



**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 and Current Conditions

Spain is a State party to the major international human rights treaties (eight out of nine core conventions). The country has also ratified the following international and regional instruments, to which it has not made any reservations or derogations:

- *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* in 1978
- *1954 Convention Relating to the Status of Stateless Persons* in 1997.
- 1950 Council of Europe *Convention for the Protection of Human Rights and Fundamental Freedoms* in 1979,
- Council of Europe *Convention on Action against Trafficking in Human Beings* in 2009.

The Spanish national protection framework for refugees is based on article 13.4 of the Spanish Constitution, which recognizes the right to asylum. Article 13.4 is further developed by the Law 5/1984 Regulating the Right to Asylum and the Status of Refugee (as amended in 1994) and by its implementing decree of 1995. Subsequently, the Aliens Law 4/2000 (subsequently amended) and its implementing decree provide for the subsidiary protection regime as spelled out in article 17(2) of the Asylum Law.

In October 2009, a new Asylum Law was adopted in order to transpose the three most important European Directives related to asylum: Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (“Reception Conditions Directive”), Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (“Qualification Directive”), and Council Directive

2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (“Asylum Procedures Directive”).

The new Asylum Law entitles beneficiaries of subsidiary protection to a standard of treatment which is very similar to the rights granted to refugees recognized under the *1951 Convention relating to the Status of Refugees* (hereinafter the 1951 Convention). Therefore, all forms of international protection are incorporated into one comprehensive Asylum Law.

In 2008, the Spanish asylum authorities processed 4,516 asylum applications. The respective asylum-seekers originated from various countries, mostly from: Nigeria, Colombia, Ivory Coast, Somalia, Algeria, Sudan, Morocco, Cuba and the Democratic Republic of Congo. As regards gender composition, there were 1,417 female asylum-seekers and 3,099 male asylum-seekers. 2,453 asylum applications were examined and admitted into the regular procedure (49.22%), while 2,531 were declared inadmissible (50.78%).

During 2008, decisions were made on asylum claims corresponding to 2,950 persons according to the data provided by the Inter-ministerial Commission for Asylum and Refuge, the organ responsible for proposing to the Ministry of Interior the granting or rejection of asylum claims during the Refugee Status Determination Procedure. Asylum was granted to 141 individuals and 113 individuals were granted other types of protection and 2,476 were rejected. UNHCR provides its opinion on the admissibility of the asylum applications and takes part in the meetings of the Inter-ministerial Eligibility Commission in an observer capacity, where it presents its views both on issues of doctrine and on specific cases.

II. Achievements and Best Practices

UNHCR would like to highlight the following positive developments in the Spanish asylum system:

- The high standards of the Spanish reception system: accommodation in reception facilities which offer food, Spanish language courses, leisure activities, counseling by an in-house social worker and psychologist, services of an employment counselor, vocational training for refugees and a mediator. Beneficiaries of these centers can receive legal and social assistance through various NGO programs. Educational and medical assistance is provided by public welfare institutions on an equal basis as to Spanish nationals. Moreover, 6 months after the asylum claim has been lodged, asylum-seekers are entitled to obtain a work permit and may enjoy free access to labour market.
- Spain has approved a new Asylum Law (mentioned above) which *inter alia* includes reception standards for asylum-seekers, the establishment of the basis for a resettlement program, the definition of beneficiaries of international protection, the procedures for the identification and recognition of these beneficiaries and the content of international protection. UNHCR welcomes the fact that all forms of international protection have been incorporated in one comprehensive Asylum Law.

The measures taken to improve access to protection of asylum-seekers include:

- In December 2005, the General Director for Home Affairs and the Police General Commissioner for Aliens issued a joint Instruction with an information leaflet on the asylum procedure to be distributed to all persons arriving in an irregular manner by sea and staying in Aliens' Detention Centers¹ on the Canary Islands and the Autonomous Community of Andalusia. The information leaflet identifies three grounds on the basis of which asylum may be granted in Spain: meeting the refugee criteria in the 1951 Convention, demonstrating a fear of being killed, tortured or subjected to cruel, inhuman or degrading treatment or punishment; and having come from a country at war (internal or international conflict). It also sets out a simple procedure to formalize an asylum application before the police guard or the director of the detention centre.
- The improvement as regards access of specialized lawyers to Alien's Detention Centers on the Canary Islands and in certain locations in Andalusia facilitating legal counselling and assistance to potential asylum seekers.
- With respect to the efforts undertaken by the Government in order to respond to the challenges posed by the phenomenon of trafficking in persons, UNHCR welcomes the signature and ratification of the Council of Europe's convention against trafficking, as well as the adoption of the National Action Plan against Trafficking for Sexual Exploitation Purposes on 12 December 2008 and its follow-up through the creation and implementation of the Spanish Forum against Trafficking.
- Concerning racism and xenophobia, Spanish society at large can be described as tolerant and supportive of immigrants and asylum-seekers.

III. Challenges and Constraints

Despite the positive aspects in the new Asylum Law highlighted above, UNHCR has identified several concerns:

- The new legislation limits the right to request and enjoy international protection to non-EU nationals and stateless persons, therefore excluding EU citizens. Such dispositions are contrary to the Universal Declaration of Human Rights, article 14 on the right to seek asylum, the 1951 Convention, article 3 on non-discrimination and its 1967 Protocol, article 1.3 on the lifting of the geographical limitations of the Convention.
- Additionally, UNHCR is concerned with the expansion in the new Asylum Law of the 1951 Convention's exclusion clauses in article 1F (b) as it includes any "serious" crime, without taking into account the additional requirement or the qualification of a "non-political crime". UNHCR considers that a "serious" crime is a capital crime or a very grave punishable act. It is also deeply worrying that

¹ In the Aliens' Detention Centers, foreigners are kept under administrative detention for expulsion purposes. They can be kept there for a maximum of 40 days after which they are released, if return cannot take place. To differentiate between detention centers used for this purpose and other regular detention centers, the above-mentioned Aliens' Detention Centers are often referred to as Aliens Internment Centers.

according to the new Asylum Law, exclusion assessments can be made already during the accelerated procedure stage, including the border procedure, before a substantive assessment of inclusion criteria has taken place.

- UNHCR is also concerned by the inclusion of the exceptions to the prohibition of *refoulement* in Article 33 (2) of the 1951 Convention as grounds for denial or revocation of refugee status in the new Asylum Law. Article 33 (2) exceptionally permits the return or expulsion of a refugee to a place of persecution “where there are reasonable grounds for regarding [the refugee] as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country”. UNHCR wishes to recall that the exclusion clauses need to be distinguished from the exceptions to the principle of non-refoulement permitted in Article 33 (2). The application of an exclusion clause means that the person is not eligible for refugee status. While Article 1F concerns the “sanctity” of the refugee protection regime, Article 33 (2) concerns protecting the national security of the host country. Article 33 (2) governs the treatment afforded to refugees, and permits under exceptional circumstances the withdrawal of protection against refoulement of refugees who pose a danger to the host country. A determination that an applicant is excludable from refugee status under Article 33 (2) of the 1951 Convention, due to the fact that he or she constitutes a risk to the security of the host country would not be consistent with the conceptual framework of the 1951 Convention.

- UNHCR would like to note that although leaflets on protection are now being distributed in the Aliens’ Detention Centers on the Canary Islands and in Andalusia, detainees often do not understand the protection leaflets due to their educational level and/or because they may not be (sufficiently) literate in Spanish, French, Arab and English; the only languages in which the leaflet is available. Moreover, detainees do not always have access to adequate legal counseling.

- UNHCR is also concerned about the difficulties that stowaways may experience in getting access to the asylum procedure. Although stowaways are entitled to *pro bono* legal aid if they indicate their wish to apply for asylum, the problem lies precisely in the first contact between the authorities and stowaways. In most instances, stowaways do not spell out clearly if they are in need of protection, and are not informed about their rights, thus being denied legal aid.

- UNHCR is concerned about the prevalence of a crime prevention approach to human trafficking issues, as reflected in the National Action Plan against Trafficking for Sexual Exploitation Purposes. The Action Plan approaches the issue of trafficking largely from a crime prevention perspective. UNHCR recommends a more balanced strategy, including a focus on the protection, assistance, and compensation of the victims.

Regarding unaccompanied children, UNHCR would like to highlight the following:

- Two repatriation agreements relating to unaccompanied minors have been signed between the Spanish Government and the Moroccan and Senegalese authorities, respectively. UNHCR is concerned that the procedure for implementing these agreements lacks safeguards that would ensure the identification of children (to whom these agreements apply) that may have international protection needs and the referral of such children to the asylum procedure.

- Age assessment procedures are not uniform in the different autonomous regions, or even amongst cities within Spain, and are generally inadequate. These examinations rarely incorporate cultural/ethnic considerations, individual maturity levels of the children involved, or psychosocial issues, and they do not usually give children the benefit of the doubt.
- Spain does not have a procedure to determine the Best Interest of the Child and a potential need for international protection is mostly not analyzed when dealing with unaccompanied and separated children.
- In relation to unaccompanied asylum-seeking children there is a lack of statistical information and there is no segregation of data concerning sex, age or other relevant information. The Asylum and Refugee Office has expressed its concerns about its inability to provide disaggregated data due to deficiencies of its computerized database.

We wish to highlight UNHCR's interest on sea arrivals, which stems from the mixed nature of the irregular flows. In this sense, access to territory for persons in need of international protection remains a concern. In relation to the procedure applied in cases of boats, "pateras" and "Cayucos" found in international waters there is not much clarity about these operations and how eventual international protection concerns are assessed, before return to the last country of transit takes place.

Nationality determination procedures at the Aliens' Detention Centers also remain a concern, as there apparently do not exist any clear written standards or procedures governing nationality determinations (e.g. use of interpreters by the police, visits of delegations of consular officials).

As regards racism and xenophobia, authorities have singled out persons in street document checks with a view to initiate expulsion proceedings of irregular aliens. These practices have also affected persons in need of international protection. In some instances, persons with protection needs who feared that they could become subject to such controls, have avoided going out or refrained from carrying out certain activities, even if they were aware of their rights as asylum-seekers or refugees.

IV. Recommendations

On the basis of the above-mentioned challenges and constraints, UNHCR wishes to make the following recommendations:

- UNHCR recommends that some dispositions of the new asylum law, especially the personal scope of the law and the definition and application of exclusion clauses, are reviewed in order to be adapted to the international standards set out in the 1951 Convention and in the National Constitution.
- The leaflets on protection that are distributed in Detention Centers should be simplified and they should also be explained by competent officials/NGOs, and translated into more African languages.

- Furthermore, UNHCR would like to recommend that the Government of Spain guarantees access by specialized lawyers to all Aliens' Detention Centers in order to ensure that all persons in need of international protection can be properly identified and receive the necessary legal assistance.
- Ensure continuous access to detention centers by specialized lawyers in order to ensure identification and legal counseling of persons in need of international protection.
- Ensure prompt access of stowaways to legal assistance in order to allow for systematic identification of potential protection needs.
- Review the approach of the Action Plan to combat Trafficking for Sexual Exploitation Purposes as the Action Plan currently focuses on crime prevention and lacks a human rights perspective focusing on the protection, assistance, and compensation of the victims.
- The Action Plan to combat Trafficking for Sexual Exploitation Purposes should acknowledge that victims of trafficking may be in need of international protection. Therefore, it must guarantee:
 - The establishment of a protection-sensitive national identification and referral mechanism for all victims.
 - Establishment of adequate measures to ensure access to the asylum procedure for foreign victims of trafficking who demonstrate to be in need of protection.
 - The right to apply for asylum and, if the criteria are met, to be recognized as refugees under the 1951 Convention or be granted other form of protection in conformity with the Spanish Asylum legislation where appropriate.
- Regarding unaccompanied children:
 - Ensure that the Repatriation Agreements for Unaccompanied Minors signed by Spain contain adequate safeguards concerning asylum and protection against *refoulement* for those found to be in need of international protection.
 - Implement a national system of appropriate age assessments which also allow to apply the benefit of the doubt in certain cases.
 - Elaborate and provide adequate statistical information regarding unaccompanied children applying for international protection.
 - Establish a formal procedure to determine the best interest of the child at national level.

Other general Recommendations:

- It is important to improve the training on asylum matters to border police, asylum officials and civil servants who might be approached by persons in need of protection. This training should include matters linked to issues related to the situation and protection needs of victims of trafficking, unaccompanied minors, persons suffering from trauma and other vulnerable persons.
- Although in the last years Spain has put in place some positive measures to combat racism and xenophobia, these measures still lack practical implementation. Spain remains one of the five EU countries which do not record and publish official statistics about incidents or reports on racially motivated crimes. In the context of the current economic crisis and the high unemployment rate, it is of great importance that Spain fulfills its responsibility and obligations to prevent and combat the phenomenon of racism and xenophobia linked especially to vulnerable persons including those in need of international protection.

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