UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report –

Universal Periodic Review:

ANDORRA

I. BACKGROUND INFORMATION

Andorra is a small Principality in the middle of the Pyrenees surrounded by France and Spain. Few asylum-seekers reach Andorra where the authorities deal with them on an ad hoc basis as no RSD procedure exists.

Andorra has not ratified the *1951 Convention relating to the Status of Refugees* (hereinafter referred to as the *1951 Convention) or its 1967 Protocol*. Regarding statelessness, Andorra is not a State party to the *1954 Convention Relating to the Status of Stateless Persons* (hereinafter referred to as the *1954 Convention),* or the *1961 Convention on the Reduction of Statelessness* (hereinafter referred to as the *1961 Convention).*

According to information available to UNHCR, Andorra hosts 7 refugees as of January 2013.

II. ACHIEVEMENTS AND BEST PRACTICES

Andorra has ratified the Council of Europe *Convention on Action against Trafficking in Human Beings* on 23 March 2011, which entered into force on 1 July 2011**.** UNHCR welcomes the ratification and coming into effect of the 2005 Council of Europe (CoE) *Convention on Action against Trafficking in Human Beings* in Andorra; the first European treaty of its kind to focus on the protection of victims of trafficking and the safeguard of their rights, including their right to seek and enjoy asylum and the principle of *non-refoulement.*[1]

UNHCR also welcomes Andorra's ratification of the Council of Europe's Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).[2]

[1] *Council of Europe Convention on Action against Trafficking in Human Beings,* Arrticle 14.5 and and Article 40.4, available at: http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm

[2] This instrument makes specific references to CEDAW, its Optional Protocol and General Recommendation No. 19 of the CEDAW Committee on Violence against Women. It includes provisions establishing the obligation to recognize sexual gender-based violence (SGBV) against women as a form of persecution within the meaning of the *1951 Convention*. It also ensures that a gender-sensitive interpretation is given when establishing refugee status (article 60), and that SGBV victims, regardless of their status or residence,

III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

Issue 1: Accession to the *1951 Convention*

Andorra is neither a State party to the 1951 Convention, nor to its 1967 Protocol. Notwithstanding competing domestic priorities and the relatively small number of cases of asylum Andorra receives, Andorra's accession to the *1951 Convention* and the establishment of a national legal and institutional framework would enable the Government to efficiently discharge its responsibilities to provide refugees with international protection.

A national asylum procedure should ensure that gender-related claims are properly considered, by notably taking into consideration the particularities of asylum claims and the need to incorporate gender-sensitive elements both in the formalization of the asylum claim and during its evaluation.[3] UNHCR also notes the importance of ensuring the quality of the asylum process for children and to ensure a consistent and child-sensitive interpretation of the refugee definition.[4]

The Committee on the Right of the Child has expressed "*concern over the lack of domestic legislation on asylum seekers and refugees, and in particular at the absence of measures to protect unaccompanied and refugee children*"[5] and has encouraged Andorra to "*enact legislation on asylum seekers and refugees in conformity with the international standards.*"[6] The Committee Against Torture has also urged Andorra to *"create a procedure for determination of refugee status for persons who could be recognized as refugees. It should also take clear legal measures to ensure that it does not expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture."*[7]

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are not returned to any country where their life would be at risk or where they may be subjected to torture or inhuman or degrading treatment or punishment in conformity with the principle of *non-refoulement* (article 61).

[3] UN High Commissioner for Refugees, Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01, available at: http://www.unhcr.org/refworld/docid/3d36f1c64.html.

[4] UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: http://www.refworld.org/docid/4b2f4f6d2.html [accessed 25 September 2014]

[5] Committee on the Right of the Child, Sixty - first session, 17 September – 5 October 2012, Concluding Observations, para. 43, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-AUT-CO-3-4_en.pdf

[6] Opcit, para. 44

[7] Committee against Torture, 51st Session, Concluding observations on the initial report of Andorra, Concluding observations (2013) CAT/C/AND/CO/1, 51st Session, 20 December 2013, para. 15, available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjNPNaDz1ObDjveA0b8hSfPTKS5M1pNuGSRzOlQVxGpzmsaQKsc0F2JZUSjcpNHGbKuEqY77%2fD%2fkYVwRu2AU9TSwMWpslBQb3IA4E%2bKDKRAK

Recommendations:
UNHCR recommends that Andorra:

- Accede to the 1951 Convention relating to the status of refugees and its 1967 Protocol; and
- Establish a refugee status determination procedure which is fully gender and age-sensitive.

Issue 2: <u>Accession to the Statelessness Conventions</u>

Andorra is neither a State party to the *1954 Convention relating to the status of stateless persons*, nor to the *1961 Convention on the reduction of Statelessness*. The *1954 Convention* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. The *1954 Convention* also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

The *1961 Convention* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to these two *Conventions* is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

The Committee on the Right of the Child has also urged Andorra to accede to "*the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness."*[8]

Recommendations:
UNHCR recommends that Andorra:

- Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

Issue 3: <u>*Trafficking in persons*</u>

Refugees and asylum-seekers are at acute risk of falling victims to trafficking or smuggling due to their unique position of vulnerability. UNHCR echoes the Committee on the Elimination of Discrimination against Women's concern which highlighted the "*lack of information about cases of trafficking in women and forced prostitution in the State party, and the absence of measures to identify and educate potential victims on the risks of such exploitative practices. It also notes with concern that the Criminal Code does not specifically criminalize trafficking in human beings, in particular women and girls, or forced prostitution. The Committee is further concerned at the lack of a legislative and policy measures to combat trafficking in women and girls, despite having ratified the Council of Europe Convention on Action against Trafficking in Human Beings*."[9] The

[8] Ibid
Committee on the Right of the Child, Sixty - first session, 17 September – 5 October 2012, Concluding Observations, para. 43, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-AUT-CO-3-4_en.pdf

[9] <u>Committee on the Elimination of Discrimination against Women,</u> fifty-sixth session (30 September-18 October 2013), concluding observations, para. 23, avalable at :

committee called upon Andorra to "*Adopt a national action plan against trafficking in human beings, in particular women and girls, including strategies for the prevention of trafficking and forced prostitution, measures aimed at identifying victims of trafficking and mechanisms to protect them and provide them with adequate support and redress*."[10]

There are currently no mechanisms in place to guarantee that persons that are victims of trafficking and who may have a well-founded fear of persecution would receive effective protection or assistance they deserve as no proper referral system to the RSD procedure (consistent with UNHCR's Guidelines on the issue) currently exists.[11]

Recommendations:

UNHCR recommends that Andorra:

- Adopt all measures necessary to deal efficiently with the phenomenon of trafficking in person and more specifically adopt a national action plan against trafficking; and
- Ensure identification and referral of victims of trafficking or smuggling with potential international protection needs to the appropriate mechanisms.

Human Rights Liaison Unit
Division of International Protection
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http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/AND/CO/2-3&Lang=En

[10] Opcit, para 24.b

[11] *See* UN High Commissioner for Refugees, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, available at: http://www.unhcr.org/refworld/docid/443679fa4.html.

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

Universal Periodic Review:

ANDORRA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to Andorra.

Committee against Torture
Concluding observations (2013) CAT/C/AND/CO/1, 51st Session
20 December 2013

Discrimination, hate speech and violence against vulnerable groups
11. The Committee is concerned at the absence of specific legislation to prevent and punish discrimination and incitement to violence, as well as measures against hate speech and other hate crimes (arts. 2, 12, 13, and 16).

The State party should take all necessary measures to prohibit and punish discrimination and incitement to violence against vulnerable groups and ensure that all hate crimes are always investigated, prosecuted and the perpetrators convicted and punished. In addition, the State party should take all necessary measures to prevent and condemn hate speech.

The State party should:

(a) Amend the Criminal Code with a view to specifically prohibiting trafficking in human beings as a criminal offence;

(b) Promptly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;

(d) Provide specialized training to the police, prosecutors and judges on effective prevention, investigation, prosecution and punishment of acts of trafficking, and inform the general public through media campaigns of the criminal nature of such acts.

Asylum
14. The Committee notes that national laws do not provide for the granting of asylum or refugee status and that there is no procedure for determination of refugee status (art. 3).

The State party should create a procedure for determination of refugee status for persons who could be recognized as refugees. It should also take clear legal measures to ensure that it does not expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

Other issues

21. The Committee invites the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also invites the State party to consider ratifying other United Nations human rights treaties to which it is not yet party, namely the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto; and the International Convention for the Protection of All Persons from Enforced Disappearance. In addition, the State party should consider acceding to the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Committee on the Elimination of Discrimination against Women
Concluding observations (2013) CEDAW/C/AND/CO/2-3, 56th Session
20 October 2013

Violence against women
21. While noting that the State party is in the process of drafting a law on gender-based violence, the Committee remains concerned about:
(a) The absence of prohibition of all forms of violence against women, and the unavailability of redress mechanisms for women victims of violence;
(b) The low number of investigations, prosecutions and convictions of perpetrators, despite the sharp increase in the number of cases of violence against women and the existence of a mechanism for issuing restraint orders to protect women at risk of violence;
(c) The disproportionately high number of migrant women who are victims of violence according to official statistics; and
(d) The absence of information on the funds allocated to shelters for victims and on gender-sensitive protocols for dealing with victims and hearing witnesses during the investigation of cases of violence against women.

22. **The Committee urges the State party to:**
(a) Ensure the adoption of a comprehensive law addressing all forms of violence against women, establishing measures in order to prevent and combat them;
(b) Amend the Criminal Code to include prohibition covering all forms of violence against women as criminal offences, including sexual violence and stalking, an establish measures to redress victims;
(c) Strengthen its efforts to prevent violence against women, including by conducting awareness-raising and education campaigns to inform women and girls on their right to be free from violence as well as on available victim's support and legal remedies;
(d) Provide adequate assistance to women victims of violence, including migrant women, and ensure that victims have access to legal remedies such as restraint orders as well as to shelters and medical and psycho-social support, in cooperation with NGOs;
(e) Provide public funding to NGOs running shelters;

(f) Provide training to the police on gender-sensitive methods for investigating cases of violence against women and for providing age-appropriate advice to victims taking into consideration their socio-economic situation; and

(g) Accelerate the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence.

Trafficking and exploitation of prostitution

23. The Committee notes with concern the lack of information about cases of trafficking in women and forced prostitution in the State party, and the absence of measures to identify and educate potential victims on the risks of such exploitative practices. It also notes with concern that the Criminal Code does not specifically criminalize trafficking in human beings, in particular women and girls, or forced prostitution. The Committee is further concerned at the lack of a legislative and policy measures to combat trafficking in women and girls, despite having ratified the Council of Europe Convention on Action against Trafficking in Human Beings..

24. **The Committee calls upon the State party to:**

(a) Undertake investigation about possible cases of trafficking in women and girls and provide, in its next periodic report, comprehensive information on the extent of trafficking in the State party;

(b) Adopt a national action plan against trafficking in human beings, in particular women and girls, including strategies for the prevention of trafficking and forced prostitution, measures aimed at identifying victims of trafficking and mechanisms to protect them and provide them with adequate support and redress;

(c) Conduct awareness-raising campaigns about the criminal nature and the risks of trafficking and forced prostitution of women and girls;

(d) Amend the Criminal Code with a view to specifically criminalizing trafficking in human beings, in particular women and girls and forced prostitution; and

(e) Strengthen bilateral and regional cooperation mechanisms in order to prevent trafficking in women and girls, protect victims and prosecute traffickers, in the framework of existing regional treaties.

Migrant women

33. The Committee reiterates its concern about the absence of information about the status and situation of women migrant workers in the State party.

34. **The Committee recommends that the State party:**

(a) Conduct a comprehensive study on the situation of migrant women, establish a system of collecting disaggregated information on migrant women, and include such information in its next periodic report;

(b) Consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;

(c) Adopt a legislative framework to address the rights and needs of women migrant workers and women asylum seekers, including measures to protect all migrant women against refoulement; and

(d) Consider amending its legislation with a view to recognizing the human rights of migrant women.

Committee on the Rights of the Child

Concluding observations (2012) CRC/C/AND/CO/2, 61st Session

3 December 2012

Non-discrimination

24. The Committee welcomes the establishment of the National Equality Commission in 2010 to address anti-discrimination issues and the initiative to develop a National Action Plan for Equality. However, the Committee is concerned that the State party has not prioritized the work of the Commission since its establishment in 2010 and that little progress has been made, including on the development of the National Action Plan for Equality. The Committee is also concerned about the existing patriarchal attitudes, practices and stereotypes that discriminate against girls and children with disabilities in the State party.

25. The Committee recommends that the State party:

(e) Monitor such efforts and regularly assess progress made towards the achievement of established goals, and include specific information in its next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.

Asylum-seeking and refugee children

43. The Committee expresses concern over the lack of domestic legislation on asylum seekers and refugees, and in particular at the absence of measures to protect unaccompanied and refugee children.

44. The Committee recommends that the State party enact legislation on asylum seekers and refugees in conformity with the international standards, including by taking into account the Committee's general comment No. 6 (CRC/GC/2005/6, 2005).
The Committee recommends that the State party accede to the 1954 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Children in situations of migration

45. The Committee notes with concern that the State party, during the Universal Periodic Review in 2010, rejected the recommendation to take necessary steps to guarantee access to fundamental social human rights, such as health care and education, for foreign residents, including their children, regardless of their migratory status. The Committee is also concerned that the Qualified

Act on Immigration of 14 May 2002 and its 2007 amendment do not entitle seasonal workers to family reunification, and does not take into account the best interests of the child, and therefore it is incompatible with the principles and provisions of the Convention, including those of its articles, 2.3,9 and 10.

46. The Committee recommends that the State party:

(a) Ensure that the National Equality Commission examines the condition of the rights of migrant children and children of seasonal workers and coordinate its efforts to promote and protect their rights, including by carrying out public awareness campaigns to change stereotypes and discriminatory attitudes against such groups of children;

(b) Revise and amend the Qualified Act on Immigration of 14 May 2002 to permit family reunification for holders of temporary immigration permits and ensure children's right to family life. The Committee further recommends that the State party ensure that the family reunification procedure is dealt within a positive, humane and expeditious manner, taking into account the best interests of the child; and

(c) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to further strengthen the fulfilment of children's rights.