

**Submission by the United Nations High Commissioner for Refugees  
For the Office of the High Commissioner for Human Rights' Compilation Report –  
Universal Periodic Review:**

**SPAIN**

**I. BACKGROUND INFORMATION**

Spain is party to the *1951 Refugee Convention* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*), the *1954 Convention relating to the Status of Stateless Persons*, the *1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Convention on the Rights of the Child* of 1989 and its protocols, as well as the *1979 Convention on the Elimination of All Forms of Discrimination against Women*. Spain is also party to the *1950 European Convention for the Protection of Human Rights and Fundamental Freedoms* and its protocols, in addition to the *2005 Council of Europe Convention against Trafficking*.

Also of relevance is the recent ratification of the 3<sup>rd</sup> Optional Protocol of the *Convention on the Rights of the Child* in 2013 and of the *Council of Europe Convention on preventing and combating violence against women and domestic violence* in April 2014.

Spain is not party to the *1961 Convention on the Reduction of Statelessness*.

The Spanish National protection framework is based on Article 13.4 of the *Constitution*, which recognizes the right to asylum. The right to asylum is developed by *Law 12/2009 on Asylum and Subsidiary Protection* (hereinafter referred to as the *Asylum Law*), and complemented by the *1995 Implementing Decree to the former Asylum Law (5/1984)*, as the issuance of the *Implementing Decree to the Asylum Law* is still pending. Additionally, the Aliens legal framework established in *Law 4/2000*, (with its various amendments), and its *Implementing Decree of 2011*, includes provisions related to asylum applicants and beneficiaries of international protection.

In 2013 there was a 70 per cent increase in asylum applications (4,513) in comparison to 2012, due to larger numbers of applicants mainly from Mali (1,482) and Syria (725). Other asylum seeking nationalities in Spain includes Algeria (351), Nigeria (182), Somalia (136) and Palestine (130). With regards to the granting of refugee status, 203 persons were given recognition in 2013. Palestinians were the largest group (63 persons) to be granted refugee status in application of article 1D of the *Geneva Convention*, followed by Pakistani nationals (60). Only four Syrians were granted *1951 Convention* status, while 146 were granted subsidiary protection. Syrians, together with Somalis, are the largest groups to be granted subsidiary protection in Spain.

The situation of economic crisis in the country with a steady unemployment rate of 27 per cent and severe austerity measures continues to be a major concern. At the end of 2013 and beginning of 2014, the migration debate reappeared with considerable force on the political agenda following a notable increase of irregular arrivals in Ceuta and Melilla, which included a drastic increase of people originating from refugee producing countries. However, in this context civil society continues to show solidarity towards migrants and refugees and xenophobic attitudes or hate crimes are in general not expressed or reported, as also shown in the results of recent European Parliament

elections.

## II. ACHIEVEMENTS AND BEST PRACTICES

UNHCR would like to point out the following positive aspects and developments in Spain:

- There is a good reception system for asylum-seekers in mainland Spain (excluding Ceuta and Melilla) which includes: accommodation in open centers that provide food and other services, Spanish courses, individual and professional counseling by an in-house social worker, and the provision of a psychologist and an employment counselor. Legal and social assistance is also provided through different NGO programs for asylum-seekers living outside centers, and public welfare institutions provide educational and medical assistance on an equal basis to Spanish citizens. Moreover, six months after an application has been lodged, asylum-seekers are able to access the labor market.
- The *2009 Law on Asylum and Subsidiary Protection* ensures a standard of treatment to beneficiaries of subsidiary protection and provides protection of their basic rights almost at the same level as for individuals granted refugee status under the *1951 Convention*. The *Asylum Law* includes also the provision of free legal assistance for all asylum-seekers, and compulsory legal assistance for applications lodged at the border and at internment centres. Finally, it establishes the basis for an annual resettlement program in Spain.
- Spain continues to apply article 1D of the *1951 Geneva Convention* in a protection-oriented manner, providing international protection to all Palestinian refugees.
- Spain is also applying a gender oriented protection approach to asylum applications, with increased recognition of refugees who are victims of domestic violence, and the granting of international protection to a small number of victims of trafficking, at the administrative and judicial level.
- As established by the *2009 Asylum and Subsidiary Protection Law*, Spain approved its first annual resettlement quota of 100 places in 2011. The first resettlement program was implemented in 2012 with the arrival of a group of 80 Ethiopian, Eritrean and Sudanese refugees from the Shousha Refugee Camp in Tunisia. Further 30 places were approved in 2012, but have not yet been implemented, and another 100 places were approved in 2013. The 130 pending quota is to be implemented in the second half of 2014 with the resettlement of Syrian nationals.
- Spain ratified in 2013 the 3<sup>rd</sup> Optional Protocol of the *Convention on the Rights of the Child* and was entered into force in April 2014. The said Protocol sets up a “lean communication procedure” that will allow the Committee to consider individual complaints directly presented by children.
- The *2011 Implementing Decree to the Aliens Law* establishes in Article 190 the obligation of the competent child protection authorities to inform the child about his/her rights and the possibility to apply for international protection, which signifies an important step in enhancing the protection mechanisms for UASC in Spain and promoting the identification of their specific (protection) needs.
- Spain has undertaken considerable efforts in order to respond to the challenges posed by the phenomenon of trafficking in human beings (THB) with a protection system that is slowly

beginning to shift away from a focus on combating illegal immigration prevalent so far, towards a more human rights and victim-centered approach.

In this regard, UNHCR welcomes the incorporation to the *Aliens Law* of Article 59bis, which applies directly to victims of THB, the correct typifying of the crime of human trafficking in the Criminal Code in December 2010, as well as the adoption in October 2011 of the Framework Protocol for the protection of trafficked persons.

- Spain has a statelessness determination procedure in place since 2001. Following reiterated Supreme Court jurisprudence recognizing the statelessness of persons of Saharawi origin, decision making on statelessness determination procedure was reassumed in 2013 after years of freezing of the majority of the claims for statelessness status. Consequently, the statelessness recognition rate significantly increased due to Saharawi applicants now being recognised as stateless in Spain.

### III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

#### Issue 1: Specific situation in Ceuta and Melilla

**Access to territory:** Ceuta and Melilla are the only European territories sharing a land border with Africa (Morocco), which is an important destination and transit country for economic migrants as well as increasingly for refugees from African and Asian countries. Access to territory for persons of concern to UNHCR through the heavily fenced borders of Ceuta and Melilla is the main protection challenge in Spain. There is no border mechanism to identify persons in need of international protection and refer them to the asylum system. Hence, there is no legal and regular way to access territory and international protection for those persons of concern to UNHCR, including persons from Syria, Somalia or Mali.

**Irregular returns in violation of national, regional and international legislation:** Border control measures have been strongly reinforced to prevent attempts to jump the fence, mostly in Melilla, where there have been a number of successful attempts by large groups of over 100 persons. In this context while announcing a legal reform to allow for more swift expulsion procedures to Morocco, the so called “hot” returns have increased, by handing the persons directly to the Moroccan Guards through the gate as they are apprehended, without implementing the legal guarantees, including the assistance of a lawyer and an interpreter and the provision of information on the right to apply for asylum in Spain. This practice has been firmly condemned by institutions like the Ombudsperson or the General Council for Spanish Lawyers, as well as large portions of civil society and the Academia.

**Reception conditions:** Due to heavy overcrowding, reception conditions in the enclaves remain below minimum standards and are far from the quality of other reception centres in Spain. While the centre in Ceuta has the capacity for 510 persons and accommodates an average of 600 persons including 60 children, the centre in Melilla almost quadrupled its capacity from 480 to 1890 at reporting time (June 2014), which includes over 300 children. In addition, due to lack of facilities, families are not jointly accommodated. Overcrowding, despite the extraordinary efforts of the centres’ managing teams renders them inappropriate places for single women and children, and presents serious risks to health and security, and to the identification of vulnerable people and those with protection needs.

Authorities do undertake so called ‘**humanitarian transfers**’ to the mainland often mainly guided by the intention to relieve the temporary facility and create new space there. Such transfers are undertaken clearly lacking clarity in the criteria applied to decide who is included; when and why,

as well as a sound and appropriate protection focus. Moreover, asylum-seekers seem to be automatically excluded from such transfers, which are being interpreted by populations of concern to UNHCR as “better not to apply asylum in the enclaves.” In this regard, upon UNHCR’s repeated requests only a few isolated cases of asylum-seekers were transferred to the mainland. However, the system remained unchanged at reporting time, while the centres, especially Melilla, remained highly overcrowded, making this a location entirely unsuited for accommodating groups of persons with special needs as well as people fleeing war and violent conflict.

**Access to the asylum procedure:** The presence of persons potentially in need of international protection (Syria, Mali, Somalia or CAR, *inter alia*) increased drastically in the past year. However applications for international protection remain extremely low, particularly in Melilla, (362 in both cities during 2013, 100 in <sup>the</sup> first quarter of 2014<sup>1</sup>), following the trend of previous years. This is mostly attributed to the restricted freedom of movement regime for asylum-seekers, the often very long periods of the procedure and the need to stay meanwhile in the heavily overcrowded reception centres, which were neither meant nor designed for longer stays.

It is of particular concern to UNHCR that practices applied in Ceuta and Melilla, in addition to the non-transparent transfers policy, results in an increasing number of persons potentially in need of international protection that do not lodge applications and that, in addition, those who do apply, increasingly withdraw their asylum applications<sup>2</sup>, often resulting in prompt and automatic transfers to the mainland. This is perceived as a clear deterrent to apply for asylum.<sup>3</sup>

#### **Recommendations:**<sup>4</sup>

- Facilitate identification and referral to the relevant procedures of persons in need of international protection at the border posts, including their safe access to the territory, and in general at any moment after entering Spanish territory when possible persons in need of international protection are detected;
- Ensure that information on international protection is provided to people of possible concern to UNHCR in a language and manner they understand;
- Establish a fair and efficient asylum procedure also in Ceuta and Melilla, guaranteeing the compliance with legal timeframes and ensure their transfer to the mainland without delay.
- Arrange for adequate reception conditions for families with children in accordance with the best interest of the child principle and the right to family life and guarantee asylum-seekers reception conditions in line with the standards provided for in the mainland;<sup>5</sup>
- Develop a transparent protocol setting clear and accurate decision making lines and criteria for inclusion to the so called humanitarian transfers to the mainland;<sup>6</sup> and

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<sup>1</sup> Data from monthly bulletins (2013) of the Spanish Office for Asylum –OAR–.

<sup>2</sup> According to the statistical data shared by the Spanish Asylum Office with UNHCR, withdrawals in Ceuta and Melilla almost trippled from 17 in 2012 to 49 in 2013, being in many cases of people in clear need of international protection. These data need to be analysed against the overall number of applications in the enclaves which is already low.

<sup>3</sup> Human rights organizations (AI or APDHA), asylum NGOs, the Ombudsman and the Special Rapporteur on Contemporary forms of racism, expressed also severe concern over this policy and recommended its review in order to ensure access to asylum. See: UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Addendum : Visit to Spain, 6 June 2013, available at: <http://www.refworld.org/docid/51b5c49d4.html>

<sup>4</sup> UNHCR recommendations concerning the situation of the international protection system in Ceuta and Melilla, shared with the Ministry of Interior in February 2014.

<sup>5</sup> The contrary is discriminatory and contrary to the Asylum Law (see articles 30-33 of the Asylum Law 12/2009) as well as non-compliant with EU Directives.

<sup>6</sup> Such protocol must include indispensably all those persons originating from countries in conflict or from countries for which UNHCR has issued a Non-Return Advisory as well as other asylum-seekers in vulnerable situations or with specific needs that cannot be adequately addressed in the enclaves.

- Facilitate and enable swift access particularly for Syrians in Ceuta and Melilla (*considered as prima facie refugees*) to the international protection system and their prompt transfer to the mainland.

## **Issue 2: Access to the procedure**

UNHCR has observed during its regular visits to internment centres<sup>7</sup> and through its role in the procedure, that there is still a poor level of information on international protection provided at internment centres, which does not facilitate access to the asylum procedure of those in possible need.

Despite the positive development that was observed with the issuance of an information leaflet on international protection,<sup>8</sup> the latter is not regularly provided and information on international protection is either not conveyed to interns or not in a manner that allows persons to make an informed decision on whether or not to apply for protection. This is also due to the obstacles detected in some internment centres with regard to access by specialized organisations and lawyers to the centres in order to adequately identify protection needs and assist potential persons in need of protection.

Another concern relates to the constraints in access of stowaways to the asylum procedure, which were already highlighted in UNHCR's submission in the framework of UPR's 8<sup>th</sup> session. Although stowaways are entitled to pro-bono legal aid if they indicate that they want to apply for asylum, the problem arises at the first contact between the authorities and stowaways. In most instances, stowaways not necessarily spell out clearly if they are in need of international protection, while not informed of their rights adequately, thus protection needs are frequently not detected and legal aid is not made available.

### **Recommendations:**

- Ensure that information on the possibility to apply for international protection is disseminated widely and timely at internment centers;
- Ensure regular access/presence of specialized organizations and lawyers to all aliens' internment centers; and
- Ensure access of stowaways to legal assistance from the first contact in order to facilitate early identification of potential protection needs.

## **Issue 3: Quality of the refugee status determination procedure**

Overall, and according to the information gathered in the framework of UNHCR's role in the asylum procedure a more protection-oriented focus is needed and the application of existing UNHCR guidelines and recommendations should be enhanced.

As regards eligibility procedures, main concerns are:

- The fact that decisions are made on the basis of a first interview in 95 per cent of cases, with a very low number of in-depth second specialized interviews;

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<sup>7</sup>According to Spanish law, aliens who are placed in internment centers are under so called 'administrative detention' and not regular detention, meaning that they are not under the same legal regime and only in the centers for expulsion purposes with a maximum of 60 days after which they are set free if return cannot take place.

<sup>8</sup>As reported in UNHCR submission on Spain to the 8th Session of the UPR, the General Director for Home Affairs and the Police General Commissioner for Aliens issued a joint instruction to provide with an information leaflet on the possibility to access the asylum procedure, to be distributed to all persons arriving in an irregular manner by sea and staying in Aliens' Internment Centers on the Canary Islands and the Autonomous Community of Andalusia.

- The application of key concepts like internal flight alternative, “actors of persecution” or “actors of protection” are frequently completed without due analysis and out of line with UNHCR guidelines;
- The application of a high standard of proof especially in gender-related cases;
- The lack of acceptance of UNHCR recommendations for improved standards of protection in the framework of its role in the RSD procedure, and
- The wide discrepancy in the interpretation of RSDP results between UNHCR and authorities.

Moreover, asylum authorities tend to downgrade refugee protection and grant subsidiary protection instead in cases falling clearly under the 1951 Geneva Convention according to UNHCR guidelines, with the argument that both would afford equal protection in Spain.

The length of the procedure is also a serious concern.<sup>9</sup> This issue, together with the policy of freezing decision making on specific nationalities, carries as a further consequence, an increased backlog (4,344 applications by end of 2013), mainly composed of applications of Malians, Syrians, Iranians and persons from Ivory Coast. The length of the procedure is particularly cumbersome and problematic for the few applicants in the cities of Ceuta and Melilla (see issue 1).

Finally, the lack of an Implementing Decree to the *Asylum Law* that was due in 2010 implies that relevant aspects of the Law, whose detailed regulation has been left to the Implementing Decree, remain largely unregulated. This affects *inter alia* the treatment of vulnerable cases or important aspects of family reunification. UNHCR has shared with the Ministry of Interior detailed comments and extensive proposals to the draft decree, that was finally shared by the authorities in October 2013, but the final text is still pending and authorities are reluctant to share any related feedback in the meantime.

#### **Recommendations:**

- Adopt a more efficient and protection focused management of the asylum procedure that allows for improved quality and for a reduction of its length;
- Adopt the Implementing Decree to the Asylum Law, including a protection – oriented focus and regulating those aspects pending legislative development; and
- Adopt a more proactive communication and solutions oriented approach *vis-à-vis* UNHCR and relevant actors of the civil society.

#### **Issue 4: Reception conditions for asylum-seekers**

Reception conditions for asylum-seekers and refugees in the mainland<sup>10</sup> maintain a good standard. However lengthy procedures and reduction of assistance programs due to cuts in the social welfare system are increasingly resulting in asylum-seekers exhausting reception programs, pending the procedure’s outcome and while not being able to find employment and become self-reliant, despite having access to the labor market after six months since the application was lodged.

As regards facilities at the borders, especially at Madrid and Barcelona Airports, conditions are acceptable for a few days and as long as the number of applicants is kept low, but are barely suitable for families or children, or for a prolonged stay.

#### **Recommendation:**

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<sup>9</sup> The average decision time in 2013 continued to be long, with 50% of the cases exceeding the legal provision of time.

<sup>10</sup> See Issue 1 for the specific situation in Ceuta and Melilla.

- Reduce processing times of asylum claims and improve reception conditions for asylum-seekers at the borders.

#### **Issue 5: Local integration of refugees**

The **economic crisis**, meaning a very high unemployment rate (25.93 per cent in the first quarter of 2014) and reduced social support, remains the most important obstacle to refugee integration in Spain. This situation affects also refugees that were resettled under the first resettlement program in 2012, as detected through participatory assessment activities undertaken in 2013 with this group.

In this context, self-reliance of refugees has become increasingly difficult in the last three years and the overall integration scheme for refugees shows important gaps to address this situation.

In the field of **family reunification**, through its role in the asylum procedure, UNHCR has detected an increasingly restrictive approach especially in those cases involving extended family members where stricter dependency criteria are being applied diverting from the former practice and the spirit of the asylum law.

#### **Recommendations:**

- Adopt an adequate approach that allows for a better identification of integration problems and is solutions-oriented, putting special focus on access to the labour market and involvement of regional and local authorities in this regard;
- Harmonize procedure timeframes with those permitting asylum-seekers to stay in specialized centers in order to maintain reception conditions conducive to adequate post-recognition integration; and
- Apply more flexible family reunion criteria in line with international standards and UNHCR's recommendations, and speed up the procedures.

#### **Issue 6: Protection of unaccompanied or separated children (UASC)**

The adoption of adequate **age assessment procedures** remains one of the main concerns in relation to UASC. A National Report of the Spanish Ombudsman published on January 2012 on the issue, denounced the existence of serious irregularities in the established procedures. In addition, despite carrying valid passports, alleged children undergo age assessment tests with most being considered over 18 years of age and being placed in reception arrangements with adults. Several judicial proceedings have been initiated on these grounds.

International protection needs of children are generally not identified nor considered in a (best interest determination) BID or similar process. Thus, durable solutions are not reached and, in most cases, UASC end up in an irregular situation once they reach full age. This situation shows the need for continued training on international protection issues and capacity building of professionals working on a daily basis with children.

#### **Recommendations:**

- Ensure that instruction is issued (by the Public Prosecutor's Office) establishing clear standards and benchmarks in age determination procedures, in line with *Aliens Law 4/2000*;<sup>11</sup>
- Ensure that a BID procedure is undertaken in each individual case of unaccompanied foreign children arriving in Spain; and

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<sup>11</sup> In accordance with the Spanish Ombudsman recommendations

- Observe international standards for transition to adulthood in line with the recent resolution of the Parliamentary Assembly of the Council of Europe PACE.

### **Issue 7: Statelessness**

Spain is a party to the *1954 Convention relating to the Status of Stateless persons* since 1997. The Royal Decree 865/2001 of 20 July 2001 on the Procedure of Recognition of Stateless Status establishes the rights and obligations of stateless persons in Spain and the procedure whereby a person can apply for this status and obtain such recognition if he/she is not considered as a national by any state under the operation of its law . According to the Royal Decree, the Spanish Office of Asylum and Refuge (OAR) recommends recognition or non-recognition of stateless status to the Ministry of Interior, which must make a decision within three months after the claim is presented before the OAR.

In practice however, the procedure to determine the statelessness status is lengthy and might last for several years. There is very little information made available to UNHCR on the steps taken to determine whether an applicant is stateless or not. Contrary to UNHCR's specific role in the asylum procedure and cooperation with the government in this regard, the authorities are reluctant to recognize UNHCR's statelessness mandate fully and to engage in closer cooperation with UNHCR in this area.

Spain is not party to the *1961 Convention on the Reduction of Statelessness (1961 Convention)*. The Spanish civil code however includes provisions to prevent statelessness, which are fully compliant with international standards. Spain pledged to accede to the *1961 Convention* in 2011.<sup>12</sup> However, until 2014, the Spanish Government did not communicate to UNHCR that Spain would not accede to 1961 Convention due to the fact that the internal process was more complex than expected even if no legislative changes were required for accession.

### **Recommendations:**

- Establish a more fluid dialog and cooperation with UNHCR on the implementation of the statelessness determination procedure;
- Where necessary, seek UNHCR technical assistance in the field of statelessness as per UNHCR's mandate; and
- Accede to the *1961 Convention* on the Reduction of Statelessness pursuant to its pledge in 2011. Accession to the Convention would contribute to the reinforcement of the domestic legal framework, and also through increased number of parties to the Convention, strengthen the international legal framework on reduction of statelessness.

### **Issue 8: Victims of trafficking in need of international protection**

Despite the formal recognition of international protection needs of victims of trafficking in the last two years and the inclusive focus laid down in the *Asylum Law* which expressly recognizes gender persecution as a ground for international protection and refers to the vulnerable situation of victims of trafficking, an adequate approach and understanding of the international protection needs of some victims is still lacking.

This is particularly worrying for persons claiming asylum at the border or at internment centres, when their asylum applications are linked to a trafficking-related situation. A high threshold of proof is applied and these claims are systematically rejected in the accelerated procedure, while the

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<sup>12</sup> UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, page 117, available at: <http://www.refworld.org/docid/50aca6112.html>.

potential victims are in closed facilities with difficult access to specialized NGOs, and lack the adequate conditions to create a trustful atmosphere. In this context it is often difficult to properly identify potential victims and refer them to the adequate services for the assistance of victims of human trafficking. Therefore, although the current National Identification and Referral Protocol is a positive step forward, there are still areas that need improvement such as when to activate it and by whom, content of the interviews, indicators and threshold used to offer the recovery and reflection period, participation of specialised NGOs and legal assistance. Likewise, the Protocol lacks any reference to the possible international protection needs of trafficked persons.<sup>13</sup>

Finally, there is an identified need for specialized training to border police, asylum officials and all civil servants, as well as interpreters, social workers, lawyers and judicial authorities dealing with potential victims of trafficking (VoT).

The arrival of Sub-Saharan women potentially VoT to the cities of Ceuta or Melilla and by sea to Southern Spanish coast (sometimes with babies or very young boys and/or girls), mainly from Moroccan coasts, is another context in which VoT are not being properly identified and no assessment of the possible risk of return is being made, while they do not claim asylum in Spain.

### **Recommendations:**

- Amend the Identification and Referral Protocol in order to include an adequate referral mechanism to the asylum system when potential international protection needs are detected by the authorities;
- Ensure information is provided to and understood by trafficked persons regarding their right to apply for international protection and establish a more protection-oriented referral protocol in the framework of the asylum procedure;<sup>14</sup>
- Facilitate the access to international protection of those victims of trafficking and persons at risk of being (re)trafficked who may be in need of it;
- Promote the implementation of UN Committees Final Observations to Spain (CEDAW, CAT, CRC) regarding trafficking issues, GRETA's recommendations contained in its first Report concerning the implementation of the Council of Europe Convention on Actions against Trafficking in Human Beings by Spain of 27 September 2013, as well as the Spanish Ombudsman's recommendations on this issue;
- Adopt a comprehensive legislation of human trafficking, with a human rights-based and protective approaches;<sup>15</sup> and
- Promote and facilitate the proper training of border police, asylum officials and all civil servants to ensure identification of trafficked persons and referral to the asylum procedure and vice versa.

**Human Rights Liaison Unit**  
**Division of International Protection**  
**UNHCR**  
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<sup>13</sup> This includes modes of assessment, and how to decide which type of protection might be the most suitable (the protection established in the specific legislation for trafficked persons or international protection according to the individual circumstances of the victim and the risks she/he might face in case of return in conformity with the Principle of *non-refoulement*).

<sup>14</sup> This should be done especially at borders and internment centres, to ensure early identification of potential VoT, and guarantee access of NGOs specialized in the identification and assistance of victims of trafficking. At the same time assess possible international protection needs with a particular attention to the Principle of "*non refoulement*".

<sup>15</sup> Taking advantage of the need to transpose Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims

## Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

### - Universal Periodic Review:

#### SPAIN

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Spain.

#### I. Treaty Bodies

##### Committee on the Elimination of Racial Discrimination

CERD/C/ESP/CO/18-20, 78<sup>th</sup> Session

8 April 2011

##### **Detention**

10. The Committee is concerned about the information received on identity checks and police raids carried out on the basis of ethnic and racial profiling in public places and neighborhoods with high concentrations of foreigners, with the aim of arresting anyone in an irregular situation in the State party (arts. 2, 5 and 7).

**Recalling its general recommendation No. 31 (2005), the Committee urges the State party to take effective measures to eradicate the practice of identity checks based on ethnic or racial profiling. Furthermore, the Committee recommends that the State party consider amending those provisions of Circular No. 1/2010 of the General Commissariat for Immigration and Borders and the relevant national legislation which allow interpretations that, in practice, can lead to indiscriminate detention and the restriction of the rights of foreign citizens in Spain. The Committee also reminds the State party that, in light of its general recommendation No. 13 (1993), law enforcement officials should receive intensive training in human rights in order to guarantee that in the course of their duties they respect and protect the fundamental rights of all persons without discrimination on the basis of race, colour or ethnic or national origin.**

##### **Hate Speech**

14. The Committee is concerned by ongoing media coverage that spreads racist stereotypes and prejudice against certain groups of migrants, such as North Africans, Latin Americans and Muslims in the State party (arts. 4 and 7).

**The Committee urges the State party to continue to implement its comprehensive national strategy to combat racism and xenophobia, to closely monitor any trends that might encourage racist and xenophobic behavior and to combat the negative impact of such trends. In light of the National Plan of Spain for the Alliance of Civilizations and in accordance with articles 4 and 7 of the Convention, the Committee urges the State party to promote responsible use of the media in order to combat hate speech and racial discrimination, and to promote general awareness of diversity at all levels of education.**

##### **Unaccompanied Minors**

17. The Committee welcomes the agreements on assisting and repatriating unaccompanied minors which the State party has signed with Romania and Senegal.

However, the Committee is concerned about the use of radiological tests to evaluate bone development as a means of determining the age of unaccompanied minors on Spanish territory, as the wide margin of error could lead to some children being classed as adults, and therefore denied the protection to which minors are entitled (art. 6).

**The Committee urges the State party, in order to ensure that unaccompanied minors are not classed as adults and that they enjoy the protection to which children are entitled, to consider different methods of determining the age of children, and to invest in the introduction of reliable and up-to-date tests which are not harmful to the physical integrity of minors.**

### **Xenophobia**

11. The Committee is concerned that there are no official figures on incidents of racism or xenophobia, or on the number of complaints, prosecutions, convictions or sentences for racially motivated crimes, as defined in article 22, paragraph 4, of the State party's Criminal Code, or on the reparation granted to victims (arts. 2 and 6).

In light of its general recommendation No. 31 (2005), the Committee reminds the State party that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as necessarily positive, since it could also be an indicator of, inter alia, the victims' fear of social censure or reprisals, the lack of trust in the police and judicial authorities, or even that the authorities are insufficiently alert to or aware of complaints of acts of discrimination.

**The Committee recommends that the State party: (a) Embark on regular and public collection of information on acts of racial discrimination from police, judicial and prison authorities and immigration services, while respecting standards of confidentiality, anonymity and protection of personal data; (b) Include, in its next periodic report, comprehensive details on the number of complaints, prosecutions, convictions and sentences and on the reparation granted to victims.**

### **Committee on the Rights of Persons with Disabilities**

CRPD/C/ESP/CO/1, 6<sup>th</sup> Session

19 October 2011

### **Sexual-Gender Based Violence**

21. The Committee is concerned that public programmes and policies on the prevention of gender-based violence do not sufficiently take into consideration the particular situation of women with disabilities. The Committee is also concerned that employment policies do not include a comprehensive gender perspective and that unemployment, inactivity and training rates are significantly worse for women than for men with disabilities.

**The Committee recommends that the State party: (a) Include a more comprehensive consideration of women with disabilities in public programmes and policies on the prevention of gender-based violence, particularly so as to ensure access for women with disability to an effective, integrated response system; (b) Include a gender perspective in employment policies, and particularly specific measures for women with disabilities; (c) Elaborate and develop strategies, policies and programmes, especially in the fields of education, employment, health and social protection, to promote the autonomy and full participation of women and girls with disability in society, and to combat violence against them.**

### **Human Rights Committee**

CCPR/C/ESP/CO/5, 94<sup>th</sup> Session

5 January 2009

### **Positive Aspects**

5. The Committee welcomes the plan to improve conditions of detention in prisons (Plan for the Standardization and Establishment of Prisons), adopted in December 2005, and notes with interest that implementation is under way. It encourages the State party increasingly to seek alternative solutions to imprisonment.

## Asylum-Seekers

16. While taking into account the State party's efforts to guarantee the rights of foreigners, as attested by, for example, the provisions of Royal Decree No. 2393/2004 on legal aid for foreigners, the Committee remains concerned at reports that judicial supervision of asylum applications has been reduced to a mere formality and that some decisions on the detention and expulsion of foreigners are arbitrary (art. 13).

**The State party should ensure that the decision-making process in matters concerning the detention and expulsion of foreigners complies fully with the procedure set out by law, and that humanitarian reasons can always be invoked in asylum proceedings. The State party should also ensure that the new asylum law is in full conformity with the Covenant.**

## Detention

14. While taking note of Organization Act No. 13/2003, which introduces the detainee's right to a second medical examination, as well as the possibility of obtaining a judicial order for the video-recording of certain interrogations, the Committee remains concerned at the persistence of the practice of incommunicado detention in cases of terrorism and organized crime, which can last up to 13 days, and at the fact that the individuals concerned are not entitled to choose their own lawyer. The Committee does not share the State party's view that maintaining the practice of incommunicado detention is necessary and justified by "the interests of justice." It considers that the practice can be conducive to ill-treatment, and regrets that it persists despite recommendations by several international bodies and experts that it should be abolished (arts. 7, 9 and 14).

**The Committee recommends once again that the necessary measures, including legislative ones, should be taken to definitively put an end to the practice of incommunicado detention, and that the right to freely choose a lawyer who can be consulted in complete confidentiality by detainees and who can be present at interrogations should be guaranteed to all detainees. The State party should also systematize the audio-visual recording of interrogations in all police stations and places of detention.**

15. While noting the safeguards introduced by Organization Act No. 13/2003 (Organization Act on Criminal Prosecution and Pretrial Detention), the Committee remains concerned that the length of pretrial detention is set according to the length of the sentence incurred and may be extended to four years, which is clearly incompatible with article 9, paragraph 3, of the Covenant.

**The State party should limit the length of police custody and pretrial detention, in a manner compatible with article 9 of the Covenant. The Committee reiterates its recommendation that the State party should end the practice of setting the length of pretrial detention according to the length of the sentence incurred.**

16. While taking into account the State party's efforts to guarantee the rights of foreigners, as attested by, for example, the provisions of Royal Decree No. 2393/2004 on legal aid for foreigners, the Committee remains concerned at reports that judicial supervision of asylum applications has been reduced to a mere formality and that some decisions on the detention and expulsion of foreigners are arbitrary (art. 13).

**The State party should ensure that the decision-making process in matters concerning the detention and expulsion of foreigners complies fully with the procedure set out by law, and that humanitarian reasons can always be invoked in asylum proceedings. The State party should also ensure that the new asylum law is in full conformity with the Covenant.**

## Violence against Women

12. While noting the steps taken by the State party to combat violence against women, as well as its intention to increase the number of specialized courts dealing with this subject, the Committee notes with concern the persistence of domestic violence in Spain, despite the noteworthy efforts of the State party. It also notes with regret the lack of effective measures to encourage women to report

incidents, as well as the lack of adequate assistance from the public prosecutor's office (arts. 3 and 7).

**The State party should step up its efforts to prevent and combat violence against women and, in particular, domestic violence, and, in this connection, should collect adequate statistics to obtain a clearer picture of the extent of the phenomenon. The authorities, including the public prosecutor's office, should also provide all necessary assistance to victims.**

### **Committee on the Rights of the Child**

CRC/C/ESP/CO/3-4, 55<sup>th</sup> Session

3 November 2010

#### **Asylum-seeking/refugee children and unaccompanied foreign children**

57. The Committee welcomes the adoption of the new Law 12/2009 of 30 October on asylum and subsidiary protection, which contains provisions on the special circumstances of unaccompanied children in need of international protection, and the need to assure differentiated treatment for them. It notes, however, that the new legislation only provides for non-EU nationals and stateless children to request and enjoy international protection, thereby excluding EU citizens from the right to seek asylum in the State party.

58. The Committee recommends that the State party extend the scope of the new asylum law, in line with international standards, in order to ensure that adequate protection is afforded to all children, irrespective of their nationality.

59. The Committee notes the measures taken by the State party, including the creation of a registry of unaccompanied children in the Police Department (see Royal Decree 2393/2004 of 30 December), and the protocol developed by the Children's Observatory concerning unaccompanied children. While noting that repatriations of unaccompanied children have decreased in the last years, the Committee continues to be concerned about reports of: (a) Methods used to determine the age of unaccompanied children, which may vary from region to region, and do not necessarily taking into account issues such as nutritional customs which may influence the physical and psychological evolution of the child; (b) Ill-treatment of unaccompanied children by the police during forced or involuntary repatriation to the country of origin, where in some cases they are deported without the necessary guarantees (such as access to a lawyer, interpretation services, consideration of the best interests of the child, and observance of the child's right to be heard); (c) Unaccompanied children (in particular Moroccan) being handed over to border authorities, and not the social services of the country of origin, where they may be victims of abuse and detention by security forces and border authorities of the country of origin; (d) Failure of the authorities to provide unaccompanied children with temporary residency status to which they are legally entitled, due to delays in applying therefor by the Department of Social Welfare; and (e) Substandard accommodation conditions and neglect in emergency centers in the Canary Islands, particularly in La Esperanza, Tenerife Island and Spanish enclaves, particularly Ceuta.

**The Committee recommends that the State party: (a) Take all necessary measures to prevent irregular procedures in the expulsion of unaccompanied children; (b) Establish child-friendly reception centers for children, with effective mechanisms to receive and address complaints from children in custody, and effectively investigate reported cases of ill-treatment of children; (c) Coordinate with Governments of countries of origin, especially Morocco, to ensure that repatriated children are returned to family members willing to care for them or to an appropriate social service agency; (d) Develop a uniformed protocol on age-determination methods and ensure that age-determination procedures are conducted in a safe, scientific, child- and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; (e) Guarantee, following identification, an analysis of the unaccompanied child individual circumstances, bearing in mind the best interests of the child,**

and the child's right to be heard; (f) Provide unaccompanied children with information about their rights under Spanish and international law, including the right to apply for asylum; (g) Ensure adequate territorial coordination between central, regional and local administrations, as well as with security forces; (h) Address the situation of the quality of conditions in emergency centers in the Canary Islands and Spanish enclaves; (i) Provide training on asylum matters and the specific needs of children, including the situation of unaccompanied and separated children, issues concerning human trafficking, and treatment of traumatized children to personnel dealing with unaccompanied children, including asylum officials, border police and civil servants, who might be the first persons in contact with children in need of protection; and (j) Take into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

### **Committee on Economic, Social and Cultural Rights**

E/C.12/ESP/CO/5, 48<sup>th</sup> Session

6 June 2012

#### **Positive Aspects**

4. The Committee is pleased to note that the following: (a) Act No. 12/2009 of 30 October 2009, on the right of asylum and subsidiary protection, which incorporates European directives and covers the protection of the rights set forth in the Convention relating to the Status of Refugees; (f) The measures adopted to combat human trafficking, especially: the classification of human trafficking as an offence in the Criminal Code; the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings; the launch of the first Comprehensive Plan to Combat Human Trafficking for Purposes of Sexual Exploitation 2009–2012; and the third Plan to Combat the Sexual Exploitation of Children and Adolescents 2010–2013.

#### **Asylum-Seekers**

8. The Committee expresses concern that the levels of effective protection for the rights enshrined in the Covenant have been reduced as a result of the austerity measures adopted by the State party, which disproportionately curtail the enjoyment of their rights by disadvantaged and marginalized individuals and groups, especially the poor, women, children, persons with disabilities, unemployed adults and young persons, older persons, gypsies, migrants and asylum seekers (art. 2, para. 1).

**The Committee recommends that the State party ensure that all the austerity measures adopted reflect the minimum core content of all the Covenant rights and that it take all appropriate measures to protect that core content under any circumstances, especially for disadvantaged and marginalized individuals and groups. In that regard, the Committee recommends that the State party compile disaggregated statistical information with a view to identifying the individuals and groups affected and that it increase the effectiveness of its efforts to protect their economic, social and cultural rights. The Committee also draws the State party's attention to its open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis.**

#### **Violence against Women**

15. The Committee is concerned at the persistence of high levels of domestic and other forms of gender-based violence, despite the State party's efforts to prevent such violence, as well as by the budget cuts that have affected the victim support services provided in certain autonomous communities (art. 10).

**The Committee encourages the State party to keep assessing the impact of the various plans and measures implemented to combat domestic and other forms of gender based violence, especially violence against women, and to ensure that the efforts under way are continued and that the restrictive austerity measures taken within the context of the economic and financial crisis do not undermine the protection afforded to victims or the protection of their rights. The Committee also recommends that the State party strengthen its measures in this area and**

ensure that all the corresponding prevention and care strategies reach the women who are at greater risk due to their social environment or to drug addiction, illness or any other disadvantageous circumstance.

## **II. Special Procedures**

### **Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living**

Addendum: Mission to Spain

Human Rights Council, 7<sup>th</sup> Session

A/HRC/7/16/Add.2, 7 February 2008

#### **Violence against Women**

99. Given the interlinkages between violence against women and women's right to adequate housing, the Special Rapporteur recommends that the Spanish authorities continue and develop their work on this issue, including to act with due diligence to prevent, investigate and punish acts of violence against women; to ensure access to temporary and appropriate shelters; and to ensure their security in any given circumstance. The Special Rapporteur recommends that the Government utilize, in this context, the solutions proposed in the work of the Commission on Human Rights on women and housing, such as the introduction of anti-violence provisions in housing legislation and policies and ensuring that domestic violence laws include provisions to protect women's right to adequate housing, including the right to privacy and security.

### **Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

Addendum: Mission to Spain

Human Rights Council, 10<sup>th</sup> Session

A/HRC/10/3/Add.2, 16 December 2008

#### **Detention**

52. The legislative framework for counter-terrorism in Spain has been to a considerable degree developed as a tool to fight ETA. This is problematic when the legislation is applied to international terrorism. Furthermore, the vagueness of certain provisions on terrorist crimes in the Spanish Penal Code carries with it the risk of a "slippery slope", i.e. the gradual broadening of the notion of terrorism to acts that do not amount to, and do not have sufficient connection to, acts of serious violence against members of the general population. This is particularly worrying in light of the measures triggered by the classification of crimes as terrorism: the application of incommunicado detention; the exclusive jurisdiction of the Audiencia Nacional; the applicability to terrorist suspects of up to four years of pre-trial detention; aggravated penalties; and often also modifications in the rules related to the serving of sentences.