



# Migration on the Canary Islands



DEFENSOR  
DEL PUEBLO  
Spanish Ombudsman





## **Migration on the Canary Islands**

### **Report**

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Translation: Essential English

© Defensor del Pueblo  
Eduardo Dato, 31 – 28010 Madrid  
[www.defensordelpueblo.es](http://www.defensordelpueblo.es)  
[documentacion@defensordelpueblo.es](mailto:documentacion@defensordelpueblo.es)

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## PRESENTATION

No one leaves home unless  
home is the mouth of a shark

*Home*, by Warsan Shire

Migration has become a matter of great importance in southern Europe, and Spain in particular, over the last few decades.

In light of this, over the last few years the Defensor del Pueblo [Spanish Ombudsman] has paid particular attention to the phenomenon, as evidenced by the recurrent action in this field that is addressed in our annual reports and monographs.

To mention just some of the most relevant, I shall refer to the action taken in 2017 and 2018 in response to the increase in irregular arrivals along Spain's Mediterranean coast. During that period and based on unannounced visits to the main points of arrival, I recorded everything that we observed and made a number of recommendations related to reception conditions, means of detecting individuals with international protection needs, minors and victims of trafficking in human beings and how these individuals are treated.

In 2020, we began taking action similar to the steps mentioned above. However, the situation is more complex now because a new factor has been added to the usual difficulties: the health crisis generated by COVID-19.

The stand-out feature of last year was the arrival of 23,023 individuals on the Canary Islands. To this, we must add a further 16,000 individuals who reached peninsular Spain (including the Balearic Islands) and a further 2,000 individuals who accessed the country through Ceuta and Melilla.

The flow of arrivals from some countries in sub-Saharan Africa is the result of a series of factors that have transpired in that geographical location over the last few years. These include a sharp demographic increase, the negative impact of

climate change, social inequalities and certain armed conflicts. On this occasion, there is a new factor: the increase in the number of undocumented individuals who have travelled to the Atlantic coast of Spain from Morocco.

This phenomenon was also experienced during the previous spike in arrivals along the Mediterranean coast of Spain in 2018. The example of the province of Las Palmas is a very illustrative one. Out of the 19,852 individuals who arrived there in 2020, 60% of them were from Morocco, followed by only 3,104 citizens from Mali. It should not be forgotten that Morocco is the third country in the world where most Spanish visas are processed and issued. Specifically, in 2019 the six Spanish consulates in that country processed 262,277 visas. Around 47,000 of them were rejected.

Nonetheless, although the number of visas issued might seem quite high, it should be pointed out that only 39,633 of these were long-stay visas (study, family or residence-related, and work visas). The remainder were essentially tourist visas or airport transit visas. We must recall that there is a Moroccan community of legally resident individuals living in Spain that is now in excess of 700,000 people.

These figures ought to make us reflect and change how we analyse the situation from the standpoint of exerting control over the arrival of undocumented individuals, the rather hackneyed 'pull factor' and the fight against mafias. Whilst necessary, the security argument does not always go hand in hand with an analysis of the actual means that individuals from Morocco have at their disposal for entering Spain. This is a crucial challenge that ought to prompt a global and urgent analysis of how to regulate migration flow with our neighbouring country. Such an analysis ought to make adapting regulation to the social reality of Moroccan migration in Spain possible.

I believe that the time has come to address certain changes to our consular policy including, for example, considering the options that job seeker visas offer and facilitating procedures for regrouping families or receiving students from Morocco in Spain. I hope that we make the most of the opportunity presented by this crisis to look beyond the emergency situation and adopt a migration policy that takes the specific needs of our job market and society into account, within the framework of European policy.

I would hope that my words highlight this new reality about which very little is mentioned. Let me now move on to describe events on the Canary Islands where

the significant increase in arrivals foundered the area's reception capacity and turned activating a range of provisional arrangements on the go in order to deal with the situation into a necessity.

It was for this reason that two teams of technical staff from the Spanish Ombudsman's Office travelled to the Canary Islands archipelago for the last two weeks of November 2020. The aim was to analyse the reception conditions for individuals arriving at the main islands with as much precision as possible. This was supplemented with the institutional visit I made to the archipelago. It lasted several days and during that time I held meetings with the president of the autonomous community, the government delegate and the Ombudsman of the Canary Islands. I also had the opportunity to exchange views with the former government delegate and the former Ombudsman of the Canary Islands and with representatives from a number of different NGOs working in the field of migration.

We understood that it was important to get an idea of what had occurred, just as we have been doing since 2017. To this end, we visited the facilities at the dock in Agüeguín, a warehouse in Las Palmas port, the camp at Barranco Seco, the environmental learning centre on El Hierro, the Centro de Acogida Temporal de Extranjeros (CATE) [short-term accommodation centre] in Adeje and the dock at Puerto del Rosario.

We also visited the humanitarian accommodation centres on Gran Canaria, Lanzarote, Tenerife, El Hierro and Fuerteventura. Similar visits were also made to accommodation centres for unaccompanied minors in Tiñajo, Galdar and Los Llanos de Aridane, accompanied by staff from the Diputación del Común de Canarias [Ombudsman's Office of the Canary Islands]. We were able to use this comprehensive undertaking to get an understanding, amongst other matters, of conditions at accommodation centres, compliance with the 72-hour maximum legal detention period, freedom of movement, the number of occasions on which minors had been separated from parents and the lack of support for families searching for missing family members.

Particular attention was also paid to understanding the characteristics of the legal assistance provided to arrivals and the role played in this field by interpreters. The aim was to assess if both were adequate. Another area of interest included understanding how international protection procedures were applied.

Unaccompanied alien minors are an ongoing concern of ours and, for this reason, we have been overseeing their circumstances for several years. It is, without a shadow of a doubt, one of the main issues currently faced by the Canary Islands autonomous community. Data provided by the organism responsible for the protection of minors on the Canary Islands placed the number of individuals under its care on 12 February 2021 at 2,666. Taking into account this figure, it is important to acknowledge the effort made by the different administrative bodies involved to provide these children with the immediate care that they need.

However, in view of the figures provided, it is not reasonable to expect protection services on the Canary Islands to rise to this challenge alone. A strategic plan for integration of minors driven by the Administración General del Estado [central government in Spain] ought to be established. The responsibility must be shared out equally and jointly with all other autonomous communities and agreements with foundations and other entities to assist and care for migrants are desirable.

Asylum seekers and asylum seeker mobility is also another important matter and it is one about which very little information is generally provided.

Further to recent Supreme Court rulings, the barriers that these individuals continue to face when trying to leave the islands should cease to exist with immediate effect.

All of these matters are suitably explained in detail in this report. We have sought to use it to reflect the reality of what has taken place on the Canary Islands.

Last of all, I would like to express my thanks for the support provided by all the authorities and civil servants during my visit and during the visits made by technical staff from this institution. I would also like to thank the NGOs for displaying their faith in us by sharing their concerns, and the migrant individuals who shared their vicissitudes.

Francisco Fernández Marugán  
Acting Spanish Ombudsman

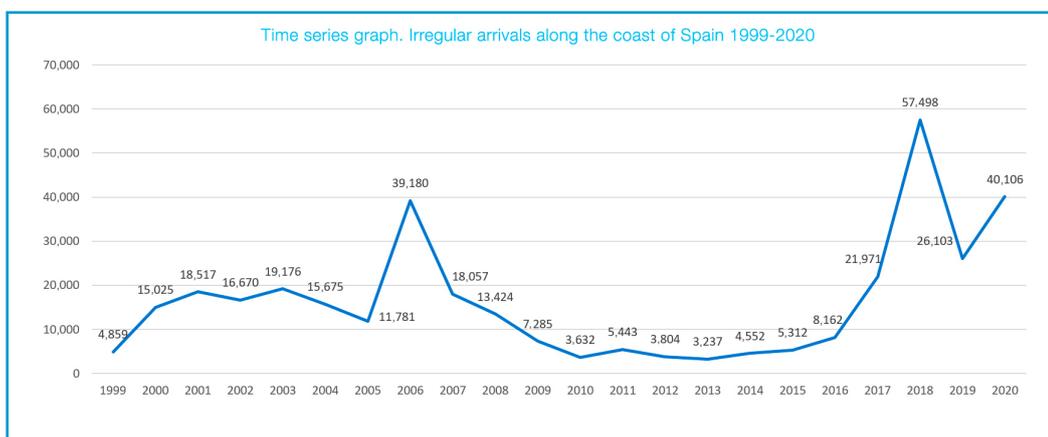
## CONTEXT: MIGRATORY PROCESSES IN AFRICA

### **Background**

The geographical location of Europe (and Spain in particular) which borders on Africa has a very significant impact on its relationship with migration from that part of the world, in particular from the Maghreb and western sub-Saharan Africa.

With varying degrees of intensity, Spain has for many years experienced continuous migration from the aforementioned part of the world to its Mediterranean and Atlantic coasts. This has been evidenced in several episodes such as the so-called 2006 dugout canoe crisis, the situation that arose along the Mediterranean coast in 2018 and the one on the Canary Islands archipelago in 2020.

**FIGURE 1**



Source: Ministerio del Interior [Spanish Ministry for Home Affairs]. Compiled in-house

Facts such as these indicate that a brief analysis of the situation that the region is facing is needed in order to get an understanding of how the foreseeable flow of individuals arrivals at the coast of Spain will unfold.

There are a number of different reasons for this displacement from Africa. Of particular historical relevance are colonialism in the 18<sup>th</sup> and 19<sup>th</sup> centuries and, above all, the decolonisation that took place over the first five decades of the 20<sup>th</sup> century and which ended with the independence of a number of different countries and the emergence of national governments.

The new states that were created were faced with serious impediments from the get go when it came to deciding how they wished to organise their production forces (agriculture, industry, society, workforces and so on) in order to lift Africa out of the precarious situation it had been left in following colonial domination. Unfortunately, developing their own production forces did not form part of their discourse or conduct.

As a result of this, a large part of Africa has experienced limited economic and social development for years, an issue that neither the initial national governments, nor the leaders who shaped the political and economic elites, nor international organisations have been able to or wanted to resolve.

There are several problematic areas:

- substitution of authoritarian regimes that put up a struggle when democracy progresses;
- access to healthcare and education, which has been incredibly slow to emerge;
- inequalities within African society itself;
- environmental degradation, which has been affecting large areas of land and the local inhabitants for a long time;
- piracy and terrorism, which exist in very specific areas of central Africa.

Al-Qaeda, the Islamic State, Boko Haram, Al-Shabaab and Islamic fighters who have returned from Syria and Iraq are currently active in Africa.

## SOME RELEVANT FACTORS

### Demographic growth

Over 1,300 million people or 17% of the world's population currently live in Africa. If United Nations demographic forecasts are correct, in 2100 this figure will have reached 4,500 million, making Africa the leading area of demographic growth in the world.

At just in excess of 1%, Europe, meanwhile, has a much slower rate of demographic growth and this figure would be even lower had it not been offset by migration. Spain is a perfect example since its almost non-existent birth rate is being compensated by the arrival of groups of migrants.

The population increase in Africa is fundamentally caused by two factors: the increase in life expectancy and elevated fertility rates.

Life expectancy increased from 53 to 63 years between 2001 and 2019. This increase is due to a decrease in mortality rates (particularly infant mortality rates) as a result of vaccination campaigns and improved healthcare which have led to a decrease in infectious diseases.

The second is due to the continent's elevated fertility rates. In 2019, each African woman of childbearing age had an average of 4.5 children. Niger has a fertility rate of 7.2 children per female. It is the highest in the world and the country has a population in excess of 15 million. Should the trend continue, this figure will reach 50 million in 2050.

### Climate change

Climate change is another factor that must be highlighted. Several studies suggest that it is the reason why many individuals leave their homes. The impact of global warming is manifested as prolonged droughts, floods and forest fires that destroy crops, infrastructures and homes. Along with a scarcity of food and water, these factors have generated new areas of conflict that lead to displacement of the local population.

The Internal Displacement Monitoring Centre of the Norwegian Refugee Council is an international entity that monitors displacement in the world. It

estimates that there were 17 million new displacements in 2018 as a result of climate change. The International Organisation for Migration (IOM) also highlights this phenomenon in its 2019 report on global migration. The World Bank maintains that environmental stress is at the very heart of migration within regions, between neighbouring countries and even within individual countries. This migration often occurs so that individuals can carry out seasonal work on farms.

These are South-South migrations but there is an increasing trend of cross-border migration. Changes in the climate have a particularly severe impact on most disadvantaged regions, particularly the tropical areas of the planet.

For example, Lagos, the capital city of Nigeria, is one of the largest sub-Saharan urban hubs and it is already one of the cities with the largest growth rate in the world. This is essentially down to the impact of climate change. The Sahara is expanding southwards and aquifers are decreasing in size at an accelerated rate because rainfall is scarce but there is increasingly more torrential and out-of-season rain which is less suitable for crops.

It is a fact, therefore, that there is a clear climatic component to emigration to the Sahel although it does not currently expand beyond the African continent and is mainly limited to that area. These factors lead us to believe that the number of displaced individuals for this reason will increase over coming years and may have a greater or lesser impact depending on how global warming progresses and how much longer governments wait before taking urgent steps on an unprecedented level.

Another factor that must be taken into account is the fact that climate-induced migration is forced migration because it pushes individuals into fleeing their homes in order to save themselves. This ought to merit these individuals classification as refugees and, in turn, the option of international protection.

### A new added factor: the COVID-19 pandemic in Africa

The consequences of the 2020 COVID-19 pandemic are having a damaging effect on the continent.

For example, on the macroeconomic front, recent World Bank forecasts estimate that economic activity across Africa decreased more than 3% in 2020, causing the first recession in 25 years.

Furthermore, certain steps taken in the fight against the pandemic such as closing schools and other education centres affect millions of students. This could lead to setbacks in human resource development in terms of training and knowledge.

To conclude, the combination of factors described above explains why there are continuous migration flows within the continent and steady flows towards Europe in general and Spain in particular.

### Some positive aspects

Nonetheless, even within the difficult panorama described above, there is some positive and encouraging data coming out of Africa that may help it in its development process. According to a report issued by the Gates Foundation, since the year 2000 infant mortality on the continent has decreased by half. This did not happen in the 1980s and 1990s.

One particularly noteworthy example is Nigeria where, following several vaccination programmes, there have been no recorded cases of polio in three years. This means that they are on the verge of declaring themselves free from a disease that has killed 350,000 individuals since 1988.

Another positive piece of data, as published recently in the renowned Nature magazine, is the increase in the quantity of sanitary housing (running water, bathrooms and sufficient room). It doubled between 2000 and 2015, going from 11% to 23%.

It should not be forgotten that large gold, platinum, copper, diamond, uranium, petroleum, gas and coltan reserves make the continent incredibly rich in natural resources.

Likewise, it has significant fish reserves and large areas of land that are being cultivated, in addition to tropical and equatorial rainforests, not to mention its many tourist attractions.

If all of the above were suitably managed, it would potentially bring widespread income to large areas of the African continent and likely refrain its inhabitants from having to turn to makeshift vessels, dugout canoes and jumping border fences in pursuit of a dignified life.

## Social characteristics of migration in Africa

According to data published by the United Nations, the proportion of the population living in conditions of extreme poverty is decreasing year by year. However, millions of Africans are still suffering. It has already been mentioned that democracy is slowly progressing in certain countries in the region although some still remain subject to authoritarian regimes and situations of violent conflict. Hunger and malnutrition, insufficient access to healthcare and education, the impact of climate change and environmental deterioration, inequalities and conflicts continue to seriously affect many areas of Africa and, in particular, vulnerable social collectives such as women.

This highlights the fact that there are many reasons for displacements and that the characteristics of these displaced individuals vary. This is a reality that is not always on view and, as a result, little is said about it since African emigration to Europe is scarce.

According to a 2019 United Nations demographic report, 269.5 million individuals out of a population of 7,700 million people in the world were international migrants. In other words, 3.5% of the global population.

Taking into account the size of the population in each region, the UN Department for Economic and Social Affairs also believes that the highest proportions of international migrants are located in Oceania, followed by North America and Europe. The proportion of international African migrants, meanwhile, is relatively small: 2%. As pointed out above, most emigration in Africa happens within the continent itself and only a small percentage reaches Europe and its coasts.

This is confirmed by the fact that, in 2018, almost 20 million of the 25 million African individuals who left their native countries in search of better opportunities elsewhere chose another country on the continent as their destination. This strips away the idea that African migration fundamentally reaches Europe and highlights the fact that migration in Africa occurs essentially on the continent itself since four out of every five migrants remain on the continent and only one reaches Europe. In 2018, the main destination countries for African migrants were not France, Italy, the United States of America or Spain, but South Africa and Ivory Coast.

Furthermore, there are huge differences when we compare per capita income across countries in Africa. For example, income in South Africa (or the

Rainbow Nation as Nelson Mandela called it) is 14 times the income in Mozambique, a neighbouring country. This explains why one in every ten individuals from Mozambique emigrates to South Africa.

These facts demonstrate that certain alarmist newspaper headlines about mass migration from Africa to Europe do not reflect the reality of the situation, as pointed out in a United Nations Development Programme (UNDP) report entitled *Voices of Irregular African Migrants to Europe*. The report analyses the variety of assumptions that are made about migration from Africa to Europe and questions the affirmation that all migrants from that continent are both poor and poorly educated. It includes the result of interviews held with almost 2,000 migrants from 39 African countries in 13 European nations. 58% of the interviewees indicated that they were employed or studying when they left.

The 'African perspectives: holding a mirror up to Europe's migration policies' seminar held in Brussels in 2020 also attempted to delve deeper into the truth about African migration to Europe. Erroneous, long-sustained concepts such as the ones that do not take the significant advantages of this migration flow for our countries into account were questioned.

Most developed nations, with their ageing populations, need workforces and migrants and refugees who need a safe place to live in provide that. New arrivals make a contribution towards the local economy, they revitalise areas where there is a decline in the population, they fill gaps in the workforce and they contribute towards the economy.

A monograph study published in 2020 by the Ombudsman's Office *La contribución de la inmigración a la economía española [Immigration's contribution towards the economy in Spain]* confirms this.

Few collectives are as necessary and important for development in Spain as migrants because they make up for the deadlock in its negative natural population growth (more deaths than births); they often inhabit empty rural areas; they limit the decline in and ageing of the workforce; they do caregiving jobs; and they support the viability of pensions and the Seguridad Social [social security system].

In short, migration is not only a humanitarian issue; it is also an opportunity for growth.

But in spite of these obvious advantages, migrants, and specifically African migrants, continue to be surrounded by worrying xenophobic incidents which, until recently, were only present in extreme right-wing groups but which now run the risk of becoming a predominant trend. Meanwhile, European policies continue to focus on reinforcing borders to combat migration rather than searching for means of making it easier in a deliberate and orderly manner.

Spain is not far removed from either of the two realities of Africa: on the one hand, a continent that is emerging as a thriving force in the 21<sup>st</sup> century and, on the other, the stronghold of poverty, radicalism, war and authoritarianism that still persists. National interest which, for the most part, coincides with the interests of African individuals, lies precisely in a future in which it is as far removed as possible from a continent that is characterised by instability and misery. This is why we require a vision of Africa as a region of opportunities, a vision that is also pursued in the African Union's (AU) Agenda 2063 and in the 2030 Agenda for Sustainable Development approved by the United Nations in 2015.

### The European Union migration project

In order to address the phenomenon of emigration from Africa, in early 2021 the EU vice-president and migration commissioner announced plans to champion an initiative with the following underlying pillars:

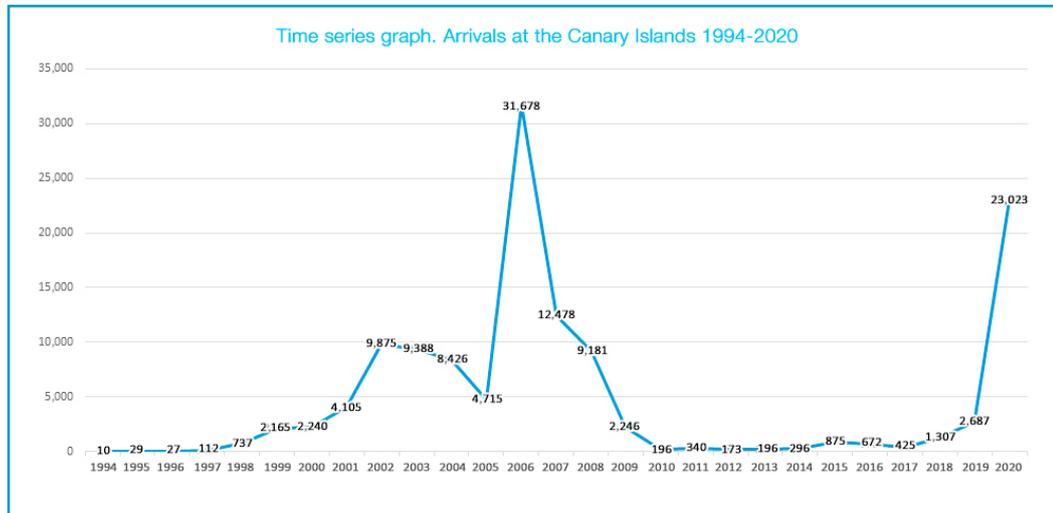
- unwavering control of EU borders;
- diplomatic agreements with neighbouring countries in North Africa;
- a solidarity mechanism for southern European countries.

It is yet to be seen if the criteria can be used to reach an agreement since countries such as Spain, Italy, Greece and Malta have serious doubts about some of them.

## THE CANARY ISLANDS AND THE AFRICA PLANS

It is no secret that this is not the first time that the Canary Islands have been faced with the arrival of numerous immigrants over a short period of time. Initiatives aimed at designing and applying global and transversal policies were adopted in order to resolve the situation generated by the increase in migrant flows.

FIGURE 2



Source: Spanish Ministry for Home Affairs. Compiled in-house

The first and largest case to date was in 2006 when there was a considerable increase in arrivals of sub-Saharan migrants along the coasts of the Canary Islands archipelago. At the time, Spain initiated what became known as the Africa Plan. A new framework for relationships with sub-Saharan Africa that would provide a means of addressing the continent's significant challenges and opportunities in matters of politics, economy, development cooperation and migration was established as a top foreign policy priority.

The first plan (2006 to 2008) was articulated within a three-year framework. Its many different objectives included promoting cooperation with African countries on regulation of migration flows by:

- reinforcing control measures on borders;
- improving immediate repatriation procedures for irregular immigrants;
- championing measures aimed at helping immigrant collectives to integrate;
- increasing efforts to conclude a network of Migration Cooperation and Readmission Agreements;

- involving multilateral organisations and institutions in the European Union and in Africa in the fight against irregular immigration.

Implementation the aforementioned plan led to, amongst other things, a more than 60% decrease in arrivals of individuals on dugout canoes at the Canary Islands in 2007 compared with 2006. In general terms, the operation was a relative success since it managed to decrease irregular arrivals from almost 32,000 in 2006 to 12,478 in 2007. Since then, the trend has continued to decrease to just a few hundred arrivals, leaving this channel sealed over the last decade.

Later, a second Africa Plan (2009-2012) based on the experience gained during the first plan was set up. It aimed to create an instrument that would contribute towards planning, prioritising and coordinating Spain's policies and strategies in sub-Saharan Africa and, in particular, establishing coordinated and coherent migration policies for the mid and long term.

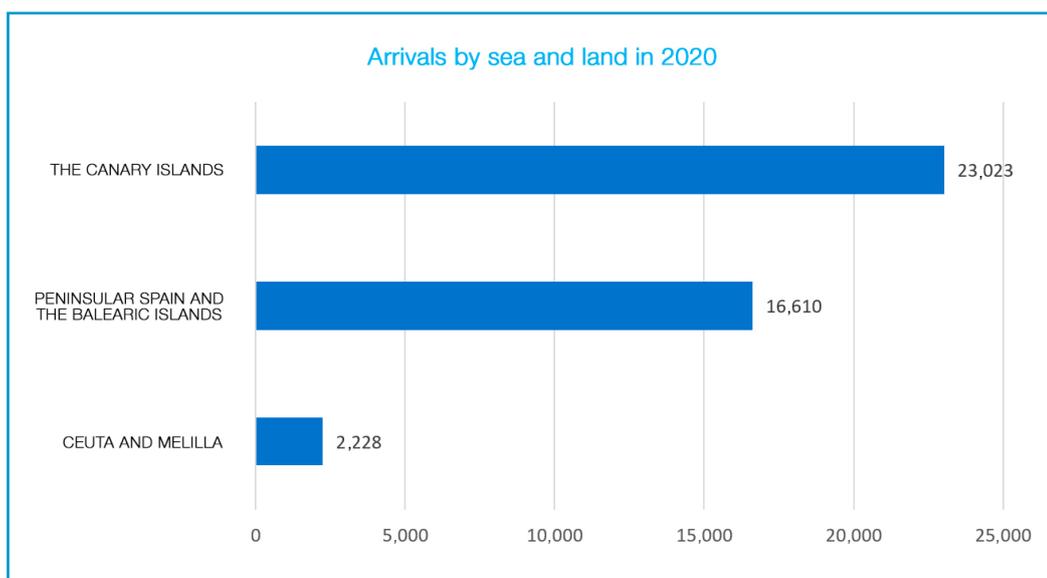
Last of all, following a break of nine years, a third edition of the Africa Plan was developed in 2019 and it remains in force today. Its objectives are similar to the ones in the previous plans.

These are the political initiatives in this field that have been developed to date. Based on the results obtained, they do not appear to have been particularly fruitful, except at certain times and for very specific aspects, as was the case with the first Africa Plan in 2006.

## STEPS TAKEN BY THE ADMINISTRATION: OMBUDSMAN'S OFFICE SUPERVISION

Since the Spanish Ministry for Home Affairs began publishing data on irregular arrivals in 1994, the year with the largest number of arrivals has been 2018 (57,000 individuals). On the Canary Islands, the highest records in terms of arrivals have been in 2006 and 2020 with 31,678 and 23,023 arrivals respectively.

**FIGURE 3**



Source: Spanish Ministry for Home Affairs. Compiled in-house

Before addressing the situation that has arisen on the archipelago due to the increase in irregular arrivals in 2020, it should be pointed out that if we wish to reach an analysis based on some kind of perspective, that analysis must go beyond the here and now which, following the increase in arrivals in 2006, has been marked by an increasing trend in arrivals by sea since 2017.

In 2017, coinciding with the renewed spike in arrivals, the Spanish Ombudsman made unannounced visits to the main points along the Mediterranean coast of Spain where individuals arrive in makeshift vessels. A number of matters were analysed and addressed in a monographic meeting between the Ombudsman's Office and the Comisión Mixta Congreso-Senado [Congress and Senate Joint Committee] which governs relationships with the institution. A number of recommendations aimed at improving reception and hosting conditions were made, in addition to measures aimed at greater efficiency when detecting individuals with international protection needs, minors and victims of trafficking in human beings.

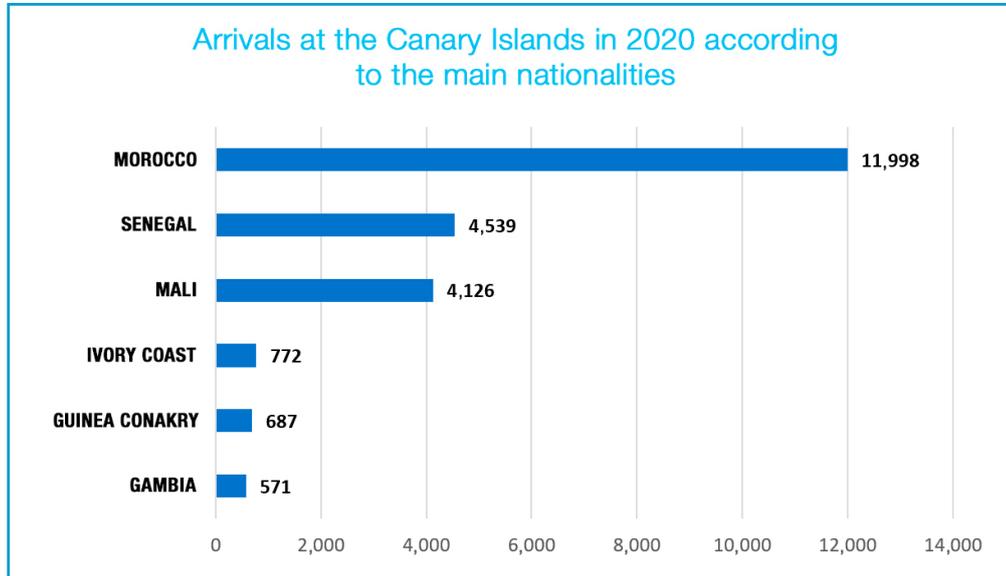
The matters addressed in the meeting can be consulted using this link:

[https://www.defensordelpueblo.es/wp-content/uploads/2018/02/Intervencion\\_Defensor\\_Comision\\_Mixta\\_15\\_02\\_2018.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2018/02/Intervencion_Defensor_Comision_Mixta_15_02_2018.pdf)

In 2020, unannounced visits have also been made to the Canary Islands. The purpose of these visits was the same as the visits made in 2017 along the Mediterranean coast of Spain. The situation in 2020 has undoubtedly been much more complex due to the health crisis we are experiencing and which has affected all aspects of life, including management of and the response to irregular arrivals. Therefore, the impact of COVID will be singled out for analysis in this document.

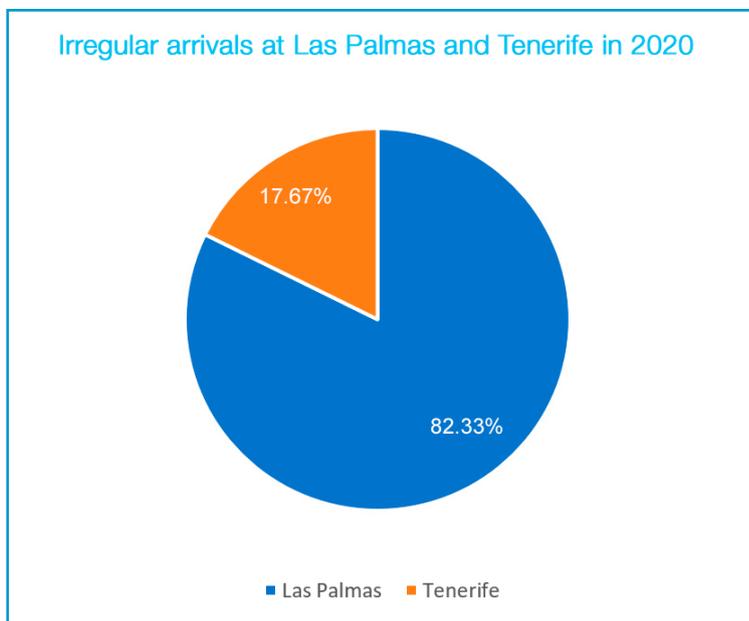
In terms of irregular arrivals, 2020 has been characterised mainly by the fact that a little over half of the individuals (23,023 people) reached the Canary Islands. As indicated in this report, over 80% of them arrived at Las Palmas province. However, it should also be pointed out that a further 16,000 undocumented individuals reached peninsular Spain and the Balearic Islands and around 2,000 undocumented individuals arrived through Ceuta and Melilla.

**FIGURE 4**



Source: Spanish Ministry for Home Affairs. Compiled in-house

**FIGURE 5**



Source: Spanish Ministry for Home Affairs. Compiled in-house

In the Ombudsman's opinion, some of this lack of coordination (once again evidenced during this increase in arrivals on the Canary Islands) is explained by the fact that responsibility for migration management is spread across different ministerial departments and the Spanish Government, autonomous communities and local councils. There has been a renewed race against time in the search for places to accommodate arrivals in a dignified manner.

Two main deficiencies were observed: a lack of suitable facilities and an absence of swift and efficient identification protocols for referring vulnerable individuals. These deficiencies, which occur time and again whenever there is an increase in irregular arrivals by sea, undermine the credibility of government agencies and generate a torrent of complaints from the different parties involved and the migrants themselves.

The exponential increase in arrivals has collapsed the islands' capacity to accommodate them, forcing the need to set up several temporary arrangements including hotels, industrial warehouses and camps. Some, such as the dock in Arguineguín, ended up hosting thousands of individuals in precarious and overcrowded conditions.

For years, the Ombudsman's Office has insisted on the need for efficient and effective coordination mechanisms for improving management of individuals who arrive at the coast of Spain, marrying border control with the interests of the general public and with protection of the rights of aliens, particularly those who are most vulnerable. Unfortunately, despite efforts made to host individuals in a dignified, coherent and efficient manner, the current situation on the Canary Islands calls for urgent intervention measures.

The Secretaría de Estado de Migraciones [Secretary of State for Migrations] itself has admitted that the huge influx of arrivals along the coast of the Canary Islands is complicating provision of immediate solutions that guarantee improvements in reception and hosting conditions for immigrants. At the same time, entities that receive humanitarian aid funds have available places in centres on peninsular Spain where these individuals can be accommodated.

According to the institution, the search for suitable places on the Canary Islands must continue, but transfers to peninsular Spain, in particular of individuals whose circumstances are most critical, must also be fostered. Swift identification

and referral of asylum seekers to resources on peninsular Spain are particularly relevant to the credibility of the international protection system.

## FACILITIES VISITED ON THE CANARY ISLANDS

In November, further to receipt of a number of complaints, and in order to supplement the information gathered on several ex officio missions, staff from the Ombudsman's Office inspected centres run by the central government of Spain, the autonomous community and local authorities. Visits to protection centres for minors were made in the company of personnel from the Ombudsman's Office of the Canary Islands.

Gran Canaria, Tenerife, La Palma, El Hierro, Fuerteventura and Lanzarote were visited. The conditions at seven police detention centres, the documentation at three police stations, five humanitarian hosting facilities, three centres for unaccompanied alien minors and an examining magistrates' court were overseen. Furthermore, visits we also made to the areas at the ports on the six islands where migrants arrive on makeshift vessels and are initially received. At one port, maritime rescue personnel were interviewed.

In December 2020, the Ombudsman made an institutional visit during which he held meetings with the government delegate and authorities from the autonomous community. Meetings were also held with a wide range of NGOs on the Canary Islands. The conclusions drawn from the visits are indicated below. Irrespective of the shortcomings that were detected, the efforts made by the Secretary of State for Migration, the government delegate and the local and autonomous community administrative bodies to improve existing means of coordination must be openly commended. The ongoing work performed by maritime rescue personnel to rescue makeshift vessels at sea should also be highlighted.

The part played by civil society and local residents in general on the Canary Islands in the complicated challenge posed by the increase in irregular arrivals in the midst of the COVID health crisis should also be pointed out.

#### a. Police detention

Individuals are intercepted as they attempt to access national territory in an irregular manner. After being rescued at sea, they are handed over to the National Police Force for the procedures provided for in Organic Law 4/2000 on the freedoms of aliens in Spain and their social Integration (hereinafter, the Aliens Act). These individuals are initially cared for by teams from the Red Cross in Spain. They are then handed over to the police as detainees for a maximum of 72 hours while the procedures for their return are carried out.

The National Police Force is setting up specific places in the areas where makeshift vessels arrive along the coast of Spain. They aim to meet the necessary safety standards for deprivation of freedom of this kind whilst taking into account the special conditions in which these individuals arrive following harsh journeys over sea. These facilities, known as short-term accommodation centres for aliens, will replace cells in police stations since the latter are considered unsuitable for detention of this kind.

However, not enough centres of this kind have been readied yet in all the areas where undocumented individuals arrive. This includes the Canary Islands. This lack of suitable facilities for initial accommodation and detention has meant that short-term facilities have had to be improvised in several places across the Canary Islands.

The urgent need to ready new detention areas specifically for alien detainees has often led to the use of other places that, to some extent, meet the necessary conditions for use as short-term accommodation centres. When the police are unable to make return arrangements to countries of origin or to the country from which the vessel set out within 72 hours, a detention request is filed with legal authorities.

In cases of mass arrivals at the coast, returns are often impossible for a number of different reasons. Requests for and provision of authorisation for accommodating individuals in centro de internamiento de extranjeros (CIE) [detention facilities for aliens] often also fail to materialise. There are two detention facilities for aliens in operation on the Canary Islands: in Hoya Fría on Tenerife and in Barranco Seco on Gran Canaria.

In reality, when there are mass arrivals, as was the case on the Canary Islands in 2020, the majority of the individuals whose return is being processed are

no longer detained since the procedure cannot be completed within the legal time frame for a range of different reasons.

The Secretary of State for Migration finances programmes run by not-for-profit organisations that care for migrant individuals in a vulnerable situation due to their declining physical state or because they have no social, family or financial structure to support them. The aim is to ensure these individuals are not left unattended.

The health crisis has generated serious breakdowns in the system, as can be observed in the deterioration of initial accommodation and detention conditions.

### ***Arguineguín dock***

On 16 November, personnel from the Ombudsman's Office accompanied by three interpreters made an unannounced visit to Arguineguín harbour in the Canary Islands municipality of Mogán. The individuals in the improvised camp when the visit was made were living in absolutely overcrowded conditions, meaning that the basic social distancing rules imposed by the current health emergency situation could not be met. At several points during the visit, the temperature inside the tents reached 40 degrees.

Minimum hygiene standards in a place into which around 2,000 individuals were crowded on the day of the visit were not met. There was no way for the cleaning service providers to access the area. The number of tents that had been temporarily set up was insufficient for the number of people inside them. There was an insufficient number of bathrooms and no access to drinking water. Many of the individuals were barefoot and others had footwear in poor condition. The clothes they were wearing were dirty and often unsuitable for the climate conditions, particularly if we take into account that many of them spent the entire time outdoors because of the overcrowded conditions. The food consisted of sandwiches and bottles of water that were handed out several times a day by personnel from the Red Cross in Spain.

Continuous complaints about the aforementioned conditions were received during the visit.

The aforementioned situation meant that it was impossible to comply with the standards prescribed by the Consejería de Sanidad canaria [Department for

Health on the Canary Islands] for dealing with the healthcare crisis generated by COVID-19. Nonetheless, the effort made by personnel from the Servicio Canario de Salud [healthcare system on the Canary Islands] who had travelled to the camp should be highlighted.

There were constant attempts to put appropriate measures in place, not only in terms of early detection of cases of COVID but also in terms of dealing with other pathologies, by sending individuals to the hospital where necessary. However, numerous individuals had once again returned to the facilities after being discharged from hospital and they were not separated in any way from the rest of the group. Furthermore, at least 80 individuals who had tested positive in a PCR test were present.

It was not possible to determine who had been at the location for over 72 hours. Many of them indicated that they had return rulings issued on 3 November. There were also signs on the fences separating each group of individuals who had arrived on each vessel that indicated that there were individuals who had arrived on 7, 8 and 9 November.

In light of the aforementioned, on 24 November, the Spanish Ministry for Home Affairs was reminded about the legal requirement to meet the 72-hour time frame for freeing detainees or handing them over to the justice system and to guarantee the physical integrity of individuals in police custody.

A recommendation to close the facilities and transfer the individuals at the facilities to suitable places depending on their legal circumstances (if the 72-hour period following detention had passed or not) and health conditions (if they were close contacts with individuals who had tested positive for COVID or if they had tested positive themselves) was also issued.

Between 22 and 24 November, personnel from the Ombudsman's Office, in their role as representatives of the Mecanismo Nacional de Prevención de la tortura [National Mechanism for the Prevention of Torture], made a renewed unannounced visit to the camp accompanied by a forensic pathologist in order to check how quickly it was being vacated.

A reply was received from the Spanish minister for home affairs on 1 December indicating that the camp had been dismantled on 29 November and that alternative short-term facilities had been made available on military premises in Barranco Seco.

### ***The warehouse in Las Palmas port***

On 17 November, personnel from the Ombudsman's Office made an unannounced visit to the aforementioned warehouse on an industrial estate at Las Palmas port. During the visit, significant deficiencies in these unclean facilities were observed.

There were 28 men and one woman at the facilities when the visit was carried out. According to the information provided, they had been in the warehouse since 14 November. One group of detainees was barefoot. Following a number of attempts, a civil servant in charge of the situation was able to provide them with sports footwear before they boarded the bus taking them to court.

A general lack of information about why individuals had been detained and deficiencies in legal counsel and interpreting services was observed. The interviewees were unaware that they had been issued a return ruling and what this implied. Many of the return rulings they had been issued had not been signed or stamped by the corresponding lawyer or interpreter.

Four individuals who were presumably minors were detected. They had not been identified as minors up until that point. They were transferred to the examining magistrates' court along with all the other detainees at the end of the visit and, following the court hearing, three of them were taken to a centre for minors.

Interviews were held with citizens from Mali who had not previously been informed that they had the option of seeking asylum. Following the interview, they expressed their interest in seeking asylum and they were handed over to the National Police Force. During a posterior visit to the regional police headquarters, it was confirmed that these two individuals and the female were waiting to be transferred to a humanitarian accommodation centre.

A formal request to close the facilities with immediate effect was sent to the Canary Islands regional police headquarters. This was done six days following the visit.

### ***The camp set up at the Barranco Seco military armament storage facilities to serve as a short-term accommodation centre***

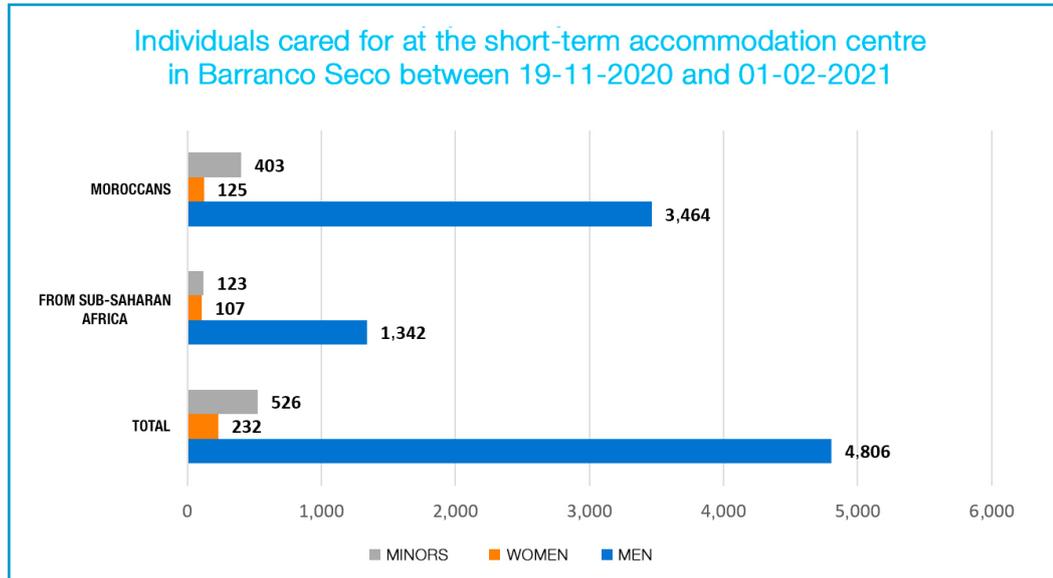
On 16 December, the Ombudsman carried out an institutional visit to these facilities that had been provided by the Ministerio de Defensa [Ministry of Defence] in the company of the government delegate on the Canary Islands. Prior to this, on 23

November, during the first few days it was in operation, personnel from the Ombudsman's Office in their role as representatives of the National Mechanism for the Prevention of Torture made an initial visit. Following these visits, complaints from several associations and lawyers representing some of the detainees were received regarding the conditions there. The weather conditions and the elevated number of arrivals have led to a significant decline in the living conditions which has to be tolerated by the migrants and the custody police officers in charge.

In addition, as confirmed during the visit to Arguineguín dock, the legal 72-hour period for retaining individuals in police custody is being hugely exceeded once again. The government delegate on the Canary Islands has indicated that this short-term camp is due to be turned into semi-permanent facilities that will be used as a short-term accommodation centre for as long as the situation of arrivals on the Canary Islands persists. The Dirección General de la Policía [Police Directorate General] has already initiated renovation work that will continue until next June. The project for extending the current facilities in two sectors is split into two phases. Once the renovation work has been completed, there will be sufficient capacity for around 600 individuals. There will also be modules for canteens, a reception area and an area designated to police officers.

General construction work addressing the electricity supply, water supply, sanitation conditions, fire protection, exterior lighting and a perimeter fence will also be carried out at the same time. According to data provided by the government delegate, up to 1 February 2021 5,564 individuals had been held at the facilities.

FIGURE 6



Source: Delegación del Gobierno en Canarias [government delegate on the Canary Islands].  
Compiled in-house

### ***The environmental learning centre on El Hierro***

On 20 November, personnel from the Ombudsman's Office made an unannounced visit to the detention centre for aliens at the Aula de la Naturaleza El Hierro [environmental learning centre in El Pinar (El Hierro)]. Since this island falls under Spanish Civil Guard control and there is no National Police Force presence, custody of alien nationals until they are transferred to a detention centre or humanitarian accommodation centre is managed by the Spanish Civil Guard. The facilities were in acceptable condition and there were no significant deficiencies in terms of initial emergency accommodation. Daily medical healthcare is provided and homemade meals are provided by local restaurants.

However, the structure of the building and the number of individuals held there meant that the measures provided for in the COVID-19 healthcare protocol could not be followed. At the time of the visit, there were 50 adults and 2 minors who had arrived on different makeshift vessels over the previous three days. They had not had a PCR test yet. Two National Police Force officers had travelled there from Tenerife to begin the procedures for aliens. They were not accompanied by

interpreters and there were no interpreters at the facilities meaning that it was impossible to converse with the detainees and inform them about their situation.

***The short-term accommodation centre in Adeje (Tenerife): annexed to Las Américas police station***

On 19 November, personnel from the Ombudsman's Office made an unannounced visit to the short-term accommodation centre in Adeje (Tenerife) which is annexed to the Playa de las Américas police station. The facilities are suitable and do not have any significant deficiencies. They can accommodate 332 individuals in five modules. Since they were inaugurated in 2008, the facilities have been visited on several occasions by staff from the Ombudsman's Office. There were mattresses with inflammable covers in the bedrooms. Sheets, towels and personal hygiene products are provided.

These facilities are appropriate as initial accommodation but they are not appropriate for prolonged periods of detention because they do not have amenities, provisions and services that are suitable for such circumstances.

At the time of the visit, 100 sub-Saharan individuals were being hosted at the facilities. Two of them were in hospital. All of them had exceeded the period for police detention and were waiting to be referred to a humanitarian accommodation centre. The leading police officer informed us that, for humanitarian reasons, they were being hosted at the facilities until they were referred. In light of these exceptional circumstances, the decision taken by the station to allow these individuals to stay in the short-term accommodation centre but without restricting their movement is considered good practice. The aliens had been informed about the situation and remained there of their own free will. They were not subject to any limitations other than basic co-habitation rules such as mealtimes and closure of the main door at 9 p.m. Interviews were held with several of the residents. They confirmed that they were free to come and go and that they were being treated appropriately.

According to data provided by the station, 3,200 individuals stayed at the facilities in 2020. Of these, 108 were women and 514 were minors (10 girls: 9 from Ivory Coast and one from Guinea-Conakry). Almost all of them were citizens of sub-Saharan Africa countries (mainly Senegal followed by Mali and Gambia) and 86 of them were from Morocco. However, on 19 November when the visit was

made, surprisingly, no international protection requests had been filed throughout 2020.

This matter will be analysed in the section on identification protocols.

### ***Puerto del Rosario dock (Fuerteventura)***

On 18 November, personnel from the Ombudsman's Office made an unannounced visit to the tent installed on Puerto del Rosario dock (Fuerteventura). The tent, which had been set up for initial aid and detention purposes, was empty when the visit took place but it was confirmed that the facilities were appropriate and suitably equipped. The occupants of the most recent makeshift vessel had left the facilities days before the visit. The facilities had been appropriately cleaned and disinfected.

Men and women are separated into different modules and there is an area where individuals with a positive coronavirus result and their close contacts can be isolated. There is also a medical consultation room staffed by personnel from the Canary Islands health service who travel to the facilities when there are arrivals. We were provided with a copy of the specific protocol designed for use during the healthcare crisis generated by COVID. This is an example of good practice.

Once affiliation has been determined, the list of immigrants is sent by e-mail to management at the Canary Islands Health Service. According to the police officers available during the visit, the health service provides the results of PCR tests within 24 hours by e-mail.

Once administrative procedures have concluded, return rulings are notified with the presence of a lawyer and individuals are no longer detained. From there, they are transferred to the hosting facility where they must isolate. Individuals with positive and negative test results are not allowed to mix and isolation is separate and not subject to police custody.

### **b. The reception system**

In addition to the massive increase in irregular arrivals along the coast of Spain in 2018, there was a sharp increase in requests for international protection. Government agencies, in exercising their powers of self-organisation, chose not to increase the network of public accommodation spaces by constructing new centres

for refugees or immigrants for short-term stays. Instead, hosting and caregiving responsibilities for individuals arriving at the coast of Spain and individuals seeking asylum were assigned to various NGOs.

It is not the Ombudsman's Office's responsibility to judge the decision taken by government agencies but it is its responsibility to ensure that the selected option is efficient and protects these people's rights. An initial assessment was already made in the 2018 annual report. It concluded that the selected option did not appear to have the capacity to generate sufficient accommodation spaces for providing the necessary immediate support.

The same circumstances occurred again in 2020 with the huge increase in irregular arrivals; on this occasion on the Canary Islands. In 2019, there were 3 reception centres on the islands with a total of 78 places. In 2020, these were increased to 11 global reception centres with 388 places. Since there are insufficient places, emergency measures have once again been needed, both for undocumented individuals and for asylum seekers.

The urgent search for new places has led to provision of short-term accommodation solutions consisting of booking hotel rooms and using spaces provided by the autonomous community and local entities.

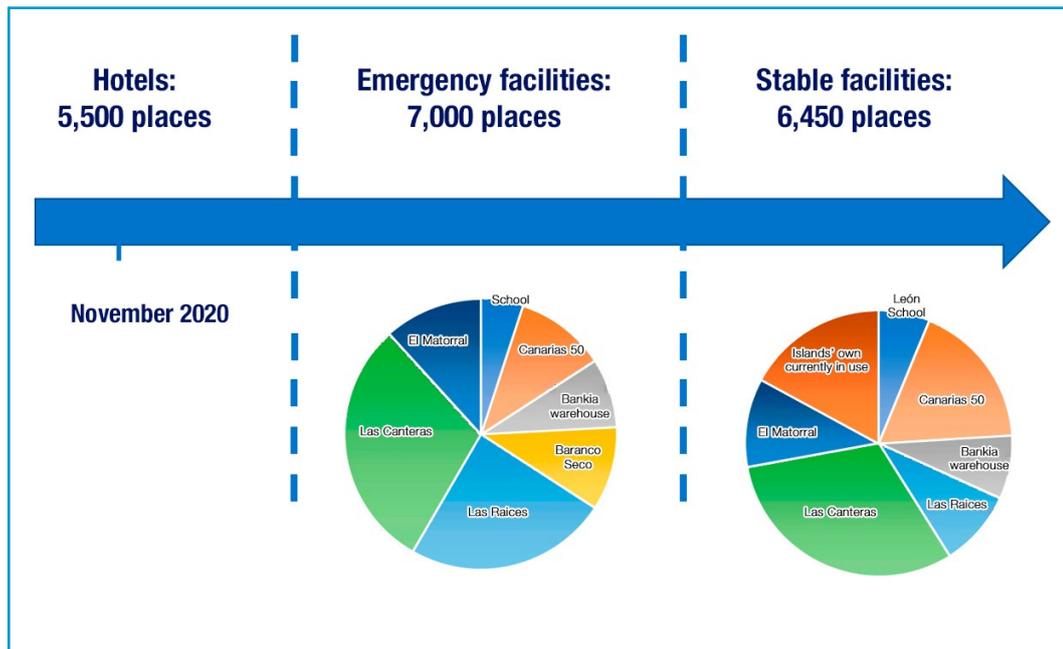
As was the case in 2018, the work carried out by the NGOs that have taken charge of these programmes is openly commended by the Ombudsman's Office. In conjunction with the anonymous work carried out by many residents of the Canary Islands, without a doubt, they represent the very best of Spanish society. However, rational assessment of public policies must go hand in hand with a system for supervising the entities that manage public funds and planning of existing resources in those areas along the coast where, as is the case with the Canary Islands, it is highly likely that there will be recurrent increases in irregular arrivals by sea.

### ***The Canary Islands Plan***

Work to set up new centres providing global care for immigrants who arrive at the coast has been ongoing since late 2019. On 20 November, the Ministry of Inclusion, Social Security and Migration presented the Canary Islands Plan that includes 7,000 short-term accommodation spaces in tents. Work will also

commence to ready military facilities made available by the Ministry of Defence and consolidate a permanent accommodation network on the Canary Islands archipelago.

**FIGURE 7. SUMMARY OF THE CANARY ISLANDS PLAN RESOURCES**



Source: Ministerio de Inclusión, Seguridad Social y Migraciones [Ministry of Inclusion, Social Security and Migration]

There will be two phases to this action plan: an initial one with emergency solutions and another that will include attempts to set up stable networks on the islands that receive the largest number of arrivals.

On Gran Canaria, Leon, a former school made available by Las Palmas de Gran Canaria council is being readied. It will have 300 places in tents and 400 places will be made available in the future. In addition, work is under way at the Canarias 50 military barracks which has 650 provisional spaces. The barracks have now become Ministry of Inclusion property. Further down the line, the barracks will have 1,150 places in prefabricated modules.

Bankia has provided a 7,000-metre square warehouse on an industrial estate in Las Palmas on Gran Canaria with a capacity to accommodate around 500 individuals.

Tenerife, for its part, now has the Las Canteras barracks which has a capacity of 1,800 places in ten buildings. It will reach 2,000 places in the future. In Las Raíces (El Rosario), the Ministry of Defence has made facilities with a capacity for 1,500 places in tents temporarily available. Last of all, on Fuerteventura, El Matorral barracks will have 700 places.

Once this initial phase has been completed, Gran Canaria will have 1,950 new accommodation places; Tenerife will have 3,250 places; and Fuerteventura will have 700. There are also a further 1,100 places in centres run by the ministry. These are already being used. Stable resources, which will be developed progressively throughout 2021, will reach 6,450 places in total. It will be financed using 43 million euros from the European Union recovery fund.

At the time this report was written, the Red Cross was still the entity in charge of managing care along the coast and the largest number of emergency accommodation places situated in different places across the islands. The accommodation temporarily includes hotel rooms until resources run by Spain's central government are made available. The International Organisation for Migration is expected to get involved in emergency caregiving and accommodation tasks on the coast for migrants who arrive at the coasts of the islands that belong to the province of Santa Cruz de Tenerife in makeshift vessels or dugout canoes.

A team for coordinating and monitoring the Canary Islands Plan was set up in late November including personnel with specific experience in the field of caring for human beings. Since January, they have been accompanied by a team from the European Asylum Support Organisation (EASO). At the time this report was written, not all the measures indicated in the plan had been initiated. Therefore, some time will have to go by before we are able to assess the results.

The Ombudsman's Office commends the effort made by administrative bodies to set up a number of emergency accommodation places in record time. These have been an essential feature in providing solutions for the situation faced by thousands of individuals who would otherwise have been left totally unattended.

However, as indicated with reference to the situation that has emerged on other occasions in autonomous cities Ceuta and Melilla, this institution remains

concerned about the slow rate of transfers from the Canary Islands to peninsular Spain throughout 2020.

To bring this section to a close, the situation generated by concentrating presence of these centres in certain municipalities on the Canary Islands must be highlighted. There must be a crackdown on xenophobic protests and grouping large numbers of migrants into neighbourhoods that have been particularly hard hit by the serious economic crisis that the pandemic has generated on the Canary Islands must also be avoided.

### ***The situation generated by COVID***

In late July 2020, faced with the increase in irregular arrivals, ex officio missions with the Ministry of Inclusion, Social Security and Migration and with the five coastal autonomous communities (Andalusia, the Balearic Islands, the Canary Islands, Murcia and the Valencian Community) that have been receiving undocumented aliens for years were initiated.

Since the end of the state of emergency, thousands of individuals have been rescued as they have attempted to reach Spain in precarious vessels and the corresponding humanitarian response operatives have been activated under management of the central government. However, the situation generated by the pandemic has meant that, in addition to this humanitarian response, other complementary healthcare measures that are autonomous community responsibilities have been adopted.

On 25 July 2020, the Secretary of State for Migration set up an action protocol to deal with potential imported cases of COVID-19 within the context of irregular immigration. The protocol addresses the lines of action that are needed in order to identify individuals who have tested positive, traceability and isolation for contacts in cooperation with the corresponding healthcare authorities in each autonomous community.

They have been asked to make places available for possible isolation needs and Secretary of State for Migration coordination has been made available in order to share management of these tasks through humanitarian care for immigrants in places set up for this purpose. In December 2020, 10 shared management centres for providing humanitarian care for individuals arriving at the coast who must isolate

either because they have tested positive for COVID or because they are close contacts (3 on the Canary Islands, 1 on the Balearic Islands, 1 in Murcia, 1 in Melilla and 4 in Andalusia) had already been set up.

The example of what occurred on the Canary Islands illustrates the need to improve coordination of this kind between administrative bodies. During the visits made, deficiencies in coordination between the administrative bodies were observed and this should be improved. On 21 November 2020, the Department for Health on the Canary Islands published an order making isolation for individuals who are intercepted when attempting to reach the islands in an irregular manner and who test positive for COVID-19 but do not need to be hospitalised obligatory. This was established as an extraordinary and necessary emergency prevention and containment temporary measure for handling the health crisis.

It was confirmed that the necessary specific residential resources for effectuating the measures provided for in the aforementioned order have not yet been set up. Therefore, the Ombudsman's Office has sent the Department for Health on the Canary Islands a formal recommendation. A response to this recommendation has been requested.

On 15 December, updated information was requested from the Ministry of Inclusion, Social Security and Migration on the terms and conditions for a review of the content of the aforementioned protocol in order to update the tests that need to be performed, transfers to centres with shared management systems and the isolation period.

### ***Visits to humanitarian accommodation centres on the Canary Islands***

Unannounced visits were made to residential facilities and emergency facilities that are part of the humanitarian accommodation network on Gran Canaria, Lanzarote, Tenerife, El Hierro and Fuerteventura. The conditions at the facilities, application of the COVID-19 healthcare protocol, the existing protocol for detecting vulnerable individuals and the information that individuals who require international protection are provided with were all examined. A significant number of individuals who indicated that they were minors were detected in several centres. A list with these individuals' data was sent urgently to the Fiscalía General del Estado [Chief State Prosecutor's Office]. Replies had not been received when this report was written.

Out of all the facilities in appropriate and suitable conditions, the accommodation centre in Santa Cruz de Tenerife is particularly noteworthy in terms of operation, both with regards to the suitability of the facilities and in terms of the attention individuals receive and the training personnel are given. The facilities were in perfect condition and they were clean. They were also well equipped: large kitchen, large patio, rooms for classes, a gym, private offices where legal and psychological support can be provided, suitable bedrooms and an isolation module for individuals with COVID-19.

The presence of legal counsel and psychological support services and the specific training given to staff at the centre which has enabled them to identify a number of vulnerable individuals stands out as good practice.

Likewise, two hotel facilities located in Puerto del Carmen (Lanzarote) and Playa de las Américas (Tenerife) were also in acceptable condition in terms of upkeep and cleanliness. However, the large number of individuals being accommodated there made identifying the most vulnerable individuals a difficult task for personnel. In fact, in one of these facilities, we detected a significant number of individuals who claimed to be minors.

In Puerto del Rosario (Fuerteventura) a visit was made to a warehouse that had been turned into a specific resource and made available by the local authorities so that individuals with a positive COVID-19 result could isolate and observe quarantine requirements. It should be pointed out that the facilities were in good condition and suitable for this purpose and that a coordination system had been established with the health service on the Canary Islands in order to adhere to the healthcare protocol.

There were deficiencies at other centres that ought to be corrected. In particular, a warehouse on an industrial estate on Lanzarote and two centres on Las Palmas. In the warehouse on Lanzarote there were some individuals who were isolating. The facilities are very hazardous and not well kept. It is an open plan space with hardly any divisions between the areas assigned for use during the day, for eating, sleeping and personal hygiene. There is insufficient space for the 200 individuals who can be accommodated there. Periods outdoors are limited to groups of three individuals. Leaving the facilities is not permitted. There is a fenced off area where individuals who have a positive test results can isolate but it is not suitable for that purpose.

The complaints received following the visit indicate that the individuals are hot during the day and cold at night because the facilities are poorly insulated. Furthermore, they are not provided with any social, legal or psychological support. This makes detecting and referring vulnerable individuals to suitable resources impossible.

At the two centres visited on Las Palmas de Gran Canaria, the cleanliness and upkeep of the facilities was not acceptable and one of them requires urgent repairs to structural elements of the building such as windows. In both cases, suitable furnishings for residential use and not just for emergency situations ought to be provided. Specifically, the bedrooms should have modules that are suitable for resting in.

In the case of the sports hall that was visited on El Hierro, the average stay of the individuals who were there on 20 November when the visit took place is a concern. The conditions in which they are required to live is also a concern because individuals in isolation were sharing spaces with others who had completed isolation, even if it is true that they were in separate zones. 100 individuals, including four women, had been at the sports hall for five days. There were 30 unaccompanied minors, some of whom were between 10 and 12 years old.

In this case, the issue was not identification of vulnerable individuals because individuals had indeed been identified as minors, but rather the deficient coordination with the entity responsible for protecting minors which, even though five days since their arrival had already gone by, had not yet taken over responsibility for them.

In terms of the condition of the facilities, it should be pointed out that they are large and well ventilated. The facilities were clean and food is provided by local restaurants. The assigned area for resting consists of mattresses that are suitable for emergency use but not for a mid or long-term stay.

Last of all, it was impossible to determine what the arrangements for entering and leaving the sports hall were. This is overseen by a security service. Based on some of the complaints received, the individuals were not allowed to leave the facilities. However, it was pointed out that this was for health reasons.

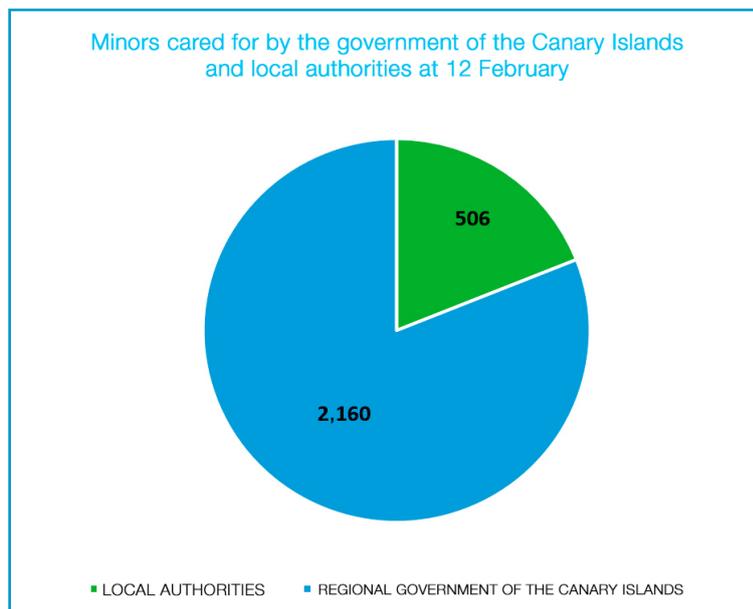
### c. Unaccompanied alien minors

Autonomous communities are responsible for protecting minors in their respective territories. For this reason, when a minor is classed as unshielded, the public entity responsible for protecting minors in that geographical area must act as the individual's guardian and provide the necessary measures for his or her protection.

When unaccompanied alien minors reach autonomous communities where undocumented individuals commonly arrive by sea, and when this has been ongoing for many years, this generates significant disorder. This is mainly due to the issues associated with adapting available accommodation resources to the number of minors who arrive. The specific geographical circumstances of the Canary Islands and Ceuta and Melilla autonomous cities mean that they are the areas that experience the impact of these arrivals the most.

The Ombudsman's Office has been overseeing this situation for years, as indicated in its annual reports. On the Canary Islands, during the so-called 'dugout canoe crisis', numerous unannounced interventions and visits to centres for the protection of minors took place. Between 2006 and 2009, according to data provided by the Canary Islands local government, 2,727 minors were accommodated using emergency resources. On this occasion, ten years later, around 15% of the undocumented individuals who have arrived at the coasts of the Canary Islands in 2020 were alien minors. Data provided by the organism for the protection of minors on the Canary Islands, as of 12 February 2021, places the number of unaccompanied alien minors under its care at 2,666.

**FIGURE 8**



Source: Dirección General de Protección a la Infancia y a la Familia del Gobierno de Canarias [Canary Islands local government Directorate General for the Protection of Infants and Families]. Compiled in-house

According to information provided by the autonomous community protection entity, a surprisingly high number of individuals - 2,030 - are still pending tests to determine their age.

In view of this situation, the Ombudsman's Office has supported the EASO and European Council initiative to translate an informative video about the procedure used to determine age into Wolof, Bambara and the Moroccan dialect. The information provided in these languages could be of utmost importance to the current situation on the Canary Islands:

<https://www.defensordelpueblo.es/otras-publicaciones/determinacion-la-edad-los-menores-extranjeros-indocumentados/>

Given that the resources available to the protection system on the Canary Islands are insufficient for hosting these individuals, setting up emergency centres has once again proved a necessity.

In fact, an isolated modification to the Law on Global Care for Minors and the regulations for accommodations centres for minors in order to adapt immediate accommodation centres into emergency facilities to accommodate unaccompanied alien minors was necessary.

It establishes that, under exceptional circumstances, when the system is temporarily overrun due to mass arrivals of minors, other residential spaces may be used as immediate accommodation centres. There are no limitations on their capacity other than those determined by the facilities and staff themselves in terms of appropriate operation.

For its part, the central government of Spain has awarded a direct grant to the autonomous community of the Canary Islands through Royal Decree 1059/2020 of 1 December to be used for caring for and accommodating these individuals.

The Ombudsman's Office acknowledges the effort made by the different administrative bodies to provide these children with the immediate care that they need. However, based on the figures provided, it is unreasonable to expect protection services for minors on the Canary Islands to face this challenge alone.

As indicated, emergency accommodation is being addressed appropriately despite the fact that there would appear to be insufficient material resources and personnel to provide these minors with their rights to education, healthcare and basic social services and provisions under the same conditions as Spanish minors.

The experience gained when overseeing management of this situation between 2006 and 2009 leads the institution to believe that immediate hosting and posterior integration of the more than 2,600 minors under the care of the entity responsible for protecting minors on the Canary Islands at the time this report was written in February 2021 is impossible.

During the so-called 'dugout canoe crisis', the minors arrived over a longer period of time and, given that there was no protocol, many of them were transferred to peninsular Spain. Both the entity responsible for protecting minors on the Canary Islands and the autonomous communities that hosted them, in collaboration with numerous associations, did all they could to ensure they integrated into society and the labour market. However, based on the numerous complaints that were received, there were significant barriers for documenting legal residence, financing places in accommodation centres and adequately supervising the situation.

This was taken into account in the reform provided through Organic Law 2/2009 of 11 December within the Aliens Act.

Three tools were included in the legal amendment in order to achieve the objective:

- generation of a multi-year strategic plan for integration of unaccompanied alien minors, promoted by Spain's central government;
- transfer of minors who arrive at the Canary Islands to other autonomous communities;
- agreements with foundations and other entities to adopt tutelage.

This same amendment established measures that allow autonomous communities such as the Canary Islands where there is an increase in number of alien minors arriving to request collaboration from public and private entities.

Autonomous communities could potentially come to agreements with other communities where the minors are located in order to take responsibility for tutelage and custody with the aim of providing them with improved integration conditions.

This initiative has already been put to use by the entity for the protection of minors on the Canary Islands and, in our opinion, it is an incredibly necessary initiative that ought to help reduce the elevated number of minors who remain in the different emergency centres.

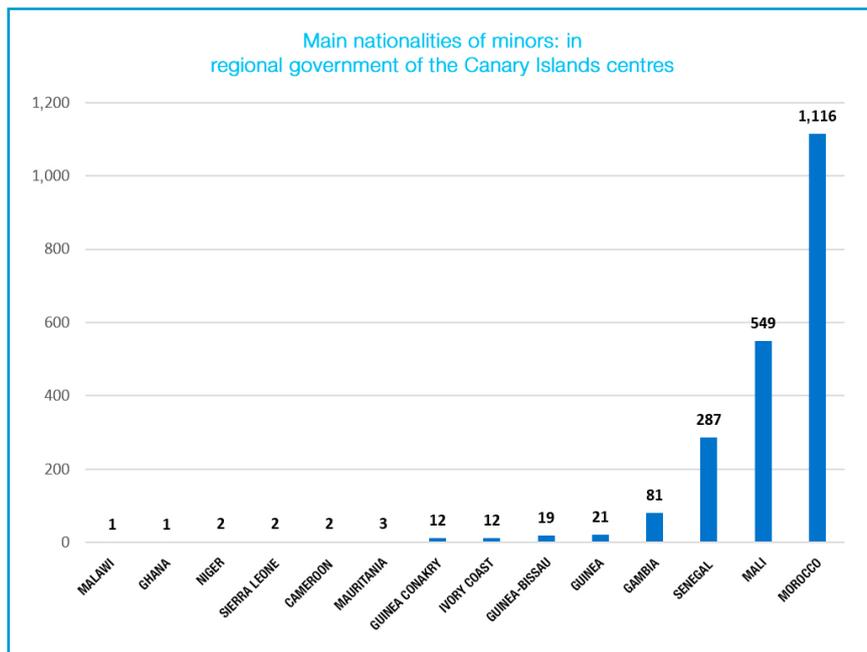
Based on information provided at the time this report was written, contact with two autonomous communities had begun. These two communities had made 65 places available. Political will and a sense of co-responsibility across all administrative bodies is necessary if this measure is to be a success. There is another option for urgent identification of referral of minors with international protection needs or potential victims of trafficking of human beings that could be explored.

This measure has never been activated and it stipulates that the central government and autonomous communities can establish agreements with non-governmental organisations, foundations and entities for the protection of minors with the aim of assigning them their tutelage. Each agreement would specify the

number of minors whose tutelage the corresponding entity is prepared to take responsibility for, the place of residence and the material means that will be used. It will have legal validity to promote tutelage for the autonomous community that is responsible for custody of the minor.

Successfully setting up this measure calls for political will, leadership in order to coordinate it and government funds.

**FIGURE 9**



Data arranged by nationality for the 506 minors hosted by local authorities has not been received.

Source: Canary Islands local government Directorate General for the Protection of Infants and Families. Compiled in-house

Based on 2020 data, the urgent need to improve access to information on international protection for unaccompanied alien minors on the Canary Islands is clear.

There are five concerning recurrent issues with regards to these minors:

- agile identification of international protection needs;
- detection of potential victims of trafficking in human beings;
- the procedure for determining age;
- documentation for legal residence;
- social and workforce integration once they are adults.

According to data provided by the government delegate on the Canary Islands on the number of residency authorisations issued to these minors in 2020, there were 134 new authorisations and 98 ex officio renovations. This, in conjunction with the lack of international protection requests for unaccompanied alien minors (addressed in the next section), is a matter that concerns this institution and, in its role as the main guarantor of the interests of minors, should be given priority by the prosecution service.

### ***Visits to centres***

Unannounced visits accompanied by personnel from the Ombudsman's Office of the Canary Islands were made to three accommodation centres for unaccompanied alien minors: one in Tinajo (Lanzarote), another in Gáldar (Gran Canaria) and, last of all, one in Los Llanos de Aridane (La Palma).

The characteristics and the ownership of the three centres are different but, in the Ombudsman's opinion, some general conclusions for the three centres can be drawn:

- the motivation and commitment shown by staff;
- the elevated number of minors with no residency authorisation;
- the elevated number of minors pending the age determination procedure;
- the significant number of minors with international protection needs.

The centre in Gáldar (Gran Canaria) meets all the minimum requirements, given its temporary nature. The facilities are in suitable condition and it is particularly clean and organised.

The centre in Los Llanos de Aridane (La Palma) is in the town centre and integrated into the local neighbourhood. It has only a few places and is ideal for the purpose for which it was set up. The centre was perfectly clean and organised. The excellent cohabitation dynamics and friendly environment that were observed are worth pointing out.

The centre in Tinajo (Lanzarote) is very deteriorated and the facilities are in need of maintenance. It is also generally rather dirty. Some of the defects that were observed, including broken glass in doors and windows, are a risk to minors' physical safety.

## IDENTIFICATION OF VULNERABLE INDIVIDUALS AND THE SEARCH FOR MISSING PERSONS

The lack of suitable facilities and the time taken to transfer individuals to peninsular Spain in 2020 have meant that individuals with very different circumstances are accommodated in the same facilities. These include non-removable returnees, individuals seeking international protection and other vulnerable individuals including, amongst others, undocumented minors who ought to be in special facilities.

Significant deficiencies in legal counsel and interpreter services, both when return rulings are initially notified and during periods in accommodation centres, make identifying these individuals complicated.

Likewise, the need to reinforce training for the staff who receive, detain and provide initial accommodation for individuals so that they have the necessary tools to identify these profiles with ease was observed.

In several visits, minors, women in vulnerable situations and individuals with international protection needs were found to be at the facilities. This had already been observed and pointed out during visits that took place in 2017 and 2018 after makeshift vessels arrived along the Mediterranean coast. As indicated at the time, there should not be any suspicion during identification and protection of particularly vulnerable collectives because this can only lead to them ending up unprotected.

Once again, the effort made by the different authorities to improve the identification processes must be acknowledged. However, and in spite of this effort, individuals are still often identified after arrival in Spain in places such as

detention facilities, or when humanitarian accommodation is provided by non-governmental organisations, or, as if in confirmation of the failure of the system, when criminal networks are disbanded. It was indicated before - and shall be mentioned here once again - that an in-depth assessment of the reception protocol pursued in these cases is necessary. It is still impossible to carry out a 'social and legal triage' aimed at identifying these individuals in a more secure manner.

In addition to law enforcement agents, expert personnel from other central government organisms and autonomous community and local administrative bodies should be involved from the outset in order to ensure that individuals are identified appropriately.

The presence of international organisations would be a positive step. It has already begun with UNHCR and the International Organisation for Migration and should be bolstered.

Likewise, the role played by the Spanish Red Cross and bar associations should be assessed and, where applicable, reinforced in order to improve the quality of the free legal counsel that is provided.

#### a. Information

Three situations require clear action protocols and improvements to the information that is provided: individuals who go missing en route, minors accompanied by adults and individuals who need international protection.

#### ***Individuals who go missing en route***

According to data provided by the Spanish Ministry for Home Affairs, 23,023 undocumented individuals arrived at the Canary Islands by sea in 2020. They did so in 745 vessels and, in many cases, had to be rescued.

UNHCR estimates that, in 2020, at least 480 individuals lost their lives while attempting to reach the islands.

During the visit to Arguineguín dock, several individuals in the area asked the Ombudsman for information about family members.

Following this, several complaints asking for Ombudsman's Office intervention have been received. They mentioned the difficulties faced by the family members of individuals who were on those precarious vessels en route to the Canary Islands when attempting to obtain information about the status and whereabouts of the survivors, about the steps taken in order to rescue and identify them or, where applicable, about officially reporting family members missing.

The responses from the different government agencies that had been received when this report was written simply point out in each case that the agency in question is not responsible for attending to family members of survivors and victims. Furthermore, promoting steps to document the number of individuals that go missing along this dangerous route does not appear to be the responsibility of any administrative body.

Since they are forced to turn to networks that deal in trafficking of human beings along incredibly dangerous routes during which they must attempt to avoid being caught by the authorities, it is not uncommon for individuals who head to Europe in search of protection or a chance at a future to go unidentified. The total absence of a record of passengers and the limited number of official complaints that are filed, whether this be because the survivors are afraid of what the consequence may be or whether this is because of the hurdles that families face in attempting to do so, also make identifying and counting the number of individuals who lose their lives in the attempt difficult.

Based on the agreements undertaken on a national scale to coordinate rescue operations, and the police and forensics response on events involving several victims, steps aimed at first of all identifying the existing framework and protocols for action and the different response or supervision steps taken by national or local authorities have been taken.

Information on tasks to identify potential missing persons, comparisons with data provided by identified survivors, the care given to their relatives and the effort made to record these incidents has been requested.

Taking into account the difficulties that identifying individuals who have passed away and caring for their relatives entails under these circumstances, the Ombudsman's Office believes that a clear formula for providing families with a response is necessary. Through efficient documentation and monitoring, the

prevention and rescue missions that help to reduce the number of deaths en route would also be improved.

### ***Minors who arrive accompanied by adults***

Complaints about mothers being separated from minors after arrival at the coast of Fuerteventura and for the duration of DNA tests to confirm the relationship between the two since they did not carry any documentation were first received in July 2020.

Further indications of a similar case were received in October. However, in this case, the father attached a copy of his 11-year-old daughter's passport to the complaint sent to the Ombudsman's Office. He called for the institution's intervention given the lack of information received and insisted that he had only been told that his daughter was being taken from Arguineguín dock to a centre for minors. He indicated that the documentation he was carrying (passport and family register) was not taken into account. The prosecution service indicated that it was caused by a mistake in the information provided by the police because they had not indicated that the parents had documentation demonstrating the relationship between them and the child. The minor was eventually returned to her parents after over a month of separation.

With regards to the other cases, the prosecution service initially indicated that this protocol is a safety precaution that arose following events involving individuals who were using children to demonstrate they had family links on the Canary Islands or who intended to take them to Europe to traffic with minors. The information provided indicates that, since family links could not be fully demonstrated, minors were separated from the individuals accompanying them and sent to a protection centre.

In the Ombudsman's opinion, however, steps should have been taken before proceeding to separate them in order to confirm if the minor and the adult were indeed related. Once again, this is not a new situation and it did not occur on the Canary Islands for the first time. The Ombudsman's Office has been monitoring this situation and been concerned about it since 2013. It has held a number of coordination meetings aimed at progressing in the field of effective protection for these undocumented minors who arrive in Spain with adults.

The last meeting took place in October 2019 and involved organisms from the different administrative bodies. Several proposals for improvements were made:

- a. Improvements to the protocol for arrivals at the coast so that, in addition to having DNA tests, the adult is informed about obligations undertaken with regards to the minor until the result is received. Namely, accommodation in a specific centre, cooperation with social services and so on.
- b. A review of the system used to register minors. While complying with European regulations on data protection, the interests of the minor and the obligations emanating from the Convention on the Rights of the Child should be given priority.
- c. The option of assigning specific residential resources in which, in coordination with municipal social services, the link between the adult and the minor can be closely monitored until the results of the DNA test are received.

Once the results have been received, if they are not confirmed as parent and child but the relationship between the two is correct, a report on the most favourable option for the minor should be drawn up and the relationship between the two should continue at the centre until the most appropriate solution for the minor can be determined.

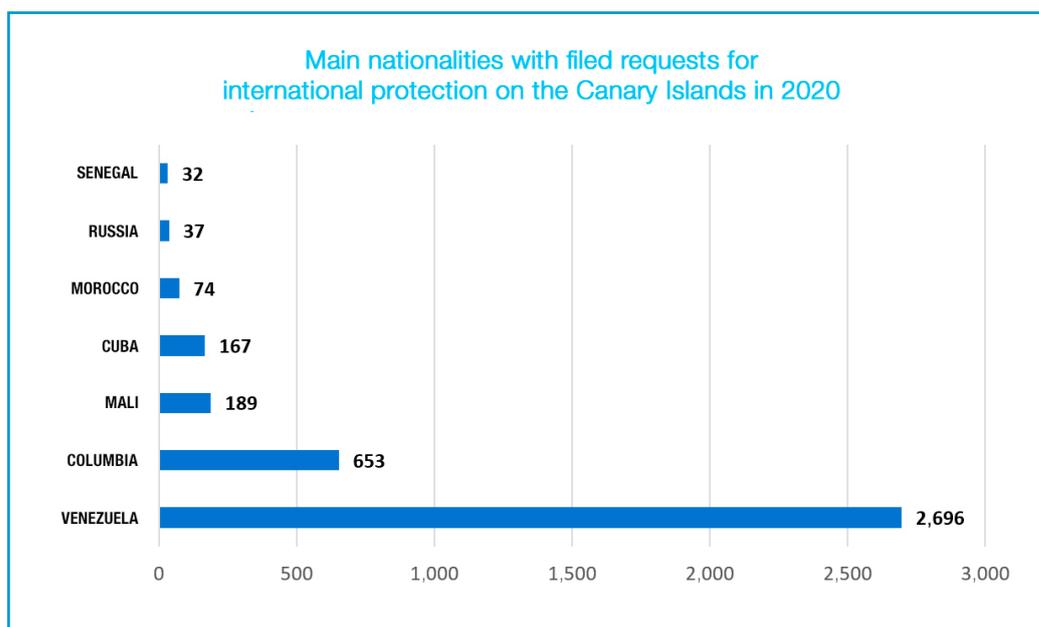
Should the result indicate that they are parent and child, steps must be taken to ensure that the minor does not leave the centre before having undergone an initial health check by a paediatrician. In addition, the destination local council should be informed about the new place of residence and, if applicable, arrangements for schooling.

- d. Establish objective risk indicators adapted to the minors' situation, taking into account the provisions of the Convention on the Rights of the Child which defines the right to identity as 'the right to have rights'.

### **Information about international protection**

Access to the asylum procedure for all the individuals who may be in need of international protection is one of the biggest challenges faced by the Spanish and European system.

**FIGURE 10**



Source: Oficina de Asilo y Refugio [Asylum and Refuge Office]. Compiled in-house

Access to the procedure must necessarily go hand in hand with correct information about the option of exercising this right. The Ombudsman's Office has repeatedly insisted that, irrespective of how an individual has reached Spain, appropriate information about the option of seeking international protection must be provided.

It is absolutely essential that the information is understandable for all individuals and government agencies have been reminded of this on numerous occasions. Access to the information must be guaranteed at all times and it must be understandable.

Provision of this information in a manner that is incomprehensible for individuals who are undocumented and arrive by sea is an issue that is repeatedly detected by the Ombudsman's Office during visits. The way in which information about asylum is provided when individuals arrive by sea must undergo a serious review.

Likewise, the role played by each party involved in transmitting this information must be made clear so that it does not end up as a simple formal guarantee that is in no way satisfactory. The conditions in which these individuals arrive following long journeys on which they risk their lives must be taken into account.

After being rescued, particularly given the circumstances of the current health crisis, individuals do not seem to be given conditions in which they can easily understand the information they are given and the consequences of this situation. Documents or other audiovisual materials must be available to them for consultation on several occasions and must help them to determine if they meet any of the conditions for receiving international protection.

National Police Force officers working in the field must have access to appropriate information regarding the right to asylum. Officers must be given access to training provided by EASO and FRONTEX aimed at improving the knowledge that civil servants working with individuals with international protection needs have. Legal counsel is an essential guarantee for transmission of information about international protection. The need to improve the quality of this counsel will be addressed in the following section.

Out of all the undocumented individuals who have arrived, the number of individuals who submitted requests for international protection in 2020 on the Canary Islands indicates the urgent need to review the role played by the National Police Force and legal representatives.

On the one hand, the issue of how the National Police Force monitors cases in which the alien indicates his or her intention to seek asylum while his or her return is being processed does not seem to have been resolved. This is an issue that leads to numerous complaints. Intention is recorded on ADEXTRA, the police database. However, the fact that requests take months to be formalised and some do not even reach the formalisation stage suggests that this intention is not included in the data that the Spanish Asylum and Refuge Office provides.

On the other hand, legal representatives working with aliens who indicate their intention to seek asylum when they first arrive at the coast do not always follow this matter up. This happens for a number of reasons. The reasons relating to legal representatives are addressed in the following section. Others are particularly relevant in the case of the Canary Islands because of their geographical location and they are to do with the fact that legal representatives have no way of getting back in touch with the client when the latter is transferred from the island or when the legal representative is refused access to the humanitarian accommodation centre.

The Ombudsman has repeatedly suggested that an in-depth organic review to help improve coordination is performed so that coherent responses can be given to the challenges that the asylum system poses. Delays in appointments for formalising asylum applications seriously affect the credibility of the system.

Lack of access to the procedure inexcusably delays processing and is an access barrier to other rights. In the institution's opinion, National Police Force collaboration in order to address asylum application management in terms of assigning appointments, carrying out asylum interviews and filing documentation is a matter that must be urgently reviewed.

Other issues about which this institution has concerns are those that arise following changes of address. The Comisaría General de Extranjería y Fronteras [General Department on Alien Affairs and Borders] indicated that, as a rule, when a seeker is relocated by the entities that manage humanitarian accommodation to a province that is not the one where the request is being filed, appointments can be changed without any problem. However, there are constant complaints regarding the difficulties submitting requests that individuals face when they change address. Complaints are also made about requirements such as a census registration certificates for requesting appointments which are not contemplated in the law.

The institution is also concerned about the way in which initial interviews are held. They are held by police officers because the Asylum and Refuge Office does not have sufficient resources in order to be able to do them all itself. The interview is an essential formality. Therefore, the Ombudsman's Office insists that there is an urgent need to set up and give mandatory and specialist training to each interviewer. This must be completed before the interviewer starts holding

interviews with individuals. The fact that a significant number of police officers involved in this initial interview lack specialist skills seriously compromises how the procedure is carried out. The lack of Asylum and Refuge Office staff and the elevated number of pending requests means that interviewers cannot ask seekers back for a second interview so that an appropriately in-depth analysis of his or her international protection needs can be performed.

### ***Special mention of minors with international protection needs***

The total absence of international protection requests made by unaccompanied alien minors on the Canary Islands once again highlights the need to remove the barriers they face when accessing the international protection procedure. Four related issues are repeatedly detected by the Ombudsman's Office. There is a total absence of specific residential resources that have been adapted to suit the needs of minors who require international protection. Autonomous community entities for the protection of minors repeatedly admit this. In the Ombudsman's opinion, the necessary steps so that resources of this kind can be made available must be taken without delay.

The second recurrent issue relates to existing practical restrictions that minors face in attempting to exercise their right to request international protection. The traditional idea of a minor with a limited capacity to exercise his or her rights has been largely overcome by the Convention on the Rights of the Child and associated Spanish legislation. In spite of the above, in practice, minors face many hurdles when trying to exercise their rights. The fact that an international protection request made by a minor who is suitably mature is not processed until the legal tutor validates it renders the legal obligation that all public administration entities have to make it possible for minors to exercise their rights void. Furthermore, it is particularly paradoxical that they cannot represent themselves in the administrative procedure for asylum requests when article 18 of the contentious-administrative jurisdiction law states that minors have the procedural capacity under contentious-administrative jurisdiction to defend the legitimate rights and interests permitted by the legal system without the need for an individual in a parental responsibility, tutelage or guardianship role.

In the Ombudsman's opinion, the procedure that is used does not provide the guarantees demanded by the Committee on the Rights of the Child in order to

assess the minor's best interests in each specific case and this is a concern. The Committee on the Rights of the Child indicates that cases in which the minor himself or herself does not actually say that he or she wishes to request international protection but the authorities who detect that the minor may be in danger of persecution for reasons of race, religion, nationality or for being a member of a certain social group, political opinion or may need international protection for any other reason are the real test of whether or not the established procedure takes the minor's best interests into account. UNHCR describes determining the minor's best interests as a formal process with strict procedural safeguards that has been established in order to determine the child's best interests, particularly when taking important decisions that affect him/her.

The procedure should ensure discrimination-free and appropriate participation of the child and involve experts in relevant areas who are responsible for taking decisions and balance all the existing factors for deciding on the best option. UNHCR guidelines for determining the child's best interests (2008) can be used to determine those best interests. The guide, which is based on practice in national protection systems for minors, gives indications on how to apply the principle of best interests and defines the three situations in which UNHCR should determine the child's best interests: a) identifying durable solutions for unaccompanied and separated refugee children; b) temporary care arrangements for unaccompanied and separated children in exceptional situations; and c) decisions that may lead to separation of a child from parents against their will.

Last of all, the international protection requests procedure for minors does not guarantee participation of the minor in determining his or her best interests.

#### b Legal counsel

The legal assistance that individuals receive when they arrive at the coast plays a fundamental role in ensuring that the compilation of guarantees laid out by the legal system functions properly. Once again, as has repeatedly been observed each time that there is an increase in irregular arrivals at the coast, there are attempts to justify that the urgency of the situation and the pursuit of efficacy make providing individual legal assistance with minimum material guarantees impossible. Appropriate legal counsel cannot be guaranteed if there are not even enough material means available.

Collective reading of rights and legal counsel continue to be observed during visits. The thousands of individuals who, over the course of several months, passed through Arguineguín dock were not given legal counsel with minimum guarantees. This was because the legal representatives were not permitted access to the facilities for several months and, once they were given access, there was a lack of suitable space to provide personalised assistance. It was noted that sometimes, when they were unable to hold a private conversation with clients with the help of an interpreter, legal representative simply limited their work to signing the return ruling.

During the visit around Arguineguín dock, it was observed that legal counsel was being given to a group of individuals in order to notify them of return rulings. In one case, two legal representatives dealt with two groups of seven individuals at the same time through an interpreter without providing any additional information other than what had already been provided by police officers.

In another case, the legal representative insisted on carrying out personal interviews with each individual but actually held a group interview when indicated to do so by the police officers. One of the police officers spoke to a group of legal representatives indicating that holding personal interviews was not possible given the huge number of individuals who needed attention, and also the need to take into account that the facilities were inappropriate and that, given the current health crisis, it would be inadvisable to stay inside them for very long.

In none of these cases did the legal representatives appear to ask questions about the individuals' circumstances. They did give comprehensible information about the ruling and about its consequences and also about the rights that may be of use to them depending on age, nationality and other special vulnerability circumstances.

Many informed rulings do not indicate who the acting legal representative is. The legal representative's name, registration number and telephone number was only indicated on one. Complying with certain formalities does not mean that essential rights are being guaranteed. Legal counsel must be effective. This is difficult to achieve if it is performed under conditions that do not meet minimum standards.

In the Ombudsman's opinion, the legal representatives who provide the service and bar associations must ensure that the legal counsel to which the

parties have a right is provided under conditions that make exercising their constitutional role effective. However, Consejo General de la Abogacía Española [Spain's General Bar Council] and Colegio de Abogados de Las Palmas [the Bar Association of Las Palmas] sustain that the work performed by assigned legal representatives and by the Legal Guidance Service at the association is entirely correct and appropriate. The law enforcement agents and the magistrates courts that process these cases are obliged to perform the role under precarious conditions and 'it is unfair to blame legal representatives for the lack of resources'. The lack of assigned space for personal interviews, of suitable interpreters of the languages that the immigrants speak fluently enough is the responsibility of the corresponding authorities, not the legal representatives. The individuals in question speak amongst themselves about the situations that might be most beneficial to them and, as a result, many of them give exactly the same date of birth or country of origin as a way of avoiding being returned. It has been pointed out that this makes giving adequate advice difficult for the legal representatives who work with the immigrants and difficult for the bar association to ensure that good legal counsel is provided.

Taking the above into account, the Ombudsman believes that the legal representatives who work on each particular case and, ultimately, the bar associations are responsible for ensuring that the legal counsel to which the interested parties have a right is provided. This must be done with at least the minimum conditions for delivering the important constitutional function of defending the rights of these individuals. To this end, participating legal representatives must demand means to ensure that at least minimum standards are maintained when assistance of this nature is provided. Likewise, the services of a suitable interpreter at the interviews are an essential element for ensuring correct communication between the legal representatives and their clients, exploring specific circumstances, providing information about individuals' situations and the rights they have regarding the procedure that is under way and so on.

Other complaints include those received from legal representatives on Tenerife pointing out irregularities detected in the services provided to aliens and which have become commonplace following the sharp increase in arrivals. For example, they highlight two cases of legal representation provided in November 2020 in two hotels set up as humanitarian accommodation facilities in Adeje and Puerto de la Cruz; one to a group of 144 individuals and another to 177 individuals.

The representatives point out their dissatisfaction with the police officers who wished to inform all the individuals about the return ruling in a collective manner, without prior interviews and with just one interpreter. These proceedings were still ongoing when this report was written.

### c. Legal proceedings

Following the unannounced visit to the warehouse in Las Palmas used as a detention centre, a group of individuals were accompanied as they were handed over to the justice system at the court in San Bartolomé de Tirajana (Gran Canaria). The magistrates' court made arrangements for personnel from the Ombudsman's Office to attend the court appearances.

The main concerns included delays in holding hearings after National Police Force transfers to court. Almost all individuals who are intercepted on Gran Canaria when travelling on makeshift vessels are sent to the three magistrate's courts in San Bartolomé de Tirajana which functions eight days every three weeks.

Judicial proceedings include taking statements with appropriate guarantees and ensuring that the time these individuals spend in cells following their demanding journey is not extended. There are significant delays in the procedure for assigning legal representatives and because of the lack of available interpreters in the appropriate languages.

This situation had previously been observed by the Ombudsman's Office. The General Council of the Spanish Judiciary was informed about it following the visits made in 2017 to the areas where makeshift vessels arrive along the Mediterranean coast. Agile and efficient contingency protocols for all the autonomous communities that receive the largest number of irregular arrivals were recommended at the time. These ought to guarantee that aliens who may be brought before a judge so that authorisation for custody can be given are provided with legal protection and should involve sufficient judicial bodies for the number of arrivals.

The Consejo General del Poder Judicial [General Council of the Spanish Judiciary] has once again been informed about the situation observed in the magistrates' courts in San Bartolomé de Tirajana and the consequence of the

significant number of court proceedings that have to be held. The office is awaiting a response.

#### d. Interpreters

The insufficient number of interpreters and the lack of availability of personnel who speak the languages that are spoken in several countries in sub-Saharan Africa is an issue that has been repeatedly observed by this institution during visits to the places where makeshift vessels arrive. The lack of interpreters with sufficient knowledge of Wolof and Bambara is particularly worrying. In some cases, the support of an interpreter is not provided or it is provided as a collective service and over the phone with a loudspeaker.

In light of the above, specific information about the resources this service on the Canary Islands had in 2020 has been requested from the Police Directorate General. The requested information had not yet been received when this report was written.

The aforementioned organism has also been informed about the numerous complaints made by several individuals interviewed in different locations about the work of one particular interpreter. The complaints that were made through the interpreter accompanying Ombudsman's Office personnel included inappropriate treatment and incorrect information about the consequences of claiming to be a minor.

In one humanitarian accommodation centre visited on Tenerife, a large number of supposed minors agreed that the interpreter in question had told them that they should not say that they were minors. In another interview on El Hierro, the female interviewee spoke about the disrespectful treatment received from the interpreter in question.

## RESTRICTIONS ON FREEDOM OF MOVEMENT AND RESIDENCY

The hosting system on the Canary Islands for illegal residents (who, for one reason or another, have not been deported) and for asylum seekers lacks sufficient capacity for addressing the needs of these individuals in suitable residential facilities.

Another matter, which is not central government responsibility but which undoubtedly affects the autonomous community's ability to host individuals, is the emergency situation that the protection services for minors finds itself in since it is caring for over 2,600 unaccompanied minors.

The Canary Islands Plan has acknowledged this reality and provisional emergency accommodation camps for over 7,000 individuals are being set up. Accommodation in tents is clearly an emergency solution used to address the situation generated by the lack of accommodation places on the Canary Islands when there was a spike in arrivals in 2019.

This matter is addressed above. However, it must be mentioned here once again in order to address restrictions on freedom of movement. Complaints about this are repeatedly made. It must be pointed out that there are individuals whose administrative situations vary greatly but who are accommodated in the same centres. On the one hand, there are individuals who are mainly from Morocco, who have passports and who have been issued a return ruling. They are waiting in these facilities for the return ruling to be executed.

There is also another group consisting of individuals with international protection needs who, in some cases, have already submitted their request and, in others, are waiting for an appointment at the police station to formalise their intention to seek asylum. In this case, the accommodation conditions would not appear to be meet the standards indicated in the corresponding directive.

With regards to the first group, the uncertainty that is generated as months go by without any adequate information about options for the future other than the option of being returned to their country more or less immediately, means that individuals who have relatives in peninsular Spain often make several attempts to try and get there. Accommodation centres are not detention centres and, as such, freedom of movement is not restricted other than to facilitate cohabitation in facilities where hundreds of individuals are being hosted.

At the time when this report was written, a significant number of individuals had been in the provisional facilities for almost three months. Cohabitation issues have already arisen and facilities that were designed to serve as emergency accommodation have started to deteriorate. The staff working there face significant challenges. On the one hand, basic cohabitation rules must be established and, on the other, there must be attempts to provide information about the future to

thousands of individuals who are not detained but who are not permitted to leave the archipelago.

As the Ombudsman has stated with regards to Ceuta and Melilla autonomous cities, in his opinion, arguments such as migrant control and preventing the pull factor cannot be used as the basis for turning certain areas of the coast in southern Europe into places where rights such as freedom of movement are curtailed.

#### a. Asylum seekers

Restrictions on freedom of movement for asylum seekers in Ceuta and Melilla, and now on the Canary Islands, have been the subject of recurrent complaints filed at the Ombudsman's Office for many years. Asylum seekers have the fundamental right to freedom of movement around Spain. They may also live in any part of Spain but must inform government agencies of their address.

This has been repeatedly mentioned by the Ombudsman and in several high court rulings for a number of years. This interpretation is already jurisprudential doctrine at the court that hears appeals against administrative decisions.

In spite of this, the Ombudsman has unfortunately found out through complaints received over the last few months that international protection seekers' rights to freedom of movement continue to be curtailed. This limitation, as indicated by the Supreme Court, is not provided for in the Law on Asylum and there is no doctrine that would allow for that limitation of fundamental rights. The information that the National Police Force gives to the individuals indicates that they may not leave the autonomous cities nor the Canary Islands unless they indicate before they leave that they have a home to go to in peninsular Spain.

However, as indicated by the Supreme Court, any such mention should be understood in the sense that the individual already has the right to choose where he or she lives. If, for the duration of the procedure, an asylum seeker undertakes to inform about changes of address this can only be because he or she has the right to change where he or she lives.

In addition, it cannot be argued that services and public aid limit his or her right to choose where to live. Understandably, as is the case in short-term accommodation centres in Ceuta and Melilla, if government agencies decide to

assign them these resources, even though they are not centres for refugees, the individual could actually lose that service if he or she leaves the place without having informed government agencies about this. But, to some extent and as indicated by the Supreme Court, he or she loses the right to choose where to live.

The Constitutional Court has established that:

fundamental rights can be surrendered in light of good and even constitutionally-relevant interests, as long as the curtailment is necessary for achieving a legitimate, planned objective, is proportionate in achieving that objective and, in all cases, is respectful of the essential content of the restricted fundamental right (constitutional court decision 17/2013).

The Ombudsman does not see any legitimate purpose for these limitations on rights, to requiring international protection seekers to surrender their fundamental rights to freedom of movement and residency.

Based on the above, the Police Directorate General should be reminded of the legal obligation to ensure that no limitations are placed on fundamental rights to freedom of movement and residency for international protection seekers who wish to move from the autonomous cities of Ceuta and Melilla or from the autonomous community of the Canary Islands to peninsular Spain.

#### **b. Undocumented individuals who cannot be returned**

A large group of Senegalese individuals living in a humanitarian accommodation centre on Tenerife have filed a complaint with the Ombudsman's Office about being unable to travel to peninsular Spain. According to the information provided, over 45 of them are passport-holders who have been refrained at the airport from boarding their plane to the peninsula, despite having relatives who are willing to host them.

Similar complaints have been received from Moroccan individuals who, despite having passports, have been detained at Las Palmas airport for around six hours and, as a consequence, have lost their flight. In addition, they are unable to claim a refund for the lost ticket because they are not issued with a detention certificate.

There are two matters that concern the Ombudsman with regards to this practice. On the one hand, the legal endorsement for requesting ID from aliens on

national territory. On the other, the Secretaría de Estado de Seguridad [Secretary of State for Security's] refusal to adhere to the provisions of the deportation directive according to which Member States are required to provide individuals who, for a range of reasons, cannot be deported within the legal time frame with documents.

Again, they are a significant number of individuals who the Administration cannot immediately return to their countries of origin.

### ***Efficiency of the returns system***

According to data published by the European Commission, 142,000 individuals were returned to a third country in 2019. That is, an actual returns percentage of 29% compared with 32% in 2018.

In 2019, the individuals who returned to non-EU countries were originally from the following countries: the Ukraine (19% of all returns), Albania (11%) and Morocco (7.2%). Among the nationalities with at least 5,000 return rulings, the percentage was particularly low for individuals from the following countries: the Democratic Republic of the Congo (2.5%), Syria (2.5%), Mali (2.8%), Guinea (2.8%), Ivory Coast (3.4%) and Somalia (4%).

The returns directive allows for measures that have not yet been set up. It states that the situation for undocumented nationals from third countries must be addressed but that they cannot yet be returned. It states that Member States must define the basic conditions for subsistence according to national legislation and aliens must be provided with a written confirmation of their situation so that they can present this if they are subjected to controls or administrative checks. It also states that Member States must ensure that certain principles are taken into account when returns are delayed. These include keeping family members in the territory together. Member States are urged to provide interested parties with a written confirmation, in compliance with national legislation, that the period for voluntary return has been extended or that, for the time being, the return ruling will not be executed.

Whilst these measures clearly do not solve the problem as a whole, the Ombudsman's Office insists that they do contribute towards helping aliens with return rulings that cannot be executed to overcome the precarious and

marginalised situation they often find themselves in. Likewise, in the specific case of the Canary Islands, addressing this situation without further delay is imperative given that it has a direct impact on rational and efficient management of the resources for hosting individuals which, in the institution's opinion, should never be used as camps at which aliens must wait sine die until their return can be arranged. The spike over the last few years in arrivals of undocumented Moroccan individuals, plus the obvious matters of foreign policy, analysis of which is a matter beyond the mandate of the Ombudsman, should lead us to perform an in-depth analysis of the visa policy. Issuing work, study and family reunification visas are matters of national responsibility, unlike visit visas which are a European responsibility.

During the visits made to the Canary Islands, there were concerning observations of a significant number of Moroccan and Senegalese individuals who stated that they had relatives living in Spain and with whom, prior to travelling on a makeshift vessel, they had tried to meet up in a legal manner.

It is this institution's opinion that the constant complaints made by Moroccan individuals and, to a lesser degree, Senegalese individuals in Spain about denied work or study visas or about unacceptable delays in visa procedures for family reunification should be studied in detail by the Ministerio de Asuntos Exteriores, Unión Europea y Cooperación [Foreign Ministry, the European Union and by Cooperation].



## CONCLUSIONS

The geographical location of Spain which borders on the north-western area of Africa has a notable impact on its relationship with the migration phenomenon from that continent.

The range of different circumstances currently present in that region, including significant demographic growth, the negative impact of climate change, social inequality and certain armed conflicts tied up with certain jihad events, are generating increasingly frequent migrant flows from some countries in the area to Europe. Incidence rates in our country, and in particular on the Canary Islands, have been especially high since 2020.

Based on this reality and on events in the past, it is a fact that the Canary Islands archipelago will continue to feel the pressure of migration. As a result, a set of policies aimed at avoiding having to take improvised decisions such as the ones taken in 2020 on the Canary Islands (the consequences of which still remain) must be urgently adopted and executed.

Situations such as those experienced on Arguineguín port, as described above, should not be repeated.

Experience has shown that the system does not efficiently provide suitable accommodation conditions for individuals who, in all cases, have put their lives at risk in the hope of a better future. The deficiencies of the current hosting system can be briefly summarised as:

- a lack of national migration policy addressing the phenomenon as a whole;
- insufficient coordination between the different public administration organisms that play a role in this matter;
- unsuitability of the infrastructures for reception on coasts (short-term accommodation centres) and a lack of staff with the capacity to identify

vulnerable individuals who can facilitate immediate transfer to appropriate facilities;

- structural insufficiencies in management and use of the procedures applicable to aliens who, for a range of different reasons, are in Spain.

The individuals who arrive at the coasts have different circumstances that require different procedures (irregular migrants, individuals with humanitarian accommodation or international protection needs, individuals who have been victims of trafficking of human beings and unaccompanied minors):

- unsuitable facilities at detention centres for aliens;
- a lack of humanitarian accommodation centres for vulnerable individuals.

As a result, based on the diagnosis of the situation and taking into account what actually happened on the Canary Islands archipelago so that this does not happen again, a range of short, mid and long-term measures with different scopes need to be taken. Some such measures are suggested below.

### Short-term measures

#### ***Accommodation centres including permanent facilities so that accommodation does not need to be improvised on the go***

These should meet at least minimum living conditions suitable for accommodating individuals in a dignified manner and have appropriate support personnel.

The Canary Islands Plan could prove to be a positive initiative in this sense.

#### ***Human and material resources*** for each of the following areas:

- police officers with experience taking data;
- a sufficient number of legal representatives with specialist knowledge of migration;

- interpreters of the most common languages used by migrants (Wolof, Bambara and the Moroccan dialect).
- healthcare personnel for first aid and for performing COVID-19 control tests.

**Clearly defined protocols for action** both for initial reception of migrants in all aspects and so that their rights are scrupulously respected (requests for asylum, humanitarian protection, mobility and so on).

**Clear and precise regulations for each set of circumstances (minors, mothers with children, asylum and international protection seekers).** Development of the regulations of the Law on Asylum which has been pending approval since 2009.

**Systems to identify individuals who have gone missing en route and an office to cater for relatives**

**Measures aimed at ensuring that xenophobia does not rise up in the general population**, particularly in places that are put under most pressure in terms of the number of arrivals. This should include taking any necessary extraordinary decisions so that local social services, healthcare services and facilities are not affected.

#### Mid and long-term measures

##### **Provision of a coordination system in the Government of Spain**

Management of a range of different aspects associated with migration is spread across different government agencies. This rather scattered system causes management deficiencies that ought to be resolved in order to take all the interests at play into account.

In 2006, attempts were made to set up an effective coordination policy. To this end, an agency for development and execution of state

responsibilities in terms of regulating and social integration for immigrants was created. This initiative was eliminated in 2015.

Therefore, based on experience, it remains true today that there is an urgent need to redesign all the management systems associated with this field. It is a matter of finding an integration and coordination model for the different organisms involved, both in the government agencies and in autonomous communities and councils.

This model should include mixed provisions (nation and autonomous communities) for carrying out responsibilities in this field in an appropriate manner. This should be reinforced in particular in autonomous communities such as the Canary Islands where there is a larger number of aliens.

In order to ensure that accommodating these individuals does not generate an imbalance between supply and demand of basic services available to the general public, all administrative bodies need to be more agile in terms of management so that funds can be distributed more quickly and more efficiently.

### ***Coordination agreement with the autonomous communities***

This is a necessity in terms of addressing migration in a united manner across all autonomous communities. It is true that the pressure generated by these phenomena falls mainly on the Mediterranean coastal areas of our country or on certain areas of the Atlantic Ocean. However, this should not translate into a lack of national solidarity and collaboration to solve the issues that these arrivals generate.

The central government of Spain should reach a consensual and stable agreement with all the autonomous communities to find means of undertaking a range of joint collaboration initiatives.

### ***More and new stable bilateral agreements between Spain and the migration flow countries of origin***

Steps must be taken to increase and reach new, stable bilateral agreements between Spain and the main migration flow countries of origin.

With this in mind, a good example of how to proceed is the initiative undertaken in the so-called Africa Plans which began in 2006 in response to the dugout canoe crisis. The main objectives of these plans, which have been appropriately updated, remain valid today. They are based on the reality of the need to set up cooperation projects with each of the countries that generate significant migrant flows towards our coasts and work together in the regions where individuals gather.

Of course, the situation in all the countries of origin is not always the same. For several historical, geographical, political and strategic reasons, the Maghreb, Morocco and Algeria are able to exert much more pressure and their interests do not necessarily coincide with those of the Sahel countries such as Senegal, Mauritania, Mali, Niger, Burkina Faso, Nigeria, Chad, Cameroon and Gambia.

The 3rd Africa Plan, which was approved in 2019, is currently ongoing. It includes a detailed analysis of the reality of the situation in Africa and the criteria and objectives that it aims to achieve. This is a good initiative for laying solid mid and long-term foundations for regulating our relationship with the African continent in all respects and particularly with regards to migration.

The action strategy for that plan is addressed across five principles:

1. Differentiation; policies that best suit each region and country.
2. Association; reinforcing efforts made by the African countries themselves.
3. Multilateralism, taking into account not only bilateral relations but also Spain's ability to intervene in European Union policy towards Africa and the influence of other organisms and multilateral forums in which Spain participates.
4. Joint exterior action with increased coordination between the different Spanish administrative bodies and institutions that are active in the area due to proximity and interest.

This would ensure that there is no crossover and that responses are integrated. Information would be shared and synergies that aid a

common objective (greater efficiency and visibility of Spain's work in Africa) would be created.

To this end, there is a proposal to create a body for inter-ministerial arrangement and coordination under the control of the Spanish President and with the participation of the main ministries that do significant work in Africa.

This body would be supplemented with an Africa Board for consultations with the general population that would serve as an instrument for coordinating the main public players.

5. Protection of human rights and gender equality as a transversal element of the relationship with African partners since human rights, rule of law and democracy are all interconnected and strengthen each another.

The aim is to apply these five principles to achieve four basic strategic aims.

- **Making a contribution towards peace and security in Africa.**
- **Fomenting inclusive and sustainable economic growth for our African partners**, fighting against poverty in all its dimensions, underscoring trade, investment, job creation, scientific and technical collaboration and promoting an increased presence of Spanish companies on the continent.
- **Strengthening creation of politically and economically open and inclusive societies by increasing Spain's institutional presence in the area.**
- **Standing up for a global approach to the migration phenomenon that integrates appropriate, regulated and safe migration, security and economic growth** in compliance with the Global Compact for Safe, Orderly and Regular Migration.

### ***Reaching agreements with the European Union on matters of migration***

Any initiative aimed at regulating the migration phenomenon in Spain and in particular on the Canary Islands necessarily needs to be based on a negotiated project at the heart of the European Union. Spain cannot

implement a policy on this matter that does not involve its European partners. Arrivals in the country spiked in 2018, particularly along the Mediterranean coast. It reached around 60,000 individuals and turned us into the main access route into the European Union for irregular immigration. Arrivals fell by half in 2019 but the reprieve was short-lived: in 2020 the Atlantic route started running once again and this has had an impact on the Canary Islands archipelago.

Clearly, there is permanent pressure from migration in Spain and spikes along our southern border (also the European Union border) occur one after the other.

In order to address this situation, Spain has made a strategy proposal to the European Commission for containing irregular immigration, using the relationship between our country and Mauritania, Senegal, Gambia and Morocco as an example of how to proceed. To this end, the Foreign Ministry, the Ministry of Home Affairs and the Migrations Ministry have worked together on a plan called the 'Spanish contribution towards a global migration outlook in the Maghreb, the Sahel and West African countries'. It includes the strategy that the government of Spain wishes to apply in Africa in collaboration with the European Union. It clearly states concerns about the situation in the countries of origin and countries of transit for migration towards Europe.

Spain wishes to use the above to take the initiative and bring countries such as Portugal, Greece, Italy and Germany on board to determine migration policy for the countries in southern Europe within the framework of negotiation of the Pact on Migration and Asylum of the European Union.

The plan proposes development of a multi-disciplinary strategy in the Maghreb, the Sahel and West Africa with significant funding for all these geographical areas. Structural funds for monitoring borders and fomenting mid-term security are absolutely necessary for putting it into practice, but it also proposes a long-term strategy to address the main reasons for forced displacement.

It is a matter of creating appropriate political, economic and social conditions in the countries of origin so that people can settle in their own areas. This would eliminate mass migration displacement towards Europe.

It also suggests formulas for regulated migration and, to this end, supports training and scholarship projects for studying or working temporarily in the European Union and then applying the skills learnt in countries of origin.

It also includes generation of local employment opportunities with a gender perspective, the fight against sexual exploitation and discrimination against the LGBTI collective and the fight against environment degradation. It also calls for more resources to help migrants return to their countries if they choose to do so.

In short, it is a plan with a global strategy sustained by aid and funds, diplomatic relationships, social and economic measures and reinforcement of security capabilities in the area. It is similar to what Spain has achieved over the last few years in Morocco, Mauritania, Senegal and Gambia, countries with which it has very good relations.

The Ombudsman, in his role as a defender of human rights, commends Spain's position in terms of how it addresses in detail the steps that ought to shape migration policy in the European Union and goes beyond just simple border control.

Let us conclude with a timely brief text that was written by Africa House on the Canary Islands, an institution that seeks to bring Spain and the continent closer together:

It is surprising to see how quickly we forget that we are what we are today thanks to migration. Now we are better and, thanks to that, we are a better country. It is incomprehensible that we should see migration only as a threat. It is a concern that our beloved Europe has decided to pursue that route.

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