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Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL), *Confederación Sindical de Comisiones Obreras* and International Movement ATD Fourth World v. Spain
Complaint No. 206/2022

COMPLAINT

Registered at the Secretariat on 2 March 2022

URGENT – Request for Immediate Measures and Priority to Examination

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COLLECTIVE COMPLAINT

INCLUDING REQUEST FOR IMMEDIATE MEASURES AND PRIORITY TO
EXAMINATION

DCI, MEDEL, FEANTSA, CCOO and ATD FOURTH WORLD v. KINGDOM OF SPAIN

1 March 2022

Violations of Articles 11, 15, 16, 17, 20, 23, 27, 30, 31 and E of the Revised European
Social Charter in relation to the power outage in Sectors 5 and 6 of the Cañada Real

Galiana

TABLE OF CONTENTS

I.	Statement of the Case.....	1
	Facts	1
	Admissibility	2
	Merits and Alleged Violations	3
	Request for Immediate Measures	4
	Request for Priority Examination.....	5
II.	Context and Domestic Law	6
A.	Context of the Cañada Real	6
	Consent to the Cañada Real by the authorities.....	7
	Demography of the Cañada Real	8
	Electricity supply in the Cañada Real until October 2020	10
	Attempts to regularise the electricity supply prior to October 2020	11
B.	Relevant domestic law and policy	12
	Law 2/2011 on the Cañada Real Galiana	12
	Social Framework Agreement of 2014	12
	Regional Pact on the Cañada Real of 2017	12
	Commissioner for the Cañada Real.....	13
	Re-housing process for part of the inhabitants of Sector 6 of the Cañada Real.....	13
	Creation of an Inter-ministerial Commission in 2021	14
	Re-housing programme for Sectors 4, 5 and 6 (December 2021).....	15
	UFD-Naturgy’s request to dismantle the electric infrastructure in the Cañada Real.....	15
III.	Facts Giving Rise to the Complaint (Continuing and Aggravated Situation)	
	17	
A.	Power outage in Sectors 5 and 6 since October 2020.....	17

B.	Impact of the power outage on the persons concerned by the Complaint	19
	Impact on health	19
	Impact on children.....	31
	Impact on women	35
	Impact on social exclusion and poverty	36
	Impact on the elderly and persons with disabilities	39
	Impact on Roma population	41
C.	Other facts relevant to the Complaint.....	41
	Neighbours' initiatives related to the power outage.....	41
	Judicial remedies sought to re-establish electricity supply known by the complainants.....	43
	Calls for action by the Spanish Ombudsman, UN treaty-bodies and UN Special Rapporteurs.....	43
IV.	Admissibility	46
A.	<i>Locus standi</i> of the Complainants	46
B.	Jurisdiction <i>ratione temporis</i>	50
	Entry into force of the Charter and the Protocol in relation with the State	50
	Jurisdiction <i>ratione temporis</i> regarding the Complaint	51
C.	Jurisdiction <i>ratione materiae</i>	52
D.	Responsibility of the State	53
E.	Formal Requirements	53
V.	Merits and Alleged Violations	55
A.	Preliminary issue I: Applicability of the Charter to the persons concerned by the Complaint.....	55
B.	Preliminary issue II: Intervention of UFD-Naturgy in the alleged violations	57

C.	Preliminary issue III: Acknowledgment of Certain Violations by the State	58
D.	Violation of Article 31 § 1, read alone and in conjunction with Article E	59
	Deprivation of electricity in the Cañada Real	61
	Lack of an adequate, effective response by the State.....	63
	Continuous violation of Article 31 § 1 due to the deprivation of electricity	65
	
	Violation of Article 31 § 1 in conjunction with Article E.....	66
	Conclusion.....	67
E.	Violation of Article 16, read alone and in conjunction with Article E....	68
	State’s failure to guarantee the participation of associations representing	
	families	68
	Conclusion.....	69
F.	Violation of Article 17, read alone and in conjunction with Article E....	69
	Violation of Article 17 § 1(a): Right to Assistance.....	70
	Violation of Article 17 § 1(b): Right to Protection against Negligence and	
	Violence	72
	Violation of Article 17 § 2: Right to Education.....	75
	Violation of Article 17 in conjunction with Article E.....	77
	Conclusion.....	79
G.	Violation of Article 30, read alone and in conjunction with Article E....	79
	Measures taken by the State	79
	Appropriate indicators: electricity poverty	82
	Interpretation of Article 30 alone and in conjunction with Articles 11, 15,	
	16, 17, 20, 23 and 31	84
	Violation of Article 30 in conjunction with Article E.....	86
	Conclusion.....	87

H.	Violation of Article 23.....	87
	Lack of allocation of adequate resources	88
	Lack of measures related to housing.....	90
	Insufficient health care necessitated by their state	91
	Conclusion.....	92
I.	Violation of Article 11, §§ 1 and 3, read alone and in conjunction with Article E.....	93
	Violation of Article 11 §§ 1 and 3.....	93
	Violation of Article 11 in conjunction with Article E.....	96
	Conclusion.....	96
J.	Violation of Article 15, read alone and in conjunction with Article E....	96
	Violation to Article 15 in conjunction with Article E.....	99
	Conclusion.....	99
K.	Violation of Articles 20 and 27, read alone and in conjunction with Article E	
	100	
	Violation of Articles 20(a) and 27 § 1(a).....	101
	Violation of Articles 20 and 27 in conjunction with Article E	103
	Conclusion.....	104
VI.	Request for Immediate Measures.....	106
	A. Reasons to indicate Immediate Measures.....	106
	Tangible situation of risk of serious irreparable harm	106
	Possible consequences if immediate measures are not granted	109
	B. Immediate Measures Requested	110
VII.	Request Pursuant to Rule 26	111
VIII.	Submissions	111
	Appendix I: Supporting Organisations and Advisers to the Complaint	113
	Appendix II: List of Annexes	114

I. STATEMENT OF THE CASE

1. Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), Magistrats Européens pour la Démocratie et les Libertés (MEDEL), Confederación Sindical de Comisiones Obreras (CCOO) and International Movement ATD Fourth World (hereinafter, “the Complainants”), supported by the organisations and advisers included in Appendix I, submit this collective complaint (hereinafter, “the Complaint”) against the Kingdom of Spain (hereinafter, “Spain” or “the State”) before the European Committee of Social Rights (hereinafter, “the Committee”) pursuant to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (hereinafter, “the Protocol”).¹

Facts

2. The Complaint relates to the ongoing power outage occurring in the Sectors 5 and 6 of the shantytown of the Cañada Real Galiana (hereinafter, “the Cañada Real”) in Madrid, Spain, which began in October 2020 and continues to this day.

3. The Cañada Real is an irregular, lineal neighbourhood of unauthorised constructions located at approximately 15 kilometres from the centre of Madrid. It is a culturally diverse, stable area which has been consolidating since the 1960s and has been consented to by the authorities. Informally divided in six sectors, Sectors 5 and 6 are those concerned by the Complaint and account for approximately 4,500 inhabitants, of which around 1,800 are children.

4. The special character of the Cañada Real has been acknowledged by the authorities through law and policies which set out the framework for the improvement of the conditions in the neighbourhood, and for a negotiation process between stakeholders aimed at solving the problems there.

5. The power outage concerned by the Complaint commenced in October 2020, affecting Sectors 5 and 6 of the Cañada Real. Although all the sectors in the Cañada Real share an informal situation and informal connections to the electricity supply network, only Sectors 5 and 6 have since been deprived of electricity. UFD-Naturgy – the electricity supplier – argued that intensive marijuana plantations

¹ ETS No. 158.

triggered safety devices installed on the electric infrastructure and were thus causing a permanent blackout in the network. Nevertheless, this explanation appears highly unsatisfactory and cannot amount to a lawful reason to permanently deprive persons with no connection to allegedly unlawful practices from electricity. Safety concerns lately alleged by the company also seems an inconsistent ground to justify permanent deprivation of electricity to the affected population. Since the power outage began, the State has not taken any steps aimed at restoring the power or providing the persons concerned with alternative sources of electricity.

6. The ongoing power outage has a serious impact on the lives of the persons concerned by the Complaint. Such a lengthy period without access to electricity supply has resulted in severe medical conditions and the worsening of pre-existing health issues, such as respiratory infections, carbon monoxide poisoning, burns, rheumatic conditions, domestic accidents, health problems in newborns, comorbidity complications from exposure to cold, and anxiety and depression. The children and adolescents concerned by the Complaint have been disproportionately affected by the electricity deprivation, their education being massively impacted. As the women and girls living in Sectors 5 and 6 of the Cañada Real traditionally carry out unpaid care and home work, which has become significantly harder as a result of the power outage, they have found themselves in a greater situation of vulnerability. The elderly, the persons with disabilities, and the persons belonging to vulnerable groups of population – such as Roma – concerned by the Complaint have too been disproportionately impacted by the electricity deprivation. In sum, the power outage and the subsequent instances of stigmatisation and institutional violence have deepened the situation of social exclusion and poverty which already existed in the Cañada Real.

Admissibility

7. The Complainants submit that the Complaint meets the admissibility criteria set out in the Protocol and the Rules of the Committee (hereinafter, “the Rules”).²

² As adopted by the Committee during the 201st session on 29 March 2004 and revised during the 207th session on 12 May 2005, during the 234th session on 20 February 2009, during the 250th session on 10 May 2011, during the 251st session on 28 June 2011, during the 266th session on 12 September 2013, during the 268th session on 6 December 2013, during the 273rd session on 9 September 2014, during the 286th session on 6 July 2016, during the 297th session on 26 January 2018, during the 308th session on 10 September 2019, and during the 320th session on 19 May 2021).

8. They submit that they enjoy *locus standi* before the Committee. They are entitled to lodge complaints before the Committee pursuant to Article 1(b) and (c) of the Protocol and are organisations with “particular competence” on the subject matter of the Complaint, in accordance with Article 3 of the Protocol. The persons with competence to represent the Complainants are the signatories of the Complaint, pursuant to Rule 23(2) of the Rules.

9. The date on which both the Revised European Social Charter (hereinafter, “the Charter”)³ and the Protocol entered into force for Spain is 1 July 2021. The Complainants submit that the Complaint falls within the temporal jurisdiction of the Committee, as it encompasses facts which amount to a continuous situation which originated prior to 1 July 2021, which have been occurring since 1 July 2021, and which occur at present.

10. The Complainants also submit that they satisfy the admissibility requirements set forth in Article 4 of the Protocol, as the grounds of the Complaint relate to provisions of the Charter accepted by the State and the extent of the State’s breaches is thoroughly addressed in Chapter V.

11. The Complainants also fulfil the formal admissibility criteria, as the Complaint is addressed to the Executive Secretary of the Committee, acting on behalf of the Secretary General of the Council of Europe (Rule 23(1) in relation with Article 5 of the Protocol), and it is lodged in writing in English, one of the official languages of the Council of Europe (Article 4 of the Protocol and Rule 24(1)).

Merits and Alleged Violations

12. The Complainants make three submissions as preliminary issues concerning the merits of the Complaint.

13. First, they submit that the Charter is applicable to all the persons concerned by the Complaint, given that the seriousness of the fundamental rights at stake. The Complainants note that the Complaint concerns a heterogeneous group of persons and argue that this cannot constitute an obstacle for the examination of the alleged

³ ETS No. 163.

violations, especially when these relate to the protection of their most basic rights enshrined in the Charter.

14. Second, noting that the Complaint concerns a private person – i.e., UFD-Naturgy, the company supplying electricity to the Cañada Real –, the Complainants submit that the issues complained of can be attributed to the State, at least in its capacity as regulator.

15. Third, the Complainants submit that the State, by means of a unilateral act by its executive branch, has acknowledged the violation of Articles 11 § 1, 16, 17 §§ 1 and 2, and 31 of the Charter, read alone and in conjunction with Article E, in relation with the children concerned by the Complaint.

16. The Complainants submit that, as a result of the ongoing power outage occurring in Sectors 5 and 6 of the Cañada Real, the State is engaged in a continuous violation of Articles 31 and E (right to adequate housing), 16 and E (right of the family to adequate housing and obligation to guarantee the participation of family associations), 17 and E (children’s right to assistance, to protection against negligence and violence, and to education), 30 and E (right to protection against poverty and social exclusion), 23 (right of the elderly to social protection), 11 and E (right to the highest possible standard of health attainable), 15 and E (right of the persons with disabilities to independence, social integration and participation in the life of the community), and 20, 27 and E (right to to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, and the right of workers with family responsibilities to equal opportunities and equal treatment).

Request for Immediate Measures

17. The Complainants submit that the Committee is presented with an exceptional, tangible situation in which the persons concerned are at a risk of serious irreparable harm. Such risk derives from the ongoing lack of electricity and heating in the Sectors 5 and 6 of the Cañada Real. This amount to a serious risk to the life, and the psychological and physical integrity of the persons concerned by the Complaint, amongst which there are around 1,800 children. If the requested measures are not indicated, the Complainants submit that the concerned persons will continue to face living conditions which infringe upon their human dignity.

18. In light of this, pursuant to Rule 36 §§ 1 and 2, the Complainants respectfully request that the Committee urgently indicate to the State the adoption of the immediate measures detailed in Section B of Chapter VI.

Request for Priority Examination

19. Finally, the Complainants politely request that the Committee, pursuant to Rule 26, give priority to the examination of this Complaint on account of the gravity of the situation it concerns.

II. CONTEXT AND DOMESTIC LAW

20. The facts of the Complaint relate to the power outage which has been occurring in Sectors 5 and 6 of the Cañada Real since October 2020 and continues at present. This Chapter provides context information on the specific situation of the Cañada Real and introduces the legal and policy framework relevant to the shantytown.

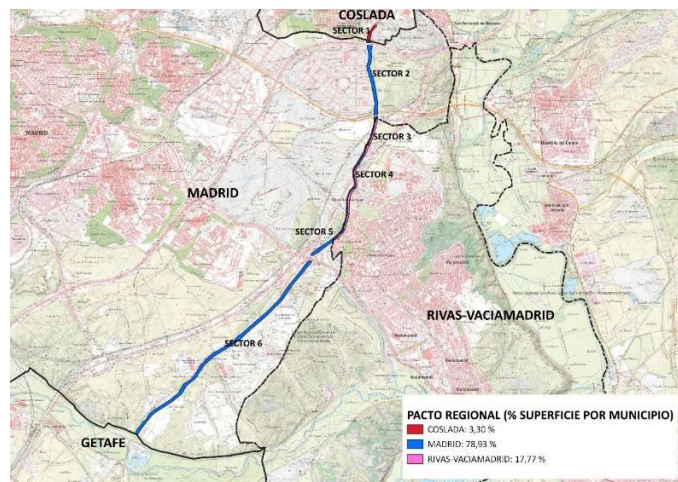
A. Context of the Cañada Real

21. The Cañada Real is one of Europe's largest shantytowns. It is a 14-kilometre-long area occupied by unauthorised constructions in the outskirts of Madrid, built over a former livestock route whose origins date back to the Middle Ages.

22. From the 1960s onwards in Madrid, the livestock route underwent a gradual process of human settlement through informal occupations. At present, its population is estimated around 7,200 people on more than 2,000 buildings, encompassing the municipalities of Madrid, Coslada and Rivas-Vaciamadrid.

23. The Cañada Real is informally divided in Sectors, numbered from 1 to 6. Although the power outage is only occurring in Sectors 5 and 6, for the purposes of providing the Committee with context, information on the entire Cañada Real is provided in this Section.

24. A map of the Cañada Real can be found below:⁴



⁴ Region of Madrid, <https://www.comunidad.madrid/sites/default/files/a4_horizontal_0.jpg>.

25. The Cañada Real is a “lineal, unplanned city”, which has been described by the competent authorities as “a very diverse territory, with deep contrasts, in which areas with substandard housing or shantytowns coexist with other houses that are fully integrated into their neighbourhood”.⁵ It is a stable neighbourhood with a great economic, social and cultural diversity.⁶

26. It is not, therefore, a temporary settlement nor a transitory encampment. On the contrary, the Cañada Real is a diverse, stable neighbourhood that has been consolidated over several decades and has been consented to by the authorities.

Consent to the Cañada Real by the authorities

27. The following actions evidence how the Spanish authorities consent to and acknowledge the specific situation of the Cañada Real:

- i) The city councils of Madrid, Coslada and Rivas-Vaciamadrid have always registered the inhabitants of the Cañada Real in their respective census, regardless of whether their home was licensed or not.⁷
- ii) The Madrid City Council collected the Real Estate Tax on the constructions of the Cañada Real until 2011.⁸
- iii) The 6 sectors of the Cañada Real have had postal service, including the delivery of communications to all homes until 2012⁹. According to the neighbours, in 2012 the service was ceased in Sector 6 but remained in the rest of the sectors.

⁵ Annex 6. “Regional Pact on the Cañada Real” (11 May 2017), p. 8.

⁶ Decree 243/2015, of 29 December, by the Government of the Region of Madrid, which creates the Commissioner of the Government of the Region of Madrid for the Cañada Real Galiana, <http://gestion.madrid.org/rlma_web/html/web/Descarga.icm?ver=S&idLegislacion=3226&idDocumento=1> [in Spanish], Recital.

⁷ The first specific census carried out by the Madrid city council in the Cañada Real in 2012 showed that 79% of the neighbourhood’s population was already registered. See “Cañada Real, definitive census: 8,628 persons” *El País* (12 March 2012) <https://elpais.com/ccaa/2012/03/12/madrid/1331558208_596879.html> [in Spanish].

⁸ “Why is real estate tax paid in the Cañada Real?” *ABC* (23 October 2007) <www.abc.es/espana/madrid/abci-paga-canada-real-200710230300-1641206883155_noticia.html> [in Spanish].

⁹ “Cañada Real, a month and a half without mail” *Cadena Ser* (12 May 2021) <https://cadenaser.com/emisora/2012/05/12/radio_madrid/1336780224_850215.html> [in Spanish].

- iv) The Cañada Real was paved with charge to the budget of the Region of Madrid nearly all along its 14 kilometres.¹⁰
- v) The city councils of Madrid, Coslada and Rivas-Vaciamadrid have been providing a rubbish collection service for decades along the Cañada Real.¹¹
- vi) The singularity of the Cañada Real and the need for a participated negotiation process towards its regularisation has been recognised by law.¹²
- vii) In 2017, the competent authorities signed a “Regional Pact” aimed inter alia at improving the infrastructures –including transport networks and electricity supply – and the living conditions in the Cañada Real.¹³

Demography of the Cañada Real

28. Since the 1960s, the Cañada Real has been populated by groups culturally and socioeconomically heterogeneous: Spanish persons who moved from rural areas to Madrid in the search for employment, persons residing in Madrid who could not live in the city centre or who chose to have a second home in the Cañada Real, Spanish Roma, migrants from Morocco or Romania – some of whom were Roma–, and persons from dismantled shantytowns.¹⁴

29. In 2011, a public body of the Madrid City Council undertook the first specific census of the inhabitants of the Cañada Real. The census showed a total population of around 10,000 people.¹⁵

¹⁰ Region of Madrid, “1.5-million euros allocated to paving and cleaning the Cañada Real” (29 August 2017) <<https://www.comunidad.madrid/noticias/2017/08/28/destinamos-15-millones-euros-asfaltado-limpieza-canada-real>> [in Spanish].

¹¹ Annex 6. “Regional Pact on the Cañada Real” (11 May 2017), p. 47.

¹² Law 2/2011, of 15 March, on the Cañada Real Galiana, Official Gazette of the Region of Madrid No. 74 (29 March 2011), First Additional Provision.

¹³ Annex 6. “Regional Pact on the Cañada Real” (11 May 2017).

¹⁴ Annex 6. “Regional Pact on the Cañada Real” (11 May 2017), p. 8.

¹⁵ “Cañada Real, definitive census: 8,628 persons” *El País* (12 March 2012) <https://elpais.com/ccaa/2012/03/12/madrid/1331558208_596879.html> [in Spanish].

30. In 2017, the year in which the latest official data was collected and published, the number of inhabitants in the Cañada Real was 7,283, of which 2,548 were under 18 years of age.¹⁶

31. The population of Sectors 5 and 6, the ones affected by the power outage, was as follows in 2017:¹⁷

	Sector 5	Sector 6
Buildings	414	1,027
Families	412	824
Population	1,601	2,953
Children	601	1,211
Integration minimum income (“RMI”) beneficiaries	75	299

32. Although no official data has been published since 2017, according to the NGOs present in the area (e.g. Fundación Secretariado Gitano and Asociación Tabadol), it is likely that a slight increase in population may have occurred over the last years in Sectors 5 and 6.

33. Sector 6 is the most populated, having also the most precarious economic situation and the largest child population.

34. The typology of housing in Sectors 5 and 6 is not homogeneous: there are two-storey dwellings, low-rise dwellings, substandard housing, industrial buildings, and cultural and religious centres (see pictures as [Annex 7](#)). In addition, some dwellings have pending demolition orders issued by the local councils, but these have been stayed or not been enforced.¹⁸

35. In Sector 5, 68% of the population is of foreign origin, of which 57% is of North African origin.¹⁹

¹⁶ [Annex 6](#). “Regional Pact on the Cañada Real” (11 May 2017), p. 12.

¹⁷ *Ibid.*, p. 11.

¹⁸ As the European Court of Human Rights noted in the case of *Raji and others v. Spain*, the Madrid City Council stayed demolition proceedings in the Cañada Real to provide stability to the concerned families during the negotiations.

See European Court of Human Rights, *Mohamed Raji and others v. Spain*, Application No. 3537/13, Decision of 16 December 2014, § 18, 24.

¹⁹ [Annex 8](#). Legal Clinic of the Master in Fundamental Rights of University Carlos III in Madrid, “Light for the Cañada. The impact of the power outage in the Cañada Real Galiana on the rights of children and adolescents” (2021), p. 19.

36. In Sector 6, 66% of the population is of Spanish origin, of which 52% is Roma. The remaining 34% of the population in Sector 6 is of foreign origin, of which 25% is of North African origin.²⁰

37. The Cañada Real is a highly culturally diverse area. Such diversity progressively increases as one moves from Sector 1 to 6. In the Cañada Real, 40.8% of the population is Roma.²¹ The neighbourhood has the highest rate of foreign population of all the districts of Madrid city. The majority group of foreigners is of Moroccan origin, who represent 78% of the foreigners on the census.²²

38. It is also remarkable that the Cañada Real is the area in Madrid where population is the youngest. According to the latest official data, the average age being 26 years-old, 16% of the inhabitants of the Cañada Real were under 5 years of age²³ and 38% were under 18²⁴. The average age in neighbouring districts of Madrid city – such as Vallecas or Vicálvaro – is 37.²⁵

Electricity supply in the Cañada Real until October 2020

39. The informal situation of the neighbourhood over the decades has been accompanied by the informal connection to water and electricity supply networks in all sectors.²⁶

40. The informal connection to the electricity supply network is tolerated by all the competent authorities and acknowledged in the “Regional Pact on the Cañada Real”, where political commitments were made to progressively regularise the supply.²⁷

²⁰ Ibid.

²¹ Ibid.

²² Proyecto de Intervención Comunitaria Intercultural, “Infancia, familia y convivencia en la Cañada Real Galiana. Monografía Comunitaria” (2016), <<https://www.gitanos.org/upload/70/28/monografia-2016-interactivo.pdf>>, p. 60.

²³ Ibid.

²⁴ See paragraph 31 above.

²⁵ Proyecto de Intervención Comunitaria Intercultural, “Infancia, familia y convivencia en la Cañada Real Galiana. Monografía Comunitaria” (2016), <<https://www.gitanos.org/upload/70/28/monografia-2016-interactivo.pdf>>, p. 62.

²⁶ For example, in 2017 the Region of Madrid regularised the water supply in Sector 2 through a public company for a total of 460,000 €, which allowed for 311 water contracts to be signed into. See Region of Madrid, “Regularizamos el acceso al agua potable de 311 viviendas del sector 2 de la Cañada Real” (17 November 2017) <<https://www.comunidad.madrid/noticias/2017/11/17/regularizamos-acceso-agua-potable-311-viviendas-sector-2-canada-real>> [in Spanish].

²⁷ Annex 6. “Regional Pact on the Cañada Real” (11 May 2017), p. 47.

The role of UFD-Naturgy

41. The energy company UFD-Naturgy is the concession holder for the distribution of electricity supply along the Cañada Real. UFD-Naturgy holds an administrative authorisation as an “area distributor” under the applicable allocation system for the distribution of electricity.²⁸ From this perspective, it is obvious that public authorities are under a positive obligation to address and tackle the relevant facts arising from the impact of UFD-Naturgy’s actions in the Cañada Real.

Management of incidents by UFD-Naturgy in coordination with the authorities

42. Given the irregular character of the electricity supply in the Cañada Real, supply disruptions and other incidents occurred often. Until October 2020, whenever there was an incident, the inhabitants of the Cañada Real would report it to the authorities, who would in turn contact the company UFD-Naturgy. The company would fix any incident “almost immediately”.²⁹

Attempts to regularise the electricity supply prior to October 2020

43. On several occasions, neighbours’ associations of the Cañada Real have tried to regularise the supply of electricity through requests to the area distributor (formerly Unión Fenosa, which today is UFD-Naturgy).

44. The first record of such attempt occurred in 1992. The request was refused because, according to the company, the relevant authorities did not grant the necessary authorisation (Annex 10).

45. Neighbours’ organisations continued trying to achieve a legal solution, for example, by requesting a meeting to the then President of the Region of Madrid in March 1996 with the aim of obtaining an authorisation to install a regular electricity supply (Annex 11). No solution was provided either.

46. Around 5 years ago, in 2016, during the drafting work of the “Regional Pact for the Cañada Real Galiana”, the Commissioner for the Cañada Real reported that it had a plan drawn up by the energy supplier to regularise the electricity supply in

²⁸ Naturgy has never denied being the only electricity company entitled to supply electricity through the affected electricity infrastructure.

²⁹ Annex 9. Witness statement by Mr. Pedro Navarrete Tortosa, former Madrid City Council Commissioner for the Cañada Real (2016-2019), § 4 [in Spanish].

all sectors of the Cañada Real, which would cost 1.4 million euros. The Complainants have never had access to such plan.³⁰

B. Relevant domestic law and policy

47. The special character of the Cañada Real has been crystalised into law and policy, which is analysed in this Section.

Law 2/2011 on the Cañada Real Galiana

48. In 2011, the Region of Madrid passed the Law 2/2011 on the Cañada Real.³¹ The law provided for the declassification of the area as a livestock route (Article 2), attributed the ownership of the area to the Region of Madrid (Article 3), introduced the possibility for the Region of Madrid to cede part or the whole area to the municipalities affected (Article 4), and allowed for these municipalities to cede or sell parts of the area to the people already living in it (Article 5). Moreover, the law set forth a negotiation process between stakeholders aimed at giving a global solution to the social and urban problem, which included consultation through neighbours' associations (First Additional Provision).

49. These provisions were acknowledged by the European Court of Human Rights in the case of *Raji and others v. Spain*, in which the Court noted (as a particular and partial solution) the existence of negotiations under the specific legal framework to address the problems of the Cañada Real.³²

Social Framework Agreement of 2014

50. On 30 April 2014, the Region of Madrid, Madrid City Council and Coslada Council signed the “Social Framework Agreement on the Cañada Real”, which set out public policy objectives on social and legal matters, as well as on issues related to security, urbanism and housing.³³

Regional Pact on the Cañada Real of 2017

³⁰ “Light and wáter for the Cañada Real Galiana” *El Mundo* (31 March 2016) <www.elmundo.es/madrid/2016/03/31/56fc0925268e3e45228b45ee.html> [in Spanish].

³¹ Of 15 March 2011, Official Gazette of the Region of Madrid No. 74 (29 March 2011).

³² European Court of Human Rights, *Mohamed Raji and others v. Spain*, Application No. 3537/13, Decision of 16 December 2014, § 4, 18, 24.

³³ Annex 12. “Social Framework Agreement on the Cañada Real Galiana” (30 April 2014) [in Spanish].

51. As a continuation of and replacement to the “Social Framework Agreement”, on 17 May 2017 the State, the Region of Madrid, the city councils of Madrid, Coslada, and Rivas-Vaciamadrid signed the “Regional Pact for the Cañada Real Galiana” (hereinafter, the “**Regional Pact**”).³⁴

52. Inter alia, the objectives of the Regional Pact included to “[e]laborate a strategy for the rehousing of the population that, for territorial, environmental, safety or health reasons, cannot continue living in their dwellings or substandard housing”, as well as to “[a]dopt urgent measures to safeguard the integrity, health and integration of the most disadvantaged population” of the Cañada Real from a human-rights approach.³⁵

53. Moreover, Annex III to the Regional Pact set forth commitments to improve the living conditions of the inhabitants of the Cañada Real. Amongst other commitments to improve the neighbourhood’s infrastructure, it provides for the “[r]ehabilitation of the electricity supply”.³⁶

Commissioner for the Cañada Real

54. In 2015 the Government of the Region of Madrid established the “Commissioner for the Cañada Real” in order to coordinate the consultation process between the authorities and the affected population through their associations, as provided for in Law 2/2011 on Cañada Real.³⁷

55. Its functions are “the communication with the different Administrations and Entities involved, as well as coordinating all the actions and the implementation of intervention plans in social, urban, housing and legal matters to be carried out in the area in order to normalise and reorganise it”.³⁸

Re-housing process for part of the inhabitants of Sector 6 of the Cañada Real

56. Following the signature of the Regional Pact, the Madrid City Council and the Region of Madrid began to negotiate a re-housing agreement for the families of

³⁴ Annex 6. “Regional Pact on the Cañada Real” (11 May 2017).

³⁵ *Ibid.*, p. 16.

³⁶ *Ibid.*, p. 47.

³⁷ Decree 243/2015 of the Region of Madrid, establishing the Commissioner of the Government of the Region of Madrid for the Cañada Real Galiana, Official Gazette of the Region of Madrid No. 310 (30 December 2015).

³⁸ *Ibid.*, Article 1.

a part of Sector 6 known as “the unpaved area”. On 11 May 2018, they signed into an agreement to re-house 150 families.³⁹

57. As of 16 June 2021, a total of 125 families had been re-housed under this agreement into various municipalities in the Region of Madrid.⁴⁰

58. It is noteworthy that it took 3 years for authorities to re-house 125 families, which should be considered against the total of around 820 families living in Sector 6.⁴¹

Creation of an Inter-ministerial Commission in 2021

59. On 28 September 2021, as a response to the joint urgent appeal made by nine UN Special Rapporteurs,⁴² the Spanish Government announced the creation of an inter-ministerial working group to provide comprehensive solutions to the population of the Cañada Real who are in a situation of particular social vulnerability.⁴³ The Commission is composed of the Ministry of Social Rights, the Ministry of Transport, Mobility and Urban Agenda, and the High Commissioner for Child Poverty. The team is coordinated by the Government Delegation in Madrid.⁴⁴

60. The Inter-ministerial Commission focuses on re-housing as a solution to the conflict in the Cañada Real but no particular measure to address power outage has been implemented so far.

³⁹ Annex 13. Convenio de colaboración de 11 de mayo de 2018, entre la Comunidad de Madrid, a través de la agencia de vivienda social de la Comunidad de Madrid y el Ayuntamiento de Madrid, para el realojamiento y la integración social de las familias de la Cañada Real Galiana, Sector 6, tramo entre la incineradora de Valdemingómez y el final del término municipal de Madrid con Getafe, BOCM Núm. 181, 31 de julio de 2018.

⁴⁰ Annex 14. Social Housing Agency of the Region of Madrid, “Freedom of Information Response” (16 June 2021) [in Spanish].

⁴¹ According to the latest available data of 2017, as per Annex 6. “Regional Pact on the Cañada Real” (11 May 2017), p. 11.

⁴² Balakrishnan Rajagopal, Gerard Quinn, Koumbou Boly Barry, Hilal Elver, Tlaleng Mofokeng, Felipe González Morales, Fernand de Vareennes, Olivier De Schutter, and Pedro Arrojo-Agudo, “Spain: Power outages put children’s lives at risk in informal settlement” (22 December 2020) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26624&LangID=E>>.

⁴³ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish], Recital.

⁴⁴ Ibid.

*Re-housing programme for Sectors 4, 5 and 6 (December 2021)*⁴⁵

61. On 1 December 2021, the Government issued a direct grant to the Councils of Madrid city and Rivas-Vaciamadrid for the implementation of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real (the “**Re-housing Programme**”).⁴⁶

62. In the grant’s recital, the Government expressly recognised the situation of vulnerability and social exclusion derived from the lack of electricity. Nevertheless, the exclusive purpose of the grant is to provide the Madrid City Council and the Rivas-Vaciamadrid Council with €5,000,000 to develop re-housing and social inclusion programmes for families in a situation of special social vulnerability residing in Sectors 4, 5 and 6 of the Cañada Real (Article 1).

63. Pursuant to Article 3(2)(a) of the grant, the allocation of the funds per Sector is as follows:

- i) Sector 4: 30% of the funds, i.e. €1,500,000.
- ii) Sector 5: 35% of the funds, i.e. €1,750,000.
- iii) Sector 6: 35% of the funds, i.e. €1,750,00

64. Article 9(1) sets out an 11-month period for the execution of the grant.

UFD-Naturgy’s request to dismantle the electric infrastructure in the Cañada Real

65. On 11 January 2022, the Region of Madrid opened a public consultation on UFD-Naturgy’s request for a project regarding the electric infrastructure of the Cañada Real.⁴⁷

66. The project, which UFD-Naturgy submitted to the authorities in February 2021, seeks to dismantle “4,715 metres and 84 overhead power line supports” in Sectors 5 and 6 of the Cañada Real.⁴⁸ Whereas the project’s stated objective is to

⁴⁵ Further analysis on the lack of effectiveness of the Re-housing Programme is included in the assessment of the violation of Articles 30 and 31 in Chapter V below.

⁴⁶ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish].

⁴⁷ Annex 15. UFD-Naturgy’s request for the dismantling of the electric infrastructure in the Cañada Real, p. 1.

⁴⁸ *Ibid.*, p. 2.

“[i]mprove the electric infrastructure in the area”, it aims at dismantling the infrastructure which formerly allowed the inhabitants of Sectors 5 and 6 of the Cañada Real to access electricity supply.⁴⁹ The electric grid maps which the Complainants have had access to show that UFD-Naturgy is requesting to the authorities’ permission to dismantle most of the existing electric infrastructure in Sectors 5 and 6 of the Cañada Real.⁵⁰

⁴⁹ Ibid., p. 1.

⁵⁰ The maps’ legend identify the electric infrastructures which UFD-Naturgy seeks to dismantle with crossed-out black lines. See *ibid.*, inter alia p. 5.

III. FACTS GIVING RISE TO THE COMPLAINT (CONTINUING AND AGGRAVATED SITUATION)

67. This Chapter addresses the facts giving rise to the Complaint, which relate to the power outage affecting Sectors 5 and 6 of the Cañada Real since October 2020.

A. Power outage in Sectors 5 and 6 since October 2020

68. On 2 October 2020, the entirety of Sector 6 of the Cañada Real' dwellings stopped receiving electricity. A month later, electricity was neither reaching Sector 5.

69. Since then, the electricity has not returned to Sector 6, and in Sector 5 a precarious and unstable supply was restored as of March 2021 but lost again in mid-November 2021. At present, Sector 6 continues without electricity and Sector 5 has electricity only a few days a week, with frequent cuts lasting several days.

70. Currently, some residents have managed to have electricity for a few hours a day by using petrol-based generators and solar panels they purchased.

71. While the other four sectors of the Cañada Real, with the same legal situation as Sectors 5 and 6, continue to enjoy electricity supply, the power outage in Sectors 5 and 6 is causing a real emergency, the impact of which is detailed below.

72. The initial explanation given by UFD-Naturgy to justify the outage was that there were residents who were using their connections to supply electricity to indoor and intensive marijuana crops, which caused peaks in the supply that led to a permanent blackout.⁵¹ As the time goes by, the explanation provided by the supplier weakens since:

- i) Several police operations have been carried out by the authorities and plantations have been dismantled since October 2020.

⁵¹ “Naturgy disconnects several points in La Cañada Real where marijuana is grown to try to supply the affected neighbours without electricity” *El periódico de la energía* (12 January 2021) <<https://elperiodicodelaenergia.com/naturgy-desconecta-varios-puntos-de-la-canada-real-donde-se-cultiva-marihuana-para-tratar-de-dar-suministro-a-los-vecinos-afectados-sin-luz/>> [in Spanish].

- ii) Without electricity for over a year, it is very unlikely that any potentially remaining marijuana plantation could still survive.
- iii) Relevant authorities and the supplier have the means to localise connections which may be related to an unusual use of electricity, discriminating them from the remaining cases.

73. In any case, unlawful practices occurring in some houses are not a legally valid reason for the State to fail to fulfil its responsibility not to unduly affect the basic rights of the population of the Cañada Real who have no connection with those practices.

74. Additionally, the concerns showed by the supplier about safety issues which would be preventing the electricity flow from reaching the affected houses and that would have caused instalment of electricity equipment in the network are also highly unsatisfactory as:

- i) No explanation has been provided on why such safety issues are problematic now and have not prevented access to energy in the past 30 years.
- ii) Considering the history of acquiescence of the situation in the Cañada Real and the longstanding behaviour of the relevant authorities and the supplier, any measure which may result in the deprivation of energy to around 8,000 persons, must come with alternative measures in order to guarantee adequate life conditions of those affected.
- iii) Besides installing equipment which prevents the flow of electricity, no additional intervention in the electricity network to improve its safety and in turn reenable the flow seems to have been carried out since October 2020, showing that there is no intention to restore the supply to Sectors 5 and 6.
- iv) The authorities and UFD-Naturgy have had over a year to reach an agreement on how to solve the safety problems related to the irregular connections to the network, with no results so far.

B. Impact of the power outage on the persons concerned by the Complaint

75. Since October 2020, the power outage has been having a huge impact on the lives of the persons concerned by the Complaint. The lengthy period without access to regular a supply of electricity is resulting in chronic and severe problems, which are also affecting children. An account on the impact of the electricity deprivation on the inhabitants of Sectors 5 and 6 of the Cañada Real is provided below.

Impact on health

76. The power outage has caused severe health problems in the persons concerned by the Complaint since its very outset.

Main health conditions arising out of and/or affected by the electricity deprivation

77. Since 2008, Sectors 5 and 6 of the Cañada Real are visited and attended by the “Intervention Team on Excluded Population” (“**EIPE**”, in Spanish),⁵² a team of socio-sanitary public employees (i.e. doctors and nurses) who visit the area in an ambulance and assist the affected population.

78. Considering the above, the EIPE enjoys a privileged position to measure effects of the power outage in the health of the persons concerned by this Complaint, whom they regularly look after.

79. Since October 2020, the EIPE has produced one letter and one report summarising the impact of the lack of energy in the population of the Cañada Real: a letter issued in December 2020 (the “**2020 EIPE Letter**”) and a very recent report, produced for the purposes of the Complaint in December 2021 (the “**December 2021 EIPE Report**”).

⁵² EIPE doctors attend the population of Sector 6 in their mobile unit. Their healthcare activity consists of monitoring and treating multi-pathological and polymedicated patients, from newborns to the elderly, monitoring and vaccinating newborns and children, monitoring pregnant women and family planning, attending to acute and urgent pathologies, as well as minor pathologies typical of primary care.

80. The 2020 EIPE Letter (Annex 16), after a detailed explanation on the health issues that they were observing and treating, qualified the situation as a “health alarm”.

81. The December 2021 EIPE Report (Annex 17) reflects how the “health alarm” scenario defined in the 2020 EIPE Letter has even worsened. Clear conclusions are drawn on the health consequences of the power outage:

“We witness on a daily basis that the absence of energy gives rise to serious individual and collective health problems, especially for the most vulnerable people – the elderly, newborns or those with chronic diseases – during these months, and even more so in the current epidemiological context of the COVID-19 pandemic” (emphasis added).

82. The report provides data and examples of cases attended by the medical unit which evidence the causal relationship between the lack of electricity and the increase and/or worsening of serious health problems. According to the December 2021 EIPE Report, the care pressure since October 2020 increased dramatically, the unit attending approximately 1,100-1,200 persons per month.

83. According to the EIPE, the cases caused and/or affected by the absence of energy are the following:

(i) Increase of respiratory infections

“The cold, damp and mould due to poorly conditioned homes and the absence of electric heating facilitates the appearance of respiratory infections and worsens the course of chronic respiratory diseases, both upper and lower respiratory tract, requiring greater consumption of antibiotic therapy due to complications (bronchiolitis in babies requiring hospital admission, COPD flare-ups with heart failure, colds that end in pneumonia, asthma attacks...). This pathology has increased to 50-60% of our daily activity since October” (emphasis added).

(ii) Cold-related dermatological and circulation problems

“Likewise, exposure to extreme temperatures in December has caused, especially in children and young people, the appearance of chilblains

complicated with ulcers and superinfection in both hands and feet, cold burns and dermatitis aggravated by cold”.

The report included the following photos:



(iii) Difficulties in the use of essential medical devices

“With regard to the need for the *use of electro-dependent medical devices*, patients requiring home oxygen are having *many difficulties in being able to carry out the treatment adequately, without being able to use the 16-24 hours of daily oxygen therapy prescribed* (and it should be remembered that in pathologies such as COPD or chronic heart failure with respiratory failure, oxygen is the only treatment that has increased survival). The same applies to *patients requiring non-invasive mechanical ventilation devices such as CPAP* (positive airway pressure) for the treatment of Obstructive Sleep Apnoea-Hypopnoea Syndrome, which *exponentially increases their cardiovascular risk due to the difficulty of its use in the current situation*” (emphasis added).

(iv) Carbon monoxide poisoning cases

“The *use of fireplaces, wood cookers, butane gas cookers and electric petrol generators as alternatives* to the lack of electricity supply requires ventilation conditions that many homes do not always meet. *Consequently, there have been approximately 80-90 carbon monoxide poisonings in approximately 20 dwellings in the last 4 months (with CO levels up to 25nmg), affecting children and adults.* More than 20 cases of carbon monoxide poisoning have required emergency hospital care for treatment with oxygen therapy and in one case, there has been a secondary

cardiological complication requiring surgery and hospital admission (last 2 admissions this winter 2021/2022)” (emphasis added).

(v) Burns

“The use of these combustion heating elements is leading to an increase in the incidence of 1st, 2nd and 3rd degree burns in children and adults”.

The report included the following photos:



(vi) Patients with Diabetes Mellitus

“In the case of *people with Diabetes Mellitus*, the lack of electricity worsens the quality of food (due to problems of preservation of fresh products, for example) and insulin therapy (which needs to be kept at between 2 and 8°C, as its effect diminishes at room temperature, or correct lighting for night-time administration) (6). Both factors affect good control of the disease and *contribute to an increase in acute and chronic complications* (we attach a photo of a diabetic foot ulcer due to poor control)” (emphasis added).

(vii) COVID-19

“In the current pandemic situation, with the increase in the incidence of COVID-19 in the Region of Madrid, not only has *the number of cases of covid 19 pneumonia infection and its complications increased* (1 person admitted to ICU, 10 people hospitalised with severe pneumonia and between 20-30 new covid cases approximately between December and January), but *it has also made isolation measures in homes more difficult*

due to overcrowding around the only source of heat in the home, increasing the risk of infection among people who do not live with each other” (emphasis added).

(viii) Rheumatic conditions

“Different *rheumatic conditions are worsened* by the cold (as in the case of arthritis), with an increase in the consumption of paracetamol, anti-inflammatory drugs and tramadol” (emphasis added).

(ix) Domestic accidents

“The absence of lighting in the home results in an *increased risk of falls and domestic accidents, aggravation of people with cognitive impairment and difficulty in caring for children with special needs. Some children with autistic spectrum disorder have had serious difficulties in adapting to the lack of light in the home”* (emphasis added).

(x) Health problems in newborns

“Newborns and infants are exposed to situations of greater fragility and risk situations, due to the difficulty of adequate heating (*children under 6 months are not able to self-regulate body temperature, with 2 cases of acral cyanosis*), the difficulty of preserving the necessary treatments for bone development (*1 case of delayed closure of the anterior cranial fontanel, due to the impossibility of administering vitamin d*) or due to the *interference of darkness and lack of energy in the preparation of food through artificial feeding (widely used in the population attended). Also, several hospital admissions in children under 1 month of age for bronchiolitis complicated by social situation”* (emphasis added).

(xi) Anxiety and depression

“Since the beginning of the power cut, there have been *two self-harming attempts due to the high levels of anxiety caused by these living conditions*. Therefore, we can affirm the high cost in mental health that this is having on the adult and child population, reflected in self-harm attempts and an *increase in the demand for anxiolytic and antidepressant treatment”* (emphasis added).

(xii) Comorbidity complications from exposure to cold ending up in 5 deaths

“To date, we are aware of up to 5 cases of deaths in the last 4 months due to comorbidity complications from exposure to cold. Three of them are 3 young people notified by the Harm Reduction Agency located in the Parish area. The other two cases are patients frequently attended by our health unit. A probable correlation of events, such as exposure to extreme temperatures and use of combustion heating, cannot be ruled out in the absence of any other pathology triggering cardiorespiratory arrest as a cause of death” (emphasis added).

(xiii) Chronification of health problems identified in 2020, particularly on children

“All that we have previously described throughout 2020 has been maintained until the present day, which means a chronification of the physical and mental health problems in the Cañada Real. Not only focused on the worsening of chronic diseases, but also numerous pneumonias and bronchiolitis that have resulted in hospitalisation without being able to ensure a good recovery upon discharge. Likewise, the post-traumatic stress of last winter and the struggle for survival in the face of power cuts are reflected in the anticipatory anxiety about the new winter, the constant anxiety crises for those whose homes are affected daily by damp or damage to the infrastructure and the repercussions this has had on children in their psychosocial development: nocturnal enuresis in older children, encopresis, anxiety about whether or not they will carry their batteries... Making it difficult and limiting their expectations for the future and conditioning their adaptation to school” (emphasis added).

84. The medical reports on some of the cases highlighted by the 2020 EIPE Letter are attached as Annex 18. They relate to cases identified during the first months after the power cut. Although it has not been possible to access to more recent reports, the December 2021 EIPE Report is clear as regards current existence and repetition of very similar cases. The attached medical reports refer to the following cases:

- i) A 74-year-old male resident of Sector 6 who died suddenly after two weeks of complaining that he felt a cold that he could not get rid of. After certifying his death due to cardiorespiratory arrest, SUMMA services carried out a PCR test to check if it could be coronavirus and it was negative.

He was in good health and had no relevant medical history before the power cut, however his condition deteriorated over a short period of time and concomitantly with the intense cold and the lack of electricity supply in his home. After more than two months without electricity supply, from 17 December 2020 the deceased began to feel unwell, saying all the time that he was very cold and unwell, and his voice sounded constipated. He was also depressed about the power cut, said he did not understand what was happening and why they could not have heating, and was silent and pessimistic about the situation. The death was reported in the news as a death caused by the power cut⁵³.

On 13 January 2021, the family of the deceased filed a complaint before the Madrid Criminal Courts for a possible offence of omission of the duty to provide assistance. It is not known what procedural course this complaint has taken. A copy of the complaint filed by the family is attached as Annex 19.

- ii) A 3-year-old girl with post-infectious bronchitis obliterans. Throughout her life she has been admitted to hospital for episodes of severe acute bronchospasm, after which she requires nocturnal oxygen therapy treatment (she needs an electric machine). Adjuvant recommendations include avoiding contact with people with acute and chronic respiratory infections, early treatment with antibiotics for respiratory infections, group vaccination and vaccination of the cohabiting family, not attending nursery school, and travel is not recommended. She suffers from acute malnutrition.

⁵³ “The Region of Madrid and Naturgy are sued for the death of a man in Cañada Real” *La Vanguardia* (13 January 2021) <<https://www.lavanguardia.com/vida/20210113/6182114/video-primer-denuncia-juzgados-comunidad-naturgy-muerte-vecino-74-anos-canada.html>> [in Spanish].

“It is a chronic progressive disease with treatment with oxygen machine and integral nutrition machine, which means that this support provides good conditions that would ensure a longer life expectancy for this 3-year-old girl, otherwise a *month without light means reducing her life expectancy by approximately two years*” (emphasis added).

- iii) Case of carbon monoxide poisoning, headaches, dizziness, dullness and epigastric discomfort and altered carboxyhaemoglobin (11.5%-1.9%) in a 46-year-old woman due to use of butane gas cooker and wood cooker. Two episodes attended by the staff of the Hospital Infanta Leonor on 15 December 2020.
- iv) Case of carbon monoxide poisoning, headaches, dizziness, dullness and otic tamponade in a 17-year-old girl due to the use of a butane gas cooker and a wood cooker. Attended by the staff of the Infanta Leonor Hospital on 15 December 2020.
- v) A 4-year-old boy with acute gastroenteritis and abdominal pain, fever, vomiting and diarrhoea.
- vi) A 2-year-old girl with Down's Syndrome in addition to respiratory difficulties due to transient pulmonary hypertension (patent ductus arteriosus), asymptomatic early hypoglycaemia and non-isoimmune hyperbilirubinaemia in phototherapy range. Visit to the hospital on 12 November 2020 due to a fever of up to 39°, mucus and vomiting without subsequent oral tolerance. With a negative covid-19 antigen test, she was diagnosed with upper respiratory tract catarrh with a treatment of Paracetamol and a series of auxiliary recommendations such as nasal washes, abundant water intake and sleeping semi-corporeally. After 4 days, the situation did not improve and she returned to the hospital because the fever had not abated, reaching 39.5°. She was diagnosed with a respiratory infection, possibly viral pharyngotonsillitis. The treatment prescribed was based on paracetamol and a series of recommendations, including home isolation.

- vii) A 49-year-old woman attended the Emergency Service of the Hospital Universitario Infanta Leonor on 6 December 2020 due to dyspnoea and wheezing after 72 hours. After a shock intervention with several rounds of inhalers, the diagnosis was considered to be asthmatic exacerbation. Treatment was applied based on up to three different types of inhalers (Relvar, Eklira ganar and Salbutamol) in addition to Prednisone and Cefixime.
- viii) A 2-year-old boy attended for an episode of cough and inspiratory stridor with sudden onset at night with respiratory difficulty.
- ix) A 54-year-old man attended the emergency department of the Hospital Universitario Infanta Leonor due to moderate asthma exacerbation, requiring treatment with Ventolin and Prednisone.
- x) An 18-year-old woman born with Down's syndrome with breathing difficulties. She was diagnosed 15 months after birth with pulmonary hypertension, congenital heart disease and gastro-oesophageal reflux. She suffers from asthma related to infectious processes, for which she has needed numerous admissions for acute respiratory failure. She has required oxygen treatment with nasal goggles, predominantly at night (electric machine). She also suffers from obstructive sleep apnoea.

85. It should be noted that health problems caused by the power cut can be intensified by the toxic emissions from the waste treatment plant (RDF) at the Valdemingómez Technology Park, which is located in the area of influence and is one of the plants that emits record emissions of methane gas in Europe.⁵⁴

Statements and communications by several Spanish health associations denouncing the seriousness of the health situation in the Cañada Real

86. The worsening of the health conditions of the population living in Sectors 5 and 6 of the Cañada Real was the subject of a statement published on 12 March 2021 by the Working Group on Health Inequalities and International Health of the

⁵⁴ “European satellite detects record methane emissions from Valdemingómez 18 km from Madrid city centre” *elDiario.es* (10 November 2021) <https://www.eldiario.es/sociedad/satelite-europeo-detecta-emisiones-masivas-metano-18-km-centro-madrid-procedentes-valdemingomez_1_8475280.html> [in Spanish].

Spanish Society of Family and Community Medicine (“semFYC”), with the support of the Spanish Society of Public Health (“SESPAS”). The statement found electricity supply “a prerequisite for good health” and energy poverty “a social and public health problem widely ignored by the international community”.⁵⁵

87. The statement reported its support to a similar statement published by its counterpart in Madrid (*Grupo de Trabajo Inequidades en Salud – Salud Internacional de la Sociedad Madrileña de Medicina Familiar*), which also reported the severe effects in health caused by the power cut: “we want to show our support for the population, denounce the violation of basic rights that the power cut represents and urge the institutions and public and private bodies involved to act as soon as possible to resolve this situation”.

88. The statement contains an explicit reference to how the power cut is increasing cases reported to health centres and deteriorating the health conditions of the persons concerned by the Complaint:

“From the health centres we can observe in every consultation and home visit the progressive deterioration of the conditions that make a dignified life possible for the most vulnerable neighbourhoods and families, generating illness and inequity with respect to the rest of society”.

Health risks highlighted by the Spanish Ombudsman and UN Special Rapporteurs

89. The Spanish Ombudsman, after a visit to the area on 4 December 2020, showed his concerns about, among others, the health problems that the cut of energy was causing to the population of the Cañada Real:

“The visit served to verify the severe effects of the prolonged deprivation of electricity supply: people affected by chronic lung diseases have worsened their state of health; elderly people who cannot take their medication because at night, in the dark, they cannot find it; school-age children whose fundamental right to education is violated, as they do not have electricity to do their homework after sunset and cannot clean themselves properly (during the visit, an increase in school absenteeism

⁵⁵ “For the right to health: uninterrupted electricity supply for the entire population” *semFYC* (12 March 2021) <<https://www.semfyec.es/por-el-derecho-a-la-salud-suministro-electrico-ininterrumpido-para-toda-la-poblacion/>> [in Spanish].

was reported, linked to children being teased for their odour and lack of cleanliness). There are also cases of electro-dependent people who are deprived of electricity and can barely recharge the batteries of their sanitary equipment. A newborn baby was even admitted to hospital with cyanosis due to the cold and a girl was admitted for carbon monoxide inhalation because her parents were using a wood-burning cooker as a source of heat. In short, a very difficult situation for many people, whose difficulties have been accentuated by the lack of understanding of this reality, which has led to statements that stigmatise or even criminalise those affected”.⁵⁶

90. Similarly, on 22 December 2020, a group of nine UN Special Rapporteurs warned the State of the serious situation of the inhabitants of the Cañada Real. The experts found that:

“The health of many children has already suffered: those who use electric wheelchairs cannot charge their batteries; children with diabetes are struggling to keep insulin at the proper temperature; children with autism are having trouble adapting to the lack of light, and a girl who normally uses oxygen therapy equipment for 15 or 16 hours a day has been deprived of it”.

“The lack of electricity not only violates these children's right to adequate housing, it is having a very serious effect on their rights to health, food, water, sanitation and education”.

“Children have no light to do their homework, and cannot use the Internet for classes that have moved online during the pandemic. In addition, NGOs that provide essential educational support to students outside of school hours cannot operate because they have no heating or electricity”.

⁵⁶ Spanish Ombudsman, “Annual Report 2020. Vol. 1” (2021) <https://www.defensordelpueblo.es/wp-content/uploads/2021/05/Informe_anual_2020-1.pdf> [in Spanish], p. 732.

“Without decisive action to immediately remedy this situation, the chronic educational disadvantage of the children living in Cañada Real is going to get even worse”.⁵⁷

91. On 2 October 2021, the UN Special Rapporteur on poverty and human rights addressed the State through his social media and held that “[c]ommunities in la #CañadaReal cannot afford another winter like 2020”.⁵⁸

Survey carried out by the Civic Platform

92. The cause-effect relationship between the lack of electricity and the worsening of health conditions of the affected population is also sustained by the results of the survey which was conducted by the Civic Platform in December 2021 in Sectors 5 and 6 of the Cañada Real (the “**Survey**”).⁵⁹

93. The sample of the Survey covered 149 households, encompassing a total of 652 persons, of which 335 were male and 311 female, and of which 277 were children and 352 adults (18-64 years old). In addition, there were a total of 23 persons over 65 years of age, 19 persons with recognised disability or dependency and 3 persons with mental illness.

94. The Survey focused on how the power cut had affected health and, in the case of children, their access to education.

95. As regards the impact on health, the Survey shows that **72.2%** (471) of the surveyed persons shared that their health had been affected by the power outage. In the case of the surveyed children, **70.8%** of them stated that their health had been affected by the lack of electricity.

⁵⁷ Balakrishnan Rajagopal, Gerard Quinn, Koumbou Boly Barry, Hilal Elver, Tlaleng Mofokeng, Felipe González Morales, Fernand de Varennes, Olivier De Schutter, and Pedro Arrojo-Agudo, “Spain: Power outages put children’s lives at risk in informal settlement” (22 December 2020) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26624&LangID=E>>.

⁵⁸ UN Special Rapporteur on poverty and human rights, “One year after the first electricity cuts started, citizens in #CañadaReal continue to experience energy hardships”, *Twitter* (2 October 2021) <<https://twitter.com/srpoverty/status/1444349646692917253>>.

⁵⁹ A more detailed analysis of the results of the Survey can be found in Annex 20. Access to the interviews filed in by each participant could be shared with the Committee if need be.

96. The impact on health was reported even higher in the case of people over 65 years of age, **91.3%** of which declared that their health had been affected by the electricity deprivation.

97. Additionally, **94%** of the surveyed persons in Sector 6 shared that they had experienced domestic accidents due to the lack of electricity.

Impact on children

98. Children and adolescents concerned by the Complaint are particularly impacted by the lack of electricity. In addition to the impact on their health covered in the previous section, several cases of enuresis and insomnia due to fear and cold⁶⁰ have also been reported.

99. Impact on basic life conditions, such as having to eat exclusively cold meals and to take cold showers, as well as affectation to its capacity to carry out basic leisure activities have multiple personal and social negative implications in their development.

100. Their ability to follow classes in school is also being highly impacted. Children and adolescents in the Cañada Real have not had access to online classes, they study with candles, charge batteries in their parents' cars or limit their study hours to sunlight, which in winter is until 5pm.

101. The current COVID-19 context, which has led to classes being mainly held online until September 2021, has increased the impact on the children affected by the power outage.⁶¹

102. At the Las Lagunas High School in Rivas-Vaciamadrid, in which 98 students from the Cañada Real are enrolled, the teaching team has been registering a permanent decrease in their performance and capacity to follow the. The school issued a report on 17 December 2021 ([Annex 21](#)) in which they detail the problems that some of the children concerned by the Complaint are facing in the classroom.

⁶⁰ [Annex 17](#), EIPE Report 2021, p. 7.

⁶¹ [Annex 8](#). Legal Clinic of the Master in Fundamental Rights of University Carlos III in Madrid, "Light for the Cañada. The impact of the power outage in the Cañada Real Galiana on the rights of children and adolescents" (2021), p. 62.

103. After stating that “a large part of the homework and course information is delivered through the virtual classroom”, and thus, acknowledging the need to access to computers with an internet connection, the report details the following problems:

“- Impossibility of consulting the resources posted in the Moodle virtual classroom at home in order to study.

- Difficulty in completing assignments and submitting them to the Moodle virtual classroom. Frequently, they ask for an extension of the deadline in order to be able to complete the homework.

- In subjects where there is no digital book and all the notes are uploaded to the virtual classroom, the problem is accentuated.

- They cannot recharge the battery of the tablets and ask to plug them into a socket when they arrive at school. During this time it is difficult for them to use them. In order to facilitate the recharging of these devices, extension sockets with power strips are going to be installed.

- They have to organise the time they spend at home doing homework and studying according to natural light, and not according to pedagogical logic. They leave homework in the notebook for the hours of natural light, and at night they use the tablet as a source of electric light.

- In cases where they have been confined, either because a family member tested positive or because of the snowstorm, they have not been able to connect normally to online classes. They rarely put the camera on, and when they did, we could see that they were dressed in coats inside the house to battle the cold.

- Some of them told us that they go to other family members' houses to study and do their homework.

- In one-to-one tutorials, some of them told us that they feel overwhelmed by this situation. It makes it difficult for them to concentrate and some of them have failed many subjects because of it.

- They also verbalise the fear of having to move house if the situation becomes untenable, and not being able to attend school.
- In other cases, they are very reluctant to talk about their situation and feel ashamed”.

104. The report concludes that “we can affirm that the lack of electricity supply in most of their homes is seriously affecting their academic performance and emotional well-being”.

105. The increase in rates of children abandoning school and repeating grade is unprecedented.⁶²

106. The above-referred report is coherent with the results of the Survey, according to which **80,9%** of the children and adolescents reported that the power cut had interfered in their education (224 out of 277).

107. Additionally, there is a great concern among the whole group of children about the problems they face in order to successfully complete the courses or to progress into the next school stages. In the adolescents group there is a collective demoralising feeling about access to higher education, vocational training or employment. A copy of the letters written by children and adolescents affected by the lack of light in March 2021 is attached as Annex 22. An excerpt from these testimonies, illustratively, is that of Adam, 12 years old:

“Hi, I'm Adam, and I'm going to write a report about what we experienced in the Cañada Real.

1) Unfortunately, the food is always cold, sometimes you don't even eat it because you can't eat it because it's so cold.

2) The cold is the worst; I wouldn't even wish it on my greatest enemy. The worst thing of all is the cold, it's very bad. I'm 12 years old and I can't stand it. There are people with 2, 3, 4 days and people of 80 years old. It's so bad.

⁶² Annex 20. The Survey.

3) Studying. Several people had to study twice, because you can't study in the dark and because of the candles we had to buy a lot of notebooks because of the wax.

4) The darkness when changing clothes. The clothes are already cold and even more so when you get undressed, it's the worst.

5) Because of the so-called friends of the school, they abuse you saying that you are poor, I don't know what... We are not poor! We're not poor! We're just going through a rough patch but, with a lot of encouragement, we'll make it”.

108. Other groups of teachers in the affected area have repeatedly asked for a solution to the problems that children of the Cañada Real are facing since October 2020. One example is the group of teachers of Rivas-Vaciamadrid, Vicálcaro and Vallecas, that denounced to the Education Department of the Region of Madrid the damage which is being done to children. See complaint and reply as Annexes 23 and 24.

109. Other examples are:

- i) The communication made by the “Vallecas Platform for Public Education”, a collective of teachers from the district of Madrid where some of the children concerned by the Complaint study, in which they denounced the educational impact of the lack of electricity (Annex 25).
- ii) The complaint to the Education Department of the Region of Madrid filed by the parents associations of the schools where children from Cañada are enrolled, claiming the violation of the right to education of the children (Annex 26).

110. The Ombudsman, as he did with the right to health, mentioned in his 2020 Report that the electricity supply “is essential for the proper application of the fundamental right to education, since for it to be fully effective, it requires certain material conditions” and specifically in the months when there is less natural light “students do their homework after sunset, so if they do not have the possibility of

doing so, the right to education is violated, which is very serious in the case of underage children in the compulsory education stage”.⁶³

111. Again, in his report of 17-11-2021, the Ombudsman has pointed out the risk to the right to education posed by the lack of electricity.

“School-age children see their fundamental right to education violated by not having electricity to do their homework after sunset and not being able to clean themselves properly (during the visit to the area, an increase in school absenteeism was reported, linked to children being teased for their smell and lack of cleanliness)”.⁶⁴

112. The incremental effect of the ongoing deprivations affecting the ability of children to normally access to education is already creating an irreparable damage with a huge impact in their development and possibility of growing as every child is entitled to.

Impact on women

113. Women and girls in the Cañada Real find themselves in a situation of greater vulnerability given that their usual tasks – relating to the care and home work they traditionally carry out – have become more difficult as a result of the power outage.

114. They have washed clothes without washing machines at low temperatures, heated water for their children’s showers because there was no hot water, cooked on butane gas or wood cookers, cared for family members in anxiety crises, and suffered domestic accidents such as burns from using cookers to heat the houses.

115. Pregnant women have endured low temperatures with difficulty to have an adequate obstetric, sexual and reproductive hygiene, and they have breastfed their newborns while caring for the rest of their children (on average 3 children per family).

⁶³ Spanish Ombudsman, “Annual Report 2020. Vol. 1” (2021) <https://www.defensordelpueblo.es/wp-content/uploads/2021/05/Informe_anual_2020-1.pdf> [in Spanish], p. 732.

⁶⁴ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>> [in Spanish], § 8.

116. This increase in care work has also affected their access to training and educational activities (both in person and online) as well as their access to jobs.

117. Among many other tasks, women have played a leading role in neighbourhood mobilisations for the protection of the human rights of the general population and this has had an added impact on their lives insofar as their time devoted to their usual tasks has been reduced.

118. Women with multiple pathologies (breast cancer, diabetes, COPD, etc.), as well as pregnant and breastfeeding women, are currently suffering an increase in their physical and mental health problems as a result of the electricity supply.⁶⁵

Impact on social exclusion and poverty

119. The situation described in the preceding paragraphs deepens the situation of extreme poverty already experienced by the residents of the Cañada Real, where the majority⁶⁶ of the population is below the poverty rate according to the criteria set out by the Committee.⁶⁷

120. This is particularly problematic in relation to the children concerned by the Complaint, who are undergoing traumatic experiences which incrementally increase the risk of those children suffering from this poverty and social exclusion in their adulthood.

121. The increasing social exclusion of the persons concerned by the Complaint is also being impacted by the connection between the power outages and criminality that can be inferred from the public statements by Naturgy and the Government of the Region of Madrid. The population of the Cañada Real has been long-associated with drugs due to the presence of points of sale in the area, which are frequented by drug addicts.

⁶⁵ Merche Negro, “Tabadol: the determined women in the Cañada Real” *El País* (15 September 2021) <<https://elpais.com/espana/madrid/2021-09-15/las-luchadoras-de-la-canada-real.html>> [in Spanish]; “Women in the Cañada Real: between reality and resistance to challenges” *Baynana* <<https://baynana.es/es/archives/1755>> [in Spanish].

⁶⁶ Some neighbours, mostly in Sector 5 have better living conditions. See paragraph 34 above.

⁶⁷ The relative poverty rate is the main indicator chosen by the Committee to measure poverty. According to it, the relative poverty rate “corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equalised median income”. See Conclusions 2013, Statement of interpretation on Article 30.

122. In particular, the President of the Region of Madrid, Ms. Isabel Díaz Ayuso has referred disparagingly to the persons concerned by the Complaint and has contributed to misrepresenting the situation occurring in the Cañada Real. On 17 September 2021, when asked at the regional Assembly about a letter written by a girl from the Cañada Real where she explained her experience on the power cut, the Regional President replied that it was not her role to “manage feelings”.⁶⁸

123. On 10 December 2020, she responded to a question at the regional Assembly about the power outage in the Cañada Real by holding that “it is one thing to criminalise poverty” and another to “democratise delinquency”.⁶⁹ She further was ironic and misrepresented the situation by stating that there may be “Porsche cars parked” in the Cañada Real at the same time that the persons concerned are unable “to pay the bills, which is what is causing these cuts”.⁷⁰

124. Some members of the political party VOX, which supports the regional Government in Madrid, have openly criminalised the persons concerned by this Complaint on grounds of their race or origin. For example, on 17 November 2020, a Member of Parliament and of the Madrid City Council, Mr Javier Ortega-Smith, referred to the inhabitants of the Cañada Real and said: “what should not be encouraged is the bare face and the crimes of those who squat in houses, of those who steal electricity and who on top of that try to live off benefits”.⁷¹ In an attempt to make a difference with the persons living in the Cañada Real, he further held: “we have to help Spaniards who cannot make ends meet, honest people who work, who have lost their jobs”.⁷²

125. It is evident that the continuous stigmatisation of the persons concerned by the Complaint contribute to deepening their social exclusion. Both the Spanish

⁶⁸ “‘No gestiono sentimientos’, la respuesta de Ayuso a la carta de una niña que vive sin luz en la Cañada Real”, *La Vanguardia* (17 September 2021) <<https://www.lavanguardia.com/local/madrid/20210917/7727175/respuesta-ayuso-carta-nina-canada-real.html>> [in Spanish].

⁶⁹ “Ayuso, sobre la Cañada Real: ‘Para tener Porsches ahí aparcados, bien; para pagar las facturas, no’”, *El Español* (10 December 2021) <https://www.elespanol.com/espana/madrid/20201210/ayuso-canada-real-porsches-aparcados-facturas-no/542446285_0.html> [in Spanish].

⁷⁰ Ibid.

⁷¹ “Más Madrid lleva a Ortega Smith a la Fiscalía por su polémico vídeo”, *El Plural* (23 November 2020) <https://www.elplural.com/politica/madrid-ortega-smith-fiscalia-polemico-video_253718102> [in Spanish].

⁷² Ibid.

Ombudsman and the Special Rapporteur on extreme poverty and human rights, Mr Olivier De Schutter have raised concerns about the continuous stigmatisation and discriminatory messages against the inhabitants of the Cañada Real. On 9 January 2021, Mr De Schutter held that “the discriminatory message of equating all residents of the Cañada with criminals, whether by the media or by government sources, must end”.⁷³ In its 2020 Annual Report, the Spanish Ombudsman found that stigmatisation and discriminatory statements worsened the situation in the Cañada Real.⁷⁴

126. Further evidence on how the power outage is increasing the social exclusion of the children and young adults concerned is shown in an interview conducted with some children⁷⁵. Children deny where they live in order not to be excluded. The following is an extract from one of the interviews:

“It is the first week of on-site classes after the pandemic year and the teacher says to her students: ‘Imagine that you arrive to cover an emergency in the Cañada Real, in the dark. what do you do?’ The response from the kids is almost unanimous: ‘I’m not going in there’, ‘I’m not going’, ‘I’ll turn around’. At the back of the classroom, a girl listens and observes, silent, as if it were nothing to do with her.

She is Doua, an 18-year-old girl who grew up in the Cañada Real. She is in the first year of her degree in Health Emergencies and when she has not yet decided when to tell the rest of her classmates about the place where she lives, she is faced with the answers. ‘After hearing that, how could I tell them I was from La Cañada? In the end, the fear of prejudice is more powerful and you keep quiet about it’, she says. A month later, no one in the group knows where she lives and, much less, what it means to be guilty of nothing and singled out for everything”.

⁷³ Luis de Vega “Dejar a familias en esta terrible situación es una violación de convenios que España ha ratificado”, *El País* (8 January 2021) <<https://elpais.com/espana/madrid/2021-01-08/dejar-a-familias-en-esta-terrible-situacion-es-una-violacion-de-convenios-que-espana-ha-ratificado.html>> [in Spanish].

⁷⁴ Spanish Ombudsman, “2020 Annual Report. Vol. 1” (2021) <https://www.defensordelpueblo.es/wp-content/uploads/2021/05/Informe_anual_2020-1.pdf> [in Spanish], p. 732.

⁷⁵ <https://www.elsaltodiario.com/pobreza-energetica/entrevista-corte-luz-jovenes-canada-real-aprendimos-luchar-queremos-tener-derechos>

127. When neighbourhood complaints have been directed at being able to enter into regular supply contracts, they have been denied this possibility, increasing the social exclusion of the entire affected population by creating barriers to access to a legal way to get electricity on their own⁷⁶.

Impact on the elderly and persons with disabilities

128. According to the specific census carried out for Cañada Real in 2012, approximately 4% of the population of the Cañada Real was over 65 years of age.⁷⁷ Although no more recent data has been published, according to NGOs working in the area, there has not been a significant change in the composition of the affected population.

129. The power outage is having a serious impact on the elderly, particularly on their health.

130. According to a report published by the Madrid City Council on Energy Poverty in 2017, the risk of mortality attributable to lack of protection against heat and cold among persons over 65 years of age increases to 16.01% in heat waves and to 9.3% in cold waves.⁷⁸ In other words, energy poverty considerably increases the possibility of mortality in people over 65 in the municipality of Madrid.

131. Moreover, according to the World Health Organisation (WHO), temperatures below 12°C are a “health risk” for the elderly, the sick, persons with disabilities and young children.⁷⁹ A systematic literature review on minimum home temperatures for winter recommended “[h]eating homes to at least 18°C”, and found that threshold “particularly important for people over 65yrs or with preexisting medical conditions”.⁸⁰ Below this comfort temperature limit, body

⁷⁶ See Annex 27 Report “Respuesta Regularizar contratos”.

⁷⁷ “Cañada Real, definitive census: 8,628 persons” *El País* (12 March 2012) <https://elpais.com/ccaa/2012/03/12/madrid/1331558208_596879.html> [in Spanish].

⁷⁸ Madrid City Council, “Report on energy poverty in the city of Madrid” (2016) <<https://www.madrid.es/UnidadesDescentralizadas/Consumo/NuevaWeb/pobreza%20energ%C3%A9tica/Estudio%20Pobreza%20energ%C3%A9tica%204%20febrero%202017.pdf>> [in Spanish], p. 122.

⁷⁹ WHO, “Indoor environment: health aspects of air quality, thermal environment, light and noise” (WHO/EHE/RUD/90.2) (1991) <<https://apps.who.int/iris/handle/10665/62723>>, p. 17.

⁸⁰ Public Health England, “Minimum home temperature thresholds for health in winter – A systematic literature review” (2014), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776497/Min_temp_threshold_for_homes_in_winter.pdf>, p. 61.

temperature may to drop and lead to hypothermia, especially in the elderly.⁸¹ At temperatures below 16°C, the likelihood of developing hypothermia increases and so does the likelihood of respiratory illness.⁸² Relative humidity above 65% impose additional dangers, particularly of respiratory and arthritic diseases and allergic reactions.⁸³

132. The impact on the population over 65 years of age is therefore considerable, as the risk attributable to energy poverty increases by up to 10 points during cold and heat waves, as well as a general worsening of pathologies.

133. A death of a 74-year-old male resident of Sector 6 has reportedly been linked to the extreme cold resulting from the electricity deprivation. As noted in Chapter III.B above (Impact on health), he died suddenly after two weeks of complaining that he felt a cold that he could not get rid of.

134. The December 2021 EIPE Report also records some of the health problems experienced by the elderly as a consequence of living below 12°C (e.g. rheumatic and respiratory problems), together with other affections which has been worsened by living without electricity, such as diabetes, dermatological lesions, depression, among others.⁸⁴

135. Following a visit to the Cañada Real, the Ombudsman also noted that, for example, “elderly people cannot take their medication because at night, in the dark, they cannot find their pills”.⁸⁵

136. Amongst the persons with disabilities concerned by the Complaint, there are a child and a woman with Down’s syndrome, two children diagnosed with Autism Spectrum Disorder and a family in which all but one of its members are deaf. Having electricity at home is essential for the adequate development of persons with disabilities.

⁸¹ WHO, “Indoor environment: health aspects of air quality, thermal environment, light and noise” (WHO/EHE/RUD/90.2) (1991) <<https://apps.who.int/iris/handle/10665/62723>>, p. 17.

⁸² Ibid., p. 18.

⁸³ Ibid., p. 17.

⁸⁴ Annex 17

⁸⁵ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>> [in Spanish], § 8.

137. In Sectors 5 and 6 of the Cañada there is also a child with a severe chronic respiratory illness who can only be treated with nocturnal oxygen therapy - which requires an electric device –, and well as several people with serious and chronic asthma, chronic conditions all of which can be assimilated to a disability pursuant to Article 1(2) of the Convention on the Rights of Persons with Disabilities.

138. It is evident that the capacity to develop and integrate in society of the persons with disabilities concerned by the Complaint, which already suffered from a disadvantaged situation, has been heavily impacted since the power outage began in October 2020.

Impact on Roma population

139. Roma people comprise 52% of the Spanish population living in Sector 6 of the Cañada Real.

140. Roma people already finding special difficulty when accessing their citizens' rights, the power outage is chronifying their social exclusion and vulnerability.

C. Other facts relevant to the Complaint

Neighbours' initiatives related to the power outage

141. The population of sectors 5 and 6 of the Cañada Real have demonstrated peacefully before different authorities to make public their situation and need for solutions. Photographs documenting the different demonstrations are attached as [Annex 28](#).

142. A number of children-lead initiatives were also carried out, including:

- i) Reading of letters before the Madrid City Hall on the Three Wise Men's holiday at Christmas to claim for the electricity before the Mayor.⁸⁶
- ii) Sending of letters to the Committee on the Rights of the Child, copying the Madrid City Council, the Presidency of the Region of Madrid, and

⁸⁶ "Children from the Cañada Real read their letters to the Three Wise Men" *Coordinadora de Vivienda de Madrid* (12 December 2020) <<http://coordinadoraviviendamadrid.com/sab-12-diciembre-2020-ninas-y-ninos-de-canada-real-leen-sus-cartas-a-los-reyes-magos/>> [[in Spanish](#)].

the High Commissioner against Child Poverty of the Spanish Government.⁸⁷

- iii) Reading of the letters addressed to the Committee on the Rights of the Child at a press conference in front of the headquarters of the Madrid Regional Government on 24 December 2020.⁸⁸
- iv) Merry Christmas message through a virtual greeting in which neighbours continue to defend their right to electricity on 25 December 2020.

Initiatives before the Spanish Ombudsman and the European Parliament

143. Following the beginning of the power outage in October 2020, a number of complaints were lodged before the Spanish Ombudsman by affected residents and social organisations. The complaints gave rise to an ongoing permanent investigation (see Annex 29, Annex 30, Annex 31 and Annex 32).

144. On 17 June 2021, the Tabadol Cultural Association filed a petition titled “Childhood and energy poverty - power cut for more than 8 months in the Cañada Real, Madrid” before the European Parliament pursuant to Article 44 of the Charter of Fundamental Rights of the European Union (Annex 33).

145. The petition asked the European Parliament to urge the State to enforce Article 28 of Directive (EU) 2019/944 of the European Parliament and of the Council and to comply with Commission Recommendation (EU) 2020/1563 of 14 October 2020 on energy poverty. The petition was registered on 23 June 2021 but has not yet been dealt with by the European Parliament.

Civic Platform in support of the Cañada Real

146. On 2 October 2021, at the demonstration that took place in the Cañada Real on the anniversary of the power cut, the organisers announced the creation of a civic platform aimed at supporting the population of the Cañada Real in their fight for

⁸⁷ “Cañada Real children write to the UN: ‘They are torturing us’” *El País* (3 December 2020) <<https://elpais.com/espana/madrid/2020-12-03/ninos-de-la-canada-real-escriben-a-la-onu-nos-estan-torturando.html>> [in Spanish].

⁸⁸ “Demonstration in Sol over Christmas Eve without electricity in Cañada Real” *Telemadrid* (24 December 2020) <<https://www.telemadrid.es/programas/telenoticias-1/Protestas-Sol-Nochebuena-Canada-Real-2-2298690117--20201224030244.html>> [in Spanish].

getting electricity back. The platform called “Plataforma Cívica de Apoyo a Cañada Real” (“the Civic Platform”) was initially composed by social entities, NGOs, political parties, neighbourhood associations of the Cañada Real and individuals. The list of entities is attached as Annex 34.

Judicial remedies sought to re-establish electricity supply known by the complainants

147. The persons concerned by the Complaint have also sought judicial remedies to restore the power supply.

148. In December 2020, the Tabadol Cultural Association, made up of Maghrebi women living in Sector 6, filed a criminal complaint against the company UFD-Naturgy and the Commissioner of the Region of Madrid for the Cañada Real on the grounds that the prolonged power outage intended to forcibly expel the inhabitants of the area. In the legal proceedings, UFD-Naturgy produced an expert report in which the lack of electricity supply was justified on security grounds. At the time of writing, the Investigating Judge appointed an independent expert to produce a report on the causes of the power outage. The report has not yet been produced.

149. On 5 January 2021, in the days prior to the storm Filomena, which left unprecedented snowfall and low temperatures in Madrid,⁸⁹ a family living in Sector 5 filed an urgent request for interim measures before the High Court of Madrid.⁹⁰ The Court dismissed the request.⁹¹

150. Moreover, the Complainants are aware that both the Association of Sector 5 “Al-Shorok” and the Free Association of Lawyers (ALA) have filed criminal complaints before the Public Prosecutor's Office. The Complainants are unaware of the status of either of the complaints.

Calls for action by the Spanish Ombudsman, UN treaty-bodies and UN Special Rapporteurs

⁸⁹ “Storm Filomena: Spain sees ‘exceptional’ snowfall” *BBC News* (9 January 2021) <<https://www.bbc.co.uk/news/world-europe-55586751>>.

⁹⁰ Annex 35. Request for urgent interim measures before the High Court of Madrid (5 January 2021) [in Spanish].

⁹¹ Annex 36. High Court of Madrid (Administrative Section), Order 2/2021 (5 January 2021) [in Spanish].

151. In 2020, the Ombudsman called relevant authorities to acknowledge the “gravity of the prolonged deprivation of electricity supply” and highlighted the impact of the situation on the right to health and on children’s rights.⁹² Consequently, it urged the authorities to adopt a “solution to the lack of electricity supply [...] through the installation of generators [...] or any other system suitable for this purpose” and recommended them to “regularise the electricity supply” in order to “guarantee the right to an accessible and legal electricity supply”.⁹³

152. In the November 2021 the Ombudsman issued another set of recommendations for urgent intervention in similar terms of its prior report.⁹⁴

153. UN Special Rapporteurs did equally warn the State of the serious situation of the inhabitants of the Cañada Real since the very beginning. The experts found that “[t]he lack of electricity not only violates these children's right to adequate housing, it is having a very serious effect on their rights to health, food, water, sanitation and education”.⁹⁵ The State filed its response on 23 April 2021.⁹⁶

154. On 30 December 2020, in the context of an individual communication on the case of a 3-year-old girl with serious health problems living in the Cañada Real, the Committee on the Rights of the Child requested the State to adopt provisional measures to provide the girl with the necessary medical and social services, including adequate accommodation.⁹⁷

⁹² Spanish Ombudsman, “Urgent restoration of the electricity supply in Sectors 5 and 6 of the Cañada Real Galiana” (21 December 2020), <<https://www.defensordelpueblo.es/resoluciones/recuperacion-urgente-del-suministro-electrico-en-los-sectores-5-y-6-de-la-canada-real-galiana-2/>> [in Spanish].

⁹³ Ibid., Recommendations 1 and 2.

⁹⁴ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>> [in Spanish].

⁹⁵ Balakrishnan Rajagopal, Gerard Quinn, Koumbou Boly Barry, Hilal Elver, Tlaleng Mofokeng, Felipe González Morales, Fernand de Vareennes, Olivier De Schutter, and Pedro Arrojo-Agudo, “Spain: Power outages put children’s lives at risk in informal settlement” (22 December 2020) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26624&LangID=E>>.

⁹⁶ Ministry of Foreign Affairs, “Response to the joint urgent call by a number of Special Procedures in relation to the alleged power outage in the Cañada Real, Madrid” (22 April 2021) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36158>>.

⁹⁷ “UN urges Spain to find solution for 3-year-old girl from Cañada Real in need of oxygen” *Infosalus* (5 January 2021) <<https://www.infosalus.com/asistencia/noticia-onu-exige-espana-solucion-ninanos-canada-real-necesita-oxigeno-20210105135335.html>> [in Spanish].

155. On 9 January 2021, Mr Olivier De Schutter, Special Rapporteur on Extreme Poverty and Human Rights, held that leaving thousands of families without electricity violated international human rights treaties.⁹⁸

156. On 7 February 2021, pursuant to the rules established for communications made by a Special Rapporteur to a State, Mr De Schutter reminded the State that within a week it had to respond to the serious violations that the families of the Cañada Real were suffering.⁹⁹

157. The State responded through the Government's High Commissioner for Child Poverty, indicating that the Spanish Government could not intervene and that the competent authorities would be the Government of the Region of Madrid. The High Commissioner addressed the President of the Region of Madrid in a letter, urging her to take the necessary measures to restore the supply. There was no response or action from the President.¹⁰⁰

158. On 2 October 2021, Mr De Schutter addressed the State through his social media and held that “[c]ommunities in la #CañadaReal cannot afford another winter like 2020”.¹⁰¹

⁹⁸ Luis de Vega “Dejar a familias en esta terrible situación es una violación de convenios que España ha ratificado”, *El País* (8 January 2021) <<https://elpais.com/espana/madrid/2021-01-08/dejar-a-familias-en-esta-terrible-situacion-es-una-violacion-de-convenios-que-espana-ha-ratificado.html>> [in Spanish].

⁹⁹ <https://www.publico.es/sociedad/cortes-luz-canada-gobierno-enviara-proximos-dias-respuesta-onu-situacion-canada-real.html>

¹⁰⁰ <https://elpais.com/espana/madrid/2020-12-19/el-alto-comisionado-contr-la-pobreza-infantil-pide-a-ayuso-que-restablezca-la-luz-en-la-canada-real.html>

¹⁰¹ UN Special Rapporteur on poverty and human rights, “One year after the first electricity cuts started, citizens in #CañadaReal continue to experience energy hardships”, *Twitter* (2 October 2021) <<https://twitter.com/srpoverty/status/1444349646692917253>>.

IV. ADMISSIBILITY

159. The Complainants submit that the Complaint meets the admissibility criteria set out in the Protocol and the Rules, as interpreted by the Committee.

A. *Locus standi* of the Complainants

160. 4 out of 5 Complainants are international non-governmental organisations (INGOs) with participatory status with the Council of Europe and are included in the Governmental Committee’s list of INGOs which are entitled to lodge complaints before the Committee pursuant to Article 1(b) of the Protocol:

- i) Defence for Children International (DCI) is the INGO number 16 in the list and is registered for the period 1 July 2018 to 30 June 2022;
- ii) European Federation of National Organisations working with the Homeless (FEANTSA) is the INGO number 54 and is registered for the period 1 January 2021 to 31 December 2024; and.
- iii) Magistrats Européens pour la Démocratie et les Libertés (MEDEL) is the INGO number 22 and is registered for the period 1 July 2018 to 30 June 2022.¹⁰²
- iv) International Movement ATD Fourth World is the INGO number 27 and is registered for the period 1 July 2018 to 30 June 2022.

161. The remaining Complainant, Confederación Sindical de Comisiones Obreras (CCOO), is a Spanish trade union entitled to lodge a complaint pursuant to Article 1(c) of the Protocol.

162. Complainants have “particular competence” on the subject matter of the Complaint, in accordance with Article 3 of the Protocol.

163. First, DCI’s particular competence for the purposes of collective complaints with regards to the rights of children has been twice acknowledged by the

¹⁰² Governmental Committee of the European Social Charter and the European Code of Social Security, “List of International Non-Governmental Organisations (INGOs) Entitled to Submit Collective Complaints” (GC(2021)11), 1 July 2021, <<https://rm.coe.int/gc-2021-11-bil-list-ingos-01-07-2021/1680a302bf>>.

Committee,¹⁰³ and should be equally considered as regards this Complaint. DCI's purpose is "to promote the basic individual and collective human rights of children",¹⁰⁴ and one of its objectives is to "[d]evelop [...] complaint strategies [...] for the individual and collective human and fundamental rights violations of children".¹⁰⁵ Moreover, DCI has also showed concern about the rights of children in the Cañada Real as a result of the power outage. Indeed, in January 2021, it released a public statement calling on the competent authorities to put an end to the situation.¹⁰⁶ Consequently, the Complainants submit that DCI satisfies the requirement of Article 3 of the Protocol with regards to the children concerned by this Complaint, which amount to the 40% of the persons concerned.¹⁰⁷

164. Second, FEANTSA's particular competence for the purposes of collective complaints with regards to the rights of the homeless has been acknowledged by the Committee in previous occasions,¹⁰⁸ and should be equally considered as regards this Complaint. According to its Statutes, FEANTSA's ultimate goal is to put an end to homelessness in Europe.¹⁰⁹ FEANTSA and its members understand homelessness as a situation that deprives individuals of fundamental rights, including the right to housing. Moreover, its members in Spain work for the improvement of the conditions of the homeless population including families living in informal settlements such as the Cañada Real. Consequently, FEANTSA satisfies the requirement of Article 3 of the Protocol with regards the Complaint.

165. Third, MEDEL has as one of its goals "the proclamation and defence of the rights of minorities and differences, in particular the rights of immigrants and the most disadvantaged, with a view to the social emancipation of the most

¹⁰³ *DCI v. the Netherlands*, Complaint No. 47/2000, Decision on admissibility of 23 September 2008, § 5; *DCI v. Belgium*, Complaint No. 69/2011, Decision on admissibility of 7 December 2011, § 7.

¹⁰⁴ Annex 1.1, Defence for Children – International (DCI), Statutes (Amended version-adopted at the Extraordinary International General Assembly of January 2015), Article 3.

¹⁰⁵ *Ibid.*, Article 4(5).

¹⁰⁶ Annex 1.4. Defence for Children – International and Defence for Children – Spain, "Statement on the Defence of Children on the devastating consequences on the life of over 4,500 people in Sectors 5 and 6 of the Cañada Real Galiana" (19 January 2021).

¹⁰⁷ See *Demography of the Cañada Real* in Section A of Chapter II.

¹⁰⁸ *Inter alia, European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on admissibility of 19 of March 2007, § 6.

¹⁰⁹ Annex 2.1. FEANTSA Statutes (as approved at the General Assembly of 19 October 2007) [in French], Article 3.

vulnerable”.¹¹⁰ Consequently, the Complainants submit that MEDEL also satisfies the requirement of Article 3 of the Protocol, with regards to the persons concerned by the Complaint.

166. Fourth, ATD Fourth World particular competence for the purposes of collective complaints with regards to the rights of vulnerable people has been acknowledged by the Committee in previous occasions,¹¹¹ and should be equally considered as regards this Complaint. In particular, Article 2 of ATD Fourth World bylaws refers as one of its principles of action: “represent, especially at the international level, the interests and hopes of the most disadvantaged individuals, families and groups so that their voice is heard wherever decisions are taken that affect their future and the future of humanity and that they are recognised as partners”.¹¹² Thus, the Complainants submit that ATD Fourth World also satisfies the requirement of Article 3 of the Protocol, with regards to the persons concerned by the Complaint.

167. Fifth, CCOO is one of the most prominent Spanish trade unions with presence all over the Spanish territory. The Section “Definition of principles” in its Statutes includes, among others:

“In addition to demanding the improvement of living and working conditions for all workers, it assumes the defence of everything that affects them as a class, in the perspective of the suppression of all oppression and exploitation, especially if it occurs against minors.

Likewise, CCOO’s CS shall exercise a special defence of the demands of women, young people, people with other abilities, occupational health, the environment and pacifism, in order to eliminate any form of discrimination based on sex or sexual orientation, age, physical, mental or sensory morphology, ethnic origin, political and/or religious convictions, as well as any other personal or social condition or circumstance.¹¹³

¹¹⁰ Annex 3.1. MEDEL – Magistrats Européens pour la Démocratie et les Libertés (MEDEL), Statutes (adopted in 29 November 1987, as amended at the General Assembly of 22 November 2014), Article 1, §8.

¹¹¹ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, Decision on admissibility of 12 June 2006, § 6.

¹¹² Annex 4.1. ATD Fourth World Statutes. Article 2.c)

¹¹³ Annex 5.1. CCOO Statutes, p. 11.

168. CCOO has actively participated in several initiatives requesting Spanish Authorities a workable solution for the situation in Cañada Real through, for example, its participation in the Plataforma Cívica de apoyo a la Luz en Cañada Real.¹¹⁴ Considering the above, and, in particular, that violations of Article 20 and 27 are included within the scope of this Complaint, the Complainants consider that CCOO is entitled to join this Complaint.

169. Finally, pursuant to Rule 23(2), the Complaint is signed by the persons with competence to represent the Complainants.

170. In the case of DCI, Article 37 of its Statute provides that “the President and the Treasurer, or other member of the International Executive Council (IEC)”, are the only persons with “the power to represent the organization in legal acts”. DCI’s President, Abdul Manaff Kemokai, and Vice President for Europe, Margaret Tuite, sign the Complaint.¹¹⁵

171. As for FEANTSA, Article 18 of its Statutes provides that “legal actions shall be monitored by the Board represented by its President”. FEANTSA’s Board has agreed upon the submission of the Complaint. Accordingly, FEANTSA’s President, Kjell Larsson, signs the Complaint.¹¹⁶

172. In the case of MEDEL, the organisation’s Council of Administration has approved the submission of this Complaint,¹¹⁷ and Article 5, § 6 of its Statutes establishes that, with regard to third parties, the president ensures the legal representation of the association. Consequently, MEDEL’s President, Filipe Marques, signs the Complaint.

173. As regards ATD Fourth World, the General Delegate, with powers to decide as regards filing a complaint before international bodies, has approved submission

¹¹⁴ CCOO de Madrid, *Twitter* (19 December 2021) <<https://twitter.com/CCOOMadrid/status/1472537738905886725>> [in Spanish].

¹¹⁵ Annex 1.2, Decision to file the Complaint and appointment of the person signing the Complaint

¹¹⁶ Annex 2.2, Decision to file the Complaint and appointment of Administrators, President, Vice-Presidents, Treasurer and Secretary (as agreed at General Assembly on 4 June 2020) [in French].

¹¹⁷ Annex 3.2, Extract of Deliberation of the Council of Administration of MEDEL and appointment of the person signing the Complaint.

of the Complaint.¹¹⁸ Mr. Bruno Dabout, competent to represent the organisation, signs the Complaint.

174. Finally, CCOO Confederal Executive Committee has approved submission of the Complaint, which is signed by Cristina Faciabén, Secretary for International Policy and Cooperation, competent to represent CCOO before the Committee.¹¹⁹

175. In sum, the Complainants submit that they fulfil the admissibility conditions set forth in Articles 1(b) and (c) and 3 of the Protocol and Rule 23(2) of the Rules.

B. Jurisdiction *ratione temporis*

176. As a general rule, the Committee's temporal jurisdiction regarding a State begins on the date on which the Charter and the Protocol enter into force regarding such State.¹²⁰ Nonetheless, the Committee – relying on the case-law of the European Court of Human Rights – has also asserted jurisdiction in complaints involving events which originated before the entry into force of the Charter and the Protocol but continued to produce effects after this date.¹²¹ This is because such events may give rise to continuing violations, which – according to the Committee's case-law – are to be examined at the merits stage of a complaint.¹²²

Entry into force of the Charter and the Protocol in relation with the State

177. On 17 May 2021, Spain ratified the Charter and, pursuant to Article D § 2, declared that it accepted the collective complaint mechanism set forth in the Protocol. Accordingly, the Charter and the Protocol entered into force in relation with Spain on 1 July 2021, in conformity with Article K § 3 of the Charter and Article 14(2) of the Protocol.¹²³

¹¹⁸ Annex 4.2. Decision to submit the Complaint executed by the General Director and appointment of the person signing the Complaint

¹¹⁹ Annex 5.2. Decision to submit the Complaint and appointment of the person signing the Complaint

¹²⁰ In application of the principle of non-retroactivity of treaties enshrined in Article 28 of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, United Nations Treaty Series Vol. 1155, p. 331.

¹²¹ Inter alia, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, Decision on admissibility of 10 October 2005, §15; *European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia*, Complaint No. 53/2008, Decision on admissibility of 2 December 2008, § 8; *Centre on Housing Rights and Evictions (COHRE) v. Croatia*, Complaint No. 52/2008, Decision on admissibility of 30 March 2009, § 18.

¹²² *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, Decision on admissibility of 10 October 2005, §16.

¹²³ The publication of both the Charter and the Protocol in the Spanish Official Gazette can be found respectively here: “Ratification Instrument of the European Social Charter (Revised)”, Official

Jurisdiction ratione temporis regarding the Complaint

178. In brief, the facts which give rise to the Complaint relate to the serious situation in the Sectors 5 and 6 of the Cañada Real as a result of the ongoing electricity outage. The outage, which commenced in October 2020, continues to adversely affect the persons concerned by the Complaint to this date.

179. The facts set forth in Chapter III of the Complaint clearly fall within the principles on temporal jurisdiction set out by the European Court of Human Rights in *Blečić* and *Šilih*, which the Committee has subsequently applied to the interpretation of the Charter.¹²⁴

180. In these cases, the Court thoroughly analysed the principle of non-retroactivity under the law of treaties. It found that “temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference” and held that “[i]n order to establish the Court’s temporal jurisdiction it is [...] essential to identify, in each specific case, the exact time of the alleged interference”.¹²⁵ In doing so, the Court found it key to have regard to both the facts and the violations alleged.¹²⁶

181. Furthermore, the Court emphasised that “from the ratification date onwards all of the State’s acts and omissions must conform to the Convention”.¹²⁷ Therefore, the Court found that subsequent facts fall within its temporal jurisdiction when they are an extension of a “continuing” situation.¹²⁸ Indeed, in *Kurić and Others*, the Court addressed a case in which the facts complained of had been “continuing to adversely affect the applicants” after the date of entry into force of the Convention and thus held that it “could have regard to the facts which had

Gazette No. 139, of 11 June 2021, <[https://www.boe.es/eli/es/ai/1996/05/03/\(2\)/con](https://www.boe.es/eli/es/ai/1996/05/03/(2)/con)>; “Provisional Application of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints”, Official Gazette No. 153, of 28 June 2021, <[https://www.boe.es/eli/es/ai/1995/11/09/\(1\)](https://www.boe.es/eli/es/ai/1995/11/09/(1))>.

¹²⁴ *Centre on Housing Rights and Evictions (COHRE) v. Croatia*, Complaint No.52/2008, Decision on the merits of 22 June 2010, §§22-26.

¹²⁵ ECtHR, *Blečić v. Croatia* (GC), Application No. 59532/00, Judgment (Merits) of 8 March 2006, § 77, 82; ECtHR, *Šilih v. Slovenia* (GC), Application No. 71463/01, Judgment (Merits and Just Satisfaction) of 9 April 2009, § 146-7.

¹²⁶ *Ibid.*

¹²⁷ ECtHR, *Blečić v. Croatia* (GC), Application No. 59532/00, Judgment (Merits) of 8 March 2006, § 81

¹²⁸ ECtHR, *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, Applications Nos. 29813/96 and 30229/96, Judgment (Merits) of 11 January 2000.

occurred prior to ratification inasmuch as they could be considered to have created a continuous situation extending beyond that date”.¹²⁹

182. From an application of the discussed case-law to the present case, it necessarily follows that the facts which give rise the Complaint fall within the temporal jurisdiction of the Committee. It is so because, although the power outage in the Sectors 5 and 6 of the Cañada Real started prior to 1 July 2021, the facts upon which the Complaint relies have been occurring since the State was bound by the Charter and the Protocol, and they are still occurring at present.

183. In other words, the Complaint does not seek to apply the Charter or the Protocol retroactively to the situation in the Cañada Real, nor does it attempt that breaches of the Charter are found in relation to “an interference that had ended before [it] came into force”.¹³⁰ Current and ongoing facts are what lies at the core of the Complaint: the ongoing electricity outage alongside the precarious housing situation, the ongoing situation of poverty and social exclusion, and the ongoing discrimination against groups of vulnerable population occurring in the Sectors 5 and 6 of the Cañada Real. That some of these facts originated before the entry into force of the Charter cannot prevent Committee from deeming the Complaint admissible and from considering these facts. It should be underscored that, upon ratification of the Charter, “all of the State’s acts and omissions must conform to [it]”.¹³¹

184. In light of the foregoing, the Complainants submit that the Complaint falls within the temporal jurisdiction of the Committee because it encompasses facts which presently occur and have been occurring since the entry into force of both the Charter and the Protocol for Spain. Moreover, it is submitted that these facts amount to a continuous situation which originated prior to 1 July 2021 over which the Committee has temporal jurisdiction.

C. Jurisdiction *ratione materiae*

¹²⁹ ECtHR, *Kurić and Others v. Slovenia* (GC), Application No. 26828/06, Judgment (Merits and Just Satisfaction) of 26 June 2012.

¹³⁰ *Mutatis mutandis*, ECtHR, *Blečić v. Croatia* (GC), Application No. 59532/00, Judgment (Merits) of 8 March 2006, § 80.

¹³¹ *Mutatis mutandis*, ECtHR, *Blečić v. Croatia* (GC), Application No. 59532/00, Judgment (Merits) of 8 March 2006, § 81.

185. Upon ratification of the Charter, the State accepted all the provisions contained in it.¹³² Therefore the violations set in Chapter V of the Complaint relate to provisions of the Charter which have been accepted by the State. Moreover, Chapter V thoroughly indicates the grounds of the Complaint as well as the extent to which the State has breached the provisions invoked.

186. In light of these, the Complainants submit that the admissibility requirements set forth in Article 4 of the Protocol are satisfied.

D. Responsibility of the State

187. Although part of the relevant facts in the Complaint are linked to local and regional competences in the Region of Madrid, the Committee has recalled that “even if under domestic law local or regional authorities [...] are responsible for exercising a particular function, states parties to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised”.¹³³

188. Thus, the ultimate responsibility for policy implementation, involving at a minimum oversight and regulation of local and regional action, lies within the State. As a signatory to the Charter, the State must be able to show that local, regional, and central authorities have taken practical steps to ensure that decentralised action is effective.¹³⁴

E. Formal Requirements

189. Pursuant to Rule 23(1) in relation with Article 5 of the Protocol, the Complaint is addressed to the Executive Secretary of the Committee, acting on behalf of the Secretary General of the Council of Europe.

¹³² Spain’s Ratification Instrument of the Charter stated: “[h]aving seen and examined the preamble, the six parts and the Appendix of the said Charter, [...] I hereby manifest the consent of Spain to be bound by this Charter [...]”, Official Gazette No. 139, of 11 June 2021, <[https://www.boe.es/eli/es/ai/1996/05/03/\(2\)/con](https://www.boe.es/eli/es/ai/1996/05/03/(2)/con)>.

¹³³ *European Roma Rights Centre (ERRC) v. Greece*, Complaint No. 15/2003, Decision on the merits of 8 December 2004, §29.

¹³⁴ *Mutatis mutandis, European Roma Rights Centre (ERRC) v. Italy*, Complaint No. 27/2004, Decision on the merits of 7 December 2005, §26.

190. In accordance with Article 4 of the Protocol and Rule 24(1), the Complaint is lodged in writing in English, one of the official languages of the Council of Europe.

V. MERITS AND ALLEGED VIOLATIONS

191. In relation to the facts accounted for above, the Complainants submit that the State has violated Articles 11, 15, 16, 17, 20, 23, 27, 30, 31 and E of the Charter. Prior to the analysis of the alleged violations, the Complainants consider it appropriate to make submissions on three preliminary issues.

A. Preliminary issue I: Applicability of the Charter to the persons concerned by the Complaint

192. The Complainants submit that the Charter is applicable to all the persons concerned by the Complaint.

193. In line with the case-law of the Committee, which has consistently held that matters relating to the personal scope of the Charter belong to the merits stage of the proceedings, the Complainants find it appropriate to submit observations on the applicability of the Charter to the persons concerned by the Complaint in this Chapter.¹³⁵

194. First, the Committee has consistently held that all children, regardless their residency status, fall within the Charter's personal scope.¹³⁶ The Committee has further reiterated that the restriction on personal scope included in paragraph 1 of the Appendix to the Charter:

“[S]hould not be read in such a way as to deprive foreigners within the category of unlawfully present migrants of the protection of their most basic rights enshrined in the Charter, nor to impair their fundamental rights, such as the right to life or to physical integrity or human dignity”.¹³⁷

195. The Committee has grounded this finding on the fact that:

“[E]xcluding unlawfully present foreigners from the protection afforded by the Charter would have seriously detrimental consequences for their

¹³⁵ Inter alia, *Conference of European Churches (CEC) v. The Netherlands*, Complaint No. 90/2013, Decision on admissibility of 1 July 2013, §12.

¹³⁶ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits of 26 January 2021, §75.

¹³⁷ Inter alia, *Conference of European Churches (CEC) v. The Netherlands*, Complaint No. 90/2013, Decision on admissibility of 1 July 2013, § 10.

fundamental rights [...] and would consequently place the foreigners in question in an unacceptable situation”.¹³⁸

196. The persons concerned by this Complaint are a heterogeneous group which includes Spanish citizens, nationals of other parties to the Charter lawfully resident in Spain, and, in an undetermined proportion, third country nationals and persons without residence permit.

197. All the persons included in this heterogeneous group equally withstand the adverse living conditions in Sectors 5 and 6 of the Cañada Real, conditions which pose an inherent risk to their fundamental rights, such as the right to life, to the preservation of human dignity, to psychological and physical integrity and health.

198. When assessing the applicability of the Charter to heterogeneous groups, the Committee has found that problems in distinguishing among the different categories of persons concerned by a complaint “should not lead to depriving persons fully protected by the Charter of their rights under it” and that, in any case, the group “which does not fulfil the definition of the Appendix cannot be deprived of their rights linked to life and dignity under the Charter”.¹³⁹ Further, the Committee has held that distinction issues do not “exempt the State from the obligation of ensuring [...] protection”.¹⁴⁰

199. In light of this, the Complainants submit that the Charter is applicable to all the persons concerned by the Complaint given the seriousness of the fundamental rights at stake, which include “the right to life, to the preservation of human dignity, to psychological and physical integrity and health”.¹⁴¹ The fact that an undetermined proportion of third country nationals and persons without residence permit live in Sectors 5 and 6 of the Cañada Real cannot constitute an obstacle for

¹³⁸ Inter alia, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits of 26 January 2021, §76.

¹³⁹ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009, Decision on the merits of 25 June 2010, §§ 32-3.

¹⁴⁰ *European Roma Rights Center (ERRC) v. Italy*, Complaint No. 27/2004, Decision on the merits of 7 December 2005, §18.

¹⁴¹ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits of 26 January 2021, §76.

the examination of the alleged violations, especially when these relate to “the protection of their most basic rights enshrined in the Charter”.¹⁴²

B. Preliminary issue II: Intervention of UFD-Naturgy in the alleged violations

200. Acknowledging that the Committee has held that questions related to the intervention of third parties belongs to the merits stage of proceedings,¹⁴³ the Complainants deem it appropriate to make observations regarding the intervention of UFD-Naturgy in the alleged violations in this Chapter.

201. The Complainants note that the facts that give rise to the Complaint concern the involvement of a private person, i.e., UFD-Naturgy, which is the company supplying electricity to the Cañada Real.

202. Regardless of whether UFD-Naturgy’s actions comply with the company’s business and human rights commitments, the question at stake in the Complaint is whether the State’s actions and omissions in relation to the situation resulting from the ongoing power outage in the Cañada Real amount to a breach of the Charter.

203. On this regard, it is essential to note that the State “is responsible for enforcing the rights embodied in the Charter within its jurisdiction” since it entered into force on 1 July 2021.¹⁴⁴

204. Against this background, the Committee has consistently held that it can assess compliance with the Charter “even if the State has not acted as an operator but has simply failed to put an end to the alleged violations in its capacity as regulator”.¹⁴⁵ It has determined that States Parties to the Charter “[are] required to ensure compliance with [their] undertakings, irrespective of the legal status of the economic agents whose conduct is at issue”.¹⁴⁶

¹⁴² Inter alia, *Conference of European Churches (CEC) v. The Netherlands*, Complaint No. 90/2013, Decision on admissibility of 1 July 2013, § 10.

¹⁴³ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, Decision on admissibility of 10 October 2005, § 14.

¹⁴⁴ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, Decision on admissibility of 10 October 2005, § 14.

¹⁴⁵ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, Decision on admissibility of 10 October 2005, § 14

¹⁴⁶ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, Decision on the merits of 6 December 2006, § 192.

205. These remarks are in line with the findings of other international bodies which are consistent with the so-called “Drittwirkung” (third-party applicability or horizontal effect) and positive obligations doctrines. For example, the Committee on the Rights of the Child has underscored that “States are not exempted from their obligations under the Convention [on the Rights of the Child] when they outsource or privatize services [such as water, sanitation or energy]”.¹⁴⁷ The Committee on Economic, Social and Cultural Rights has held that the States parties’ obligation “to monitor and regulate the conduct of non-State actors to ensure that they do not violate [Article 3 of the Covenant] [...] applies, for example, in cases where public services have been partially or fully privatized”.¹⁴⁸

206. In light of the foregoing, the Complainants submit that the issues complained of can be attributed to the State, at least in its capacity as regulator, and politely request the Committee to assess the State’s compliance with the Charter.

C. Preliminary issue III: Acknowledgment of Certain Violations by the State

207. As addressed in Section B of Chapter II, on 1 December the 2021, the State Government issued a direct grant to the Councils of Madrid city and Rivas-Vaciamadrid for the implementation of the Re-housing Programme.¹⁴⁹ The grant was issued by means of Royal Decree 1058/2021 (hereinafter, the “Royal Decree”), which was passed by the Council of Ministers.

208. The recital of the Royal Decree states inter alia:

“[T]he lack of electricity, the main source of energy in [the Cañada Real], places [...] both the adults and, in particular, the children affected in a *situation of extreme vulnerability and social risk*”.

“[C]hildren’s health is suffering the consequences of the lack of electricity at their homes, which, in addition to *violating children’s right to adequate*

¹⁴⁷ Committee on the Rights of the Child, “General comment No. 16 on State obligations regarding the impact of the business sector on children’s rights” (CRC/C/GC/16) (17 April 2013), § 33.

¹⁴⁸ Committee on Economic, Social and Cultural Rights, “General Comment No. 16. The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)” (E/C.12/2005/4, 11 August 2005), § 20.

¹⁴⁹ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish].

housing, has a strongly negative impact on their rights to food, education, and ultimately, to a life in dignity”.

“[T]he exclusion and the absence of public services hang over the people and families living in this settlement, generating a situation of extreme precariousness [...] which *contravenes* Spain’s commitment to the fulfilment of the Sustainable Development Goals and the *obligations arising from the several international treaties on the promotion and protection of human rights ratified by Spain*”.¹⁵⁰

209. The Complainants submit that these extracts from Royal Decree, which originates from the executive branch of the State, amount to a unilateral act of the State whereby it acknowledges (i) the seriousness of the ongoing situation in the Cañada Real as a result of the power outage, (ii) that the State is in breach of its international human rights obligations, and (iii) that the State violates the rights of children to adequate housing, food, education, and a life in dignity.

210. The acknowledgement encompasses rights enshrined in the Charter, as interpreted by the Committee: the right to health (Article 11 § 1), the right to adequate housing (Articles 31, 16, and 17 § 1), and children’s right to education and to human dignity (Article 17 §§ 1-2).

211. Moreover, the Royal Decree’s acknowledgement of the particular risk and vulnerability faced by the concerned children needs to be read as an acknowledgement of the discrimination (including multiple discrimination, on the grounds of ethnic group, sex, migrant status) suffered by children in the enjoyment of their rights, in the terms of Article E of the Charter.

212. Consequently, in relation with the children concerned by the scope of the Complaint, the Complainants politely request that the Committee declare that the State has acknowledged violations of Articles 11 § 1, 16, 17 §§ 1 and 2, and 31 of the Charter, read alone and in conjunction with Article E.

D. Violation of Article 31 § 1, read alone and in conjunction with Article E

¹⁵⁰ Ibid. (emphasis added).

213. Article 31 § 1 of the Charter enshrines the right to adequate housing. The Committee has held that Article 31 imposes on the State positive obligations to guarantee this right.¹⁵¹ It has further determined that Article 31 must be interpreted in light of the International Covenant on Economic, Social and Cultural Rights.¹⁵²

214. In defining the notion of “adequate housing”, the Committee has established that inter alia it means “a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc. [...]”.¹⁵³ The Committee has consistently held that the notion of “adequate housing” encompasses “all basic amenities”, including “electricity” and “heating”.¹⁵⁴

215. Electricity and heating are hence central for a dwelling to fulfil the “adequate housing” requirements under Article 31 § 1. In fact, the Committee has held that authorities must “guard against the interruption of essential services” such as water and electricity.¹⁵⁵

216. Moreover, the Committee has held that vulnerable groups of population require the adoption of positive measures with regards to housing and that particular attention must be paid to Roma people.¹⁵⁶ Indeed, in cases wherein housing policies have resulted in the spatial and social segregation of Roma, the Committee has found violations of the Charter.¹⁵⁷

¹⁵¹ Inter alia, *European Roma Rights Center (ERRC) v. Bulgaria*, Complaint No. 31/2005, Decision on the merits of 18 October 2006, §35.

¹⁵² *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, Decision on the merits of 5 December 2007, § 70.

¹⁵³ Conclusions 2003, France.

¹⁵⁴ Conclusions 2003, France; *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the merits of 5 December 2007, §74; *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Decision on the merits of 20 October 2009, § 43; *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits of 26 January 2021, §115.

¹⁵⁵ *European Roma Rights Center (ERRC) v. Portugal*, Complaint No. 61/2010, Decision on the merits of 30 June 2011, §48.

¹⁵⁶ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §§ 39-40.

¹⁵⁷ *European Roma Rights Center (ERRC) v. Portugal*, Complaint No. 61/2010, Decision on the merits of 30 June 2011, §48.

217. The Committee has also held that, regardless the division of functions within domestic law, it is ultimately the State's role to supervise and regulate the effectiveness of the right contained in Article 31 § 1.¹⁵⁸

218. The Complainants submit that the deprivation from electricity occurring in Sectors 5 and 6 of the Cañada Real amounts to an inadequate housing situation and, hence, to a continuous violation of Article 31 § 1 of the Charter, read alone and in conjunction with Article E.

219. It should be emphasised that, as addressed in Section C of this Chapter, the State already acknowledged the existence of a violation of Article 31 § 1 in relation to the children deprived from electricity in the Cañada Real by means of a unilateral act, and further acknowledged that the lack of electricity supply puts all persons concerned “in a situation of extreme vulnerability and social risk”.¹⁵⁹

Deprivation of electricity in the Cañada Real

220. As has been described in the Complaint, the Cañada Real is a long-established irregular settlement which makes up a linear, unplanned neighbourhood. It is a consolidated, stable and very diverse area, whose residents have always been connected to the electricity supply network informally. This situation has been tolerated to by both public authorities and UFD-Naturgy, the energy supplier.

221. Evidence of the acquiescence is that, as confirmed by the witness statement of the former Madrid City Council Commissioner for the Cañada Real during 2016-2019, whenever there was an incident related to the energy supply in the Cañada Real, the inhabitants would report it to the authorities, which would in turn contact the company UFD-Naturgy.¹⁶⁰ The company would fix it “almost immediately”.¹⁶¹

¹⁵⁸ *European Roma Rights Center (ERRC) v. Italy*, Complaint No. 27/2004, Decision on the merits of 7 December 2005, § 26; *European Federation of National Organisations Working with the Homeless (FEANTSA) c. France*, Complaint No 39/2006, Decision on the merits of 5 December 2007, § 79.

¹⁵⁹ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish].

¹⁶⁰ Annex 9. Witness statement by Mr. Pedro Navarrete Tortosa, former Madrid City Council Commissioner for the Cañada Real (2016-2019) [in Spanish].

¹⁶¹ *Ibid.*, § 4

222. The specific legal and policy framework related to the Cañada Real reinforces the particular character of the neighbourhood. This framework provides for a negotiation process between the concerned stakeholders and includes, inter alia, a commitment by the authorities to improve the neighbourhood's infrastructure and "[r]ehabilitat[e] the electricity supply".¹⁶²

223. This negotiation process has been heavily compromised since beginning of the ongoing power outage on 2 October 2020. The deprivation of electricity supply is not part of this improvement and progressive regularisation process agreed upon for the neighbourhood. On the contrary, it entails the collapse of such process and subjects the persons concerned by the Complaint to a housing crisis which has a serious impact on their daily lives.

224. The deprivation from electricity affects a approximately 4,500 people, of which around 2,900 live in Sector 6, where there is a permanent, ongoing power outage, and around 1,600 in Sector 5, where intermittent power cuts occur. The lack of electricity deepens the social and spatial segregation that the persons living in the Cañada Real undergo and arguably amounts to a de facto policy which pushes them to forcibly leave the neighbourhood.

225. As accounted for above, the Committee has been very clear that the notion of adequate housing set forth in the Charter requires access to heating and electricity, even in the case of temporary accommodation.¹⁶³ In fact, the Committee has held that authorities must "guard against the interruption of essential services".¹⁶⁴

226. The Committee on Economic, Social and Cultural Rights has also interpreted that the notion of "adequate housing" set forth in Article 11 of its respective Covenant must include "sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation

¹⁶² Annex 6. "Regional Pact on the Cañada Real" (11 May 2017), p. 47.

¹⁶³ Conclusions 2003, France; *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the merits of 5 December 2007, §74; *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Decision on the merits of 20 October 2009, § 43; *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits of 26 January 2021, §115.

¹⁶⁴ *European Roma Rights Center (ERRC) v. Portugal*, Complaint No. 61/2010, Decision on the merits of 30 June 2011, §48.

and washing facilities, [and]means of food storage [...]”.¹⁶⁵ Moreover, the Commissioner for Human Rights of the Council of Europe has held that “dignity in housing means that even temporary shelters must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, *sufficient lighting and heating*”.¹⁶⁶

227. It is evident that the deprivation of electricity in the Cañada Real is incompatible with the notion of adequate housing of Article 31. Indeed, the Spanish Ombudsman has noted the gravity of the power outage, which he labelled as a problem “of humanitarian character”, and has accounted for the implications that the deprivation of electricity to the persons living in Sectors 5 and 6 of the Cañada Real have in the enjoyment of their rights.¹⁶⁷

Lack of an adequate, effective response by the State

228. The lack of an adequate response by the State after repeated calls for action by the Spanish Ombudsman and nine UN Special Rapporteurs is noticeable.¹⁶⁸ The single measure taken by the State in response to the power outage has consisted of the issuance of a €5-million direct grant in December 2021 to the Councils of Madrid city and Rivas-Vaciamadrid for the implementation of the Re-housing Programme for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real.¹⁶⁹

¹⁶⁵ Committee on Economic, Social and Cultural Rights, “General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)” (E/1992/23) (13 December 1991), § 7(b).

¹⁶⁶ Commissioner for Human Rights, “Recommendation of the Commissioner for Human Rights on the implementation of the right to housing” (CommDH(2009)5) (30 June 2009), p. 13 (emphasis added).

¹⁶⁷ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>> [in Spanish], §§ 6-9.

¹⁶⁸ Ibid.; Spanish Ombudsman, “Urgent restoration of the electricity supply in Sectors 5 and 6 of the Cañada Real Galiana” (21 December 2020), <<https://www.defensordelpueblo.es/resoluciones/recuperacion-urgente-del-suministro-electrico-en-los-sectores-5-y-6-de-la-canada-real-galiana-2/>> [in Spanish]; Balakrishnan Rajagopal, Gerard Quinn, Koumbou Boly Barry, Hilal Elver, Tlaleng Mofokeng, Felipe González Morales, Fernand de Varennes, Olivier De Schutter, and Pedro Arrojo-Agudo, “Spain: Power outages put children’s lives at risk in informal settlement” (22 December 2020) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26624&LangID=E>>.

¹⁶⁹ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish].

229. This policy, nevertheless, fails to tackle the cause of the humanitarian crisis currently occurring in Sectors 5 and 6 of the Cañada Real: the lack of electricity supply. In fact, it ignores the urgent need to restore the supply, as recommended by the Spanish Ombudsman in November 2021.¹⁷⁰ Further, the measure is inadequate and insufficient as an alternative to the restoration of the electricity supply for three reasons.

230. First, the process of re-housing an entire neighbourhood is lengthy, as it takes social services work, involves the purchase of housing by councils and the development of the re-housing criteria to be subsequently applied to the concerned community. The Government Delegate in Madrid, Ms Mercedes González, acknowledged in an interview that the process for re-housing the eligible inhabitants of the Cañada Real could take three years.¹⁷¹ In the same interview she stated the grant would cover over 55 families.¹⁷² It should be noted that in 2017 there were 824 families in the Sector 6 alone,¹⁷³ 125 of which were rehoused over a period of three years.¹⁷⁴ Thus, the 11-month period that Article 9(1) of the grant sets out for the execution of the €5-million re-housing programme does not seem realistic.

231. Second, it is questionable why re-housing is a priority for Sector 4, which currently has electricity supply and is not included in the appeals for urgent intervention by the UN Rapporteurs and the Spanish Ombudsman.¹⁷⁵

¹⁷⁰ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>>, Recommendation 2 [in Spanish].

¹⁷¹ “Mercedes González announces plan to combat youth gangs in Madrid”, *Cadena Ser* (29 November 2021) <https://cadenaser.com/emisora/2021/11/29/radio_madrid/1638214430_061422.html> [in Spanish].

¹⁷² *Ibid.*

¹⁷³ *Annex 8*. “Regional Pact on the Cañada Real” (11 May 2017), p. 11.

¹⁷⁴ *Annex 14*. Social Housing Agency of the Region of Madrid, “Freedom of Information Response” (16 June 2021) [in Spanish].

¹⁷⁵ Balakrishnan Rajagopal, Gerard Quinn, Koumbou Boly Barry, Hilal Elver, Tlaleng Mofokeng, Felipe González Morales, Fernand de Varennes, Olivier De Schutter, and Pedro Arrojo-Agudo, “Spain: Power outages put children’s lives at risk in informal settlement” (22 December 2020) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26624&LangID=E>>; Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>> [in Spanish].

232. Third, the funds are not allocated to the three sectors in a manner commensurate with the emergency existing in each one. For example, Sector 6, which is the most populated, has the highest number of persons with low-income and children, and has been without electricity for over a year, nonetheless is allocated less funds in proportion than Sector 4, which has electricity and whose total population and low-income population is half that of Sector 6.¹⁷⁶ Moreover, considering that there are 824 families living in Sector 6,¹⁷⁷ the current €1,750,000 grant allocation to this sector would allow for a public expense of €2,123.7 per family, which appears clearly insufficient for any appropriate re-housing.

233. Moreover, in January 2022 the Complainants learnt that UFD-Naturgy had requested the Region of Madrid for an authorisation to undertake a project in the electric infrastructure of the Cañada Real which would dismantle “4,715 metres and 84 overhead power line supports” in Sectors 5 and 6.¹⁷⁸ In case of its approval by the authorities, UFD-Naturgy would dismantle the electric infrastructure which formerly allowed the inhabitants of Sectors 5 and 6 of the Cañada Real to access electricity supply.¹⁷⁹

234. Far from an adequate and effective response, UFD-Naturgy’s request amounts to a dangerous step to entrench the electricity deprivation of the persons concerned by the Complaint. The Complainants submit that an authorisation by the Region of Madrid to this project, which would ultimately dismantle the electric infrastructure of Sectors 5 and 6 of the Cañada Real, would be incompatible with the obligations arising from Article 31 of the Charter.

Continuous violation of Article 31 § 1 due to the deprivation of electricity

235. The power outage in the Cañada Real commenced in October 2020 and still occurs to this date. The Complainants submit that this situation amounts to a continuous violation of Article 31 § 1 of the Charter, for the State has not adopted

¹⁷⁶ Cf. population data and beneficiaries of the integration minimum income (RMI) in [Annex 6](#). “Regional Pact on the Cañada Real” (11 May 2017), pp. 10-1.

¹⁷⁷ [Annex 6](#). “Regional Pact on the Cañada Real” (11 May 2017), p. 11.

¹⁷⁸ [Annex 15](#). UFD-Naturgy’s request for the dismantling of the electric infrastructure in the Cañada Real, p. 2.

¹⁷⁹ *Ibid.*, p. 1.

any decisive, effective measure to remediate or put an end to the inadequate housing situation arising from the deprivation of electricity supply in Sectors 5 and 6.

236. Contrary to the Committee’s case-law, the authorities have not adopted any effective measure to “guard against the interruption of essential services” in the Cañada Real,¹⁸⁰ or against the spatial and social segregation generated by the power outage.¹⁸¹ On the contrary, the State’s inaction has resulted in preventing a whole population from the enjoyment of a basic public service on the grounds of isolated illegal activities, which appears clearly disproportionate and infringes upon their basic fundamental rights.

237. This continuous violation is particularly aggravated considering that a substantial number of the inhabitants of the Cañada Real belong to vulnerable groups of population – for example Roma –, which the Committee has deemed to require the adoption of positive measures.¹⁸²

238. Furthermore, the fact that the electricity is supplied by a private company, does not excuse the State from its role as ultimate supervisor and regulator of the effectiveness of the right to adequate housing contained in Article 31 § 1.¹⁸³

239. The State itself has acknowledged that the deprivation from electricity has caused a “situation of extreme vulnerability and social risk” to the persons concerned by the Complaint.¹⁸⁴ Moreover, the power outage prevents the persons concerned from the enjoyment of other rights set forth in the Charter, as will be elaborated upon below.

Violation of Article 31 § 1 in conjunction with Article E

¹⁸⁰ *European Roma Rights Center (ERRC) v. Portugal*, Complaint No. 61/2010, Decision on the merits of 30 June 2011, §48.

¹⁸¹ *European Roma Rights Center (ERRC) v. Portugal*, Complaint No. 61/2010, Decision on the merits of 30 June 2011, §48.

¹⁸² *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §§ 39-40.

¹⁸³ *European Roma Rights Center (ERRC) v. Italy*, Complaint No. 27/2004, Decision on the merits of 7 December 2005, § 26; *European Federation of National Organisations Working with the Homeless (FEANTSA) c. France*, Complaint No 39/2006, Decision on the merits of 5 December 2007, § 79.

¹⁸⁴ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish].

240. In failing to adopt any measures to re-establish the electricity supply or remediate the power outage the State has also violated the principle of non-discrimination set forth in Article E of the Charter, in conjunction with Article 31 § 1.

241. First, because the State has disregarded the vulnerable nature of the persons concerned by the Complaint. As has been accounted for, 40.8% of the population in the Cañada Real is Roma.¹⁸⁵ There is also a number of persons belonging to other vulnerable groups.¹⁸⁶

242. Second, because the State is failing to act against a discriminatory practice by the electricity supplier. Unlawful practices related to cannabis plantations occurring in some houses are not a valid reason to justify the State's inaction against the power outage, which affects the basic rights of persons who have no connection with those practices. Indeed, should the alleged suspicions of cannabis plantations had occurred in a high-income neighbourhood, it is safe to argue that an entire area would not have been deprived from power supply. According to a recent piece of news, marijuana plantations were found in "luxury villas" in Madrid, which were causing an energy consumption 20-times superior to that of similar houses.¹⁸⁷ The fact that the supplier did not cut off the power in these cases evidences that the inhabitants of the Cañada Real concerned by the Complaint are facing a discriminatory practice grounded on race and economic status, against which the State has failed to act.

243. Consequently, the State has violated Article E of the Charter, in conjunction with Article 31 § 1.

Conclusion

244. In light of the foregoing, the Complainants submit that the State's failure to remediate the power outage in the Cañada Real and the impact thereof in the

¹⁸⁵ Annex 8. Legal Clinic of the Master in Fundamental Rights of University Carlos III in Madrid, "Light for the Cañada. The impact of the power outage in the Cañada Real Galiana on the rights of children and adolescents" (2021), p. 19.

¹⁸⁶ *European Roma Rights Center (ERRC) v. Portugal*, Complaint No. 61/2010, Decision on the merits of 30 June 2011, §52-3.

¹⁸⁷ "Five arrested for growing more than a thousand marijuana plants in luxury villas in Madrid and Guadalajara" *Europa Press* (27 December 2021) <<https://www.europapress.es/madrid/noticia-cinco-detenidos-cultivar-mas-mil-plantas-marihuana-chalets-lujo-madrid-guadalajara-20211227100810.html>> [in Spanish].

housing situation in Sectors 5 and 6 – especially considering that vulnerable population lives therein – amount to a continuous violation of Article 31 § 1 of the Charter, read alone and in conjunction with Article E.

E. Violation of Article 16, read alone and in conjunction with Article E

245. The Committee has determined that Article 16 encompasses the right of the family to adequate housing “in the context of securing the right of families to social, legal and economic protection”.¹⁸⁸ It has consistently held that, although Articles 16 and 31 differ in their personal and material scope, the notion of adequate housing in both provisions is identical.¹⁸⁹ According to its case-law, “the finding of a violation under Article E taken in conjunction with Article 31 amounts to a finding of a violation of Article E taken in conjunction with Article 16”.¹⁹⁰

246. In the previous Section the Complainants have provided a thorough account of a violation of the right to adequate housing enshrined in Article 31 in conjunction with Article E in the context of the ongoing power outage in Sectors 5 and 6 of the Cañada Real.

247. Amongst the persons concerned by the Complaint there are 1,236 families, whose daily lives are affected by the ongoing power outage.¹⁹¹ Consequently, the Complainants submit that State’s failure to remediate the power outage in the Cañada Real and the impact thereof in the families living in Sectors 5 and 6 amounts to a continuous violation of Article 16 of the Charter, read alone and in conjunction with Article E.

State’s failure to guarantee the participation of associations representing families

248. The Committee has also determined that Article 16 mandates States to guarantee that civil organisations representing families are consulted by the authorities in the formulation of family policy.¹⁹²

¹⁸⁸ *European Roma Rights Center (ERRC) v. Bulgaria*, Complaint No. 31/2005, Decision on admissibility of 10 October 2005, §9

¹⁸⁹ Inter alia, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009, Decision on the merits of 25 June 2010, § 115.

¹⁹⁰ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, Decision on the merits of 25 June 2010, § 116.

¹⁹¹ 412 families in Sector 5 and 824 in Sector 6. Annex 8. “Regional Pact on the Cañada Real” (11 May 2017), p. 11.

¹⁹² Conclusions 2006, Statement of Interpretation on Article 16.

249. After the electricity supply was cut off in Sectors 5 and 6 of the Cañada Real, families have created organisations such as the Tabadol Association, the Association of Neighbours of Sector 5 or the Civic Platform.

250. These associations are nevertheless not being taken into account by the relevant authorities in the search for solutions to the power outage in the Cañada Real. For instance, organisations representing families are not included in the inter-ministerial working group promoted by the Ministry of Social Rights and Agenda 2030 created on November 2020.

251. The Complainants submit that the failure to take the relevant family associations of Sectors 5 and 6 of the Cañada Real into consideration when formulating policies related to the neighbourhood amounts to a violation of Article 16 of the Charter.

Conclusion

252. In light of the foregoing, the Complainants submit that both the power outage in Sectors 5 and 6 of the Cañada Real and the State's failure to guarantee the participation of family associations amounts to a continuous violation of Article 16 of the Charter, read alone and in conjunction with Article E.

F. Violation of Article 17, read alone and in conjunction with Article E

253. Article 17 of the Charter enshrines the right of children and adolescents “to social, legal and economic protection”. Inter alia, it encompasses their right to assistance, to protection against negligence and violence, and to education (Article 17 § 1(a), (b), and § 2, respectively).

254. According to the Committee, Article 17 is to be interpreted in light of the Convention on the Rights of the Child,¹⁹³ to which Spain is also a party.¹⁹⁴ The

¹⁹³ Conclusions XV-2, Statement of Interpretation on Article 17; *World Organisation against Torture (OMCT) v. Ireland*, Complaint No. 18/2003, Decision on the merits of 7 December 2004, §61-63.

¹⁹⁴ Spain ratified the Convention on the Rights of the Child on 6 December 1990. Its ratification instrument can be found in the following communication of the Secretary-General of the United Nations: <<https://treaties.un.org/doc/Publication/CN/1990/CN.335.1990-Eng.pdf>>.

Committee has also found itself to be bound to the principle of the best interests of the child when called to interpret the Charter in relation to children.¹⁹⁵

255. In relation to the children concerned by the Complaint, the Complainants submit that the situation of all children and adolescents deprived of electricity supply in Sectors 5 and 6 of the Cañada Real amounts to a continuous violation of Article 17 §§ 1 and 2 of the Charter, read alone and in conjunction with Article E.

256. It should be emphasised that, as addressed in Section C of this Chapter, the State has already acknowledged the existence of such violations by means of a unilateral act.

Violation of Article 17 § 1(a): Right to Assistance

257. Article 17 § 1(a) guarantees, inter alia, the right of children and young persons to assistance “by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose”, which the Committee has deemed to include appropriate accommodation.¹⁹⁶

258. In Section D of this Chapter, the Complainants have submitted that the lack of power supply in Sectors 5 and 6 of the Cañada Real amounts to a violation of the right to adequate housing contained in Article 31 § 1 of the Charter. The Complainants submit that this violation should give rise to a violation of the right to assistance enshrined in Article 17 § 1(a) on the same ground.¹⁹⁷

259. With regards to power supply and protection of children, the Committee of the Rights of the Child has held that “energy [...] [is] critical to the enjoyment of children’s rights”.¹⁹⁸ In doing so, it has emphasised that “States are not exempted from their obligations under the Convention when they outsource or privatize services that impact on the fulfilment of children’s rights”.¹⁹⁹ In fact, it has more

¹⁹⁵ *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Decision on the merits of 20 October 2009, § 29; *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits of 26 January 2021, § 158.

¹⁹⁶ Mutatis mutandis, *European Federation of National Organisations working with the Homeless (FEANSA) v. Netherlands*, Complaint No. 86/2012, Decision on the merits of 2 July 2014, §50.

¹⁹⁷ Mutatis mutandis, *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Decision on the merits of 20 October 2009, §71.

¹⁹⁸ Committee on the Rights of the Child, “General comment No. 16 on State obligations regarding the impact of the business sector on children’s rights” (CRC/C/GC/16) (17 April 2013), § 33.

¹⁹⁹ Ibid.

recently asserted that States “should not [...] or enable other actors to obstruct the supply of electricity”.²⁰⁰ As the Committee has consistently found that Article 17 is to be interpreted in light of the Convention on the Rights of the Child,²⁰¹ the Complainants submit that these considerations should be applied by the Committee to the interpretation of the Charter in this Complaint.

260. In light of this, it appears evident that without electricity supply, children and young persons cannot “grow up in an environment which encourages the full development of their personality and of their physical and mental capacities”, as required according to Article 17 of the Charter.

261. In this case, contrary to what Article 17 § 1 establishes, the State has not cooperated with UFD-Naturgy to take all appropriate and necessary measures to provide for “the establishment or maintenance” of the electricity supply, which has to be read as a “service” in the terms of Article 17 § 1. Therefore, the State has failed to undertake the measures required to ensure that children and young persons living in Sectors 5 and 6 of the Cañada Real have the care and the assistance they need.

262. The failure to adopt such necessary measures in relation to the children and young persons concerned by the Complaint poses “a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity” and therefore amounts to a violation of Article 17 § 1 of the Charter.²⁰²

263. Indeed, the nine UN Special Rapporteurs held in December 2020 that “[t]he lack of electricity not only violates these children's right to adequate housing, it is having a very serious effect on their rights to health, food, water, sanitation and education”.²⁰³

²⁰⁰ Committee on the Rights of the Child, “General Comment No. 25 on children’s rights in relation to the digital environment” (CRC/C/GC/25) (2 March 2021), § 54.

²⁰¹ *World Organisation against Torture (OMCT) v. Ireland*, Complaint No. 18/2003, Decision on the merits of 7 December 2004, §61-63.

²⁰² *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, Decision on the merits of 23 October 2012, §82.

²⁰³ Balakrishnan Rajagopal, Gerard Quinn, Koumbou Boly Barry, Hilal Elver, Tlaleng Mofokeng, Felipe González Morales, Fernand de Varennes, Olivier De Schutter, and Pedro Arrojo-Agudo, “Spain: Power outages put children’s lives at risk in informal settlement” (22 December 2020) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26624&LangID=E>>.

Violation of Article 17 § 1(b): Right to Protection against Negligence and Violence

264. Article 17 § 1(b) guarantees the protection of children and young persons against “negligence” and “violence”.

265. The Complainants submit that the power outage, in conjunction with the State’s failure to observe the right to assistance in accordance with Article 17 § 1(a) of the Charter, expose the children and adolescents concerned by the Complaint to negligent treatment and mental violence, and therefore amount to a violation of Article 17 § 1(b) of the Charter. Following the Committee’s case-law,²⁰⁴ the definitions set forth by the Committee on the Rights of the Child in its General Comment No. 13 are taken into consideration.

266. The Committee on the Rights of the Child has held that “neglect or negligent treatment” includes inter alia:

“(a) Physical neglect: failure to protect a child from harm, including through lack of supervision, or failure to provide the child with basic necessities including adequate food, shelter, clothing and basic medical care;

(b) Psychological or emotional neglect: including lack of any emotional support and love, chronic inattention to the child, caregivers being “psychologically unavailable” by overlooking young children’s cues and signals, and exposure to intimate partner violence, drug or alcohol abuse;

(c) Neglect of children’s physical or mental health: withholding essential medical care”.²⁰⁵

267. In light of this definition, the Complainants submit that the State’s failure to restore the supply of electricity in Sectors 5 and 6 of the Cañada Real amounts to a failure to provide the concerned children and adolescents with their basic

²⁰⁴ Conclusions XV-2, Statement of Interpretation on Article 17; *World Organisation against Torture (OMCT) v. Ireland*, Complaint No. 18/2003, Decision on the merits of 7 December 2004, §61-63.

²⁰⁵ The Committee on the Rights of the Child has defined “neglect or negligent treatment” as “the failure to meet children’s physical and psychological needs, protect them from danger, or obtain medical, birth registration or other services when those responsible for children’s care have the means, knowledge and access to services to do so”; Committee on the Rights of the Child, “General Comment No. 13 on the right of the child to freedom from all forms of violence” (CRC/C/GC/13) (18 April 2011), § 20.

necessities and, in turn, amounts to continuous negligent treatment prohibited by Article 17 § 1(b) of the Charter.

268. With regards to “mental violence”, the Committee on the Rights of the Child has found that it includes inter alia:

“(a) All forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another’s needs;

(b) Scaring, terrorizing and threatening; exploiting and corrupting; spurning and rejecting; isolating, ignoring and favouritism;

(c) Denying emotional responsiveness; neglecting mental health, medical and educational needs;

(d) Insults, name-calling, humiliation, belittling, ridiculing and hurting a child’s feelings”.²⁰⁶

269. The Complainants submit that the children and young persons in Sectors 5 and 6 of the Cañada Real have been subject to continuous mental violence which amounts to a violation of Article 17 § 1(b) of the Charter.

270. The mental violence to which the children and adolescents in the Cañada Real are subject can be shown with the letters that 50 of them, aged between 5 to 17 years old, addressed on 15 November 2020 to the Committee on the Rights of the Child, copying the competent Spanish authorities.²⁰⁷ In these letters, they expressed feeling sad and socially excluded due to the lack of electricity, as well as fearing being laughed at, falling ill or having their houses burn down because of the use of candles. The Spanish authorities never replied to the letters or addressed the concerned children and young persons.²⁰⁸

²⁰⁶ Committee on the Rights of the Child, “General Comment No. 13 on the right of the child to freedom from all forms of violence” (CRC/C/GC/13) (18 April 2011), § 21.

²⁰⁷ Annex 8. Legal Clinic of the Master in Fundamental Rights of University Carlos III in Madrid, “Light for the Cañada. The impact of the power outage in the Cañada Real Galiana on the rights of children and adolescents” (2021), pp. 190-233.

²⁰⁸ *Ibid*, p. 131.

271. Moreover, as accounted for in the Statement of facts above, it is noticeable the authorities have not prevented psychological violence suffered by children and adolescents in Sectors 5 and 6 of the Cañada Real.

272. These statements amount to examples of institutional violence which only aggravate the mental violence from which children and adolescents in Sectors 5 and 6 of the Cañada Real suffer. On this note, the Spanish Ombudsman has shown concern about the “the flippancy and lack of restraint with which the problem has been dealt with in public statements by authorities of the Region of Madrid”.²⁰⁹ It also noted that authorities have contributed to misrepresenting the problem in the Cañada Real by addressing it only as a crime-related issue and found that “[s]uch arguments are fallacious and dangerous, as they victimise the majority of those affected and engage in aporophobia”.²¹⁰

273. The nine UN Special Rapporteurs equally tackled this issue in their communication to the State in December 2020. They “call[ed] on all politicians to stop stigmatising migrants, members of the Roma minority and anyone who lives in poverty” and stated that “[t]he people of the Cañada Real urgently need the support of the Government to achieve adequate living conditions, not verbal attacks that provoke public hostility”.²¹¹

274. The acts and omissions carried out by Spanish authorities in relation to the power outage in the Cañada Real and the children and adolescents affected by it, amount to examples of violence, which fall within the definition of violence posited by the Committee on the Rights of the Child in its General Comment No. 13.²¹²

275. In light of the foregoing, the Complainants submit that the State has failed to protect the children of the Cañada Real against violence or neglect in practice.

²⁰⁹ Spanish Ombudsman, “Urgent restoration of the electricity supply in Sectors 5 and 6 of the Cañada Real Galiana” (21 December 2020), <<https://www.defensordelpueblo.es/resoluciones/recuperacion-urgente-del-suministro-electrico-en-los-sectores-5-y-6-de-la-canada-real-galiana-2/>> [in Spanish], § 14.

²¹⁰ Ibid.

²¹¹ Balakrishnan Rajagopal, Gerard Quinn, Koumbou Boly Barry, Hilal Elver, Tlaleng Mofokeng, Felipe González Morales, Fernand de Varennes, Olivier De Schutter, and Pedro Arrojo-Agudo, “Spain: Power outages put children’s lives at risk in informal settlement” (22 December 2020) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26624&LangID=E>>.

²¹² Committee on the Rights of the Child, “General Comment No. 13 on the right of the child to freedom from all forms of violence” (CRC/C/GC/13) (18 April 2011), § 4.

The State is responsible for the suffering caused to the children and adolescents living in the Sectors 5 and 6 of the Cañada Real as a result of the power outage, which amounts to a violation of Article 17 § 1(b) of the Charter.

Violation of Article 17 § 2: Right to Education

276. Article 17 § 2 mandates that States, “either directly or in co-operation with public and private organisations” take “all appropriate and necessary measures” to encourage school attendance and guarantee children and young persons’ right to equal access to education.

277. The Committee has held that “access to education is crucial for every child’s life and development”,²¹³ and that a child who has been deprived from education “sustains consequences thereof in his or her life”.²¹⁴ With regards to vulnerable children, the Committee has determined that special measures should be taken to ensure their equal access to education.²¹⁵ Moreover, the Committee has held that States should adopt measures to encourage school attendance and prevent dropping out and absenteeism.²¹⁶

278. The Complainants submit that the power outage’s impacts on the education of the children and adolescents in the Sectors 5 and 6 of the Cañada Real amounts to a continuous violation of Article 17 § 2 of the Charter.

279. First, the lack of electricity supply has had a twofold direct negative effect on the rights of the concerned children to access education. On the one hand, it has made it considerably harder to study, revise or do homework, as the concerned children and adolescents have been forced to use candles to read their books and write on their notebooks. On the other, the power outage has prevented them from accessing the internet at their homes and from being able to charge their tablets and computers, which are essential to undertake school homework and to access teaching content.²¹⁷

²¹³ Statement of interpretation on Article 17§2, 2011.

²¹⁴ *Médecins du Monde - International v. France*, Complaint No. 67/2011, Decision on the merits of 11 September 2012, §128.

²¹⁵ Conclusions 2011, Slovakia; Conclusions 2003, Bulgaria.

²¹⁶ Conclusions 2011, Republic of Moldova; Conclusions 2003, Bulgaria.

²¹⁷ Annex 8, Legal Clinic of the Master in Fundamental Rights of University Carlos III in Madrid, “Light for the Cañada. The impact of the power outage in the Cañada Real Galiana on the rights of children and adolescents” (2021), p. 72.

280. Second, the lack of electricity has had a disproportionate effect on all the daily aspects that allow for the enjoyment of the right to education. As mentioned in the letters that 50 children and adolescents addressed to the Committee on the Rights of the Child, the power outage forces them to get dressed by candlelight, shower with cold water, and eat cold meals.²¹⁸ These have discouraged children and adolescents from attending school.²¹⁹

281. Third and consequently, the lack of electricity has caused learning slow-downs, lower grades and early school leaving among the concerned children and adolescents, as stated by some of their teachers.²²⁰ The Spanish Ombudsman noted “an increase in absenteeism linked to children being ridiculed for their odour and lack of cleanliness”.²²¹

282. The extent of the severity of the impact of the power outage on children’s right to education is confirmed by the report of the faculty of Las Lagunas High School in Rivas-Vaciamadrid²²², the complaint filed before the Education Department of the Region of Madrid by a group of parents of Rivas-Vaciamadrid and Vallecas schools²²³ and the Survey²²⁴’s result, in which **80,9%** of the children and adolescents surveyed reported that the power cut had interfered in their education.

283. The importance of access to electricity for the enjoyment of the access to education has been addressed by the Committee on the Rights of the Child. On this note, it has found that “access [...] to the basic utilities necessary for distance learning, including [...] electricity”, should be ensured for disadvantaged or vulnerable children to access education.²²⁵ The Spanish Ombudsman has also held that electricity supply “essential” for the “material conditions” around the right to

²¹⁸ Ibid., p. 71.

²¹⁹ Ibid., p. 73.

²²⁰ Ibid., p. 71.

²²¹ Spanish Ombudsman, “Urgent restoration of the electricity supply in Sectors 5 and 6 of the Cañada Real Galiana” (21 December 2020), <<https://www.defensordelpueblo.es/resoluciones/recuperacion-urgente-del-suministro-electrico-en-los-sectores-5-y-6-de-la-canada-real-galiana-2/>> [in Spanish], § 3.

²²² [Annex 21.](#)

²²³ [Annex 26.](#)

²²⁴ [Annex 20.](#)

²²⁵ Committee on the Rights of the Child, “General Comment No. 25 on children’s rights in relation to the digital environment” (CRC/C/GC/25) (2 March 2021), § 102.

education to be met.²²⁶ Particularly in wintertime, it found that if students cannot “their homework after sunset [...] the[ir] right to education is violated”.²²⁷

284. Indeed, in relation to the children and adolescents in the Sectors 5 and 6 of the Cañada Real, the Ombudsman has consistently held that their right to education was being violated.²²⁸

285. In light of the above, it is evident that, in the context of the lack of electricity supply, the State has not adopted the necessary measures to put an end to the power outage, to provide the concerned children and adolescents with the material conditions necessary for the enjoyment of their right to education, and to prevent absenteeism in the Cañada Real. The State has failed to guarantee that the children and young persons concerned can access to the internet or have adequate lighting to do their homework, especially since they belong to vulnerable groups of population.

286. Accordingly, the Complainants submit that the power outage and the facts accounted for amount to a continuous violation of Article 17 § 2 of the Charter which has been occurring since October 2020.

Violation of Article 17 in conjunction with Article E

287. Article E of the Charter enshrines the principle of non-discrimination and prohibits both direct and indirect discrimination. The Committee has consistently held that “its function is to help secure the equal effective enjoyment of all the rights concerned regardless of difference”.²²⁹ Accordingly, the Committee has found that

²²⁶ Spanish Ombudsman, “Protection of vulnerable consumers regarding electricity supply” (2017) <https://www.defensordelpueblo.es/wp-content/uploads/2017/05/Bono_social-1.pdf> [in Spanish], p. 8.

²²⁷ Ibid.

²²⁸ Spanish Ombudsman, “Urgent restoration of the electricity supply in Sectors 5 and 6 of the Cañada Real Galiana” (21 December 2020), <<https://www.defensordelpueblo.es/resoluciones/recuperacion-urgente-del-suministro-electrico-en-los-sectores-5-y-6-de-la-canada-real-galiana-2/>> [in Spanish], § 3; “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>> [in Spanish], § 8.

²²⁹ *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §51.

non-discrimination in the enjoyment of rights requires access not only in theory but also “in practice”.²³⁰

288. The Complainants submit that, although the children and adolescents living in Sectors 5 and 6 of the Cañada Real have Article 17 recognised by law, they are prevented from the enjoyment of their rights contained therein due to the power outage, which amounts to discrimination prohibited by Article E.

289. Furthermore, it needs to be underscored that the children and adolescents concerned by this Complaint belong to vulnerable groups of population, including children with disabilities, and are consequently affected by structural and intersectional discrimination contrary to Article E. As explained, in Sector 5, 68% of the population is of foreign origin, and in Sector 6, 52% is Roma and 34% of foreign origin.²³¹ Poverty and social exclusion is also prevalent in the Cañada Real.

290. On this note, Professor Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, stated that he was “shocked at the extent to which the relevant governments appear to have abandoned the people living” in the Cañada Real after a visit there in February 2020.²³² He added that in the Cañada Real he had “met people living without a clinic, employment center, school, or even legal electricity, on an unpaved road, directly adjacent to incinerators, in an area deemed hazardous to human health”.²³³

291. The discriminatory situation faced by the children and adolescents in the Cañada Real – which prevents them from the enjoyment of Article 17 of the Charter – is only aggravated by the stigmatisation and institutional violence they have received from certain regional public authorities, such as the statements by the President of the Region of Madrid referred to.

²³⁰ *International Planned Parenthood Federation - European Network (IPPF EN) v. Italy*, Complaint No. 87/2012, Decision on the merits of 10 September 2013, §193.

²³¹ Annex 8. Legal Clinic of the Master in Fundamental Rights of University Carlos III in Madrid, “Light for the Cañada. The impact of the power outage in the Cañada Real Galiana on the rights of children and adolescents” (2021), p. 19.

²³² Office of the High Commissioner for Human Rights, “Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to Spain, 27 January – 7 February 2020” (7 February 2020), <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25524&LangID=E>>.

²³³ *Ibid.*

292. Accordingly, the Complainants submit that in relation to the children and young persons living in Sectors 5 and 6 of the Cañada Real, the State has violated Article E of the Charter, read in conjunction with Article 17.

Conclusion

293. In light of the foregoing, the Complainants submit that the State, in relation to the power outage in the Cañada Real, has failed to duly consider the best interests of the children and young persons concerned by the Complaint. It is submitted that the State has failed to adopt all necessary measures to guarantee in practice their right to assistance, to protection against violence and neglect and to education.

294. Accordingly, the situation of all children and adolescents deprived from electricity supply in Sectors 5 and 6 of the Cañada Real amounts to a continuous violation of Article 17 § 1(a) and (b), Article 17 § 2 of the Charter, read alone and in conjunction with Article E.

G. Violation of Article 30, read alone and in conjunction with Article E

295. The power outage has significantly increased the situation of poverty and social exclusion in which population of Sectors 5 and 6 of the Cañada Real lives. It has added energy poverty to the existing situation, severely affecting enjoyment of other basic rights.

296. Measures taken by the State to prevent it are, if not inexistent, insufficient according to the criteria maintained by the Committee when assessing violations of Article 30, which imposes signing parties an explicit obligation:

- (i) to take measures;
- (ii) within a framework of an overall and coordinated approach;
- (iii) to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to inter alia housing and education.

Measures taken by the State

297. First, States are required to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures.²³⁴

298. As a context note, the Complainants would like to indicate that the violations of the Charter addressed in this Complaint are focused on the State's behaviour with regards to the power outage, not to the general situation of poverty and social exclusion of the Cañada Real, which would require further, separated analysis.

299. Thus, the scope of the Complaint should be limited to the approach taken by the State since October 2020, when the power outage began, to promote effective access to housing, health and education.

300. As explained in Section B of Chapter II, below are the initiatives taken by the authorities since October 2020:

- (i) Creation of an Inter-ministerial Commission composed of the Ministry of Social Rights, the Ministry of Transport, Mobility and Urban Agenda, and the High Commissioner for Child Poverty (September 2021).²³⁵
- (ii) The Re-housing Programme (December 2021).²³⁶

301. As regards the Inter-ministerial Commission, only a few details about the first meeting held by the group on 28 September 2021 have been made public.²³⁷ Aside of the explicit reference to the need for a coordinated response to the problems faced by the population of the Cañada Real and to conversations held by the Government Delegation in Madrid with the regional authorities aimed at

²³⁴ Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France.

²³⁵ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish], Recital.

²³⁶ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish].

²³⁷ Ministry of Territorial Policy, "Mercedes González chairs the constitution of the inter-ministerial working group on the Cañada Real" (28 September 2021) <https://www.mptfp.gob.es/portal/delegaciones_gobierno/delegaciones/madrid/actualidad/notas_de_prensa/notas/2021/09/2021-09-28-.html> [in Spanish].

reviewing and reinforcing the agreements on the Regional Pact, no further information is available.

302. The Inter-ministerial Commission, created as a response to the UN Special Rapporteurs and treaty bodies calls for action,²³⁸ has been created one year after the power outage. No formal coordination mechanism between the authorities and the concerned stakeholders was in place before. This gives an accurate idea of how the “humanitarian” emergency – as labelled by the Spanish Ombudsman –²³⁹ is being dealt with by the authorities.

303. Even if the Complainants have limited access to the content of the Inter-ministerial Commission meetings as well as to the measures taken by the authorities concerned, the Re-housing Programme adopted last December, considered together with the absence of intervention in the electricity network, is a valid indicator of the approach taken by the public authorities.

304. The exclusive purpose of the Re-housing Programme is to provide the Madrid City Council and the Rivas-Vaciamadrid Council with a €5-million direct grant to develop re-housing and social inclusion programmes for families in a situation of special social vulnerability residing in Sectors 4, 5 and 6 of the Cañada Real.

305. Even if the situation of extreme vulnerability worsened by the lack of electricity is explicitly and extensively acknowledged in the recital of the Royal Decree by means of which the Re-housing Project was passed, no measures aimed at the restoration of the electricity are incorporated in the text.

306. The €5-million grant ignores the urgent need to restore the supply, as recommended by the Spanish Ombudsman in November 2021.²⁴⁰

307. As explained above in relation with Article 31, the measure is inadequate and insufficient as an alternative to the restoration of the electricity supply.

²³⁸ Ibid.

²³⁹ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>> [in Spanish], §§ 9.

²⁴⁰ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>>, Recommendation 2 [in Spanish].

308. Adequate resources are an essential element to measure whether the strategy set by the State complies with the criteria set forth in Article 30. To his point, the Committee has been clear that “adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty and should be *adequate in their quality and quantity* to the nature and extent of poverty and social exclusion in the country concerned”.²⁴¹

309. As regards *quantity*, the amount is clearly insufficient for any appropriate re-housing. In Sector 6, for example, the current €1,750,000 grant allocation to this sector would allow for a public expense of €2,123.7 per family.

310. The *quality* component is also unsatisfactory, as re-housing is a lengthy process which is not suitable to address the emergency situation which is currently taking place. Only 125 families have been rehoused since the Regional Pact, with an ambitious rehousing project which entered into force in 2017.²⁴² The 11-month period that Article 9(1) of the grant sets out for the execution of the programme, in addition to being clearly insufficient to tackle the situation of the whole affected population, is not adequate, as cannot effectively prevent violation of the affected rights.

311. It is also clear that no effective action has been taken either over the electricity network, or over the instalment of alternative means to generate electricity which may reach the affected households. There is no evidence which may indicate that steps are being taken in this direction.

Appropriate indicators: electricity poverty

312. Any indicator relevant to measure fulfilment of the State’s obligations arising from Article 30 must deal with the electricity poverty generated by the power outage and the measures taken by the State.

313. Even if some connection problems arose from time to time, no persistent problems with energy access were reported prior to October 2020.²⁴³

²⁴¹ Conclusions 2005, Slovenia (emphasis added).

²⁴² Annex 14. Social Housing Agency of the Region of Madrid, “Freedom of Information Response” (16 June 2021) [in Spanish].

²⁴³ Annex 9. Witness statement by Mr. Pedro Navarrete Tortosa, former Madrid City Council Commissioner for the Cañada Real (2016-2019).

314. Energy poverty directly affects the dignity of people who cannot carry out basic activities such as eating properly (cooking or keeping food in optimal conditions), heating, studying, being able to clean clothes or to apply medical treatments correctly.

315. In terms of direct mortality attributable to energy poverty, the figures are alarming. The World Health Organisation (WHO) claims that 30% of premature winter deaths in temperate countries are attributable to fuel poverty. Energy poverty and living conditions also have an impact on mental health. Children living in poor housing conditions, including climatic conditions, are more likely to suffer from mental health problems such as anxiety and depression, meningitis, respiratory problems, stunted growth, and cognitive development.

316. Alleviating the effects of energy poverty is one of the challenges that the European Union has set itself through the Commission Recommendation (EU) 2020/1563 of 14 October 2020 on energy poverty.²⁴⁴

317. The Commission Recommendation for the creation of the European Child Guarantee also focuses on the need to combat energy poverty affecting minors, compelling States to “assess and review, where necessary, national, regional and local housing policies, and take measures to ensure that the interests of families with children in need, including the fight against energy poverty, are duly taken into account; the above assessment and review should also cover social housing policies and housing support”.

318. The effect of energy poverty in the elderly is even higher. See impact on health figures set in Chapter III. B above.

319. One year and four months after the power outage, nothing has changed. Energy poverty rates remain the same as back in October 2020 (when the power cut occurred).

320. This clearly indicates that measures taken by the State (among others, the measures identified in the preceding paragraphs) have not been effective to tackle the problems created by the power outage.

²⁴⁴ Commission Recommendation (EU) 2020/1563 of 14 October 2020 on energy poverty (C/2020/9600), OJ L 357, of 27 October 2020, p. 35 <<http://data.europa.eu/eli/reco/2020/1563/oj>>.

321. The lack of effective measures to prevent violations of article 11, 15, 16, 17, 20, 23 and 31 should also be considered as relevant indicators according to the criteria followed by the Committee on application of the principle of indivisibility explained hereinbelow²⁴⁵.

Interpretation of Article 30 alone and in conjunction with Articles 11, 15, 16, 17, 20, 23 and 31

322. The Committee has stated that protection against poverty and social exclusion governed by Article 30 is closely linked to the enjoyment of the rights set forth in other provisions of the Charter.

323. According to the Committee, the principle of indivisibility also applies to the relationship between the two dimensions of Article 30, poverty and social exclusion.

324. Concerning poverty, the Committee has concluded that it can arise from the failure of the State to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion.²⁴⁶

325. The same criteria should be applied in the case at hand, but not just in relation to the right to access to housing, but also in connection with the violations of Articles 15, 16, 17, 20, 23.

326. Although those violations do not automatically lead to a breach of Article 30,²⁴⁷ in the case at hand, they show a “substantial weakness” affecting several “essential pillar[s]” of the fundamental obligations of the State “contained in Article 30 in relation to protection against poverty and social exclusion”.²⁴⁸

327. A particular reference should be made to the *social exclusion dimension* of Article 30.

²⁴⁵ *EUROCEF v. France*, Complaint No. 82/2012, Decision on the merits of 19 March 2013.

²⁴⁶ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, Decision on the merits of 5 December 2007, §§ 169-170.

²⁴⁷ *EUROCEF v. France*, Complaint No. 82/2012, Decision on the merits of 19 March 2013.

²⁴⁸ Conclusions 2013, Statement of interpretation on Article 30.

328. The Committee has highlighted the fight against social exclusion as “one area where the notion of the indivisibility of fundamental rights takes on special importance”.²⁴⁹

329. The process of social inclusion that had been taking place since the Law 2/2011 on the Cañada Real Galiana was enacted, has collapsed as a direct effect of the power outage.

330. After almost a decade (2011 to 2020) of movement towards social inclusion thanks to measures such as those envisaged in the Regional Pact, a setback in this process has occurred due to the deprivation of electricity supply.

331. There is no known public policy aimed at cushioning the accelerated fall into social exclusion of the residents who have been left without electricity. The public authorities have not even collected statistical information on the current situation of those affected, essential to assess the damages suffered by the affected population.²⁵⁰

332. There has been no progress on the implementation of any measure aimed at regularising the electricity supply in the affected households repeatedly requested by the affected population.

333. The authorities have not implemented of any measure aimed at facilitating access to energy supply contracts in the Cañada Real, recognised as a permanent settlement since over 50 years ago. This amounts to a denial of the status of full citizens of the persons concerned by the Complaint, deepening their social exclusion.

334. To this point, it should be noted that the arguments held by the energy supplier to deny energy supply contracts (i.e. that the dwellings are not regularised and therefore no contract can be signed into) does not stand up to scrutiny, as the same supplier has entered into electricity supply contracts with neighbours who live in non-regularised dwellings.

²⁴⁹ *European Roma and Travellers Forum (ERTF) v. France*, Collective Complaint No. 64/2011, Decision on the merits of 24 January 2012, §71.

²⁵⁰ *Fédération internationale des Ligues de Droits de l’Homme (FIDH) c. Belgique*, Complaint No.75/2011.

335. Current legislation does not prevent from electricity supply contracts to be executed in not fully-regularised houses and, in any case, measures can be taken by the relevant authorities to conduct the necessary works to allow for its regularisation, which could subsequently lead to the possibility to enter into contracts.

336. In addition, the increasing stigmatization substantively caused by the public statements of some public authorities referred to above also contributes to keep the Cañada Real population out of society. This effect has been particularly referred to both by the Rapporteur on Extreme Poverty and the Spanish Ombudsman.²⁵¹

337. The effect in the social exclusion of children is in most cases irreversible. The cases of children hiding to their school colleagues that they live in the Cañada Real are a clear example of how the current situation is deepening social exclusion of children affected by the power cut.

Violation of Article 30 in conjunction with Article E

338. The Committee has made consistently clear that Article 30 requires Governments to introduce measures which take account of the multidimensional nature of poverty and exclusion and, in particular, to target specifically the most vulnerable groups.²⁵²

339. On this note, the Committee has also stated that housing is a critical policy area in fighting poverty and social exclusion.²⁵³

340. As explained in Chapter III above, the State has not considered the specific needs of vulnerable groups affected by the power outage in Cañada Real (e.g. children, Roma population, elderly persons and persons with disabilities).

341. The subsequent violation of Article 31 in connection with Article E is translated into an additional violation of Article 30 in conjunction with Article E, as such an absence of particular effective measures aimed at preventing further

²⁵¹ Spanish Ombudsman, “Annual Report 2020. Vol. 1” (2021) <https://www.defensordelpueblo.es/wp-content/uploads/2021/05/Informe_anual_2020-1.pdf> [in Spanish], p. 734.

²⁵² Conclusions 2007, Belgium, Article 30.

²⁵³ Conclusions 2003 France, Article 30.

violation of the rights the vulnerable population concerned by the Complaint is deepening their situation of poverty and social exclusion.

342. Indeed, the lack of electricity has only deepened the spatial and social segregation already existing in the Cañada Real in a manner contrary to the Charter.

343. These criteria are to be placed, in the case at hand, in relation to the housing initiatives that should have been implemented to avoid the explained impact on Sectors 5 and 6 population and the subsequent violations of Articles 11, 15, 16, 17, 20 and 23.

344. Consequently, following the same rationale explained above in relation to the violation of Article E in conjunction with Article 31, the Complainants submit that there is a “substantial weakness” on protection against poverty and social exclusion of the persons Concerned by the Complaint, whose particular needs should have been considered.

345. The lack of differentiated treatment and targeted measures to improve their circumstances should lead to find a violation of Article E read in conjunction with Article 30.²⁵⁴

Conclusion

346. In light of the foregoing, the Complainants submit that the State has failed to take measures within the framework of an overall and coordinated approach to promote the effective access of people living in Sectors 5 and 6 of the Cañada Real to electricity and, thus, to enjoyment of basic human rights, failing to protect them against poverty and social exclusion.

347. Accordingly, the situation of the inhabitants of Sectors 5 and 6 of the Cañada Real amounts to a continuous violation of Article 30 of the Charter, read alone and in conjunction with Article E.

H. Violation of Article 23

348. In 2012, date in which the latest official census of the Cañada Real was done, around 4% of the population of the Cañada Real was over 65 years. Latest

²⁵⁴ *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 62/2010, Decision on the merits of 21 March 2012, § 204.

data suggest that the percentage of elderly people has not changed significantly since then.

349. As thoroughly explained in Chapter III.B above, the power outage is having a devastating impact on the oldest people, particularly on their health.

350. It should be reminded that the persons concerned by the Complaint were already living in extreme poverty conditions before October 2020 and, thus, their exposure to serious health problems has increased exponentially by the power cut.

351. Article 23 sets out an obligation on State Parties to adopt or encourage appropriate measures designed to enable elderly persons inter alia to “remain full members of society” and lead independent lives.²⁵⁵

352. Measures aimed at enabling elderly persons to remain full members of societies should be accompanied with adequate resources which must enable them to lead a decent life (Article 23 § 1(a)).

353. As regards measures designed to enable elderly persons to lead independent lives, Article 23 § 2 explicitly refers to measures linked to (a) “provision of housing suited to their needs” and (ii) “the health care and the services necessitated by their state”.

354. The Complainants submit that the State has failed to adopt and encourage measures to protect elderly persons from the effects of the power outage in the Cañada Real.

Lack of allocation of adequate resources

355. First, no allocation of adequate resources needed to implement any measure aimed at enabling elderly persons to remain full members of society has been adopted.

356. The Committee has stated that Article 23 overlaps with other provisions of the Charter protecting elderly persons as members of the general population, such as Articles 11 and 30.

²⁵⁵ Conclusions 2017, France (Article 23).

357. The impact of violations to Articles 11 and 30 is particularly serious in the case of elderly persons, who are prevented from becoming “full members of society” while the violations are still occurring.

358. The human rights approach and the principle of indivisibility play an important role in its reading together with Article 23, as explicitly referred to by the Committee.²⁵⁶

359. This approach is consistent with the progressive inclusion of the protection of elderly persons in the European agenda. For example, the Europe 2020 Strategy states “[e]qually important will be our ability to meet the challenge of promoting a healthy and active ageing population to allow for social cohesion and higher productivity”.²⁵⁷

360. Abuse and neglect of the elderly, prohibited by Article 23, is defined in the Toronto Declaration on the Global Prevention of Elder Abuse as “a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person”.²⁵⁸ According to the Declaration, abuse can only be effectively prevented by developing a culture of intergenerational solidarity and rejection of violence, with a gender perspective, and by creating structures of health, social, legal and police services. We have evidenced in the corresponding Sections that Articles 11 and 30 have been violated by the State.

361. As far as there has not been a proportional and sufficient allocation of resources to prevent such violations, they additionally evidence breach of Article 23 to the extent they affect the elderly persons living in Sectors 5 and 6.

362. The analysis incorporated in both sections as regards insufficient quantity and quality of the resources is fully applicable in this context, as no additional measure has been taken to protect this particularly vulnerable group.

²⁵⁶ Conclusions 2013, Statement of interpretation on Article 30.

²⁵⁷ European Commission, “EUROPE 2020. A strategy for smart, sustainable and inclusive growth” (COM(2010) 2020, 3 March 2010) <<https://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>> p. 16.

²⁵⁸ WHO, “The Toronto Declaration on the Global Prevention of Elder Abuse” (17 November 2002) <https://www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf>.

363. To this point it is worth noting that none of the actions detailed above include actions addressed to prevent the social vulnerability of the elderly, as it is required by Article 23.

364. The December 2021 EIPE Report is equally relevant as regards lack of sufficient resources.²⁵⁹ No additional staff has been incorporated into the team of doctors and nurses attending the persons concerned by the Complaint. This means that the increase of health problems due to the lack of electricity is worsening the medical attention that elderly persons are receiving. This is particularly relevant as the Committee has assessed the performance of home help services and support for families caring for the elderly in past occasions.²⁶⁰

365. No evidence of additional resources in the relevant primary attention health centres have either been reported, neither on providing for additional services or devices which may help the elderly to be less affected by the lack of energy in their homes.

Lack of measures related to housing

366. Second, as regards obligation of the States to implement measures related to “housing suited to their needs and their state of health”,²⁶¹ no particular measure has been taken with the aim of improving housing conditions of the elderly concerned by the Complaint since October 2020. It can therefore be concluded that the State has not complied with this obligation.

367. On this note, the Committee has consistently stated that the elderly should be provided with financial formulas to enable them to pay for adaptation works at their homes.²⁶² It also pointed out that States should evidence that “safety, adequate living conditions and basic amenities are ensured for dwellings occupied by elderly persons”.²⁶³

²⁵⁹ Annex 17.

²⁶⁰ Conclusions 2003, France.

²⁶¹ Article 23 §2(a).

²⁶² Conclusions 2005, Slovenia.

²⁶³ Conclusions 2013, Andorra (Article 23).

368. No measure on this direction has been reported so far. As extensively referred to in the Chapters II and III, the lack of measures is contributing to worsen the health conditions of the elderly.

369. In fact, the only death which has been reported as directly linked to the lack of electricity has been that of a 74-year-old male resident of Sector 6.

370. This is consistent with the report published by the Madrid City Council on Energy Poverty in 2017 which states that the risk of mortality attributable to lack of protection against cold among persons over 65 years of age increases to 9.3% in cold waves.²⁶⁴

371. The WHO has also stated that temperatures below 12°C are a “health risk” for inter alia the elderly.²⁶⁵ A systematic literature review on minimum home temperatures for winter recommended “[h]eating homes to at least 18°C”, and found that threshold “particularly important for people over 65yrs”.²⁶⁶

372. The December 2021 EIPE Report records some of those problems experienced by the elderly as a consequence of living below 12°C (e.g. rheumatic and respiratory problems), together with other affections which has been worsened by living without electricity, such as diabetes, dermatological lesions, depression, among others.²⁶⁷

373. The Ombudsman has equally conveyed some additional health problems faced by elderly people as a consequence of the lack of electricity at their homes.²⁶⁸

Insufficient health care needed by their state

²⁶⁴ Madrid City Council, “Report on energy poverty in the city of Madrid” (2016) <<https://www.madrid.es/UnidadesDescentralizadas/Consumo/NuevaWeb/pobreza%20energ%C3%A9tica/Estudio%20Pobreza%20energ%C3%A9tica%204%20febrero%202017.pdf>> [in Spanish], p. 122.

²⁶⁵ WHO, “Indoor environment: health aspects of air quality, thermal environment, light and noise” (WHO/EHE/RUD/90.2) (1991) <<https://apps.who.int/iris/handle/10665/62723>>, p. 17.

²⁶⁶ Public Health England, “Minimum home temperature thresholds for health in winter – A systematic literature review” (2014), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776497/Min_temp_threshold_for_homes_in_winter.pdf>, p. 61.

²⁶⁷ Annex 17.

²⁶⁸ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>> [in Spanish], § 8.

374. Third, lack of appropriate measures aimed at providing the elderly with housing adequate to their “needs” and “state of health” is directly connected with insufficient health care and “services necessitated by their state”.²⁶⁹

375. In the context of the right to adequate health care for the elderly, Article 23 requires that health care programmes and services (in particular primary health care services, including nursing services and home health services) are tailored for the elderly and mental health programmes are available.²⁷⁰

376. Such obligation must be read, in the case at hand, as an obligation to establish specific health care services for the elderly living in Sectors 5 and 6 sufficient to meet the needs provoked by the absence of electricity.

377. Far from fulfilling this obligation, the current health care for the elderly of the Cañada Real is even worse than before October 2020, as COVID-19 cases are congesting the primary health care system in the Region of Madrid,²⁷¹ preventing the elderly from being able to receive appropriate care for the health problems arising out or connected with the lack of electricity in violation of Article 23.

Conclusion

378. The Complainants consider that the State is in breach of its obligations under Article 23, as it has failed to implement adequate measures designed to protect the elderly affected by the power outage, in particular, by (i) not allocating sufficient resources to enable them to lead a decent life; and (ii) not implementing adequate measures aimed at counteracting the effects of the power cut in the housing conditions of the elderly and to guarantee appropriate health care to prevent worsening of their health.

379. As a result of this continuous violation, the elderly are being denied their right to social protection, to be considered “full members of society for as long as possible”, to have enough resources to lead a dignified life, to have housing adapted to their state of health and needs, and to receive the health care and services required by their condition. By failing to act and alleviate the extreme situation of

²⁶⁹ Article 23 § 2(b).

²⁷⁰ Conclusions 2003, France, (Article 23).

²⁷¹ “The saturation of primary care threatens to leave six wave cases unchecked”, *elDiario.es* (16 December 2021) <https://www.eldiario.es/sociedad/saturacion-atencion-primaria-amenaza-control-casos-sexta-ola_1_8586551.html> [in Spanish].

vulnerability, the State is putting at risk not only their dignity and rights, but also their lives.

I. Violation of Article 11, §§ 1 and 3, read alone and in conjunction with Article E

Violation of Article 11 §§ 1 and 3

380. Article 11 of the Charter enshrines the right to protection of health. This provision encompasses the rights to the highest possible standard of health and to access to health care (§ 1), as well as the right to protection from epidemics and accidents (§ 3).

381. The Committee has held that Article 11 imposes positive and negative obligations upon States,²⁷² and that it is “inextricably linked” to Articles 2 and 3 of the European Convention on Human Rights.²⁷³

382. Article 11 § 1 includes States’ obligation to “to remove as far as possible the causes of ill health”. Indeed, the Committee has defined health in accordance with the WHO as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.²⁷⁴ Moreover, the Committee has held that States “must respond appropriately to *avoidable health risks*; i.e. ones that can be controlled by human action”.²⁷⁵ It has also acknowledged that “living conditions” can be “a clear aggravator and [...] the root cause” of illness.²⁷⁶

383. Article 11 § 1 also encompasses the right to access health care. Although the Committee has afforded States a wide margin of appreciation on this regard, it has determined that such margin may not result in impeding disadvantaged groups’ exercise of their right to health.²⁷⁷

²⁷² *Transgender Europe and ILGA Europe v. Czech Republic*, Complaint No. 117/2014, Decision on the merits of 15 May 2018, §79.

²⁷³ *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, Decision on the merits of 3 November 2004, §31.

²⁷⁴ *Transgender Europe and ILGA Europe v. Czech Republic*, Complaint No. 117/2014, Decision on the merits of 15 May 2018, §71.

²⁷⁵ Conclusions XV-2 (2001), Denmark (emphasis added).

²⁷⁶ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on admissibility and on immediate measures of 23 May 2019, § 14.

²⁷⁷ Conclusions 2005, Statement of Interpretation on Article 11; *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, Decision on the merits of 23 October 2012, §28.

384. Moreover, Article 11 § 3 imposes States an obligation to adopt appropriate measures designed to *inter alia* prevent epidemics and domestic accidents.²⁷⁸

385. The ongoing impact of the power outage on the health of the persons concerned by the Complaint has been thoroughly explained in *Impact on health* in Section B of Chapter III and will not be reiterated here. In this Section the Complainants provide a brief account of the key facts relating to the right to protection of health and submit that it amounts to a continuous violation of Article 11, §§ 1 and 3, of the Charter.

386. The December 2021 EIPE Report accounts for an increase in respiratory infections, cold-related dermatologic and circulatory diseases, difficulties in the use of essential medical devices, cases of carbon monoxide poisoning, burns, complications in patients with diabetes mellitus, rheumatic conditions, complications in COVID-19 infections and a heightened risk of COVID-19 infection, domestic accidents, health problems in new-borns, anxiety and depression, comorbidity complications from exposure to cold resulting in five deaths, and the chronification of the health problems identified in November 2020.²⁷⁹ The Report finds a causal relationship between these serious pathologies and the ongoing power outage. Moreover, the situation in the neighbourhood is further aggravated by the toxic emissions from the neighbouring waste treatment plant at the Valdemingómez Technology Park.²⁸⁰

387. Furthermore, the Survey – conducted amongst some of the persons concerned by the Complaint – shows that 72.2% of the surveyed population shared that their health had been or was being affected by the power outage. 91.3% of the surveyed persons of over 65 years of age declared an affection to their health as a result of the deprivation of electricity.²⁸¹

388. The Complainants submit that the evidence that the Committee has been presented with speaks for itself. The inadequate housing situation resulting from

²⁷⁸ Conclusions 2005, Moldova.

²⁷⁹ Moreover, in [Annex 18](#) the Complainants have presented the Committee with the medical reports of some of the cases highlighted in the 2020 EIPE Report.

²⁸⁰ “European satellite detects record methane emissions from Valdemingómez 18 km from Madrid city centre” *elDiario.es* (10 November 2021) <https://www.eldiario.es/sociedad/satelite-europeo-detecta-emisiones-masivas-metano-18-km-centro-madrid-procedentes-valdemingomez_1_8475280.html> [in Spanish].

²⁸¹ [Annex 20](#). Civic Platform, Survey on Sector 5 and 6 of the Cañada Real (2021).

the power outage has acted as both an “aggravator” and a “root cause” of the illnesses and pathologies of the persons concerned by the Complaint.²⁸²

389. The dire living conditions which the persons concerned by the Complaint have experienced and currently experience, especially in winter, amount to an “avoidable health risk” which the State could have acted upon.

390. The persons concerned are and have been placed under unacceptable, extreme cold living conditions in which they need to withstand temperatures at their homes which are very far below the 18 °C minimum temperature recommendation for homes in winter.²⁸³ The State, which was in a position to prevent or mitigate the effect of the power outage on the health of the persons concerned, did not adopt any necessary measures on this regard. Therefore, inasmuch as the State does not take any steps to remediate the power outage – which clearly amounts to a *cause of ill health* –, it fails to guarantee the concerned persons’ right to the highest possible standard of health, breaching Article 11 § 1 of the Charter.

391. As addressed above, the ongoing violation of the right to health has been denounced by Spanish medical associations, as well as by the Spanish Ombudsman and the group of 9 UN Special Rapporteurs.²⁸⁴ As submitted in Section C of Chapter V, the State itself has acknowledged a violation of the right to health in relation to the children concerned by the Complaint.

392. Moreover, the fact that the EIPE – a team of doctors and nurses visiting the area and assisting its inhabitants in an ambulance – is the main public health service provided to the persons concerned by the Complaint is troubling, especially in the context of COVID-19 and considering that they belong to disadvantaged groups of population. The Complainants submit that this amounts to a breach of the right of access to health encompassed in Article 11 § 1.

²⁸² *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on admissibility and on immediate measures of 23 May 2019, § 14.

²⁸³ Public Health England, “Minimum home temperature thresholds for health in winter – A systematic literature review” (2014), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776497/Min_temp_threshold_for_homes_in_winter.pdf>, p. 61.

²⁸⁴ *Impact on health* in Section B of Chapter III of the Complaint.

393. Furthermore, the instances of domestic accidents directly accounted for by the EIPE and the fact that the Survey showed that 94% of the surveyed persons living in Sector 6 had experienced domestic accidents as a result of the power outage confirm that the State failed to take the necessary precautionary steps, which amounts to a violation of Article 11 § 3.

394. The State has also failed to guarantee food safety and hygiene standards in Sectors 5 and 6 of the Cañada Real and to protect the persons concerned by the Complaint from the COVID-19 pandemic. The power outage made it significantly harder for the concerned persons to refrigerate, preserve and prepare food, as well as to adhere to the State's anti-COVID-19 protocols and recommendations. These failures also amount to a violation of Article 11 § 3.

Violation of Article 11 in conjunction with Article E

395. In failing to adopt any measures to re-establish the electricity supply or remediate the power outage the State has also violated the principle of non-discrimination set forth in Article E of the Charter, in conjunction with Article 11, as a number of the persons concerned by the Complaint belong to vulnerable groups of population.

396. It should be noted that the power outage has disproportionately affected both children and women's health. As regards pregnant and breastfeeding women, for example, the lack of access to adequate care and hygiene has increased the risk of gynaecological and obstetric diseases, which disproportionately aggravates the interference on their right to health.

397. Consequently, the State has violated Article E of the Charter, in conjunction with Article 11, §§ 1 and 3.

Conclusion

398. In light of the foregoing, the Complainants submit that the ongoing interference on the right to health of the persons concerned by the Complaint, which directly results from the power outage affecting Sectors 5 and 6 of the Cañada Real, amounts to a continuous violation of Article 11, §§ 1 and 3, of the Charter, read alone and in conjunction with Article E.

J. Violation of Article 15, read alone and in conjunction with Article E

399. A number of persons with disabilities live in Sectors 5 and 6 of the Cañada Real. Among them, there are one child and one woman with Down's syndrome, two children diagnosed with Autistic Spectrum Disorder and a family in which all but one of its members are deaf. Persons with severe, chronic respiratory diseases which can be assimilated to a disability pursuant to Article 1(2) of the Convention on the Rights of Persons with Disabilities are also amongst the persons concerned by the Complaint.²⁸⁵

400. Access to electricity at home is essential, not only to ensure effective exercise of the right to health set forth in Article 11, but to enable development of persons with disabilities in accordance with the standards of Article 15.

401. Article 15 § 3 requires State Parties to implement measures to promote their full social integration and participation in life of the community. These measures must ensure access to housing, understood as housing adapted to their needs.

402. In the case at hand, the fulfilment of the obligations arising from Article 15 § 3 would require the State to tackle the problems derived from the lack of electricity, so that the power cut would not affect the right of the persons with disabilities concerned by the Complaint to develop in accordance with the standards of the Charter.

403. As regards children with autism, they need stability to be calm. Any element of instability alters their behaviour. Thus, the fact that there is no light significantly worsens their disorder.

404. In this line, it is worth recalling that the Committee has stated that "Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age" and held that the scope of this Article "clearly covers both children and adults with autism".²⁸⁶

405. In what relates to deaf persons, who can only communicate by sign language, the lack of light means that they cannot see their interlocutors accurately,

²⁸⁵ See *Impact on the elderly and persons with disabilities* in Section B of Chapter III.

²⁸⁶ *International Association Autism-Europe (IAAE) v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, § 48.

affecting very severely their capacity to communicate and develop a normal life in their day-to-day tasks and interactions, especially at night.

406. Finally, in relation to persons with disabilities with severe respiratory diseases, the lack of electricity supply is particularly dangerous because their defences against the complications caused by the cold are reduced to a greater extent, and they do not have the necessary support to face the new conditions. This, on top of the critical health issue, impedes de facto any possibility to conduct a normal and independent life.

407. To this point, it is clear that the already disadvantaged situation of persons with disabilities living in the Cañada Real as regards their capacity to develop and integrate in society has been exponentially worsened since October 2020.

408. According to the Committee, “[t]he needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further financial assistance should be provided for the adaptation of existing housing”.²⁸⁷

409. In the case at hand, application of Article 15 § 3 should mean that fast and adequate assistance should have been provided to guarantee that people with disabilities affected by the lack of electricity were not put in a situation of risk, covering their basic needs and guaranteeing that they are able to fully exercise their “right to independence, social integration and participation in the life of the community”, as mandated by Article 15.

410. Finally, in application of Article 15 § 1, the Committee has found that “securing a right to education for children and others with disabilities plays an important role in advancing their citizenship rights and guaranteeing their fundamental rights”.²⁸⁸ Children with disabilities affected by the power outage are being doubly impacted in their right to education, particularly important not just from a pure formative perspective, but as an essential tool for integration and inclusion.

²⁸⁷ Conclusions 2003, Italy.

²⁸⁸ *European Action of the Disabled (AEH) v. France*, Complaint No. 81/2012, Decision on the merits of 11 September 2013, §75.

Violation to Article 15 in conjunction with Article E

411. The violation of Article 15 should be read in the light of the Convention on the Rights of Persons with Disabilities and, in particular, its Article 2, which defines discrimination on the basis of disability as:

“[A]ny distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”.²⁸⁹

412. Considering the above, the Complainants submit that persons with disabilities living in Sectors 5 and 6 of the Cañada Real are being discriminated against with respect to other people who, having the same disabilities, have a stable supply of electricity. Persons with disabilities outside of Sectors 5 and 6 of the Cañada Real do not see their quality of life and capacity to be independent worsened by the deprivation of electricity, neither do they find it harder to integrate and participate in the life of the community as a result of this. Consequently, the State is engaged in a continuous violation of Article E in conjunction with Article 15.

Conclusion

413. The lack of electricity supply at home is preventing people with disabilities from the full exercise of their right to independence, social integration and participation in the life of the community.

414. The Complainants submit that the State is engaged in a continuous violation of Article 15, read alone and in conjunction with Article E, as it has failed to implement adequate measures designed to protect people with disabilities affected by the power cut, in particular, by not placing the adequate resources and taking the needed actions aimed at ensuring that the lack of electricity does not add barriers to their already difficult integration and independence.

²⁸⁹ Convention on the Rights of Persons with Disabilities, signed in New York on 13 December 2006, whose instrument of ratification was published in the Official State Gazette on 21 April 2008.

415. Such continuous violation is having an irreversible impact on their lives, mostly in children who are additionally being excluded by the difficulties in their access to education.

K. Violation of Articles 20 and 27, read alone and in conjunction with Article E

416. Article 20 of the Charter enshrines the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex. In particular Article 20(a) obliges States to take appropriate measures to ensure non-discriminations on the grounds of sex with regards to “access to employment”.

417. Article 27 of the Charter contains the right of workers with family responsibilities to equal opportunities and equal treatment. Article 27 § 1(a) mandates States to adopt the appropriate measures “to enable workers with family responsibilities to enter and remain in employment”.

418. The principle of equal treatment in Article 20 precludes any discrimination, either direct or indirect, on grounds of sex.²⁹⁰ In this sense, States are required to take steps to remove de facto inequalities affecting women’s training or employment opportunities, so that equality in practice can be progressively achieved.²⁹¹

419. In terms of sex discrimination, Article 27 applies to women workers with family responsibilities insofar as such responsibilities restrict their possibilities of entering, remaining in and re-entering employment. The Committee has noted that “persons with family responsibilities may face difficulties on the labour market due to their family responsibilities”.²⁹² Against this background, it has held that the aim of Article 27 § 1 of the Charter is to provide people with family responsibilities with equal opportunities in respect of entering, remaining in and re-entering employment.²⁹³

²⁹⁰ Conclusions XIII-5, Sweden, Article 1 of the Additional Protocol.

²⁹¹ Conclusions 2002, Romania.

²⁹² Conclusions 2005, Estonia.

²⁹³ Conclusions 2003, Sweden.

420. On this note, it is particularly relevant to mention the international obligation of due diligence held by the State and its obligation to integrate a gender perspective in its decision-making in order to guarantee the fulfilment of its obligation to protect women from discrimination against all actors in the social, labour and domestic spheres in accordance with Article 2 of the CEDAW.²⁹⁴

421. In this Section the Complainants consider the power outage's impact on women workers, including those with family responsibilities, living in Sectors 5 and 6 of the Cañada Real in light of the obligations arising jointly from Articles 20 and 27 of the Charter, read alone and in conjunction with Article E.

Violation of Articles 20(a) and 27 § 1(a)

422. The Complainants submit that the State's failure to adopt any measures to restore the electricity supply in Sectors 5 and 6 of the Cañada Real has a harmful effect on women workers who live there, as they disproportionately assume "obligations in relation to dependent children and also other members of the immediate family who need care and support".²⁹⁵

423. These violations of the Charter resulting from the power outage have in turn impacted upon the right to equal opportunities of women workers and women workers with family responsibilities.

424. The electricity deprivation has complicated the daily housework and family responsibilities carried out by the persons concerned by the Complaint.

425. On the one hand, the outage has increased the time committed to unpaid housework and family responsibilities due to inter alia the darkness in the home and in the entire neighbourhood, the inability to use electrical appliances for cooking, cleaning, ironing or washing, and the lack of hot water, which requires heating water over a fire.

426. On the other, the electricity deprivation has increased the hardship of unpaid housework and family responsibilities. For instance, the lack of hot water makes it harder to clean children, sick persons, persons with disabilities and the elderly.

²⁹⁴ Convention on Elimination of All Forms of Discrimination against Women, New York, 18 december 1979, ratified by Spain on 1983. The ratification instrument can be found here <<https://www.boe.es/buscar/doc.php?id=BOE-A-1984-6749>>.

²⁹⁵ Conclusions 2003, Statement of Interpretation on Article 27§3; see for example Bulgaria.

Doing laundry becomes significantly harder without hot water or electricity and children and the elderly require more attention and support.

427. All of this leads to a further deterioration of women's health, which makes it difficult for them to work, affecting their physical health (respiratory and dermatological conditions, skin irritations due to increased exposure to cleaning products and cold water, muscular and joint pains typical of domestic work, eating and digestive disorders, fatigue, gynaecological conditions due to difficulties in intimate hygiene), psychological (isolation at home, depression, anxiety, anguish in the face of the multiple problems suffered by them and their families, the impotence of finding a job, family conflicts derived from the demand for help and the serious situation) and emotional (loss of self-esteem, undervaluation, mental burden). The situation of pregnant and breastfeeding women is particularly serious, as they lack access to adequate care and hygiene, increasing the risk of gynaecological and obstetric diseases.

428. These difficulties have disproportionately impacted woman, who carry out the majority of the housework and family responsibilities. According to official data from the Spanish Statistics Institute, 92.3% of the persons who remained inactive to care for dependents in 2020 were women,²⁹⁶ and so were the 93,6% of the persons who worked part-time to care for dependents.²⁹⁷ Official data from 2015 showed that women carry out more than twice as much unpaid work as men.²⁹⁸

429. Moreover, Roma women traditionally take on family responsibilities from a very early age, their societal roles being characterized by the subordination to male authority and the undertaking of care activities.²⁹⁹ This, in turn, limits their opportunities to enter employment or undertake full-time jobs.

430. These societal roles and stereotypes whereby women bear the responsibility for housework and family care are reproduced in the Cañada Real.

²⁹⁶ National Statistics Institute (INE), "Women and men in Spain" (2021) <<https://www.ine.es/uc/BKgpSYAx>> [in Spanish], Section 1.11, p. 3.

²⁹⁷ Ibid., Section 1.4, p. 4.

²⁹⁸ Ibid., Section 5.1, p. 4.

²⁹⁹ Fundación Secretariado Gitano, "Guide on social intervention with Roma people from a gender perspective" (2012) <https://www.gitanos.org/upload/80/53/Guia_Interv_Genero.pdf> [in Spanish], p. 56.

431. Moreover, a majority of women have led the social activism in favour of the restoration of the electricity supply in the Cañada Real. Women living in Sectors 5 and 6, mainly throughout the Tabadol Cultural Association, have demonstrated for their rights for over a year.³⁰⁰ The time which the concerned women commit to this pursue is detrimental to the search for a secure, full-time job.

432. Consequently, the increased housework and family responsibilities resulted from the power outage, as well as their activities as human rights defenders, have hindered the concerned women's right to enter, remain in and re-enter employment without discrimination on the grounds of sex or family responsibilities.

433. The time and effort committed to unpaid housework and social responsibilities alongside social activism have prevented the concerned women from accessing paid work in equal conditions to men, condemning them to precarious and temporary employment, exposing them to being laid off, and making it harder to re-enter employment. Indeed, employment data from the neighbourhood show that the economic activity rate in men is 85%, whereas in women is 39%.³⁰¹

434. Furthermore, the lack of electricity itself hinders job search and training activities. Using makes it harder for working women, including those with family responsibilities, to use computer-based tools to search for employment, submit applications, attend online job interviews and deal with administrative procedures.

435. Against this background, the State has not taken any effective measures to restore the electricity supply or to guarantee that working women affected by the power outage can enter, remain in and re-enter employment without discrimination on grounds of sex or family responsibilities. The State's failure to act has only deepened the vulnerable situation from which the working women from Sectors 5 and 6 of the Cañada Real suffer.

436. In light of the foregoing, the Complainants submit that the State is engaged in a continuous violation of Articles 20(a) and 27 § 1(a).

Violation of Articles 20 and 27 in conjunction with Article E

³⁰⁰ Annex 8. Legal Clinic of the Master in Fundamental Rights of University Carlos III in Madrid, "Light for the Cañada. The impact of the power outage in the Cañada Real Galiana on the rights of children and adolescents" (2021), pp. 11, 19, 24-5.

³⁰¹ *Ibid*, p. 20.

437. The Complainants are well aware that the Committee has noted that Article E cannot be invoked in conjunction with the provisions of the Charter which are intrinsically anti-discriminatory.

438. Both Articles 20 and 27 are of anti-discriminatory nature on grounds of sex and family responsibilities. These, nevertheless, are not the grounds for discrimination as a result of the power outage which the Complainants want to highlight now. The Complainants submit that in this case the discrimination against the concerned women workers, including those with family responsibilities, is grounded upon their social origin and the mere fact that they live in the Cañada Real.

439. Indeed, the Committee on Economic, Social and Cultural Rights has acknowledged that intersectional discrimination against woman result in compounded disadvantage.³⁰²

440. In this case, the interference in Articles 20 and 27 as a result of the power outage addressed above is further aggravated by the fact that the concerned women belong to vulnerable groups of population such as Roma, which inherently face greater difficulties in entering, remaining in and re-entering employment. Their belonging to vulnerable groups of population makes it even harder for them to secure a stable, full-time job and to remain in it. As has been addressed above, employment data from the neighbourhood show that the economic activity rate in men is 85%, whereas in women is 39%.³⁰³

441. In light of this, the Complainants submit that this situation amounts to intersectional discrimination contrary to Article E of the Charter, read in conjunction with Article 20 and 27.

Conclusion

³⁰²Committee on Economic, Social and Cultural Rights, “General Comment No. 16. The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)” (E/C.12/2005/4, 11 August 2005), § 5: “[W]omen experience distinct forms of discrimination due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage”.

³⁰³ Annex 8. Legal Clinic of the Master in Fundamental Rights of University Carlos III in Madrid, “Light for the Cañada. The impact of the power outage in the Cañada Real Galiana on the rights of children and adolescents” (2021), p. 20.

442. The power outage has a disproportionate effect in the lives of women workers, including those with family responsibilities, inasmuch as they carry out most of the housework and unpaid work, which in turn makes it harder for them to enter, remain in or re-enter employment. The State's failure to remediate the effects of the power outage in the women workers in the Cañada Real, including those with family responsibilities, further disregards that they belong to vulnerable groups of population, amounting to intersectional discrimination.

443. In light of the foregoing the Complainants submit that the State is engaged in a continuous violation of Articles 20 and 27 of the Charter, read alone and in conjunction with Article E.

VI. REQUEST FOR IMMEDIATE MEASURES

444. Rule 36 § 1 enables the Committee to indicate to States parties any immediate measures it deems “necessary to avoid *irreparable injury or harm* to the persons concerned” at any time of the proceedings of a complaint.³⁰⁴ Pursuant to Rule 36 § 2, complainants may submit a request for immediate measures.

445. The Committee has reiterated that immediate measures are of “exceptional character” and that, in order to satisfy the threshold set forth in Rule 36 § 1, their adoption must be necessary to prevent “irreparable injury or harm”.³⁰⁵

446. In its case-law, the Committee has emphasised that “the aim and purpose of the Charter [...] is to protect rights not merely theoretically, but also in fact”.³⁰⁶ Therefore, it has established that “[a]ny request for immediate measures must establish a *tangible situation* in which the persons concerned by the complaint find themselves at *risk of serious irreparable injury or harm*”.³⁰⁷

447. Pursuant to Rule 36 §§ 1 and 2, the Complainants respectfully request that the Committee urgently indicate to the State the adoption of immediate measures. In this Chapter, the Complainants set out the reasons for this request, the possible consequences if it is not granted, and the measures requested.

A. Reasons to indicate Immediate Measures

448. The Complainants submit that in this case the Committee is presented with an *exceptional, tangible situation* in which the persons concerned are at a *risk of serious irreparable harm*.

Tangible situation of risk of serious irreparable harm

449. The Cañada Real is one of Europe’s largest shantytowns, a situation which should be deemed as *exceptional* by itself. The long-standing precarious housing

³⁰⁴ Rule 36 § 1 of the Rules (emphasis added).

³⁰⁵ Inter alia, *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Complaint No. 86/2012, Decision on immediate measures of 25 October 2013, § 1.

³⁰⁶ Inter alia, *International Commission of Jurists v. Portugal*, Complaint No. 1/1999, Decision on the merits of 9 September 1999, § 32.

³⁰⁷ Inter alia, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on admissibility and on immediate measures of 23 May 2019, § 13 (emphasis added).

situation is only aggravated by the ongoing electricity outage affecting Sectors 5 and 6.

450. The State itself has acknowledged that the power outage gives rise to a “situation of *extreme vulnerability and social risk* [and] of *extreme precariousness*” for the persons concerned by the Complaint.³⁰⁸

451. Accordingly, the lack of heating due to the power outage and the low winter temperatures, clearly amount to a *tangible situation of risk of serious irreparable harm*.

452. It is noteworthy that, in relation to the municipality of Rivas Vaciamadrid – located at the Eastern border of Sectors 5 and 6 of the Cañada Real – the Climate Atlas of the Spanish Meteorological Agency (AEMET) accounts for the following meteorological data in winter:³⁰⁹

453. Average number of winter days with minimum temperature ≤ 0 °C	40 days
Average temperature of January’s average of minimum temperature	0.4 °C
Average temperature of February’s average of minimum temperature	1.5°C
Average temperature of March’s average of minimum temperature	3.2°C
Average temperature in January	5.2°C
Average temperature in February	7.2°C
Average temperature in March	9.9°C

454. In interpreting Article 31 § 1 of the Charter, the Committee has held that the notion of “adequate housing” necessarily entails access to “heating” and “electricity”.³¹⁰ Moreover, the Committee has endorsed that “living conditions” can be “a clear aggravator and [...] the root cause” of illness.³¹¹ The Committee has

³⁰⁸ Royal Decree 1058/2021, of 30 November, which regulates a direct grant to Madrid City Council and Rivas-Vaciamadrid Council for the development of re-housing programmes for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real, Official Gazette No. 287 (1 December 2021), <<https://www.boe.es/eli/es/rd/2021/11/30/1058>> [in Spanish], Recital (emphasis added).

³⁰⁹ Annex 37: AEMET, “Climate Atlas Report on Rivas Vaciamadrid” (1 February 2022). This meteorological report is drawn from a series of climatic data gathered from 1971 to 2000 by the Spanish Meteorological Agency. Further information can be found here <<http://agroclimap.aemet.es/#>>.

³¹⁰ *DCI v. the Netherlands*, Complaint No. 47/2008, Decision on the merits of 20 October 2009, §43; *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits of 26 January of 2021, § 115.

³¹¹ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on admissibility and on immediate measures of 23 May 2019, § 14.

further noted that “the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity”.³¹²

455. From a joint consideration of (i) the meteorological data, (ii) the Committee’s case-law, and (iii) the situation of lack of electricity and heating in the Sectors 5 and 6 of the Cañada Real, it necessarily follows that the concerned persons find themselves under a *tangible situation of risk of serious, irreparable harm*.

456. The absence of electricity and heating, which are amongst the most basic elements required by the Charter’s notion of “adequate housing”, place all concerned persons under unacceptable, extreme cold living conditions in which they need to withstand temperatures at their homes which are very far below the 18°C minimum temperature recommendation for homes in winter.³¹³

457. Moreover, extended periods of extreme cold entail a serious risk to life, psychological and physical integrity, and health; the persons concerned are at risk of suffering from hypothermia, severe respiratory conditions, psychological distress, and other injuries.³¹⁴ These circumstances are especially harmful for some of the vulnerable groups living in Sectors 5 and 6 of the Cañada Real: children, persons with disabilities, the elderly or ill persons.

458. Indeed, the lack of heating and electricity in Sectors 5 and 6 during the winter of 2020-21 played as both an *aggravator* and *root cause* of a number of medical pathologies as well as a death. In a visit to Sectors 5 and 6, the Spanish Ombudsman noted that “persons affected by chronic lung diseases have worsened their health condition” and that elder persons encountered hardship to take their medication at night.³¹⁵ During last winter the Ombudsman also reported cases of persons dependent on electro-medical equipment who were unable to recharge their batteries, as well as the case of “a newborn baby [who] was admitted to hospital

³¹² *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, Decision on the merits of 26 January of 2021, § 117.

³¹³ Public Health England, “Minimum home temperature thresholds for health in winter – A systematic literature review” (2014), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776497/Min_temp_threshold_for_homes_in_winter.pdf>, p. 61.

³¹⁴ WHO, “Indoor environment: health aspects of air quality, thermal environment, light and noise” (WHO/EHE/RUD/90.2) (1991) <<https://apps.who.int/iris/handle/10665/62723>>, pp. 17-18.

³¹⁵ Spanish Ombudsman, “Emergency electric supply to Sector 6 of the Cañada Real (Madrid)” (11 November 2021), <<https://www.defensordelpueblo.es/resoluciones/suministro-electrico-de-emergencia-al-sector-6-de-la-canada-real/>>, § 8.

with cyanosis due to the cold” and the case of a girl admitted to hospital “for carbon monoxide inhalation, because her parents only had a wood-burning heater as a source of heat”.³¹⁶

459. Additionally, it should be underscored that children living in Sectors 5 and 6 of the Cañada Real face an enhanced risk of serious, irreparable harm. The Spanish Ombudsman, who also highlighted the difficulties faced by children to access education, deemed that the situation of children in Sector 6 of the Cañada Real was “particularly serious and worrying” and stated that the problem arising from the prolonged power outage “must be considered of a humanitarian character”.³¹⁷

460. In sum, the Complainants submit that the ongoing *exceptional* situation in Sectors 5 and 6 of the Cañada Real amounts to a *tangible situation* in which the persons concerned are at *risk of serious, irreparable harm*. This merits that the Committee indicates immediate measures in order to ensure the effective respect to the fundamental rights recognised in the Charter.

Possible consequences if immediate measures are not granted

461. If immediate measures are not granted, the concerned persons in Sectors 5 and 6 of the Cañada Real will continue to face living conditions which infringe upon their human dignity.

462. On the one hand, it is very likely that the medical pathologies reported in the winter of 2020-21 could be repeated, or even aggravated, during this winter’s cold. To this point, it is particularly relevant that the concerned persons – amongst which vulnerable persons such as children, the elderly, persons with disabilities and ill persons can be found – have been deprived from electricity for over fourteen months. As accounted for above, both the 2020 EIPE Letter and the 2021 EIPE Report find a relation between the extreme cold resulting from the power outage with an increase in respiratory infections, cold-related dermatologic and circulatory diseases, difficulties in the use of essential medical devices, cases of carbon monoxide poisoning, burns, complications in patients with diabetes mellitus, rheumatic conditions, complications in COVID-19 infections and a heightened risk

³¹⁶ Ibid.

³¹⁷ Ibid., § 6, 9.

of COVID-19 infection, domestic accidents, health problems in new-borns, anxiety and depression, and comorbidity complications from exposure to cold resulting in five deaths.³¹⁸

463. On the other hand, the ongoing electricity outage will continue to infringe upon the right to equal access to education of the children living in Sectors 5 and 6 of the Cañada Real. The unsurmountable technological barrier resulted from the outage and the lack of adequate housing in the sense of Article 31 § 1 of the Charter impede children's adequate development and infringe upon their psychological and integrity and human dignity, as confirmed by the report of the faculty of Las Lagunas High School in Rivas-Vaciamadrid,³¹⁹ the complaint file against the to the Education Department of the Region of Madrid by a group of teachers of Rivas-Vaciamadrid, Vicálvaro and Vallecas,³²⁰ and the Survey's result, in which 80,9% of the children and adolescents surveyed reported that the power cut had interfered in their education.³²¹

B. Immediate Measures Requested

464. In light of the foregoing, the Complainants politely request that the Committee indicate to the State the following immediate measures:

- i) To adopt all possible measures with a view to avoiding serious, irreparable injury to the life, physical and moral integrity of of the population of Sectors 5 and 6 of the Cañada Real, in particular:
 - To ensure that all concerned persons have access to electricity and heating, in particular taking into account the needs of the vulnerable groups concerned (including children, persons with disabilities and elderly persons); and
- ii) To ensure that the implementation of these measures consist of a co-ordinated approach of the competent authorities at national, regional and municipal levels.

³¹⁸ [Annex 17](#). December 2021 EIPE Report; [Annex 16](#). 2020 EIPE Letter.

³¹⁹ [Annex 21](#).

³²⁰ [Annex 23](#).

³²¹ [Annex 20](#).

VII. REQUEST PURSUANT TO RULE 26

465. Pursuant to Rule 26, the Complainants respectfully request that the Committee decide to give priority examination to the complaint based upon the gravity of the situation.³²² This request is based on the seriousness of the facts accounted for and on the resulting infringement on the fundamental rights of the concerned persons, which include around 1,800 children and other groups in situation of vulnerability.

VIII. SUBMISSIONS

466. In light of the foregoing, the Complainants respectfully request the Committee:

- i) To declare the Complaint admissible.
- ii) To indicate the immediate measures requested in Section B of Chapter VI.
- iii) To give the Complaint priority examination.
- iv) To declare that the State has violated Articles 11, 15, 16, 17, 20, 23, 27, 30, 31 and E of Charter in relation to the ongoing power outage in Sectors 5 and 6 of the Cañada Real.

Abdul Manaff Kemokai



Margaret Tuite



DCI

Kjell Larsson



FEANTSA

Filipe Marques



MEDEL

³²² Other complaints where the Committee has decided to give priority are, inter alia, *International Planned Parenthood Federation - European Network (IPPF EN) v. Italy*, Complaint No. 87/2012, Decision on the merits, §3; *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, Decision on the merits of 2 July 2013, §5; *Syndicat de Défense des Fonctionnaires v. France*, Complaint No. 73/2011, Decision on the merits of 12 September 2012, §4; *General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece*, Complaint No. 66/2011, Decision on the merits of 23 May 2012, §4; *Centre on Housing Rights and Evictions (COHRE) v. France*, Complaint No. 63/2010, Decision on the merits, §4; *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, Decision on the merits, §4.

Bruno Dabout

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ATD Fourth World

Cristina Faciabén

A handwritten signature in black ink, featuring a vertical stroke on the left, followed by several loops and curves that end in a sharp point to the right.

CCOO

**APPENDIX I: SUPPORTING ORGANISATIONS AND ADVISERS TO THE
COMPLAINT**

This Complaint is brought by the Complainants with the support of the organisations listed in Annex 34.

The Complainants have been advised by the following advisors:

Leading advisors and coordinators:

Rafael Cid Rico and Héctor Tejero Tobed (GENTIUM)

Javier Rubio Gil [Centro de Asesoría y Estudios Sociales (CAES)]

Advisors:

María José Sobrino Rodríguez-Rey [Centro de Asesoría y Estudios Sociales (CAES)].

Victor Palomo [Centro de Asesoría y Estudios Sociales (CAES)]

Jorge Cardona Llorens

Ignacio Campoy Cervera

María López de la Usada (Asociación de Mujeres Juezas de España)

Cecilia Palomo (Asociación de Mujeres Juezas de España)

Rosa García Carreres (Asociación Libre de Abogadas y Abogados)

Juan Carlos Villalón Prieto (Asociación Libre de Abogadas y Abogados)

Beatriz Duro Álvarez del Valle (Asociación Libre de Abogadas y Abogados)

Carmen Ordóñez Montellano (Clínica Jurídica de la Universidad Carlos III)

APPENDIX II: LIST OF ANNEXES

The list of supporting documents annexed to the Complaint can be found below:

Annex 1	Bylaws of DCI, agreement to file the complaint and title to represent the organization before the ECSR
Annex 2	Bylaws of FEANTSA, agreement to file the complaint and title to represent the organization before the ECSR
Annex 3	Bylaws of MEDEL, agreement to file the complaint and title to represent the organization before the ECSR
Annex 4	Bylaws of ATD Fourth World, agreement to file the complaint and title to represent the organization before the ECSR
Annex 5	Bylaws of CCOO, agreement to file the complaint and title to represent the organization before the ECSR
Annex 6	Regional Agreement Cañada Real
Annex 7	Pictures of Cañada Real
Annex 8	Report “Luz para la Cañada”
Annex 9	Statement of former “Comisionado para la Cañada Real”
Annex 10	Letter from UF. Rejection of proposal to regularize supply of electricity (1992)
Annex 11	Letter sent by Cañada Real neighbours’ association asking for regularization of electricity supply
Annex 12	Framework agreement executed by regional authorities. Cañada Real
Annex 13	Rehousing agreement Cañada Real (2018)
Annex 14	Answer to request of information on rehousing project
Annex 15	UFD-Naturgy’s request for the dismantling of the electric infrastructure in the Cañada Real
Annex 16	EIPE Letter 2020
Annex 17	December 2021 EIPE Report
Annex 18	Medical reports. Impact on health of Cañada Real inhabitants affected by power outage
Annex 19	Complaint filed before the Madrid Criminal Courts by the family of a Cañada Real neighbour deceased during the power outage
Annex 20	Civic Platform. Survey on Sector 5 and 6 of the Cañada Real (2021)
Annex 21	Las Lagunas High School report on impact in education of Cañada Real children
Annex 22	Letters written by children and adolescents affected by the lack of electricity to several authorities
Annex 23	Complaint filed before the Education Department of the Region of Madrid by teachers of Rivas-Vaciamadrid, Vicálvaro and Vallecas
Annex 24	Reply by the Education Department of the Region of Madrid to the complaint filed by school teachers of Rivas-Vaciamadrid and Vallecas
Annex 25	Communication by the “Vallecas Platform for Public Education”

Annex 26	Complaint filed before the Education Department of the Region of Madrid by a group of parents of Rivas-Vaciamadrid and Vallecas
Annex 27	Answer by Naturgy to proposal of regularisation of electricity supply contracts
Annex 28	Pictures of demonstrations organised by Cañada Real neighbours
Annex 29	Spanish Ombudsman press release
Annex 30	Spanish Ombudsman report 12/20
Annex 31	Spanish Ombudsman answer to NGOs and neighbours (10/21)
Annex 32	Spanish Ombudsman report 11/21
Annex 33	Petition titled “Childhood and energy poverty - power cut for more than 8 months in the Cañada Real, Madrid” before the European Parliament
Annex 34	List of entities of the the Civic Platform
Annex 35	Interim measures request to the High Court of Madrid
Annex 36	Order issued by the High Court of Madrid rejecting the request for interim measures
Annex 37	AEMET, “Climate Atlas Report on Rivas Vaciamadrid”