

49 UNIVERSAL PERIODIC REVIEW

PRE - SESSION
SPAIN

"Situation of the rights of migrants, refugees and stateless persons in Spain".

Who we are?

- **ORGANISATION WITH ECOSOC STATUS, COMMITTED TO PROMOTE AN INCLUSIVE AND INTERCULTURAL SOCIETY. FROM OUR FOUNDATION, WE WORK TO ENSURE FULL ACCESS TO HUMAN RIGHTS FOR THE MOST VULNERABLE PEOPLE, ESPECIALLY MIGRANTS, REFUGEES AND STATELESS PEOPLE.**
- **WE PRESENT OUR RECOMMENDATIONS ON BEHALF OF AN ALLIANCE OF DIFFERENT EUROPEAN AND SPANISH CIVIL SOCIETY ORGANISATIONS.**



Review of Previous UPR Recommendations



- **INTERNATIONAL PROTECTION: IN 2020, SPAIN WAS URGED TO ENSURE SPEEDY AND ACCESSIBLE ASYLUM PROCEDURES. HOWEVER, DELAYS HAVE WORSENER, WITH WAITING TIMES THAT CAN EXCEED TWO YEARS.**
- **RACIAL DISCRIMINATION AND ETHNIC PROFILING: IN 2015 AND 2020, IT WAS RECOMMENDED TO EXPRESSLY PROHIBIT POLICE STOPS BASED ON RACIAL PROFILING. TO DATE, THESE PRACTICES PERSIST WITHOUT REGULATION TO ERADICATE THEM.**
- **SUMMARY RETURNS: SPAIN HAS BEEN REPEATEDLY SINGLED OUT FOR CARRYING OUT RETURNS AT THE BORDER WITHOUT LEGAL SAFEGUARDS. DESPITE WARNINGS FROM THE UN HUMAN RIGHTS COMMITTEE AND THE EUROPEAN COURT OF HUMAN RIGHTS, THESE PRACTICES CONTINUE IN CEUTA AND MELILLA.**
- **STATELESSNESS: IN PREVIOUS CYCLES, THERE WERE CALLS TO IMPROVE DATA COLLECTION AND SIMPLIFY RECOGNITION PROCEDURES. DESPITE REGULATORY PROGRESS, ACCESS TO STATELESS STATUS REMAINS COMPLEX AND BUREAUCRATIC.**

Migrants' rights:



ACCESS TO JUSTICE	<p>Access to justice continues to present a challenge for migrants in an irregular administrative situation who are victims of crime. The Organic Law 4/2000 of 11 January, on the rights and freedoms of foreigners in Spain and their social integration (LOEX) and its regulations provide for a sanctioning and/or expulsion procedure for persons in an irregular administrative situation (art. 57 et seq. LOEX) without considering the guarantees of access to justice set out in international and EU law.</p>
POLICE IDENTIFICATIONS BY ETHNIC PROFILING	<p>Despite multiple warnings from international human rights organisations such as the UN Human Rights Committee in 2015, or the European Commission Against Racism and Intolerance in 2018, the Law still does not provide for the express prohibition of this type of identification.</p> <p>Organic Law 4/2015 of 30 March 2015 on the protection of citizen security (art.16)</p>
EQUAL TREATMENT AND NON-DISCRIMINATION	<p>Despite its provision in law, Spain has still not created the Independent Authority for Equal Treatment and Non-Discrimination, responsible for protecting and promoting equal treatment and non-discrimination of persons on the grounds of the causes and in the areas of competence provided for.</p>
DETENTION	<p>The measure of detention in detention centres for foreigners (CIE) is disproportionate and violates the principles of last resort and proportionality of punishment of the state legal system and international commitments.</p> <p>2,085 persons detained in CIE in 2023, of which there are a total of 877 applications for international protection in detention centres.</p>
TRAFFICKING IN HUMAN BEINGS	<p>The lack of access to rights for victims of trafficking and exploitation is mainly due to the lack of a formal identification procedure that is carried out by authorities that are not competent to prosecute the crime.</p>

Rights of Asylum Seekers and Refugees



ACCESS TO THE RECEPTION SYSTEM	<p>Difficulties for access to the international protection procedure remain (Article 6 of Directive 2013/32/EU).</p> <p>Delays in the resolution of their cases, which can take several years. Thus, Spain has a backlog of nearly 170,000 unresolved cases as of July 2024.</p>
ACCESS TO THE ASYLUM PROCEDURE AT THE BORDER	<p>The impossibility of requesting international protection in diplomatic delegations or at border posts has been repeatedly denounced, as the Commissioner for Human Rights of the Council of Europe noted during her visit to Spain.</p>
INTERNATIONAL PROTECTION MECHANISMS FROM ABROAD.	<p>Law 2/2009 on Asylum provides, among others, for the possibility of requesting the transfer of persons from Embassies abroad when they are fleeing from a third country and their life or integrity is at risk. However, there are serious difficulties in its use due to a lack of regulatory development.</p>
PRINCIPLE OF NON-REFOULEMENT	<p>Practices of summary refoulement or collective expulsions have been detected, as well as the denial of the right to an effective remedy from various institutions such as the Ombudsman, the European Court of Human Rights and the Committee on the Rights of the Child.</p>

Statelessness



REDUCING STATELESSNESS	Spanish legislation, when regulating access to nationality by residence for stateless persons not born in Spain, unlike in the case of refugees, does not include any reduced period for the granting of Spanish nationality, so the general rule is 10 years. (1954 Convention Relating to the Status of Stateless Persons (art. 32)).
STATELESSNESS DETERMINATION PROCEDURE	Spain has a specific procedure established by national legislation. However, this procedure contains a number of potential obstacles for applicants: shortage of ex officio initiation, digital divide, forms in Spanish, burden of proof, no authorization to work, limitation of free legal aid.
DETENTION OF STATELESS PERSONS	There are no procedural safeguards preventing stateless persons from being detained for deportation. Statelessness (and the risk of statelessness) is not taken into account in vulnerability assessments, and the law does not require the identification of a country proposed for removal before a person is detained, so the competent authorities do not take into account the unrealistic likelihood of expelling a stateless person.

Recommendations



MIGRANTS' RIGHTS:	<ul style="list-style-type: none">• Promote the necessary legislative reforms to guarantee access to effective judicial protection, prioritizing the right to protection of victims over immigration status.• To expressly prohibit in Organic Law 4/2015, of March 30 on the protection of citizen security and in Law 15/2022, of July 12, comprehensive for equal treatment and non-discrimination the use of racial profiling.• To create the Independent Authority for Equal Treatment and Non-Discrimination established by Law 15/2022, in order to be able to deploy the sanctioning regime of the same. Approve the regulatory development of Law 15/2022 of July 12, Integral for Equal Treatment and Non-Discrimination.• Immigration detention as a measure of last resort and promote alternative programs to immigration detention.
RIGHTS OF ASYLUM SEEKERS AND REFUGEES	<ul style="list-style-type: none">• Guarantee access to the international protection procedure, the individualized study of cases without regard to nationality criteria, as well as create and respect a protocol for detecting situations of vulnerability.• Develop regulations for the Asylum Law, developing international protection mechanisms that can be activated from abroad (art. 38).• Increase the number of places available for resettlement.• Modify the tenth additional provision of Organic Law 4/2000 of January 11, on the rights and freedoms of foreigners in Spain and their social integration and make it possible for all those who arrive in Spanish territory to have the right to an administrative procedure with all the guarantees before proceeding to their expulsion or return.

Recommendations



STATELESSNESS

- Allow for facilitated naturalization of stateless persons, with a reduced time limit of 2 years and the elimination of other potential barriers, such as strict language requirements, fees and citizenship tests, in line with Spain's obligations to facilitate access to nationality for stateless persons under Article 32 of the 1954 Convention.
- Ensure that the statelessness determination procedure is easily accessible to applicants. Remove all possible barriers, such as language, computer literacy, lack of legal assistance and lack of information, and encourage the ex officio initiation of the Statelessness Determination Procedure, to ensure that the procedure is easily accessible to all persons.
- Guarantee those standards necessary for the procedure to be fair and efficient, such as non-removal of applicants and their access to the territory during the processing of the file, right to an interview, shared burden of proof, free legal assistance, and obtaining a decision within a short and reasonable period of time.
- Strengthen legal and policy measures, including alternatives to detention, to protect persons who are stateless or at risk of statelessness from arbitrary detention, and ensure that all persons in immigration detention have access to the statelessness determination procedure.
- Accede to the 1997 European Convention on Nationality, the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.



Trabajando por la Convivencia
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