

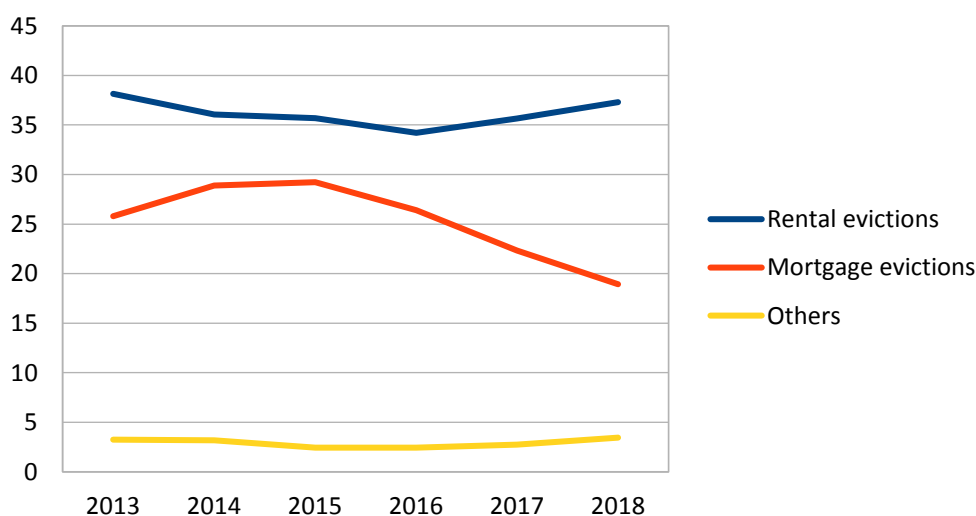
# SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS AHEAD OF THE VISIT TO SPAIN

Amnesty International submits this briefing to the United Nation(UN) Special Rapporteur on extreme poverty and human rights in the context of the official country visit to Spain that will take place from 27 January to 7 February 2020.

In this briefing Amnesty International provides information on and raises concerns in relation to Spain’s implementation of its international human rights obligations regarding the right to adequate housing and the right to the highest attainable standard of physical and mental health.

## 1- THE RIGHT TO ADEQUATE HOUSING:

During the last decade, hundreds of thousands of people have been evicted from their homes after being unable to continue their rental or mortgage payments. Between 2013, when the authorities started to collect statistics, and June 2019, there were 159.732 mortgage eviction and 237.032 rental evictions in Spain.<sup>1</sup> Rental evictions continue to rise since 2017.



Contrary to the obligation to collect qualitative and quantitative data on the housing needs of the population, and women specially, deriving from the Law 3/2007 on Equality of women and men<sup>2</sup>, publicly available statistics on evictions neither provide information about the number of people affected, nor is the data disaggregated in a manner that identifies how many men and women, children and adults, victims of gender-based violence, foreign nationals and other groups have been evicted, or whether the number of homeless people has gone up. Furthermore, statistics do not differentiate between homes and other properties. This lack of data means that the authorities do not have an accurate assessment of the impact of evictions on the right to adequate housing of different groups, which represents a clear obstacle to formulate and implement appropriate law and policy responses.

Based on Amnesty International’s research, and in line with what has been highlighted by the UN Special Rapporteur on adequate housing in several reports, in Spain, victims of gender-based violence and female-

<sup>1</sup> General Council of the Spanish Judicial Authorities. Statistics available in: <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Efecto-de-la-Crisis-en-los-organos-judiciales/>

<sup>2</sup> Article 20 of the Law 3/2007, 22th March, on Equality of women and men.

headed households often face particular obstacles to the enjoyment of their right to housing due to multiple layers of discrimination, relative impoverishment and lack of access to social and economic resources.<sup>3</sup>

Recent measures taken by the government on rental housing are positive but are not sufficient to address the housing crisis in the country. Royal Decree Law 7/2019<sup>4</sup> (RDL) includes measures that improve the protection of tenants and their security of tenure, for example, the extension of the duration of rental contracts -from 3 to 5 years and up to 7 years in cases where the owner is a company-; a mandatory extension after contract expiration extended to 3 years; and the extension of the term for the landlord to inform the tenant's intention to terminate the contract, among other measures.

This law reverses the trend of successive Urban Rent Law reforms that had been eroding the rights of tenants since 2009.<sup>5</sup> However, RDL contains insufficient measures to increase the stock of social rental housing, to reinforce the guarantees of protection of the right to housing during evictions and to ensure the affordability of the right to adequate housing, as detailed below.

### **1.1 Insufficient guarantees to protect the right to adequate housing**

Evictions have been carried out without sufficient guarantees for the protection of the rights of the affected people.<sup>6</sup> Some evictions may be justified in case of persistent non-payment of rents, but all evictions must comply with international human rights standards.<sup>7</sup>

In 2018, the UN Committee on Economic, Social and Cultural rights called on Spain to adopt a legislative framework on evictions that incorporates principles of reasonableness and proportionality. The Spanish Supreme Court has also stressed the need to apply the principle of proportionality, to ensure effective protection against evictions.<sup>8</sup>

The recent RDL incorporates a requirement that courts provide details of the day and time of the eviction and where there may be a situation of specific social and/or economic vulnerability, consider the possibility to delay the eviction by one month, or three months where the property is owned by a company.

However, this regulation does not contemplate reform of the Civil Procedure Law that would require courts to examine the proportionality and reasonableness of the eviction on a case-by-case basis. As a result, nearly all the people who had gone through a foreclosure or rental eviction procedure who Amnesty International interviewed for its research and campaign said that their lawyers had made clear from the outset that the outcome of the procedure was unavoidable: they were likely to lose their home regardless of their personal circumstances.

Amnesty International has documented cases of evictions affecting people with disabilities, people with chronic health conditions, families with children, among other groups.

In October 2019, the UN Committee on Economic, Social and Cultural Rights found that Spain violated a family's right to housing by failing to weigh their vulnerability in an eviction. In its Decision, the Committee determined that a State party cannot stipulate that a person who occupies a property without a legal title should be immediately evicted regardless of the circumstances, and without a court considering the proportionality of the measure.<sup>9</sup>

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<sup>3</sup> UN Special Rapporteur on adequate housing, *Women and adequate housing*, 2006, para. 30-31, UN Doc: E/CN.4/2006/118.

<sup>4</sup> Real Decreto-ley 7/2019, de 1 de marzo, de medidas urgentes en materia de vivienda y alquiler <https://www.boe.es/buscar/doc.php?id=BOE-A-2019-3108>

<sup>5</sup> Since 2009, Spain reformed the Urban Rent Law and the Civil Procedure Law five times (Laws 19/2009, 37/2011, 4/2013, 2/2015 and 42/2015). These reforms liberalized the housing rental sector and led to speed up the judicial eviction procedure, thereby putting tenants' rights at further risk at a time when an increasing number of people became reliant on rental housing. For more detail on the reforms see Amnesty International *The housing crisis is not over*: Right to housing and impact of rental evictions on women in Spain. May 2017

<sup>6</sup> Amnesty International "Evicted rights: Right to housing and mortgage evictions in Spain". June 2015 and "The housing crisis is not over": Right to housing and impact of rental evictions on women in Spain. May 2017

<sup>7</sup> CESCR, General Comment No. 7, 1997, para. 11. Also the Human Rights Committee has highlighted that every interference with the right to private and family life should be reasonable in the particular circumstances (Human Rights Committee, General Comment No. 16, 1988, para. 4) and the European Court of Human Rights has established that any person and any person at risk of loss of their home should be able to have the proportionality of such a measure assessed by an independent tribunal (ECtHR, *McCann v. UK*, 2008, para. 50; *Paulić v. Croatia*, 2009, para. 43; *Zehentner v. Austria*, 2009, para. 59; *Kay et al v. UK*, 2010, para. 68; *Buckland v. UK*, 2012, para. 65; *Rousk v. Sweden*, 2013, para. 137).

<sup>8</sup> Supreme Court. Judgment No. 1.797/2017.

<sup>9</sup> CESCR Communication N°37/2018 E/C.12/66/D/37/2018, October 2019.

Amnesty International therefore reiterates that the proportionality and reasonableness assessment is essential to prevent a situation where the evictions further entrench patterns of poverty and discrimination including indirect discrimination against women.<sup>10</sup> It is also of critical importance when children are involved.<sup>11</sup>

The lack of justiciability of the right to housing in Spain lies at the root of the ineffective remedies for people experiencing rental evictions.<sup>12</sup> The UN Committee on Economic, Social and Cultural Rights found that Spain had violated the right to adequate housing of a family with two minor children who after being evicted had to live in a car for some days, since they were not provided with alternative housing. The Committee recommended that Spain adopts appropriate legislative and/or administrative measures to ensure that, in judicial proceedings in relation to the eviction of tenants, defendants are able to object or lodge an appeal so that the judge might consider the consequences of eviction and its compatibility with the Covenant.<sup>13</sup>

## 1.2 Insufficient social housing:

Following an eviction, many people cannot escape the trap of insecure housing. Public authorities are failing to adopt the necessary measures to ensure that evictions do not result in individuals being rendered homeless, and are not allocating the necessary resources to protect and fulfil the right to housing of those people after eviction.

Between 2009 and 2018, when measures to meet a growing demand for social housing were particularly necessary, the government of Spain did not invest the necessary resources in significantly and progressively increasing the social housing stock.

Where people affected by an eviction are unable to provide for themselves, the state must take all appropriate measures, to the maximum of available resources, to ensure that adequate alternative housing is made available.<sup>14</sup>

The UN Committee on Economic, Social and Cultural Rights and the Special Rapporteur on adequate housing have recommended consistently since 2008 that Spain invests more resources in increasing the social housing stock in order to meet demand, reiterating this recommendation in 2018.<sup>15</sup> However, national authorities have continued to fail to meet this obligation.

During the economic crisis, the social housing budget experienced the most severe cuts in the Spanish public budget.<sup>16</sup> Between 2009 and 2018, the Spanish public budget for access to housing and support for housing renovation was cut by over 70,4 %.<sup>17</sup> In 2019, there was an attempt by the government to increase the budget on housing, but it was not approved by the Parliament, so the 2018 budget was extended which meant that there was no increase in the access to housing budget line.

Social housing stock in Spain comprises only 2,5% of all dwellings, compared to 30% in the Netherlands, 24% in Austria, 17,6 % in the UK or 16,8% in France.<sup>18</sup> This scarcity of social housing stock has had a devastating impact for low-income families, especially those who have not been provided any alternative housing following evictions. Many of these families are single parent households, headed by women. The lack of adequate social housing stock has meant that many families have had no choice but to seek housing in the private rental market where they have to pay higher rents.

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<sup>10</sup> "Good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women." (CEDAW Committee, General Recommendation No. 33 on women's access to justice, 2015, para. 14.d, UN doc: CEDAW/C/GC/33.

<sup>11</sup> Article 3 of the Convention on the Rights of the Child.

<sup>12</sup> Housing, similarly to the majority of other economic, social and cultural rights, is not duly guaranteed in the Constitution and in ordinary legislation. See Amnesty International. Derechos a la intemperie: Obstáculos para hacer valer los derechos económicos, sociales y culturales en España. April 2011 [https://www.es.amnesty.org/uploads/pics/derechos\\_a\\_la\\_intemperie.pdf](https://www.es.amnesty.org/uploads/pics/derechos_a_la_intemperie.pdf)

<sup>13</sup> CESCR Communication N° 5/2015, E/C.12/61/D/5/2015. June 2017.

<sup>14</sup> Committee on Economic, Social and Cultural Rights, General Comment N. 7. The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions.

<sup>15</sup> CESCR E/C.12/ESP/CO/6, April 2018, CESCR Communication N° 5/2015, E/C.12/61/D/5/2015. June 2017; CESCR (2012): Concluding Observations: Spain, para. 21, Special Rapporteur on the Right to Housing, Miloon Kothari (2008): Report after mission to Spain, para. 101.

<sup>16</sup> Ministerio de Hacienda y Administraciones Públicas, Estadísticas 2007-2016 Presupuestos Generales del Estado Consolidados 2016, 18 de noviembre de 2015, p. 11.

<sup>17</sup> Spanish public budget on access to housing and support for housing renovation was just over €450.352,67 million in 2017, for €1,606 billion in 2009.

<sup>18</sup> Housing Europe, State of Housing within the EU, 2019.

Despite the shortage of social housing stock, both regional and municipal public authorities in Madrid sold 4.800 social housing units to investment trusts.<sup>19</sup>

The UN Special Rapporteur on adequate housing recommended that authorities in Spain make more intensive use of vacant buildings.<sup>20</sup> However, according to the latest official Population and Housing census, in 2011 there were 3,44 million empty homes in Spain.<sup>21</sup> The number of empty homes increased by 10.8% between 2001 and 2011.

Measures included in the Royal Decree Law 7/2019 are also insufficient for increasing the social housing rental stock as they do not include a time frame and a budget allocation.<sup>22</sup> Regarding the vacant buildings, it includes some fiscal measures.<sup>23</sup> However, the law fails to define what constitutes a vacant building. It instead leaves the task of identifying and defining 'vacant building' to sectorial, autonomous or state housing regulations without establishing a time frame for doing so.

### 1.3 Affordability of the right to housing

In a context of social housing scarcity, Spain has not adopted adequate measures to protect people, especially those more vulnerable to discrimination and marginalisation, and who cannot afford renting in the private market or owning a property.

In order to comply with international human rights obligations, housing must be affordable. The state must not only ensure that the average cost of housing is proportionate to average income<sup>24</sup>, it must also make sure that housing is affordable for all, including the most disadvantaged households, in line with their limited resources.

The UN Committee on Economic, Social and Cultural Rights has already expressed its concern about the "growing lack of affordability" of housing in Spain and recommended the adoption of "necessary measures to regulate the private housing market in order to facilitate the accessibility, availability and affordability of adequate housing for low-income people".<sup>25</sup>

In Spain, the lack of public investment is offset by an increase in private spending. The personal expenditure on housing has increased from 17.4% of total household expenditure in 2005 to 21,9% in 2018.<sup>26</sup>

The price of rental housing in Spain has gone up more than 50% since it hit lows at the end of 2013 to the peak observed in May 2019.<sup>27</sup>

During the economic crisis, average rental housing prices went down by 31.2% between 2007 and 2014, but came back up by 2.8% in the first quarter of 2015<sup>28</sup>. In the course of 2017, they increased by 8,9%, the sharpest increase ever recorded since 2006.<sup>29</sup> However, in some cities recent rises in rental prices have been particularly steep, like Madrid and Barcelona. In addition, although salaries have gone up by 2,2% during last year<sup>30</sup> in the last decade salaries lost 7,8% of their purchasing power.<sup>31</sup>

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<sup>19</sup> Tenants were misinformed on the sell and its conditions and monthly rents went up, resulting in increasing numbers of tenants being evicted, while others vacated their apartments prior to the judicial eviction. Amnesty International "Evicted rights: Right to housing and mortgage evictions in Spain", June 2015.

<sup>20</sup> Special Rapporteur on the Right to Housing, Miloon Kothari (2008): Report after mission to Spain, para. 101 and 91.

<sup>21</sup> Instituto Nacional de Estadística. Available in: [http://www.ine.es/censos2011\\_datos/cen11\\_datos\\_inicio.htm](http://www.ine.es/censos2011_datos/cen11_datos_inicio.htm)

<sup>22</sup> Real Decreto Ley 7/2019. Disposición adicional primera. Medidas para promover la oferta de vivienda en alquiler. <https://www.boe.es/buscar/doc.php?id=BOE-A-2019-3108>

<sup>23</sup> Real Decreto Ley 7/2019. Artículo cuarto. Modificación del texto refundido de la Ley Reguladora de las Haciendas Locales, aprobado por Real Decreto Legislativo 2/2004, de 5 de marzo.

<sup>24</sup> ECSR, Feantsa v. Slovenia, Complaint No. 53/2007, para. 76-77.

<sup>25</sup> CESCR E/C.12/ESP/CO/6, April 2018, para. 35 and 36 b.

<sup>26</sup> Eurostat. Final consumption expenditure of households by consumption purpose (COICOP 3 digit). October 2019 <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

<sup>27</sup> Banco de España. Evolución reciente del mercado del alquiler de vivienda en España. David López-Rodríguez y María de los Llanos Matea. August 2019

<sup>28</sup> Fotocasa.es, La vivienda en el primer trimestre de 2015, April 2015.

<sup>29</sup> Fotocasa.es, <https://www.fotocasa.es/blog/alquiler/precio-del-alquiler-sube-un-89-en-2017>

<sup>30</sup> Instituto Nacional Estadística (INE) Encuesta Trimestral de Coste Laboral (ETCL) Segundo trimestre de 2019. September 2019 <https://www.ine.es/daco/daco42/etcl/etcl0219.pdf>

<sup>31</sup> UGT. <http://www.ugt.es/los-salarios-tienen-que-despegar-en-2019>

In addition, 36,9% of working people in Spain earn less than twice the Interprofessional Minimum Wage. Of these, 40,3% are women, compared to 33.7% of men.<sup>32</sup> The at-risk-of-poverty rate is 21.5%<sup>33</sup> which rises up till 42,9%<sup>34</sup> for single-parent families, and in the case of single-parent families headed by women it is 81,8%.<sup>35</sup> Women's unemployment rate is a 16,2% while men's rate is a 13,1% en 2018.<sup>36</sup>

The Royal Decree Law includes in its explanatory memorandum the need to “*address the serious situation of economic and social vulnerability of a large number of families to meet the payments for a home*”. It also highlights the fact that “*more than 42% of Spanish households spent in 2017 more than 40% of their income to pay rent*”.

For this purpose, it includes positive measures such as limiting the annual updating of the rent during the contract based on the Consumer Price Index, and reducing the amount of the guarantee/deposit to two months payments. The second Additional Provision also contemplates the establishment of a reference index system of rental prices to be drawn up within a period of eight months. These measures could be important initial steps towards improving affordability of adequate housing for persons with low incomes. However, no further information on these steps has been published as of October 2019.

These measures, while positive, are insufficient to meet the international obligation of States to ensure affordability of housing and to protect individuals from the largest increase in rental housing prices in the last decade.

## 1.4 Conclusions and recommendations

Amnesty International recommends that the Spanish authorities:

- Request the National Statistics Institute to compile and monitor disaggregated information on housing conditions and evictions.
- Modify the Civil Procedure Law to require judges to assess the proportionality and reasonableness of a rental eviction on a case-by-case basis.
- Work in coordination with autonomous communities to invest more resources in increasing the social rental housing stock.
- Adopt a framework protocol in relation to evictions, including measures to improve the coordination between courts and local authorities that lead to the provision of adequate housing alternatives for people with limited resources.
- Adopt the necessary measures in order to facilitate the accessibility of adequate housing for people living in poverty and those who are vulnerable to discrimination and marginalisation.

## 2. IMPACT OF AUSTERITY ON THE RIGHT TO HEALTH:

In 2018, Amnesty International published “*Wrong Prescription: The Impact of Austerity Measures on the right to health in Spain*”.<sup>37</sup> This report documented the impact of Spain’s austerity measures in the public health system, at a time when the economic crisis had a severe impact on people in Spain, with levels of financial vulnerability, poverty and inequality increasing:

- The unemployment rate rose from 8.2% (2007) to 26.1% (2013).<sup>38</sup> Youth unemployment rose from 18.1% (2007) to 55.5% (2013).<sup>39</sup> Long-term unemployment increased from 20.4% (2007) to 52.8% (2014).<sup>40</sup>

<sup>32</sup> INE Encuesta anual de estructura salarial de 2017, published 21 June 2019, [https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736177025&menu=ultiDatos&idp=1254735976596](https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736177025&menu=ultiDatos&idp=1254735976596)

<sup>33</sup> Instituto Nacional Estadística (INE) Encuesta de condiciones de vida, 2013 - 2018, published on 27 June 2019.

<sup>34</sup> INE encuesta de condiciones de vida, 2019.

<sup>35</sup> Statistics from Instituto de la Mujer. April 2019 <http://www.inmujer.gob.es/MujerCifras/FamiliaHogares/FamiliaHogares.htm>

<sup>36</sup> INE. Encuesta de población active, 2019.

<sup>37</sup> Amnesty International, Wrong Prescription: The Impact of Austerity Measures on the right to health in Spain, EUR 41/8136/2018, available here: <https://www.amnesty.org/download/Documents/EUR4181362018ENGLISH.PDF> [hereinafter, “Wrong Prescription”]

<sup>38</sup> OECD (2018), Unemployment rate (indicator). doi: 10.1787/997c8750-en. These were the second highest unemployment rates in the EU, and more than double the average unemployment rate in the EU. They have since improved.

<sup>39</sup> OECD (2018), Youth unemployment rate (indicator). doi: 10.1787/c3634df7-en

<sup>40</sup> OECD (2018), Long-term unemployment rate (indicator). doi: 10.1787/76471ad5-en

- Median income was over 10% lower in 2014 than in 2009.<sup>41</sup> The percentage of households unable to meet an unexpected financial expense increased from 30.8% (2007) to 42.7% (2014).<sup>42</sup>
- The poverty rate increased from 14% (2012) to 15.9% (2013);<sup>43</sup> the rates were much higher amongst children. 30% of the population was at risk of poverty in 2013 (29.5% in 2016).<sup>44</sup>
- The Gini Coefficient – a commonly used measure of inequality – rose from .324 (2007) to .344 (2014).<sup>45</sup>

As the economic crisis unfolded in Spain, it impacted a range of factors – such as housing and employment - with potentially negative consequences for people’s health.<sup>46</sup> The increase in poverty and financial vulnerability combined with the risk of poorer health outcomes called for greater support to the public health system, particularly for marginalized groups who are often the worst affected. While the government initially adopted a stimulus package and increased public spending, it later changed its strategy and began to reduce public spending, including by introducing austerity measures. Several measures introduced to limit public expenditure impacted existing social security protection and disposable incomes, which risked increasing financial vulnerabilities during the economic crisis. For example, the government reduced spending on housing, health, and education.<sup>47</sup> It increased the rates of general VAT, effectively making consumption more expensive.<sup>48</sup>

## 2.1 Austerity Measures in the Public Health System

In the context of health specifically, starting 2009, the government began to cut public spending. The health care system in Spain is decentralized: the primary responsibilities for public health organizing, expenditure and delivery vests in the regional governments of the 17 autonomous communities. Total public health expenditure in 2013, including at the central and regional levels, was 12.7% lower than expenditure in 2009.<sup>49</sup> The government also introduced a range of policies to reduce the costs of the Spanish public health system (“Sistema Nacional de Salud”, hereinafter “SNS”), notably through the Royal Decree Law 16/2012 (hereinafter “RDL 16/2012”). It limited the health care that irregular migrants could access. The government also instituted measures to shift the burden of certain health costs on to individuals: it restructured the common portfolio of services in the SNS to make it possible for more products and services to involve co-payments through future regulation. It introduced pharmaceutical co-payments in some instances for groups who could previously access health care freely and increased the rates for some others. And finally, it added to the list of criteria based on which medicines would be covered or excluded from SNS financing, following which over 400 products were removed from SNS funding. As a part of the reductions in public health expenditure, spending on remuneration for health workers also fell: in 2013, this spending was 10% lower than it was in 2009.<sup>50</sup> The period between 2011 and 2014 has seen a reduction in the numbers of health workers being employed by the SNS. According to official data from the Ministry of Treasury (Ministerio de Hacienda y Funcion Publica) the National Health System lost almost 28,500 workers between 2012 (when the total number was 505,185) and 2014 (when the total number was 476, 689).<sup>51</sup>

## 2.2 Impact of austerity measures in the health system

These austerity measures resulted in a deterioration of the accessibility, affordability, and quality of health care. Many of these changes have had a particular and disproportionate impact on people with lower incomes, and within this group, on people with chronic health conditions, people with disabilities, older persons, and people accessing mental health care.

<sup>41</sup> Eurostat, Mean and median income by age and sex - EU-SILC survey, available here: [ec.europa.eu/eurostat/en/web/products-datasets/-/ILC\\_DIO3](http://ec.europa.eu/eurostat/en/web/products-datasets/-/ILC_DIO3)

<sup>42</sup> Eurostat, Inability to face unexpected financial expenses - EU-SILC survey, available here: [appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc\\_mdcs04&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_mdcs04&lang=en)

<sup>43</sup> OECD (2018), Poverty rate (indicator). doi: 10.1787/0fe1315d-en. For children - 23.5% (2013) and 22.1% (2015).

<sup>44</sup> Eurostat, People at risk of poverty or social exclusion by age and sex, available here: [http://ec.europa.eu/eurostat/statisticsexplained/index.php/People\\_at\\_risk\\_of\\_poverty\\_or\\_social\\_exclusion](http://ec.europa.eu/eurostat/statisticsexplained/index.php/People_at_risk_of_poverty_or_social_exclusion)

<sup>45</sup> OECD (2018), Income inequality (indicator). doi: 10.1787/459aa7f1-en

<sup>46</sup> For more details, see Wrong Prescription, page 14.

<sup>47</sup> For more analysis on this, see Wrong Prescription, page 16.

<sup>48</sup> Eurostat Data on Indirect taxes, available at: [https://ec.europa.eu/taxation\\_customs/business/economic-analysis-taxation/data-taxation\\_en](https://ec.europa.eu/taxation_customs/business/economic-analysis-taxation/data-taxation_en)

<sup>49</sup> EGSP Data, Table 1 (Public Health Expenditure Statistics [hereinafter: EGSP data] is available here:

[www.msssi.gob.es/estadEstudios/estadisticas/inforRecopilaciones/gastoSanitario2005/home.htm](http://www.msssi.gob.es/estadEstudios/estadisticas/inforRecopilaciones/gastoSanitario2005/home.htm)) and Sistema de Cuentas de Salud (SCS) Data Table 23. SCS Data is available here: [www.msssi.gob.es/estadEstudios/estadisticas/sisInfSanSNS/SCS.htm](http://www.msssi.gob.es/estadEstudios/estadisticas/sisInfSanSNS/SCS.htm)

<sup>50</sup> ESGP Data. This has started to improve, but as of 2015 (the last year for which data was available at the time of publication of the report) it has still not reached 2009 levels. For example, it was €31336619 in 2009; €27778955 in 2013; and €28908257 in 2015

<sup>51</sup> See Ministerio de Hacienda y Administraciones Publicas, “Boletín estadístico del personal al servicio de las Administraciones Públicas.

Registro Central de Personal Enero” [hereafter: Registro Central de Personal] 2012,

[http://www.sefp.minhfp.gob.es/dam/es/web/publicaciones/centro\\_de\\_publicaciones\\_de\\_la\\_sgt/Periodicas/parrafo/Boletin\\_Estadis\\_Personal/Bol\\_estad\\_pers-ener12-INTERNET.pdf](http://www.sefp.minhfp.gob.es/dam/es/web/publicaciones/centro_de_publicaciones_de_la_sgt/Periodicas/parrafo/Boletin_Estadis_Personal/Bol_estad_pers-ener12-INTERNET.pdf). In 2014, the number had dropped to 476 689. See Registro Central de Personal 2014, [http://www.sefp.minhfp.gob.es/dam/es/web/publicaciones/centro\\_de\\_publicaciones\\_de\\_la\\_sgt/Periodicas/parrafo/Boletin\\_Estadis\\_Personal/BE\\_ENE-2014-PROTEGIDO.pdf](http://www.sefp.minhfp.gob.es/dam/es/web/publicaciones/centro_de_publicaciones_de_la_sgt/Periodicas/parrafo/Boletin_Estadis_Personal/BE_ENE-2014-PROTEGIDO.pdf)

The exclusion of irregular migrants from accessing some forms of health care has meant that almost 750,000 migrants have been excluded from free SNS coverage, except in limited circumstances.<sup>52</sup> Several regional governments disagreed with this decision, and restored access to health care for irregular migrants, within their jurisdiction. However, Amnesty International has documented how some health care centres continued to charge for emergency services or deny access to health care for people who should have been covered.<sup>53</sup> The discrepancy in rules at the national and regional level on access acted as a deterrent: many people that Amnesty International interviewed during the course of its research in YEAR (correct), did not seek health care they were entitled to, thinking they would be turned away.

In July 2018, the Government adopted the Royal Decree Law 7/2018, on universal access to the National Health System, which represents an improvement in terms of access to health care for migrants. However, migrants in administrative irregular situations still face obstacles in the access to healthcare. Although the new legislation recognises in its explanatory statement the need to guarantee the right to health care for all persons in the Spanish State, under the same conditions, the new law does not ensure the same level of protection migrants had prior to the 2012 reform.<sup>54</sup>

During the course of the research for 'Wrong Prescription...' Amnesty International spoke with 107 users of the SNS and their families and carers. Almost all of them said that the amount they spent on healthcare had increased since the crisis began, and austerity measures were introduced. Even though the sums involved were not high, people explained that this created a significant strain because of their low incomes and/or because as a result of the crisis they are now supporting more dependants on their incomes. Many noted the anxiety and financial burden the increased costs of health care caused them, and said they were only able to afford their medicines because they had financial support from family members. Others told Amnesty International how they either did not access all the health care they needed for financial reasons – for example, take all their medication – or made choices about whether to pay for health care or other expenses. Most of the 75 health workers who shared information with Amnesty International confirmed this.<sup>55</sup>

Amnesty International found that the decrease in health workers and resources available in the SNS combined with a general increase in demand for health care has increased waiting times to access health care. Increased waiting times to access health care emerged as a key issue in all interviews, including with experts, health workers or people using the health system. These concerns are corroborated by data published by the SNS: for example, the number of people waiting for elective surgeries as well as the time they spend waiting, have increased since the years of the crisis. In 2010, the average waiting time was 65 days; in 2016 it was 115 days, which is almost double.<sup>56</sup> As a result, people using the SNS and their families described the difficulties caused by the waiting lists, including the anxiety they felt as a result of not knowing the cause of their pain or of the other symptoms they experienced.<sup>57</sup>

### 2.3 All alternatives were not exhausted

The Spanish government did not explore all possibilities to raise revenues before implementing retrogressive austerity measures. For example, the Spanish government amended its tax policy as a part of its response to the crisis: VAT rates increased, as did top income tax rates. Top corporate income rates, however, decreased in this period.<sup>58</sup> The composition of Spain's tax revenue also evolved during this time: the percentage of total tax revenue coming from taxes paid by individuals and families (personal income tax and taxes on goods and services) grew, while the percentage of taxation from corporate income reduced. The government's reasoning behind reducing corporate income tax rates was to attract investment and growth. However, in effect, this policy reduced the "maximum available resources" at a time at which resources were necessary. At a minimum, the government

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<sup>52</sup> See articles Article 3, RDL 16/2012 and Article 3 *ter*, RDL 16/2012.

<sup>53</sup> Amnesty International, Spain: Sin Tarjeta, No Hay Derecho: Impacto en derechos humanos de la reforma sanitaria en Castilla-La Mancha y en la Comunitat Valenciana (EUR4140015); Amnesty International, Spain: El Laberinto De La Exclusión Sanitaria. Vulneraciones del derecho a la salud en las Islas Baleares (EUR4160013).

<sup>54</sup> Amnistía Internacional Organizaciones sociales exigen una nueva regulación que proteja el derecho a la salud de todas las personas <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/organizaciones-sociales-exigen-una-nueva-regulacion-que-recupere-el-derecho-a-la-salud-de-todas-las/> Also note that in June 2019, a Supreme Court ruling prevented access to health care to a woman of Cuban nationality legally regrouped by her daughter. This decision is contrary to the UN and Council of Europe human rights protection mechanisms recommendations to Spain regarding the need to ensure the equal access to health care without any kind of discrimination.

<sup>55</sup> See Wrong Prescription, page 21.

<sup>56</sup> Based on data from MSSSI's 'Key Indicators of the Health System', available here: <http://inclasns.msssi.es/main.html>

<sup>57</sup> See Wrong Prescription, page 31.

<sup>58</sup> For a more detailed analysis of the changes in the tax structure in Spain, see Wrong Prescription, page 40.



should have demonstrated and published how it had considered and assessed all potential changes to tax policy, both to see whether they offered feasible alternatives to cuts in expenditure and in terms of their impact on different groups of people (such as through changes to VAT), which it did not do.

Addressing the pervasive problems of tax evasion and fraud is one-way tax revenues can be used as a tool to increase revenues. 2010 estimates by GESTHA, a union of tax inspectors, suggest that €88 billion were lost to tax evasion in Spain.<sup>59</sup> Revenue from addressing tax evasion played a limited role in the fiscal consolidation effort during the crisis and the fiscal consolidation effort was mostly on the expenditure side. Spain introduced reforms to strengthen the efforts against tax fraud in 2012 and 2015. While these were positive, they were introduced after cuts had been made in welfare spending and had limited impact.

Furthermore, the manner in which the austerity measures were developed and implemented was inconsistent with criteria developed by international human rights monitoring bodies. Measures that saved costs in the SNS without unduly compromising the right to health were implemented after, and not before, the measures that have had a retrogressive impact. No human rights impact assessments were conducted before the public health budget was cut or RDL 16/2012 was enforced. The levels of participation and consultation in how the austerity measures were developed and implemented were inadequate. And many of the changes introduced to the health system, notably RDL 16/2012, were not temporary and remain in force.<sup>60</sup>

## 2.4 Conclusions and recommendations

The increase in poverty and financial vulnerability combined with poorer health outcomes due to negative impacts on the social determinants of health called for greater support to the public health system in times of economic crises, particularly for marginalized people who are often the worst affected. Instead, the Spanish government's policies reduced health coverage, exacerbating people's financial vulnerability. Amnesty International concluded that the retrogressive impact of the austerity measures, combined with how they were developed and implemented, meant that Spain is in violation of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and made detailed recommendations, including:<sup>61</sup>

- The Ministry of Health, Social Services and Equality should urgently ensure that all persons, including irregular migrants, can access public health care, free from discrimination.
  - Regional Governments should prioritize increasing budgetary allocations for public health at a regional level, and should urgently address the difficulties with respect to access, affordability, and quality regarding the right to health identified, including ensuring that the new structure for out of pocket payments includes adequate safeguards to ensure that health care is affordable to all, and does not result in undue financial burdens.
  - The Ministry of Health, Social Services and Equality should urgently conduct a human rights impact assessment to assess how austerity measures have impacted the right to health in Spain, particularly the rights of groups at risk of greater impact.

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<sup>59</sup> [www.gestha.es/index.php?seccion=actualidad&num=464](http://www.gestha.es/index.php?seccion=actualidad&num=464)

<sup>60</sup> See Wrong Prescription, page 38.

<sup>61</sup> For a detailed list of recommendations, see Wrong Prescription, page 52.