



**Supplementary observations by  
the Office of the United Nations High Commissioner for Refugees  
in the cases of *N.D. and N.T. v. Spain*  
before the Grand Chamber of the European Court of Human Rights**

**1. Introduction\***

1.1. UNHCR was granted leave to intervene by the European Court of Human Rights (‘the Court’) in the cases of *N.D. and N.T. v. Spain* (Appl. Nos. 8675/15 and 8697/15) by its letter of 9 October 2015. Following the referral of the Chamber judgment<sup>1</sup> to the Grand Chamber, UNHCR submits these supplementary observations to update its initial intervention of 15 November 2015.<sup>2</sup>

1.2. While the material time for the Court’s examination of the present cases is August 2014, UNHCR understands, in light of the questions addressed by the Court to the parties following the referral of the Chamber judgment to the Grand Chamber, that updated information regarding the relevant legislation and practice beyond that date may assist the Court in its assessment.

1.3. In the present submission, UNHCR provides updated information about access to the border crossing posts, in practice after the entry into force on 1 April 2015<sup>3</sup> of the amendment to the Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration 4/2000 (‘Aliens Act’),<sup>4</sup> (part 2) and the reception conditions in the enclaves of Ceuta and Melilla (part 3), including, where appropriate, references to relevant provisions of the Reception Conditions Directive<sup>5</sup> (RCD).

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\* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, <http://www.refworld.org/docid/3ae6b3902.html>.

<sup>1</sup> *N.D. and N.T. v. Espagne*, 8675/15 and 8697/15, European Court of Human Rights, 3 October 2017, [http://www.refworld.org/cases/ECHR\\_59d3a7634.html](http://www.refworld.org/cases/ECHR_59d3a7634.html).

<sup>2</sup> UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the cases of N.D. and N.T. v. Spain* (Appl. Nos 8675/15 and 8697/15) before the European Court of Human Rights, 15 November 2015, 8675/15 and 8697/15, <http://www.refworld.org/docid/59d3a81f4.html>.

<sup>3</sup> Aliens Act amended by Organic Law 4/2015, 30 March, on the protection of citizens’ security, Official State Bulletin N° 77, March 31, 2015, pp. 27242-27243, <https://www.boe.es/boe/dias/2015/03/31/pdfs/BOE-A-2015-3442.pdf>

<sup>4</sup> Ley Orgánica 4/2000, de 11 de enero, sobre Derechos y Libertades de los Extranjeros en España y su Integración Social, BOLETÍN OFICIAL DEL ESTADO (B.O.E), Jan. 12, 2000, as amended by Organic Law 2/2009, <http://www.boe.es/buscar/act.php?id=BOE-A-2000-544>. The law has been amended several times and further implemented by Royal decree 557/2011, (RLOEx).

<sup>5</sup> European Union: Council of the European Union, *Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States*, 6 February 2003, OJ L. 31/18-31/25; 6.2.2003, 2003/9/EC, <http://www.refworld.org/docid/3ddcfda14.html>.

## 2. Updated information about the lack of access to a fair and efficient asylum procedure at the Melilla and Ceuta enclaves since August 2014

### 2.1. The relevant legislation

2.1.1. The amendments to the Aliens Act<sup>6</sup> which introduced the concept of ‘rejection at the border’<sup>7</sup> came into force on 1 April 2015. This concept provides that third country nationals, who are detected in the border area of Ceuta and Melilla while trying to cross the border irregularly, may be rejected in order to prevent their illegal entry to Spain. These amendments contain a clear commitment that the law will be implemented in compliance with international human rights standards and other international obligations of Spain. The amendment further states that ‘applications for international protection will be formalized in premises established to this end at the border posts, and will be processed according to the legal framework on international protection’.<sup>8</sup>

2.1.2. In UNHCR’s view, the duty to ensure that ‘rejections at the border’ are in compliance with international human rights standards and that asylum claims can be lodged and will be processed at the border posts, has not been fully implemented in practice. This is so, because operating arrangements allowing for the identification of persons in need of international protection through fair and efficient asylum procedures, including where relevant, admissibility procedures, without discrimination, are still lacking at these border posts and legal and safe access to such procedures remains effectively impossible for people from sub-Saharan Africa.<sup>9</sup>

2.1.3. Upon entry into force of the amendment in April 2015, the Spanish Minister of Interior had announced the approval of a protocol to provide clear operating instructions to the Civil Guard on how to apply the new provisions to persons attempting to cross the border via the fences at the Melilla and Ceuta enclaves. However, UNHCR is not aware any that such protocol was produced. The adoption of such a protocol was recommended not only by the Ombudsperson<sup>10</sup> with a view to establishing a proper identification and referral mechanism for persons in need of international protection<sup>11</sup> but also by the Civil Guard itself to guarantee legal

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<sup>6</sup> Ley Orgánica 4/2000, de 11 de enero, sobre Derechos y Libertades de los Extranjeros en España y su Integración Social, BOLETÍN OFICIAL DEL ESTADO (B.O.E), Jan. 12, 2000, as amended by Organic Law 2/2009, <http://www.boe.es/buscar/act.php?id=BOE-A-2000-544>. The law has been amended several times and further implemented by Royal decree 557/2011, (RLOEx).

<sup>7</sup> Aliens Act amended by Organic Law 4/2015, 30 March, on the protection of citizens’ security, Official State Bulletin N° 77, March 31, 2015, pp. 27242-27243, <https://www.boe.es/boe/dias/2015/03/31/pdfs/BOE-A-2015-3442.pdf>.

<sup>8</sup> *Ibid.*

<sup>9</sup> February 2018 visit to Spain of the UN Working group for persons of African Descent <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22705&LangID>; European Council on Refugees and Exiles, *Asylum Information Database, National Country Report: Spain, 15 March 2018*, pages 16 and 17, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_es\\_2017update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_es_2017update.pdf); Spanish Ombudsperson, *A study of asylum in Spain. International Protection and Reception system resources* [hereafter ‘A study of asylum in Spain’], June 2016, [https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asylum\\_in- Spain.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asylum_in- Spain.pdf).

<sup>10</sup> Reflected in the Institution’s annual report on asylum presented to Parliament in 2016, page 58, third para, [https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo\\_en\\_Espa%C3%B1a\\_2016.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo_en_Espa%C3%B1a_2016.pdf)

<sup>11</sup> Reflected in the Institution’s annual report presented to Parliament in 2016, pages 258 – 262, <https://www.defensordelpueblo.es/wp-content/uploads/2016/02/Informe2015.pdf>.

security to their personnel on the ground.<sup>12</sup> These recommendations were not taken into account by the Ministry of Interior.<sup>13</sup>

## 2.2. The relevant practice

2.2.1. Since the entry into force of the amendment on 1 April 2015, push-backs at the Melilla and Ceuta land borders continue to be reported on a regular basis. UNHCR estimates that 1,500 persons were returned without any proper individual identification procedure in several incidents in Ceuta and Melilla since that date.<sup>14</sup> Examples of this practice appear to have been documented in video footage published by Faro TV Ceuta on 10 September 2016<sup>15</sup> and on 21 November 2017,<sup>16</sup> after the Chamber judgment of this Court in *ND and NT v Spain* was issued.

2.2.2. UNHCR is concerned that access to a fair and efficient asylum procedure, including where relevant, an admissibility procedure, at the Melilla border crossing is, in practice, only available to persons from Middle East and North African countries. Access is virtually impossible for Sub-Saharanans who are prevented from approaching the border area.<sup>17</sup> Statistics from the Spanish authorities indicate that 11,150 asylum-seekers from Middle East and North African countries have been registered at the Beni-Enzar border post, the main Melilla-Morocco border-crossing post, since the end of 2014.<sup>18</sup> In contrast, only 35 asylum-seekers from Sub-Saharan Africa were registered during the same period.<sup>19</sup>

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<sup>12</sup> See for example <http://www.diariosur.es/agencias/andalucia/201702/09/avgc-pide-ministro-protocolo-887503.html>

<sup>13</sup> Hearing of the Ministry of Interior in the Spanish Senate, 7 February 2017 “Civil Guards do not need further instructions at the border fences because their practice already complies with international, EU and national legislation”, <http://www.europapress.es/sociedad/noticia-zoido-cree-guardia-civil-no-necesita-instrucciones-valla-melilla-porque-ya-cumple-derechos-humanos-20170207170957.html>; Defensor Del Pueblo, Informe anual 2015 y debates en las Cortes Generales, 2016, p. 262, <https://www.defensordelpueblo.es/wp-content/uploads/2016/02/Informe2015.pdf>; Letter of CoE Commissioner for Human Rights calling for guidance to the border police on how to handle migration flows in Ceuta and Melilla <https://www.coe.int/sr/web/commissioner/-/spain-commissioner-muiznieks-calls-for-guidance-to-border-police-on-how-to-handle-migration-flows-in-ceuta-and-melilla>. The Ministry of Interior did not address the recommendation in his reply and states that the practice of rejection at the border is in compliance with international human rights standards, [https://rm.coe.int/ref/CommDH/GovRep\(2016\)15](https://rm.coe.int/ref/CommDH/GovRep(2016)15).

<sup>14</sup> The Spanish Ministry has acknowledged that there are no official records of the number of push-backs notably in in the response of the Government of Spain to a parliamentary question on this matter at <http://www.senado.es/web/expedientdocblobServlet?legis=12&id=45951>. UNHCR’s estimate of the number of persons who have been subjected to push backs is based on border monitoring it has conducted and related follow up activities whenever push-backs occurred (through the collection of individual testimonies, reports from civil society organisations in Morocco and media and press statements by local government authorities.)

<sup>15</sup> [https://www.youtube.com/watch?v=exA1cGiqs\\_U](https://www.youtube.com/watch?v=exA1cGiqs_U).

<sup>16</sup> <https://www.youtube.com/watch?v=uCnfpkcE16Q>.

<sup>17</sup> Amnesty International, *Fear and Fences: Europe’s Approach to Keeping Refugees at Bay*, 17 November 2015, EUR 03/2544/2015, Page 40, <http://www.refworld.org/docid/5652e0764.html>; Jesuit Migrants Service Spain, *No protection at the border*, July 2016, page 29, [http://www.asylumineurope.org/sites/default/files/resources/no-protection-at-the-border\\_sjm.pdf](http://www.asylumineurope.org/sites/default/files/resources/no-protection-at-the-border_sjm.pdf), Human Rights Watch, *Spain: Migrants Held in Poor Conditions*, 31 July 2017, <https://www.hrw.org/news/2017/07/31/spain-migrants-held-poor-conditions>.

<sup>18</sup> Between November 2014 and December 2017 some 11,185 asylum claims were registered at the Melilla border crossing. According to the Spanish Ministry of Interior the main nationalities of asylum seekers at the Beni-Enzar border post are Syria (9,397), Palestine (904), Morocco (446), Yemen (209) and Algeria (82).

<sup>19</sup> The breakdown of this total figure is as follows:

- In 2016, one woman was from Guinea;

2.2.3. UNHCR further observes that, since April 2015, not a single person has been able to claim asylum so far at El Tarajal, the main border crossing between Ceuta and Morocco.<sup>20</sup>

2.2.4. As highlighted above, reports from various reliable sources and individual testimonies of the persons concerned indicate that persons from Sub-Saharan Africa are not allowed to approach the border area on the Moroccan side and, as such, use dangerous and sometimes deadly means such as jumping the fences, hiding in cars or crossing by sea to access the enclaves. Furthermore, a range of policies continue to deter *bona fide* refugees and other persons of concern to UNHCR from applying for international protection in the enclaves. This is mostly attributable to: 1) the restricted freedom of movement regime for asylum-seekers and the still widespread practice of not transferring asylum-seekers to the mainland, as is the case for other irregular arrivals;<sup>21</sup> 2) the length of the asylum procedure; 3) and the need to remain in the heavily overcrowded reception centers during the processing of their claim.<sup>22</sup>

### **3. Updated information about the lack of reception conditions for foreigners, including asylum-seekers, who try to enter or are in Melilla since August 2014**

3.1. Built in 1998 for the temporary stay of irregular migrants, there is a reception center (CETI) in both Ceuta and Melilla. These centers, originally designed for short term stay of irregularly arriving persons (usually young, single males), are managed by the Ministry of Employment and Social Security, as part of the national reception network headed by the Secretary General for Migration.

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- In 2017, 21 were from Ivory Coast, 8 from Gambia, 2 from Central African Republic, 2 from Cameroon and 1 from Sierra Leone.

The Guinean woman was detained while trying to access Spain irregularly hidden in a vehicle, she was transferred to the Reception Centre and her asylum claim was submitted at the border crossing where she was taken some days later. Regarding the 34 asylum applications registered in 2017 by persons of Sub-Saharan origin, UNHCR wishes to clarify that these applications were formalized at the border post once these persons had been transferred by Spanish authorities to Melilla territory from Isla de Tierra, -one of the small uninhabited islets of Chafarinas under Spanish sovereignty, very close to the Moroccan coast-, where they had arrived on 4 August 2017.

<sup>20</sup> For more information on the establishment of these asylum facilities see: Ombudsperson, *A study of asylum in Spain*, note 10 above, pages 53 and 54.

<sup>21</sup> Asylum-seekers were systematically excluded from such transfers from Melilla until November 2014. At present, asylum-seekers are selectively transferred as reception places become available in the mainland, while in Ceuta the practice of excluding them continues. See: Council of Europe: European Commission Against Racism and Intolerance (ECRI), para. 81 of *ECRI Report on Spain (fifth Monitoring Cycle): Adopted on 5 December 2017*, 27 February 2018, CRI(2011)4, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CbC-V-2018-002-ENG.pdf> and European Council on Refugees and Exiles (ECRE) <http://www.asylumineurope.org/news/01-06-2017/spain-ceuta-administrative-court-reiterates-asylum-seekers-freedom-movement>.

<sup>22</sup> Human rights organizations (Amnesty International and Asociación Pro Derechos Humanos de Andalucía), refugee NGOs (ECRE and Comisión Española de Ayuda al Refugiado (CEAR)), the Ombudsperson, the European Commission Against Racism and Intolerance (ECRI), the UN Committee on the Rights of the Child have all expressed serious concerns over this policy and recommended its review in order to ensure access to asylum. See: Council of Europe: *ECRI Report on Spain (fifth Monitoring Cycle): Adopted on 5 December 2017*, 27 February 2018, para. 81, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CbC-V-2018-002-ENG.pdf> and Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Spain*, 2 February 2018, [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ESP/CRC\\_C\\_ESP\\_CO\\_5-6\\_30177\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ESP/CRC_C_ESP_CO_5-6_30177_E.pdf).

3.2. UNHCR and others<sup>23</sup> have observed that conditions for asylum-seekers in the CETI do not meet minimum standards laid down in Spain's national legal framework and in the EU Reception Conditions Directive,<sup>24</sup> and fall far below the quality of other reception centers for asylum-seekers in Spain. There is insufficient capacity to identify persons with specific needs and for the prevention of and response to sexual and gender-based violence (SGBV). Reception conditions are not child sensitive and the right to family life is not respected. Families cannot share rooms and mothers with children are placed separately from their husbands who are accommodated together with other men and adolescent boys. Thus, regular family life is not feasible.

3.3 Despite efforts to increase staffing levels, the number of staff remains insufficient given the scale of overcrowding. Training needs of staff are seldom addressed, including of security personnel, who are the only available staff during night time. The lack of sufficient numbers of interpreters is another concern.<sup>25</sup> The accommodation provided is inadequate, with a bare minimum space per person, very little privacy and inadequate beds and cots.<sup>26</sup> Services such as hot water, heating, hygiene, medical and psychological assistance are insufficient and there are no areas for personal belongings, battery charging facilities or a lounge or common area for recreation, so persons either stay in their rooms or outside in the open air.<sup>27</sup>

3.4. The Spanish authorities maintain that the Reception Conditions Directive does not apply to the CETI in Melilla and Ceuta because they were conceived as migrants' centers. However, the CETI are, in practice used to accommodate asylum-seekers. This is particularly the case in Melilla, where the CETI regularly accommodates around 40/50 per cent of asylum-seekers (and sometimes recognized refugees) often for lengthy periods of over a year. The center in

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<sup>23</sup> See hearing of UNHCR Representative in Spain in the Spanish Congress, 12 April 2016, pages 7 and 8, [http://www.congreso.es/public\\_oficiales/L11/CORT/DS/CM/DSCG-11-CM-8.PDF](http://www.congreso.es/public_oficiales/L11/CORT/DS/CM/DSCG-11-CM-8.PDF). See also: Amnesty International: *In No-Man's Land: The situation of refugees and migrants in Ceuta and Melilla*, [https://www.es.amnesty.org/uploads/media/Informe-Ceuta-y-Melilla\\_FINAL-1.pdf](https://www.es.amnesty.org/uploads/media/Informe-Ceuta-y-Melilla_FINAL-1.pdf), Spanish ombudsperson, *A study of asylum in Spain*, pages 249-253.

<sup>24</sup> European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)* [hereafter 'RCD'], 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, <http://www.refworld.org/docid/51d29db54.html>. The RCD entered into force in 2013 and had to be transposed before 20 July 2015 with some of its articles directly applicable from that moment. See also, Articles 30-33 of the 2009 Asylum Law which regulates reception conditions of asylum-seekers and makes reference to the need of an implementing decree which must be adopted by the competent Ministry (Ministry of Employment and Social Security) which, at the time of this submission has not been adopted (the reception system is regulated in the Reception and Integration System Management Handbook for Asylum-Seekers and Beneficiaries of International Protection, [http://extranjeros.empleo.gob.es/es/Subvenciones/AreaIntegracion/proteccion\\_internacional/sociosanitaria\\_cetis\\_2017/documentos/manual\\_de\\_gestion\\_acogida.pdf](http://extranjeros.empleo.gob.es/es/Subvenciones/AreaIntegracion/proteccion_internacional/sociosanitaria_cetis_2017/documentos/manual_de_gestion_acogida.pdf)). In addition, asylum-seekers, once transferred to the mainland and due to limited reception places in Refugee Reception Centers and other asylum-seeker reception provisions, are being placed in alternative reception conditions under the so called humanitarian program awaiting referral to refugee-specific reception centers.

<sup>25</sup> In the CETI in Melilla, only two interpreters are available, one for the morning shift and another one for the afternoon shift. Occasionally, staff from different NGOs help interpreters to carry out their tasks, but this is insufficient. No interpreters are available at night or during the weekends.

<sup>26</sup> Men share a common space full of uncomfortable military bunk beds where they do not have privacy and security. In these cases, their space is reduced to the bunk bed. Women and children share rooms with a capacity of 10 people, but sometimes they are 12-14 (with children having to sometimes share beds).

<sup>27</sup> RCD, Article 13(2): "Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence." See: Amnesty International: *In No-Man's Land: The situation of refugees and migrants in Ceuta and Melilla*, 29 November 2016, [https://www.es.amnesty.org/uploads/media/Informe-Ceuta-y-Melilla\\_FINAL-1.pdf](https://www.es.amnesty.org/uploads/media/Informe-Ceuta-y-Melilla_FINAL-1.pdf).

Ceuta has capacity for up to 510 persons and accommodates an average of 600/700 persons (including children). At times over 1,000 persons were accommodated there. The center in Melilla has capacity for 480 persons and during the last two years it has regularly accommodated 1,000 persons (one third of whom are children).<sup>28</sup> Asylum-seekers are often accommodated with migrants in open spaces or large tents housing up to 200 men at a time, including male adolescents.

3.5. The average length of stay depends on the authorities' capacity to process transfers to the mainland. Despite the reduction of the length of stay in the CETI during 2017, on average, a resident (asylum-seeker or migrant) could stay in the CETI between two to four months or longer. Moreover, as transfers are not regulated by law, no information is provided to residents on when they will be transferred until a few days before their departure to the mainland. This situation causes high levels of uncertainty, anxiety, tension and frustration among residents.<sup>29</sup>

3.6. Among other problems, the chronic overcrowding renders the CETI a highly inappropriate place for single women, children and persons with specific needs, and presents continuous risks to health, security, and wellbeing. Significant risks of SGBV and exploitation in these centers particularly affect persons with specific needs.<sup>30</sup>

3.7. There is serious concern over the presence of children in the CETI. In addition to the inadequate reception conditions described above, many children in the CETI lack access to schooling.<sup>31</sup> Children, including babies, are separated from their families if they have crossed the border separately, while the child protection authorities take over their care until a DNA test is carried out to confirm the family relationship. Results of DNA tests are often delayed while separation causes high levels of suffering for the families.

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<sup>28</sup> At its peak, the Melilla CETI has even quadrupled its capacity from 480 to 2,200 persons, including over 400 children See: Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Spain 2 February 2018*, paras. 42 and 43, [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ESP/CRC\\_C\\_ESP\\_CO\\_5-6\\_30177\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ESP/CRC_C_ESP_CO_5-6_30177_E.pdf).

<sup>29</sup> This assessment is based on individual testimonies collected by UNHCR from the persons concerned.

<sup>30</sup> RCD, Article 13(2) second indent: "Member States shall ensure that a standard of living is met in the specific situation of persons who have special needs" and RCD, Article 17: "Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence." See for instance the following media reports on a specific case: [http://cadenaser.com/ser/2016/02/23/sociedad/1456256334\\_056339.html](http://cadenaser.com/ser/2016/02/23/sociedad/1456256334_056339.html); <http://www.europapress.es/epsocial/derechos-humanos/noticia-trabajador-ceti-melilla-suspendido-empleo-sueldo-acusado-acoso-sexual-maltrato-refugiados-20160224110459.html>; [http://cadenaser.com/ser/2016/08/26/sociedad/1472229750\\_712261.html](http://cadenaser.com/ser/2016/08/26/sociedad/1472229750_712261.html); Ombudsperson's report for 2017, p.266, [https://www.defensordelpueblo.es/wp-content/uploads/2018/03/Informe\\_anual\\_2017\\_vol.I.1\\_Gestion.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2018/03/Informe_anual_2017_vol.I.1_Gestion.pdf).

<sup>31</sup> Specific programs/protocols designed to guarantee their well-being and security while being in the Melilla CETI are insufficient: see <http://www.senado.es/web/expedientdochbobservlet?legis=12&id=97434> regarding a parliamentary question on access to schooling of children in the CETI for school year 16/17, where 41 children were attending school, 75 in process after receiving the authorization, and 60 waiting for the authorization from the education authorities. There were 330 children present in the center at that moment according to data provided to UNHCR by the CETI in Melilla. See also the recommendation by the Ombudsperson to the Ministry of Education to programme and address educational needs of minors in the CETI of Melilla, partially accepted by the competent authority: <https://www.defensordelpueblo.es/resoluciones/propuestas-de-mejora-en-el-centro-de-estancia-temporal-para-inmigrantes-ceti-de-melilla/> and Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Spain*, 2 February 2018, [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ESP/CRC\\_C\\_ESP\\_CO\\_5-6\\_30177\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ESP/CRC_C_ESP_CO_5-6_30177_E.pdf).

3.8. Transfers to the mainland are not regulated by law and are carried out in an arbitrary manner. Excessive delays are frequently observed, particularly affecting asylum-seekers with certain nationalities or profiles. Asylum-seekers cannot move freely to the mainland and need the authorities' permission to cross the 'border' between Melilla and the mainland. However, Ceuta and Melilla are part of the Schengen area, and there are no borders between Melilla and the mainland.<sup>32</sup> Although several final judicial decisions by the Andalusian and Madrid Superior Tribunals have ruled on the illegality, in general terms, of this practice to require permissions to cross, it continues to be applied and in practice asylum-seekers who do not have the authorization to cross are held back by the Police upon exiting Melilla.

3.9. In addition to the above, the transfers to the mainland remain arbitrary in particular with respect to certain categories such as Lesbian, Gay, Bisexual, Transgender and Intersex ('LGBTI') Moroccans and Algerians, including single women who are among the groups less frequently transferred. This further aggravates the difficult reception conditions and seriously impacts the wellbeing of persons of concern to UNHCR, leading them to depression, drug and alcohol abuse, survival sex, domestic violence and other harmful coping strategies.

3.10. Of particular concern is the situation of LGBTI asylum-seekers in the reception centers of the enclaves, many of Moroccan origin, who have been residing there for more than a year in some cases, awaiting a decision on their asylum applications. Although decision making on these claims has recently been accelerated, they are facing excessive delays compared to other CETI residents in relation to their transfer to the mainland, compounded by a high exposure to violence and other protection and security risks in the centers based on their sexual orientation.

#### **4. Conclusion**

4.1. The additional information provided in these supplementary observations demonstrates that Spain's practice at the border of rejecting and pushing back persons who may be in need of international protection without proper inquiries in individual cases and without adequate reception conditions continues at the Spanish enclaves of Ceuta and Melilla. Therefore, UNHCR's interpretation of the relevant principles of international refugee and human rights law and the conclusions contained in the 15 November 2015 intervention remains valid.

**UNHCR**  
**03 April 2018**

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<sup>32</sup> The enclaves have special status under the Schengen Border Code (Art. 41) but are part of the Schengen area. When Spain signed the Schengen implementing Convention in 1991, it introduced a specific Declaration that states: (1) Spain maintains checks (on identity and documents) with regard to people already in Ceuta and Melilla who want to travel to the mainland and (2) Moroccan residents in Nador or Tetuan are allowed to enter every day to Melilla and Ceuta, respectively, without any further visa or documents but in possession of their passport to prove that they are living in one of these provinces. There is not, however, any legal provision that prevents asylum-seekers, already admitted to the asylum procedure, from going to the mainland.