucia/noticia-sup-pide-cierre-centro-temporal-inmigrantes-motril-falta-seguridad-habitabilidad-20170707151940.html>. [Accessed on 4 October 2017].

³⁸ The Public Prosecutor’s Office considers the CIEs in Algeciras and Malaga to be the most deficient in the entire country. (*La Fiscalía del Estado considera que los CIE de Algeciras y Málaga son los más deficientes de todo el país.*) Europa Press. <http://www.europapress.es/andalucia/sevi-lla-00357/noticia-fiscalia-estado-considera-cie-algeciras-malaga-son-mas-deficientes-todo-pais-20100924133322.html>. [Accessed on 11 December 2017].

³⁹ This law implements certain aspects of Directive 2008/115/CE of the European Parliament and the Council, of 16 December 2008, on common standards and procedures in member states for returning illegally staying third-country nationals.

⁴⁰ The former director of the CIE says that 90% of those interned have a criminal record. (*El exdirector del CIE dice que el 90% de los internos tienen antecedentes.*) EuropaSur Algeciras. http://www.europasur.es/algeciras/exdirector-CIE-dice-internos-antecedentes_0_809319715.html [Acceso el 12 de diciembre de 2017].

there were women (25 places and a family module). In Tarifa, foreign people with no criminal record were interned; all of them men. However, this has changed recently. The CIE in Tarifa closed in June 2017 to do building work by order from the Judge for Control of Stays, but it re-opened a week later without all of the renovations that had been ordered having been done. Some social organisations lodged a complaint with the aforementioned judge to denounce that the work that she had ordered had not been done. When the one in Tarifa closed for this purpose, the men were taken to the CIE in Algeciras. As the detainees with a criminal record had to be separated from those with none⁴¹, as well as the men from the women, but the space did not allow for these two separations to be made, the women were released and referred to different reception centres in order to be able to separate the men with criminal records from those with none. Thus, since June 2017 there have been no women interned in the CIE in Algeciras.

Another noteworthy occurrence in the summer of 2017 was the appearance of Moroccans interned in the CIE who applied for asylum due to the conflict in the Rif region. Before this, they were returned directly within the detention period of 72 hours without internment in the CIE.

The facilities in Algeciras have a capacity for 190 people; in Tarifa for 160. In both cases, the shortcomings in the facilities and services are obvious due to the age of the buildings. These deficiencies have been made clear by various reports from Migreurop⁴², and Pueblos Unidos⁴³ so that different social groups have asked for them to be closed⁴⁴: there is dampness in various areas, leaks from pipes and generally poor conditions in the facilities; there is no air conditioning or heating; the rooms have a system of bars and measure barely 30 m² with 10 bed spaces in five bunk-beds; there are no cupboards for personal belongings or clothes, which are in another section that the detainees can only enter accompanied by a police officer; in each room there is an area with a washbasin and a single lavatory; the showers are for groups; there are television and leisure rooms, though there does not seem to be a timetable for this or an educational or game area; there is not enough sports equipment. The visiting rooms have glass screens that make communication difficult and direct contact impossible with relatives; there is not much physical space for washing clothes; poor lighting conditions in some rooms; mobile phones cannot be used⁴⁵; and in general there is a lack of minimal maintenance in the facilities. There are no specific areas for worship, nor a permanent social assistance service, which is partly taken up by some NGOs. The section prepared for holding interviews with lawyers is still small, so that only one visit can be made at a time. There is no legal guidance service in the centre. The police staff wear no identifying badge and some carry firearms. There are no fire extinguishing systems nor evacuation plans. All of the detainees undergo a complete strip search on arrival, which has no legal justification⁴⁶ since foreigners held in the CIEs are technically detained (not arrested) for preventive purposes due to a mere administrative infringement and not because they have committed a crime.

All of this restricts many of the interns' rights enshrined in Article 62 bis of LOEx⁴⁷, which states that the purpose of the internment is preventive and cautionary with no restrictions other than those stipulated regarding their freedom of movement agreed upon judicially. Many of the provisions in Royal Decree 162/2014 are also not met, such as those that state that the facilities and areas must meet the conditions of access and hygiene and be prepared so that the spatial volume, ventilation, water, lighting and heating meet the standards of habitability and climatic conditions of the centre's

⁴¹ Algeciras ACOGE lodged various complaints with the Judge for Control of Stays in the CIE due to the detainees with criminal records not being separated from those without. Moreover, it maintains that this separation has still not been made.

⁴² Migreurop (no date): Report on immigrant detention centres in Spain. (*Informe sobre los centros de internamiento de extranjeros en España.*)

⁴³ Pueblos Unidos (2015): Current situation in the immigrant detention centres in Spain and their compliance with the current legal context. (*Situación actual de los centros de internamiento de extranjeros en España y su adecuación al marco legal vigente.*)

⁴⁴ Several organisations have confirmed deficiencies in the facilities, temporary overcrowding, judicial irregularities, deficiencies in the legal and interpreting service, a very restrictive visiting system and difficulties to communicate with the outside.

⁴⁵ This prohibition was denounced in reports by the State Ombudsman on 14 and 15 February 2017. There are also court orders from the Criminal Investigation Court No.1 of Barcelona, acting as the Judge for Jurisdictional Control over the CIE in Barcelona, agreeing to allow the interns to use their mobile phones.

⁴⁶ As pointed out by Migreurop, although complete strip-search activities are regulated by *Instruction 7/1996 of 20 December from the Secretary of State for Security on carrying out complete strip-searches on the detainees in order to detect if they are carrying any dangerous objects or incriminating evidence on their clothing or body*, and by *Instruction 19/2005 of 13 September from the Secretary of State for Security on carrying out searches by the security corps and forces, as well as by Instruction 12/2007 from the Secretary of State for Security on conduct demanded of the members of the State's security corps and forces to ensure the rights of detainees in police custody*; this practice is an exceptional activity aimed at people detained for committing a crime or at interns in penal facilities, so that carrying out these practices in the CIEs is not legally justified or admissible.

⁴⁷ The right that covers respect for their life, physical integrity and health, without under any circumstances being subjected to degrading verbal or physical treatment and for their dignity and intimacy to be preserved; and to receive suitable medical and health care and be assisted by the centre's social assistance services; to be aided by a lawyer and to communicate in private with the him/her; and to communicate within the centre's established hours with their relatives, etc.

location, and they must be equipped with sufficient furniture and have a healthcare service with the staff, instruments and equipment available that are necessary to attend to the interns permanently and in emergencies.

In Algeciras, control over the stay in the CIE is carried out by the Criminal Investigations Judge no.1, who has issued several orders for renovation works in the CIE.

The order of 8th May 2017⁴⁸ was issued after visiting the CIE in Algeciras and its annex in Tarifa, and after receiving a report from the Spanish State Ombudsman, which was also written after visiting both CIEs and which detected a series of deficiencies and suggested solutions.

This report from the Spanish State Ombudsman was carried out using its powers to defend and protect fundamental rights, which include the noteworthy implementation of the National Mechanism for the Prevention of Torture, MNP, whose fundamental mission is to watch over compliance with the provisions of Articles 15⁴⁹ and 17⁵⁰ of the Spanish Constitution. The aforementioned court order states that, out of everything demanded previously in the court order dated 12th December 2016⁵¹, only the order to supply suitable clothing for the interns and to make the CRE responsible for managing the library was met.

The court order also contains specific requirements for the director of the Algeciras CIE (to build sports grounds in the men's module and in the women's module; to install a laundry service for the interns; to withdraw the glass and iron screens in the rooms used for communications and visits from the outside; to install soft drinks or cigarette machines; to install individual showers in the rooms of the interns occupying Module II; to reopen the leisure rooms in the men's modules as a games area) and for the director of the Tarifa CIE (to eliminate rooms with more than three interns; to install in each of them a shower, WC with toilet bowl and cistern, and a washbasin as well as a wall or door that covers the intern's whole body; to eliminate group showers; to repair the existing soft drinks machine; to install a specific space reserved for the interns to receive visits from the outside; and the need for the medical service to issue a report showing that an intern to be deported is ready to travel).

All of these requirements prove the conditions denounced by different human rights organisations, including CEAR, and justify their demands to close the centres.

The Capuchinos CIE in Malaga closed in 2012 because the facilities were not adequate for the interns or for the staff to have habitable conditions. Its closure had been demanded by human rights NGOs almost since it was opened in 1990. In addition to the requests from humanitarian organisations, over the years they also came from the State and Regional Ombudsmen, public prosecutor's office, the judicial council and even heads of police.

In April 2017, the Interior Minister announced the creation of three new CIEs: one in Malaga, another in Algeciras and a third in Madrid. The opening process nearest to completion is for the CIE in Algeciras.

10. Minors

A detention of a boy or girl made solely because of their migrant status or that of their parents is an arbitrary detention and contravenes the principle of what is in the child's greater interest. For these reasons, the United Nations Committee on the Rights of the Child urges all states to put an end to the detention of children for reasons related to their migrant status. Article 37 Section b of the United Nations Convention on the Rights of the Child stipulates that

⁴⁸ A judge orders 31 urgent improvements in the CIE in Algeciras. (*Una juez requiere la realización de 31 mejoras urgentes en el CIE de Algeciras.*) El País. https://politica.elpais.com/politica/2017/05/08/actualidad/1494262609_632583.html [Accessed on 4 October 2017].

⁴⁹ The right to life and physical and moral integrity, and to not be subjected to torture or inhumane or degrading punishment or treatment.

⁵⁰ The right to freedom and security.

⁵¹ A judge denounces "deplorable" living conditions and a prison system operating in two CIEs. (*Una jueza denuncia "deplorables" condiciones de vida y un régimen carcelario en dos CIE.*) Sur. <http://www.diariosur.es/malaga-capital/201701/06/jueza-denuncia-deplorables-condiciones-20170106001220.html>. [Accessed on 4 October 2017].

minors may only be deprived of liberty as a measure of last resort and for the shortest appropriate period of time, since detaining children has a damaging effect on their emotional development and physical well-being. If a minor is accompanied by their parents, then before detaining the family the greater interest of the child and the notion of comprehensive protection for childhood should imply maintaining the family unit without resorting to deprivation of freedom. Pregnant women or women with children should not be detained either, apart from in suitably justified exceptions; in such cases, their special needs such as those of hygiene and health should be met⁵².

However, in Malaga, Almeria, Motril, Cadiz and the Canary Islands, children arriving with their parents or with their mothers are detained on arrival to be identified and begin the process for their return. This also happens to pregnant women, although the detention is carried out in as short a time as possible until they are released and referred to a reception place. In the case of unaccompanied children, in Almeria, Malaga, Motril and Algeciras, the public prosecutor's office is contacted for it to adopt pertinent measures to protect them. In Algeciras, minors are not seen by the public prosecutor; the police report that they have localised them and report on their admission into minors' protection centres. Faced with saturation last year, in addition to a lack of resources, the minors were admitted into centres not intended for first reception, creating a dysfunction in the system and ignoring the importance of specialisation in human and material resources.

In Almeria and Motril, while tests are carried out to ascertain ages, the minors remain detained in cells together with adults. On 25th February 2015, the Spanish State Ombudsman issued three recommendations regarding the detention of pregnant women and minors: a) after arrival in a patera boat, the assessment and processing of cases to return pregnant women and minors should be given priority; b) alternative measures should be applied instead of detaining pregnant women and minors intercepted on attempting to enter Spain by irregular ways; and c) pregnant women and children should be allowed to shower and be given the necessary means for personal hygiene⁵³.

Unlike in Almeria and Motril, in Malaga children are accommodated in centres for minors while they await the results of the test to determine their age. In Algeciras there has been a case in which minors await the results in the police cells. In some one-off cases, in July 2017 minors were observed (together with other migrants) sleeping on the ground in the port of Barbate since it was impossible to accommodate them in the cells, which were full.

In Malaga, Almeria, Motril and Cadiz, children claim to be legal adults with no documents on them to prove this, and even though they appear to be minors, no tests are carried out to determine their age. On the other hand, if they claim to be minors and even carry documents from their country of origin showing this, they are given a test to determine their age.

In Algeciras, if a minor states that they are a minor and have a document from their country to corroborate this, they only avoid undergoing the test to determine their age if the document they show has a fingerprint and a photo; other documents are not accepted as valid. If a minor from Nigeria has a birth certificate (which has no photo or fingerprint), it is assumed to be a forgery.

Furthermore, in Algeciras the forensic officer does not produce reports on the age determination, so that this responsibility is passed on to the radiologist, who just issues a brief communication with an X-ray of the person's wrist to determine their age with a margin of error of +/- two years according to the Greulich-Pyle tables. This method has been widely questioned by the scientific community.

Both UNHCR and the United Nations Human Rights Office of the High Commissioner have repeatedly expressed their concern for the consequences on children of carrying out these kinds of tests. They have raised the alarm

⁵² Unicef (2016): Uprooted. The growing crisis for refugee and migrant children. (*Desarraigados. Una crisis creciente para los niños refugiados y migrantes.*)

⁵³ Modification to the protocol for action in the centres for primary assistance and detention of foreigners in Motril (Granada) and Almeria, giving priority to the assessment and processing of cases for returning pregnant women and minors. Spanish State Ombudsman. <https://www.defensordelpueblo.es/resoluciones/modificacion-del-protocolo-de-actuacion-de-los-centros-de-primera-asistencia-y-detencion-de-extranjeros-de-motril-granada-y-almeria-priorizando-la-resena-y-tramitacion-de-expedientes-de-devolucion-2/>. [Accessed on 4 October 2017].

about its inaccuracy as it does not take into account aspects such as race, ethnicity, nutrition, the environment, psychology and culture, which have a direct influence on children's growth and development⁵⁴.

The aforementioned communication is used as the reference for age until the minor's documents appear. When they appear, they normally shorten the person's time remaining as a minor, and thus also the time for their situation to be regularised. This fact and the complete lack of resources for them after public guardianship creates added stress for the minors.

Trafficking networks use flaws in the mechanisms for determining age to their advantage and they instruct girls to state they are adults. Such girls, pressured by the traffickers, believe it is better to be considered adults because they can thus carry out their migration plans. On the other hand, adolescents who had stated their true age to the administration said they had been subjected to procedures to determine their age and had felt harassed and judged because the authorities acted under the presumption that they were lying. They say that they were asked if they wanted to state that they were legal minors to get the benefits of the protection system⁵⁵.

In some cases, NGOs who give legal assistance in the Algeciras-Tarifa CIE have detected unidentified minors and have notified the competent authorities of this, but the latter have only pointed out that the suspected minor said he/she was an adult. Social organisations denounce the fact that the MENA Framework Protocol for Unaccompanied Minors is not applied, because neither interviews nor physical examinations are carried out. It is only possible to carry out the bone test to determine their age and there is no possibility of carrying out other more reliable tests since the hospital does not have the equipment to carry out other complementary tests.

An increase in arrivals of unaccompanied children has also been reported in Algeciras, above all Moroccans, but the Andalusian regional government (Junta), which must take over their guardianship, is overwhelmed. Due to the lack of places in the Centres for Minors this summer, a campsite was prepared for unaccompanied children, many of whom left with no investigation initiated by the public prosecutor. Furthermore, as a result of this situation they have become viewed as being of secondary importance in inclusion programmes. This creates difficulties for these children's possibilities for inclusion and they suffer from a greater lack of protection. At the time of publishing this report, there is no prevention or action plan to give a suitable response to such situations.

11. Victims of trafficking

Although many of the women arriving on Spanish shores may be victims of trafficking, there is practically no identification of these victims in Almeria, Malaga, Motril or Cadiz (Algeciras and Tarifa).

Until 2016, most of them were Nigerians from the state of Edo (Benin or Laos). However, in 2016 an increase was seen in women who were possibly victims of trafficking from French-speaking countries, above all Ivory Coast, Guinea Conakry and the Democratic Republic of the Congo. This trend continued throughout 2017. The Nigerian women have changed their route and are arriving in Italy from Libya. Tragic proof of this was given by the death of 26 Nigerian girls of 14 to 18 years of age on the route from Libya to Italy, who were found dead in an irregular migrant boat on 7th November 2017 and whose deaths are still being investigated⁵⁶ since there are suspicions they were abused and raped.

⁵⁴ Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, UNHCR. <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b3360>. [Accessed on 4 November 2017]; UNHCR. *GUIDELINES ON INTERNATIONAL PROTECTION: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, UNHCR. <http://www.unhcr.org/50ae46309.pdf> United Nations [Accessed on 4 November 2017]; A/HRC/15/29, *Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the Protection of the rights of the child in the context of migration*, www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.29_en.pdf. [Accessed on 4 November 2017].

⁵⁵ Women's Link Worldwide (2017): *Mothers in the networks. (Madres en las redes.) Stolen rights. (Derechos robados.)*

⁵⁶ What happened to the 26 adolescent women found dead floating in the Mediterranean Sea? (*¿Qué pasó con las 26 adolescentes encontradas muertas flotando en el mar Mediterráneo?*) Univisión Noticias. <http://www.univision.com/noticias/muertes/que-paso-con-las-26-adolescentes-encontradas-muertas-flotando-en-el-mar-mediterraneo>. [Accessed on 11 December 2017].

Nevertheless, this trend may change again following the agreement signed between Italy and Libya mentioned above. Normally the women's age is from 28 to 35, though some of the parties involved who have been interviewed have identified an ever greater drop in the age of these women.

In Almeria, on carrying out medical triage on the women, the CRE's female staff strike up informal conversations with them that occasionally enable them to detect possible victims of trafficking. However, the other parties involved need to take up a proactive role in order to detect and identify trafficking victims.

In Motril, the National Police interview all women separately after their arrival without a lawyer present. These interviews are mostly carried out by male police officers, which hinders the women from having enough trust to talk of the persecution they may have suffered, in addition to their circumstances in themselves being extremely difficult even when they are interviewed by a woman.

When a possible victim of trafficking is detected by the CRE, the National Police is notified. In identifying them, priority is given to pursuing the crime over an approach based on protecting the victims. This approach is typical in all of the places visited to create this report.

In the CIE in Algeciras, different organisations work in a network in order to protect the women interned and identify possible trafficking victims, minors and people in need of international protection. From January to June 2017, this network of NGOs detected twelve cases of women in the Algeciras CIE who were victims of trafficking. Reports were written backed by a multidisciplinary group including a mediator-translator, an educational psychologist and a lawyer. These reports confirmed that signs of trafficking had been detected. Although these reports were sent to UCRIF, only one of them was identified. As a result, these women are not protected and thus may foreseeably be exploited with complete impunity. However, this work ended in June 2017, when the CIE in Algeciras no longer had women.

12. The Canary Islands

In 2017 about 418 people arrived in the Canary Islands in *patera* or *cayuco* irregular migrant boats from Africa⁵⁷. This number is far lower than the 31,678 people who arrived in 2006. The people who arrived in *patera* or *cayuco* boats in 2017 in the Canaries were 87.7% men. Women made up 3.5%, and the remaining 8.7% were minors. The specific numbers were: 371 men, 15 women and 37 minors. In the boats arriving in November, 30 people said they were unaccompanied minors, but finally nine people were accredited as such via the bone test.

Out of the 16 migrant boats that came to Canaries in 2017, most of them did so from Morocco and Western Sahara, but there were also craft that came from Senegal and Gambia, voyaging 1,600 km over the sea to reach the Canary Islands.

Eight *patera* boats landed in Lanzarote directly without being rescued, located on the high seas or detected by the SIVE. This is the way traditionally used by Moroccans or Saharans. One craft landed on the island of Tenerife and another on Fuerteventura. The remaining six *patera* and *cayuco* boats arrived or were taken by Salvamento Marítimo to Gran Canaria, where the rescue service base for the Canaries is based. When a *patera* boat is intercepted on the high seas, normally it is taken to Gran Canaria's port of Arguineguín in the municipal area of Mogán, which is the port furthest south.

Out of the 16 craft that reached the coast or were rescued, nine were *pateras*, one a zodiac and four *cayucos*. Three out of four *cayuco* boats reached the Canaries in October and November. It could be said that *cayucos* have reappeared. They are bigger boats carrying over 60 people with a more powerful motor that can come from further, with

⁵⁷ <http://www.interior.gob.es/es/prensa/balances-e-informes/2017>

voyages planned that may last a week. Occasionally they have two engines to be able to last longer at sea. Over the last year, three *cayucos* reached the Canary Islands, the most numerous passenger count being 103 people travelling from Gambia.

In addition, we have found that another 172 people used this migration route to reach the Canaries in three *patera* boats. Following warnings from NGOs, Salvamento Marítimo located them and they were finally rescued and returned to their point of origin in Western Sahara by the Moroccan navy.

A significant number of boats that have come to be known as *express pateras* have been identified, too. These are craft occupied by Moroccans or Saharans that spend less than 48 hours at sea, using the usual, known routes to reach Lanzarote. There are not usually more than 15 passengers on board.

Patera boats are usually rescued on the high sea. Members of Salvamento Marítimo are always responsible for carrying out these rescues, after a call from an NGO, a craft being detected by the SIVE or spotted by another commercial craft, and the Spanish authorities then being notified.

Once rescued, the people are detained and taken to the Port of Arguineguín, where humanitarian assistance is given by CRE. In this port there is a broad esplanade on which a hospital tent can be set up. Although separate spaces are not arranged when giving primary assistance, this separation is made when the people going to change clothes and the CRE staff who accompany the women in this procedure are women. The CRE staff fill in an information sheet for each person arriving, for internal use. When they are rescued, they are not given information about the right to asylum.

Once the humanitarian assistance is over, they are led to police facilities where the return procedure begins, in which an interview is carried out with a foreign affairs public duty lawyer assisting, who interviews their defendant individually. Whether or not information about the right to asylum is given at this moment depends on if the lawyer assigned gives it.

After reading the court order for the return, judicial authorisation is requested for internment. Most of the people detained for whom a case for return is processed are admitted into a CIE, as happens in Almería, Málaga, Motril, Algeciras and Tarifa. An exception occurs with a very small number of people deemed to be in a vulnerable situation, who are taken to reception and accommodation places. People interned in the CIEs are informed of their right to apply for asylum by the organisations that visit the detention centre. From 1st January until 31st December 2017 there were 39 requests for asylum through the CIE, with Morocco and Western Sahara being the main nationalities.

Women who are victims of trafficking are not detected until and if they enter a CIE by the NGOs giving assistance in such centres. In the case of minors, CRE informs the competent authorities about the children identified during the humanitarian assistance and refers them to the minor protection services, where they remain until the corresponding tests are carried out to confirm they are minors. If this is confirmed, they are declared to be unprotected and fall under the guardianship of the Government of the Canary Islands. If they are not accredited as minors, they are brought before a judge and ordered to enter a CIE or not.

The deficient conditions in the CIE in Gran Canaria have been made clear in different court orders from the Court for Control and Surveillance of the CIE⁵⁸. Various human rights organisations have denounced the excessive number of internees per room; the poor quality of the food and scarcity of water; the lack of permanent healthcare, which when given is deficient; the protocols for detecting trafficking victims have not been activated; there are no social workers; there are obstacles to making and receiving calls from outside; and access to proper legal assistance is not guaranteed⁵⁹.

⁵⁸ http://nadiesinfuturo.org/IMG/pdf/Auto_JI_8_Las_Palmas_con_funcion_de_control_del_CIE.pdf

⁵⁹ <http://www.laopinion.es/canarias/2016/03/16/cear-caritas-medicos-mundo-exigen/662562.html>

13. Ceuta

The Immigrant Temporary Stay Centre (CETI) in Ceuta, as in Melilla, is an entity belonging to the public administration conceived as a provisional primary reception unit and designed to provide services and cover basic social needs for migrants and asylum seekers arriving in Ceuta. Identification procedures and a medical check-up are carried out here before any decision is taken about the most suitable course of action depending on the person's administrative situation in Spain.

The number of internees in the CETI is a rather approximate indicator of the number of migrants and refugees that have entered the autonomous city regular or irregularly, since it is the main residential resource and it is necessary to pass through it to be able to get taken to the Iberian Peninsula. According to data from CEAR, 1,996 people had passed through the CEI in Ceuta by the end of October 2017. As for the residents' profiles, the most numerous nationalities come from Guinea Conakry (41.6%), Cameroon (19.8%), Algeria (18.3%) and Ivory Coast (4.7%). Of these, 94.6% are men and only 5.34% are women. The average age is 23.

All people arriving in Ceuta via a border post without the necessary resources and official status are not detained, unlike what happens in the places on Spanish coasts visited, but an expulsion case is opened for them and they are interned in the CETI. On average, people stay 88 days in the CETI, although as we will explain later, there are people who stay there for over a year. The CETI has the capacity for 512 people, but this capacity is always exceeded. This is why people are transported to the peninsula. At the end of February 2017, the capacity was exceeded by up to 120.85%, well over double, housing 1,141 people.

They are taken to the peninsula within the Humanitarian Assistance Programme funded by the government (MEYSS) and managed by non-government organisations. The MEYSS itself, along with the CRE, organises this transport by sea once it has been approved by the Border and Foreign Affairs General Police Headquarters (Comisaría General de Extranjería y Frontera), the destination being the reception facilities for migrants in a vulnerable situation, which the organisations manage via the programme.

One of the main problems today in Ceuta is that the criteria for the journey, which are not very transparent, discriminate by nationality and do not take into account factors of vulnerability to prioritise the transport. Only Sub-Saharanans that have not applied for asylum are currently transported. This sometimes leads to complaints and public demonstrations, as is the case of people from Asia who have not requested asylum and are not transported. There are Asians who have spent over a year in the CETI.

For over a year now, only citizens from Bangladesh, India, Sri Lanka and Pakistan have been transported to the peninsula like the Sub-Saharanans. These circumstances have led about 50 migrants from these countries to gather in the Plaza de los Reyes in front of the Provincial Government offices (Diputación) and to go on hunger strike as of 25th October, asking to be transported to the peninsula and to know why some nationalities travel to the peninsula where there are more opportunities for work, but not others. In Ceuta they cannot work or take any steps to begin their process of integration in Spain⁶⁰.

Some of them are potential asylum applicants but do not wish to request it because they think that if they do they will have difficulties in being moved to the peninsula. This is because if they request asylum in Ceuta, even if this is accepted to be processed, they are not allowed to move to the peninsula; in other words, their freedom of movement is restricted.

⁶⁰ Asian migrants ask to leave Ceuta in front of the Provincial Government building. (*Los inmigrantes asiáticos piden ante la Delegación del Gobierno salir de Ceuta.*) El Faro Ceuta. <https://elfarodeceuta.es/inmigrantes-asiaticos-delegacion-ceuta/>. [Accessed on 11 December 2017].

Since 2010, there have been 15 rulings from the High Courts of Justice of Madrid and Andalusia⁶¹ affirming that the asylum seekers “may be subjected to identity and document checks, but under no circumstances may their freedom of circulation be hindered for this reason”. The most recent ruling is the one handed down by the Madrid Court of Justice on 29th September 2017⁶² which upholds the appeal lodged by CEAR and again annuls the decisions by the Borders and Foreign Affairs General Headquarters, and by the General Police Directorate, which had denied an asylum seeker the right to travel from Ceuta to the peninsula. The court deems that it is not justified to refuse a refugee their right to move to the peninsula after their asylum application has been accepted. In its decision, the court clarifies that the affected party “is in a legal situation” so there should be no restriction on movement “throughout the national territory”⁶³.

The situation of LGBTI asylum seekers whose application has been accepted for processing is especially worrying. Similarly, they are not moved to the peninsula even though the CETI is not the most suitable place for them.

This situation can be seen in the data available to CEAR towards the end of October 2017: only 11.6% of CETI residents are asylum applicants while the remaining 88.3% are not. At the time of writing in 2017, so far 209 asylum seekers have come from Algeria, 19 from Morocco and one from the Central African Republic. Only nine of these are women and there have been no asylum requests from Sub-Saharan. Hardly any Syrian nationals have arrived in recent years. Since the conflict in the Rif region broke out in Morocco, there have been two asylum applications made in Ceuta.

Although an asylum office was opened in March 2015 at the El Tarajal border post in Ceuta, since it was created there have been no asylum applications, which should be processed via the procedure on the border.

Another of the notable problems in Ceuta is the situation for unaccompanied children. Many of them are Sub-Saharan who claim to be adults to avoid being put under the authority of the city’s minor protection services and to be able to be referred instead to the CETI and from there sent to the peninsula. When they subsequently arrive at Algeciras, their credibility is questioned by the authorities. If they have already undergone a test to determine their age in Ceuta that has found them to be adults, this criterion is maintained.

There is no proactive action taken by the competent authorities to check this affirmation in cases where it is clear that they are minors. Those who state that they are minors are given an age test by checking their bones, and as happens in Almeria, Malaga, Motril and Algeciras, in the vast majority of cases the result finds them to be adults. If it is confirmed that they are minors, they are referred to the “La Esperanza” Unaccompanied Minors Centre. In March 2017, the trade union Comisiones Obreras denounced that this centre is on the brink of breaking down due to the large number of minors residing there (about 170 with peaks of over 200) without sufficient staff, whose numbers are actually lower than when it was created in 2000⁶⁴.

As for the victims of trafficking, parties involved who were interviewed agree in saying that it is very difficult for

⁶¹ Rulings from the Administrative Court of the High Court of Justice of Andalusia (Sec. 4, of 25 October 2010; Sec. 2 of 28 October 2010; Sec. 2 of 21 December 2010; Sec. 4 of 27 December 2010; Sec. 2 of 13 January 2011; Sec. 2 of 24 February 2011; Sec. 4 of 23 February 2012; Sec. 4, 6 March 2012; Sec. 2 of 11 April 2012; Sec. 2 of 11 July 2014; Sec. 2 of 13 February 2015): “recognises freedom of movement “for foreigners who are legally in our territory”. In other words, it does not affect the right to enter legally, but to be legally in Spain, and without a doubt this includes whoever has had their asylum application accepted for processing, and even has an identity document issued allowing them to stay, at least until the request has been definitively solved. And this is true to the extent that they must notify of any change of address. That is to say, it would be illogical and contradictory to maintain that somebody has no authorisation to stay in Spain when at the same time they are obliged to notify of changes of address. [...] As we can see, the limitations to this right can only be provisional in nature and furthermore its adoption is limited to very special and delimited cases, which do not include asylum seekers when their application has been accepted. FIVE. - Lastly, as regards the specific police action, there is no doubt as to their right to carry out the corresponding border control. This is why it is a special case when the asylum seeker is in Ceuta and not on the peninsula, since on the peninsula in principle there could be no control over their movements. But the case of Ceuta is special as regards control, but not as regards a restriction not imposed by law. The fact that the police may control does not mean it may impede the use of a right” (Andalusia Administrative High Court (STSJ), Sec. 4 of 25 October 2010, legal grounds (FFJJ) 4 and 5).

⁶² Ruling by the High Court of Justice of Madrid no. 667/2017. <https://www.cear.es/wp-content/uploads/2017/10/sentencia-libre-circulacion-ceuta.pdf>. [Accessed on 11 December 2017].

⁶³ The ruling can be seen at this link: <https://www.cear.es/wp-content/uploads/2017/10/sentencia-libre-circulacion-ceuta.pdf>

⁶⁴ The trade union Comisiones Obreras warns that the minors’ centre “La Esperanza” is on the brink of being overwhelmed. (*CCOO alerta de que el centro de menores “La Esperanza” está al borde del colapso.*) Ceutaldia. <http://www.ceutaldia.com/articulo/administracion/ccoo-alerta-centro-menores-esperanza-borde-colapso/20170308152902156809.html>. [Accessed on 11 December 2017].

women recently arrived in Ceuta to recognise they are victims of trafficking. In fact, there are not even requests for asylum for this reason, nor is police identification carried out, which shows the complete lack of effectiveness in the current protection system. The organisations present in the CETI are aware of these difficulties and organise activities with women who are possibly victims of trafficking. These activities aim to boost confidence and provide these women with all the necessary information about trafficking victims' rights and the resources available at different places in Spain so that if they decide to seek protection later, they will know where to go.

In any case, this has never led to any victim of trafficking being identified. It is also noteworthy that there is no evidence of any minors and there is a lack of information available about the matter. According to Amnesty International⁶⁵ there is a certain belief that many of the women arriving at the CETI in Ceuta may be victims of the human trafficking networks. The situation is especially serious given the reasonable suspicion that some of them may be minors even though they tell the civil servants who interview them that they are adults.

The lack of security and the control that the trafficking networks have over them makes the women reluctant to speak or to want to request asylum, added to the fact that the request for asylum slows up the process to leave Ceuta. Thus, most of them go to the peninsula as migrant women through irregular ways, susceptible to continuing under the sway of the human trafficking networks.

14. Melilla

In Melilla, 2,202 people applied for asylum up to October 2017 (1,983 asylum requests via the border procedure and 219 by the territory procedure). A total of 2,038 asylum applications were made in 2016, in other words by October 2017 the number was greater than the previous year. Since August 2017, an increase in international protection applications in the territory from Moroccans from the Rif area has been detected. The main nationalities of people requesting asylum on the border are Moroccans and Syrians, whereas in the territory they are from Algeria, Guinea Conakry, Ivory Coast and Gambia. The women requesting asylum are about 20% of the total and almost all of them are Sub-Saharan and Moroccan. There have been no asylum requests from Nigerian women recently.

After the asylum offices opened in both autonomous cities in March 2015, in Melilla only people fleeing the Syrian conflict, Algerians and Moroccans have a real possibility of applying for international protection in the border post prepared for this. This is not possible for Sub-Saharans, whose only viable option is to cross the fence, hide in vehicles, cross the sea in unsafe craft or even swim. The latter two options are particularly used by women⁶⁶.

At the end of October 2017, the number of people in the CETI in Melilla came to 1,186 people, yet after the building work done in 2015, its capacity is for only 700 people⁶⁷. As in Ceuta, the CETI in Melilla is also usually over its capacity.

Another problem occurring in Melilla, as in Ceuta, is the discrimination in transport to the peninsula by nationality and the rejection or late transport to the peninsula of asylum applicants accepted for processing in centres for reception of refugees. This matter falls under the authority of the Borders and Foreign Affairs General Headquarters.

Although the average time spent in the centre has been shortened to about three months and Sub-Saharans and Syrians (the latter including many asylum seekers) are moved to the peninsula, Algerians, Moroccans and Tunisians are still not moved. When Sub-Saharans are moved to the peninsula, they are taken to Humanitarian Reception Programme Centres. As their expulsion procedure has already been started, they are all given an expulsion order that will hinder their possibilities of regularising their administrative situation in Spain.

⁶⁵ Amnesty International (2016): In No-Man's Land. The situation of refugees and migrants in Ceuta and Melilla. (*En Tierra de Nadie. La situación de las personas refugiadas y migrantes en Ceuta y Melilla.*)

⁶⁶ *Ibidem*

⁶⁷ Spanish State Ombudsman (2016): Study on asylum in Spain, international protection and the resources of the reception system (*Estudio sobre el asilo en España, la protección internacional y los recursos del sistema de acogida*): https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo_en_Espa%C3%B1a_2016.pdf

The situation of unaccompanied children in Melilla is also cause for concern. The problems in identifying these minors is the same as we have discovered in all places on the coast visited to draw up this report and in Ceuta.

When the minors are identified, the males are referred to the “La Purísima” Centre for Minors and the girls to the “Gota de Leche” Assistance Centre or the “La Divina Infantita” Centre.

There are currently 540 unaccompanied foreign minors in Melilla⁶⁸, of whom 340 are in the “La Purísima” centre and it is estimated that about 100 live on the city’s streets. They are in an extremely vulnerable situation, whether they are outside the protection system and obliged to live and sleep on the street, abandoned by the authorities, or are internees in the “La Purísima” centre.

The minors living on the street are under the guardianship of the Autonomous City of Melilla, but they are completely unprotected, have no documents and are socially excluded. They beg on the street, sleep exposed to the elements, have health problems and are sometimes not assisted in health centres.

It is very striking that there is a lack of information available about the situation of unaccompanied foreign girls in the “Gota de Leche” and “La Divina Infantita” Assistance Centres.

15. Push-backs

Since the border fence in Ceuta and Melilla was built for the first time in 1990, there have been numerous steps taken by the authorities to bolster these borders. Examples of this include the introduction of concertina wire and the increased cooperation with Morocco to control migration and carry out systematic, illegal returns for which an attempt has been made to provide legal cover by introducing the concept of “border rejection” in the Aliens Act via the reform to the Organic Law on the protection of citizens’ security approved on 27th March 2015.

This concept was introduced by adding Additional Provision 10 to the Law on the Rights and Freedoms of Foreigners in Spain (Aliens Act). This is a new regulation⁶⁹ intended to lend legality to an administrative practice that was being carried out on the Spanish border with Morocco until then without legal coverage and with an excessive use of force by the officers of the security forces. This practice is illegal since it goes against the Spanish Constitution, legislation on foreigners and asylum, and European and international regulations with which Spain is obliged to comply. Specifically, it must comply with the principle of “non-refoulement”, which prohibits returning or deporting people to countries where they may suffer from persecution (in keeping with the 1951 Geneva Convention Relating to the Status of Refugees), torture or inhumane or degrading treatment. Neither the 1978 Constitution or the agreements and treaties ratified by Spain authorise restricting any person’s fundamental rights or public liberties, whether they are nationals or foreigners in a regular or irregular administrative situation, without following a procedure that guarantees their rights⁷⁰.

In its 2016 Annual Report⁷¹ the National Ombudsman refers to the complaints received about these kinds of actions, which make it difficult to “know whether the people affected are minors or in need of international protection. There have also been repeated complaints about the delay in the arrival of emergency services, which implies a risk for people who are up on the fence”. The Spanish State Ombudsman reiterated its position against automatic returns, as well as the need to urgently prepare and implement the procedure provided for in Additional Provision 10 of the

⁶⁸ <http://www.europapress.es/ceuta-y-melilla/noticia-melilla-acoge-540-menas-inmensa-mayoria-proviene-marruecos-20170115154059.html>

⁶⁹ Additional Provision 10. Special regime in Ceuta and Melilla. 1. Aliens who are detected on the border line of the territorial demarcation of Ceuta or Melilla while trying to breach the border containment elements to illegally cross the border may be rejected in order to prevent them from entering Spain illegally. 2. In any case, the rejection must be carried out observing international regulations on human rights and international protection to which Spain is a party.

⁷⁰ For more information on the stance taken by ECHR, UNHCR and humans rights organisations on the matter of illegal returns on the southern Spanish border, see the ECHR judgement on the matter of ND and NT v SPAIN: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-177231%22%5D%7D>

⁷¹ Spanish State Ombudsman (2016). 2016 Annual Report. <https://www.defensordelpueblo.es/informe-anual/informe-anual-2016/> [Accessed on 11 December 2017].

Aliens Act. It is important to point out that on 3rd October 2017, the European Court of Human Rights ruled against Spain for the push-backs to Morocco of two people at the fence in Melilla without identifying them and without giving them access to the relevant procedures and guarantees⁷². In its decision, the Court considered that these returns “amounted to a collective expulsion”⁷³. The ruling concludes that Spain also violated the right to an effective appeal.

16. Morocco

CEAR carried out a mission to Morocco in 2015 to find out the vulnerable situation of the rights of migrants and refugees in the country. After the mission, a report was published: “Morocco: Lack of protection and violation of migrants’ and refugees’ rights on Europe’s doorstep.”⁷⁴. It concluded that although Morocco was trying to improve its image as a country receiving immigration by fostering a new migratory policy via the National Immigration and Asylum Strategy (SNIA)⁷⁵ in order to comply with the European Union’s wish to sell the image of a “safe country” for migrants and refugees, human rights were not being observed and insufficient protection was being given to the migrants and refugees in the country. As we shall now see, the situation has not improved since then.

Due to the policy of externalisation and bolstering borders favoured by the European Union and Spain, Morocco is becoming less of a transit country and more of a forced destination country that does not guarantee respect for human rights or suitable protection for migrants and refugees, with the latter finding themselves trapped in a completely unprotected and defenceless situation.

Morocco has insufficient regulations. Although it ratified the 1951 Geneva Convention Relating to the Status of Refugees in 1956 and has been announcing for years that it is to formally announce a law on asylum, this has not been passed according to parties involved in civil society who were interviewed. The Office of Refugee and Stateless People, ORS (Bureau des Réfugiés et des Apatrides, BRA)⁷⁶, was founded in 1957 to give legal and administrative protection to refugees. This office should have recognised everybody under UNHCR’s mandate as a refugee⁷⁷, or anybody meeting the criteria to define a refugee according to the stipulations of the Geneva Convention. Moreover, it should have handed over the identification documents necessary for refugees to be able to exercise their rights and to carry out the usual, everyday activities of civil life. However, the ORS never began to operate and was not active from 2004 until 2013, when it was reactivated as Morocco announced a regularisation process. UNHCR, whose only office in Morocco is in Rabat, has in practice been the party that has dealt with registering asylum applicants since 2013, determining whether they are refugees according to its mandate and issuing the documents necessary to justify their status as beneficiaries of international protection. Today, UNHCR registers, interviews and sends a file to the ORS when it considers that the decision may be favourable, and the ORS decides.

The total number of asylum applications processed through UNHCR Rabat in 2017 until 31st August came to 4,924, of whom 2,082 were women and 2,842 were men. The asylum seekers’ countries of origin are mainly Syria (3,263), Yemen (496), Ivory Coast (297), the Central African Republic (215) and Iraq (151)⁷⁸. The percentage recognised as refugees is 24%.

The number of asylum requests from Syrian nationals fell 54% in the third quarter of 2017 due to greater security controls on the border with Algeria. However, it is essential to reach the UNHCR offices in Rabat to be able to for-

⁷² N.D & N.T. v. Spain, Application nos. 8697/15 and 8697/15 Ruling of 3 October 2017.

⁷³ Prohibited by Article 4 of Protocol no.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already in the Convention and in the first Protocol thereto, Strasbourg, 16 November 1963.

⁷⁴ CEAR (2015): Marruecos: Desprotección y vulneraciones de derechos de las personas migrantes y refugiadas a las puertas de Europa. https://www.cear.es/wp-content/uploads/2016/11/informe_marruecos_cear_2015_definitivo.pdf

⁷⁵ Announced after the National Human Rights Council (NHRC)’s report in 2013 on the situation of migrants and refugees in Morocco. More information at: <http://www.marocainsdumonde.gov.ma/sites/default/files/Fichiers/Pages/strat%C3%A9gie%20Nationale.pdf>

⁷⁶ This office is subordinate to the management of the Moroccan Ministry of Foreign Affairs and International Cooperation.

⁷⁷ See the information via this link: <http://www.unhcr.org/fr/news/stories/2013/10/52540fb06/qr-premiers-vers-nouvelle-politique-dasi-le-maroc>.

⁷⁸ The asylum applications are referred to UNHCR Rabat from the offices of the Organisation Marocain des Droits Humaines (OMDH) in the north-east of Morocco.

malise an asylum application in Morocco. Given that migrants travelling towards Rabat are often arrested or detained, the obstacles to accessing the country's international protection system are extremely worrying. On top of the obstacles in terms of access to the procedure, it is important to point out that the asylum applicants and refugees do not have enough protection. There is no effective state system of protection, so that recognising a person as a refugee does not lead to effective access to rights such as legal assistance, housing, healthcare, work, education and other public services. It is UNHCR that deals with facilitating access to basic services in collaboration with local organisations⁷⁹. The state takes on little or no responsibility in this matter. For example, the East-West Foundation (*Fondation Orient Occident*) is UNHCR's partner for emergency housing for a period of 3 to 5 months. They have 17 apartments, each one containing three bedrooms with a capacity for two people each, in Fez, Casablanca, Rabat and Tangier, financed by UNHCR and the IOM. Apart from this resource, there is no other kind of accommodation available in Morocco.

In this context and in order to try to provide an image of a country that respects human rights, the first regularisation process was begun for one year, beginning on 1st January 2014. The criteria for attaining regularisation⁸⁰ were heavily criticised by human rights organisations for being restrictive and leaving many people out. Furthermore, these criteria were not agreed upon with the aforementioned organisations and in each region they were interpreted differently, creating great legal insecurity. In February 2015, it was announced that 17,916 applications out of total of 27,332 had ended in a favourable decision⁸¹, including all of those presented by women and children.

However, the Moroccan authorities' persecution and repression of migrants that has always existed in the country⁸², did not end with the regularisation process. On the contrary, it got worse for "non-regularised" migrants: violent eviction from camps on Gurugu Mountain near the border with Melilla and from the camp in the Oudja Faculty of Law, raids in Nador and the surrounding area as well as in the Boukhalef district of Tangier, and a lack of protection in the makeshift camp in Fez. In the context of these operations, at least 1,200 people were arbitrarily detained in the region of Nador, at least 800 of whom were taken in buses to improvised retention centres in 18 different cities in southern Morocco. These included minors, pregnant women, asylum seekers and people that had presented their application for the regularisation process but had not yet received a reply.

At the beginning of January 2017, a second regularisation came into force with the same requisites as the previous one. This regularisation remained open until 30th December 2017. Many people with a profile of asylum seekers, faced with the difficulties in accessing the right to asylum, chose to apply for regularisation via this procedure. At the time of writing, 20,000 requests have been made but none have been given a solution. As with the previous one, there is a great disparity of criteria in interpretation. For example, in Oudja 400 people have presented regularisation applications so far, but in Nador there are very few applications because they are presented in Oudja where the criteria are less restrictive.

However, as happens with people who have been given documents as refugees, those who have obtained a residence permit via regularisation have not accessed social rights, so that their documents do not entail an improvement in their situation since the state's integration policies are non-existent.

Migrants with or without a residence permit do not have access to the Moroccan public healthcare system (RAMED), which is very restrictive even for Moroccan nationals themselves. Foreigners and nationals may access primary healthcare services provided they can show they have a rent contract for residence and there are no ex-

⁷⁹ Psychosocial support, formal and informal education programmes for children and adults, HIV AIDS guidance and prevention, and the promotion of rights for refugees are carried out through the East-West Foundation; healthcare through the Association Action Urgence; professional training, activities related to creating income and insertion into the job market are carried out by the Association Marocain d'Appui à la Promotion de la Petite Entreprise (AMAPPE); legal assistance and support by MOHR and the law firm Lemseguem; and medical and psychological aid (especially for victims of trafficking for sexual exploitation) through Médecins Sans Frontières.

⁸⁰ Mainly: residence in Morocco for five years, humanitarian reasons or illness, or two years of marriage with a Moroccan. More information: http://www.gademasso.org/wp-content/uploads/2016/05/Circulaire_MI-MCMREAM_12_decembre2013.pdf and <http://www.pnpm.ma/>.

⁸¹ People from Senegal, despite not needing a residence permit to legally reside in Morocco, were the most numerous group that presented regularisation applications in order to have greater guarantees against a possible future expulsion.

⁸² Human Rights Watch (2014): *Abused and Expelled. Ill-treatment of Sub-Saharan African Migrants in Morocco*.

ceptions to this rule, not even for pregnant migrants, which is very worrying because many Sub-Saharan women arriving in Morocco have suffered from sexual violence on the way and as a result there are unwanted pregnancies. We have seen above that on arrival on Spanish shores, specifically in Algeciras, an increase has been detected in women with babies born during the journey. If these babies are born in Morocco, they do not have access to any medical service and nor do the mothers have access to services such as pre- and post-natal care, except for the costs of delivery covered by *Medicos del Mundo* (Doctors of the World), whose future funding is not assured. Many Sub-Saharan women who are victims of trafficking and become pregnant are made to abort by the traffickers by giving them abortion pills, which if not taken in the right dosage depending on the weeks of pregnancy, may cause very high risk abortions and complications that put these women's lives at risk⁸³. These women are thus denied access to their sexual and reproductive rights.

Organisations such as *Cáritas* try to mediate with hospitals for these migrant women's newborn infants to get vaccinated, but they do not always achieve this. Furthermore, there are great divergences in criteria for assistance from one place to another as regards these primary healthcare services. It is UNHCR that covers refugees' primary healthcare costs, and *Cáritas* those of migrants. A year ago, the Moroccan government planned a healthcare system parallel to *RAMED* for migrants and refugees, but by the time of writing it has not been created.

As for access to employment, the only sectors that they normally access are informal ones, with or without a residence permit. In Rabat there are many young Sub-Saharans who work selling things on the street. Migrant women enter sectors with little regulation in which abuse and violation of rights occur in the private sphere, such as home helps.

Many women are victims of trafficking and find themselves forced to beg and work as prostitutes until they manage to get to Spain, and from there to other European countries where they are sexually exploited. Many people make a living begging at traffic lights and the police arrest them. If they have a residence permit or they are processing it, they are released, but if not they are taken by bus to other places in Morocco further from the border with Spain and abandoned with no protection. Although the migrant population has grown in Marrakesh, there is greater dispersion throughout the country.

It should be noted that the criteria for issuing documents or renewing a residence permit also depend on each city, as with the criteria for obtaining it by means of regularisation. The further the place is from the northern border, the more flexible the requisites are.

Access to education is conditional upon having a residence permit. There is only one official educational entity, *Entraide Nationale*, that accepts people without a residence permit.

Access to housing is very limited. Normally, Sub-Saharan migrants live in shared apartments in areas where Moroccans also live or else in ghettos where only Sub-Saharans live; forests whose settlements are being destroyed by the Moroccan police as happened in October in Bolingo, one of the forests by Nador; or in camps like the one in Fez located on land next to the train station where there are 500 to 1,500 people, another being set up in Casablanca in the bus station and those in Agadir and Tiznit. However, they are being violently evicted from these camps by the Moroccan security forces. There is an imminent threat of eviction from the Fez camp, so the many people who live there are leaving for fear of being detained.

As regards access to birth certificates and education, the situation of foreign women's children in Morocco is extremely worrying. According to Moroccan law, anybody born in Morocco must be registered in the Civil Registry, but children of migrants in an irregular situation are not registered. A single foreign mother may only register her child if she presents a birth certificate from the hospital. But foreign women who give birth in the forests or camps cannot obtain a certificate.

⁸³ Women's Link Worldwide (2012): *Clandestine Women Migrants: Abortion in Morocco. (Mujeres Migrantes en la Clandestinidad: El aborto en Marruecos.)*

Although they may get it by paying, since they have no economic resources and there is no public aid as they are not considered to be people in a vulnerable situation, they cannot be registered. Furthermore, since they are women living clandestinely, it is not likely for them to go to a hospital for fear of being identified, detained and deported. Thus, unregistered children born in Morocco have no birth certificate. Without the certificate, they can go to school until the age of nine, but after that age they must present a certificate to continue their studies. It can sometimes be obtained from their embassies with money, but for people without economic resources the only option is to drop out of their studies.

This lack of access to social rights is not only suffered by the migrant population, but also nationals, as has become clear in the conflict in the Rif area. Since the end of 2016, the people of the Rif have been taking to the streets to demonstrate against the marginalisation and exclusion they suffer and the lack of access to social rights. In some places in the south, there are protests about the scarcity of water, and the state's response has been to silence these demands by arresting and imprisoning the civil population.

Following a mission carried out in Morocco in 2013⁸⁴ the UN's Special Rapporteur on human trafficking (and especially of women and children) gave some recommendations to the country's government about establishing an institutional and legal framework to combat the trafficking and about adopting effective measures to foster skills, identify victims, gather information, give assistance and support for the victims and prosecute the guilty parties.

The report made it clear that the lack of opportunities in Morocco for education and employment, coupled with generalised poverty, are the main causes for the vulnerable situation in which migrant women find themselves to become victims of trafficking for sexual exploitation. It also indicated that one of the greatest challenges was the lack of assistance and reception resources for trafficking victims, as well as the lack of any programme to integrate migrants in an irregular situation, refugees and asylum seekers, which increases the possibilities of falling into trafficking networks.

The UN's Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance, expressed his special concern on his visit to Spain in 2013 about the situation of women who are victims of sexual and gender violence in Morocco at the hands of the trafficking networks in the border area of Oujda before entering Ceuta and Melilla⁸⁵.

In 2016 Morocco announced a law against human trafficking⁸⁶, but this law, drafted without participation from organisations from civil society, focuses on the fight against crime and human trafficking, as well as against irregular immigration. It does not take into account the need to protect the victims.

However, this law has not been implemented and the only "protection" mechanism applied is the returns managed by the IOM that many Nigerian women take up as the last alternative when they have been a long time in Morocco without being able to cross the border to Spain. Very few identifications are made and these women later reach Spain and Europe and continue to be sexually exploited. There are no specific resources for foreign women victims of trafficking, either. Some of them are taken to general protection centres for women, of which there are very few with scarce resources given that the state does not fund them. Some centres do not accept Nigerian women who are victims of trafficking because this implies a danger for the others. The Court of Rabat states that it has not received any official complaint of trafficking, which is obvious given that a complaint does not lead to any protection. Although the law provides for the concession of a residence permit, it links it to the victim reporting the crime. The only positive point about this law is that it has helped Moroccan society become aware of the phenomenon.

As for other forms of violence against women, the violence generated by parties not working for the state in Morocco is another form of abuse and habitual discrimination against Moroccan women. According to the report on

⁸⁴ Mission by the Special Rapporteur, Joy Ngozi Ezeilo, to Morocco on 17-21 June 2013. http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/26/37/Add.3&Lang=E. [Accessed 11 December 2017].

⁸⁵ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere. Visit to Spain. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf. [Accessed on 11 December 2017].

⁸⁶ Law No. 27-14, of 25 August 2016 on Combating Human Trafficking.

equality in Morocco by the European Institute of the Mediterranean⁸⁷, violence occurs in all situations of intimate marital and family life (42.3% of physical violence is perpetrated by brothers, and 17.3% by fathers) and also of social life in the most varied of public spaces. Domestic violence accounts for 55%, while 47.4% is extramarital⁸⁸.

Furthermore, it is difficult to eradicate patriarchal, conservative cultural practices that discriminate against women, since they are so ingrained in Moroccan society. The women themselves are often reluctant to defend their rights in court, above all if those responsible for breaching them are male members of their families, since this could entail damage to the family's reputation. Moreover, although Moroccan women theoretically have the same witness rights in civil and criminal cases, in family matters the judiciary places greater value on male testimony.⁸⁹ So, there are no effective protection mechanisms against violence against Moroccan women, and much less against migrant and refugee women.

The situation experienced by the LGTBI community and unaccompanied children is alarming. LGTBI people face rejection and discrimination since there are many prejudices in Moroccan society regarding sexual diversity. The ORS (BRA) does not recognise gender-based persecution, so although UNHCR considers that they may be refugees, the ORS does not recognise them as such or give them documents. In addition, the Moroccan Penal (Criminal) Code punishes sexual relations between people of the same sex with sentences from six months to three years deprived of freedom and a fine of 120 to 1,000 dirhams⁹⁰. This lack of legal status added to the discrimination they face (assaults, insults, rape, evictions, etc.), means they have no possibility to integrate in Morocco, since the aggressions they suffer are not reported due to fear of the Penal Code being applied to them. As they have no documents, they cannot work or access the scarce public services available, and they are often forced into prostitution to survive - a kind of prostitution that is prohibited by law and which entails prison sentences. On practising prostitution, they are at high risk of contracting HIV or other sexually transmitted diseases and they do not have access to healthcare services, to which they would probably not turn anyway if they had the right, for fear of being arrested. Medical assistance for this social group, including HIV testing, is carried out by ALCS (*Action Urgence de Lutte Contre la SIDA*), a social organisation allied with UNHCR.

For this reason, LGTBI people who request international protection are relocated by UNHCR to Canada or the United States. However, there are a limited number of places for resettlement⁹¹. For example, up to October 2017 there were 92 LGTBI people identified in need of international protection, but it was only possible to resettle 30 of them. The rest were left completely unprotected and trapped in a country that persecutes them and denies their most basic rights.

UNHCR assists this group in accessing basic services and some people are accommodated in apartments managed by the East-West Foundation.

In many cases, the only strategy for protection they have is to try to hide their sexual identity or orientation, which means renouncing a fundamental characteristic of their identity which nobody should be forced to renounce, according to international law.

In Morocco there are many unaccompanied minors, more boys than girls, and they are getting younger. Many are from Guinea Conakry, residing in the camps in Fez and Meknes. There is no protocol for action regulating their situation and like the trafficking victims they are not identified. There may also be more trafficking victims among the minors who have not been identified. In France in 2015, social organisations identified more than 100 Nigerian girls and adolescents in different zones of Paris, who are controlled by other women of the same nationality⁹². Many of these girls have reached Europe through Spain from Morocco. They are minors who have not been identified as

⁸⁷ Chikhaoui, Naïma (2015): "Overcoming obstacles in the matter of equality: the Case of Morocco", in *Quaderns de la Mediterrània* No. 22, pp.

⁸⁸ *Ibidem*

⁸⁹ *Ibidem*

⁹⁰ Article 489 of the Moroccan Penal Code of 1962.

⁹¹ With the current migration policy in the United States, these relocation numbers may fall still further.

⁹² Women's Link Worldwide (2017): Mothers in the trafficking networks. Stolen rights. (*Madres en las redes de trata. Derechos robados.*)

such nor as trafficking victims in Spain, France or Morocco, which has made it possible to exploit them in the three countries or in other countries of the European Union with complete impunity.

There are some centres for minors but the standards of quality in them are very low to the point that some parties involved who we interviewed considered that the children are worse off in the centres than on the streets. Nobody questions the minors' age because the system is not ready to receive them and they have very serious problems in accessing documentation, training and education.

The minors often turn to begging since they cannot work. They look for food in the streets and live exposed to the elements, clandestinely dodging the human trafficking networks though unaware of the consequences of falling into these mafias to continue their forced journey. There are children who consume drugs, abandoned, unaccompanied, victims of sexual and labour exploitation, who work as "petites-bonnes" employed in people's homes in conditions of semi-slavery, suffering from violence, sexual exploitation and ill-treatment by the families that hire them⁹³.

Furthermore, the discrimination towards the Sub-Saharan population in Morocco, which has been repeatedly denounced by many human rights organisations such as CEAR, has not ceased.⁹⁴ There is discrimination from institutions, employers, the local population, etc. Although the king announced that a Ministry of African affairs would soon be created in order to tackle this discrimination, it has yet to be created. The violence continues towards migrants, asylum seekers and refugees, as well as arbitrary detentions by the Moroccan authorities, particularly in border cities such as the border at Nador with Melilla, where throughout the year serious episodes of violence have been recorded, as well as arbitrary detentions and migrants and refugees being taken involuntarily to other parts of the country.

All of this shows that Morocco is a country that does not comply with the standards of respect for the human rights of migrants and refugees⁹⁵. Furthermore, it does not guarantee adequate protection or access to rights for the migrant and refugee population, so that many prefer to risk their lives trying to reach Spain.

The Interior Minister stated at the end of July 2017 in Congress that up to that date 10,751 people had entered Spain irregularly by sea or land, 3,204 doing so through Ceuta and Melilla. According to his data, there had been 2,266 attempts to go over the perimeter fence of Ceuta⁹⁶.

⁹³ Alianza por la Solidaridad. <http://www.alianzaporlasolidaridad.org/testigodirecto/una-verdadera-politica-publica-que-proteja-a-ninos-y-ninas> [Accessed on 4 November 2017].

⁹⁴ Human Rights Watch (2014): *Abused and Expelled. Ill-treatment of Sub-Sahara African Migrants in Morocco*.

⁹⁵ More information at: http://www.pnpm.ma/wp-content/uploads/2017/12/Rapport-PNPM-11_2017_ACCES-AUX-SERVICES-POUR-MIGRANTS-AU-MAROC.pdf

⁹⁶ Compared to the 3,472 attempts in the whole of 2016.

Conclusions

- The drop in arrivals to Spain through Ceuta and Melilla since 2016 and the growth in arrivals across the Strait of Gibraltar and the Alboran Sea show that the obstacles to crossing the border encourage new, more dangerous routes to be opened up.
- The routes used to reach Spain are getting more dangerous. Arrivals in precarious, overcrowded crafts are becoming more and more common.
- A lack of coordination and uniformity 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.
- The port facilities receiving the people arriving in boats are not suitably prepared. The same can be said of the facilities where they are detained, and the cells.
- Except for Malaga, on the Andalusian coast the recent arrivals are not given suitable information about the right to asylum.
- In Almeria and Tarifa, lawyers are not ensured of the rights to interview the people they are defending before they make a statement to the National Police. In Almeria, after this statement the individual interview in private between the lawyers and the defendants is often hindered by the National Police, claiming a lack of resources and secure conditions. In Tarifa, there have been cases when the National Police have written the return orders before taking a statement from the person concerned.
- Generally, the right to an interpreter is not adequately guaranteed on arrival to the shores, which makes it difficult to identify the needs for international protection. Sometimes, when there are uncommon languages, another person who has travelled in the same boat is used as an interpreter. This is extremely problematic if there are women who are potential trafficking victims that may be travelling with their traffickers.
- In all of the places visited on the Spanish coast, in the early months of the summer of 2017 the asylum applications were processed via the border procedure. In recent months, due to a lack of resources and suitable facilities, they have been processed by the procedure in the territory. However, in Malaga, sometimes when the CIEs are full or when a lot of people arrive, some applications are processed via the border procedure and others by the territory procedure, which leads to some legal insecurity.
- In Almeria, Motril and Algeciras the court orders authorising internment are “standard orders” written prior to being brought before the judge and without taking into account each individual’s situation, which is contrary to the current regulations. The asylum applications, as in Tarifa, are made once the person has been admitted into a CIE without taking into account when they have expressed the wish to apply for it.
- On Spanish coasts, people are detained, given an order to return and interned in a CIE systematically to avoid creating “pull factors”, without taking into account that deprivation of freedom by detention and internment in a CIE are measures of last resort.
- Serious shortcomings have been observed in the early identification of people with special needs before they are brought before state security forces, together with the latter’s lack of training or material and human means to carry out their job.

- Human rights organisations and the Spanish State Ombudsman have pointed out the shortcomings and efficiencies of the facilities and services at the Algeciras/Tarifa CIEs, which have also been mentioned in various court orders from the Judge in charge of Control of Stays in the centres.
- A lack of suitable identification of unaccompanied children has been found in Almeria, Motril, Algeciras, the Canary Islands, Ceuta and Melilla, as well as a breach by presuming the minors' age. In Almeria, Malaga, Motril and Algeciras it is common for minors to be detained along with adults, regardless of whether, following detention and processing of their case for return, they are ruled to be free and not interned in a CIE. In Algeciras there have been cases detected of unidentified minors interned in the CIE and returned or deported to their countries of origin.
- The lack of an approach based on human rights and protection for trafficking victims means that there is practically no identification of trafficking victims.
- In Ceuta and Melilla, the CETIs are normally over their capacity for reception; discretionary criteria are applied in moving them to the peninsula, with discrimination regarding the journeys depending on nationality. In both cities, the asylum applicants' freedom of movement is illegally restricted, and the protection system for unaccompanied minors and trafficking victims is completely ineffective in identifying and protecting them. In Ceuta it is also worrying that the centres for minors are saturated, as well as the lack of requests for asylum in the border post office. Furthermore, in Melilla the situation of minors is alarming in both the accommodation centres and for those on the streets.
- Morocco is becoming a forced destination country rather than one of transit due to the European Union's and Spain's policy of externalising and strengthening borders. Regulations in matters of asylum and integration policies are inexistent (restrictions to healthcare, education, employment, etc.). The lack of protection for women who are trafficking victims and unaccompanied children, in addition to institutional discrimination and violence towards the migrant and refugee population, make it clear that Morocco cannot be considered a safe place for refugees and migrants.

Proposals

- A state-level plan of action should be adopted to give a suitable response to the increase in arrivals on Spanish coasts, including a unified protocol for action to help improve management of the arrivals of migrants and refugees by sea, ensuring identification of needs for protection and referring people to the relevant protection channels. This plan should also be covered by a budget that will enable the existing material and human resources to be extended.
- Access to information and the international protection procedure should be suitably guaranteed for individuals at the main points of arrival, ensuring access to assistance from lawyers and interpreters as of the moment of arrival.
- Appropriate, ongoing training should be provided in matters of international protection for the state's security forces.
- Early identification of people with special needs should be ensured before they are brought before the state security forces in order to ensure they are properly dealt with by them.
- Effective measures for identifying and protecting trafficking victims should be adopted, along with assistance from multidisciplinary teams and an approach based on protecting victims.

- Suitable protection for minors should be guaranteed so that they are not detained under any circumstances, while ensuring appropriate identification of unaccompanied children and carrying out suitable tests to determine people's age.
- Restrictions to asylum applicants' freedom of movement in Ceuta and Melilla should be removed, as well as discretionary and discriminatory criteria for transporting people to the peninsula.

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