

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: Fourth Cycle, 49th Session

KINGDOM OF SPAIN

I. BACKGROUND INFORMATION

Spain ratified both the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1978 (hereinafter jointly referred to as the *1951 Convention*). It is also party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) since 1997, and in September 2018 Spain acceded to the *1961 Convention for the Reduction of Statelessness*.

The Spanish national framework on international protection is based on Article 13.4 of its Constitution of 1978, which recognizes the right to asylum. This constitutional provision is implemented through the *12/2009 Asylum Law*¹. The asylum law foresees access to rights for asylum seekers and refugees including education, health, work, and legal assistance. The 2009 Asylum Law does not transpose the full Common European Asylum System and lacks an implementing regulation² which results in obstacles to apply asylum legislation in full compliance with EU and international human rights standards.

The Ministry of Interior (MOI) is responsible for border management and for the asylum and statelessness procedures, whereas the Ministry of Inclusion, Social Security and Migration (MISSM) is responsible for the reception of asylum-seekers, refugees, and stateless people. Regional and local authorities have competence over key areas for integration and inclusion such as education, health, justice and social services, as well as for the reception and protection of unaccompanied children. Asylum-seekers, refugees and stateless persons have the right to access public services on the same conditions as nationals. However, in practice they face challenges in accessing rights, in particular in relation to employment and housing.

Asylum trends: In 2023, Spain saw a significant rise in asylum applications, with 163,220 individuals applying for asylum, a 37% increase compared to 2022, with a monthly average of 13,600 applications, positioning Spain as the second-largest EU recipient of asylum seekers. The main countries of origin of applicants were Venezuela, Colombia and Peru. In 2024, by the end of August, 111,463 asylum applications were registered. The main countries of origin registered were the same as for 2023, as well as Malians (mostly rescued at sea by the Spanish rescue service).³

The 2023 recognition rate was 12%, marking a 25% decrease from 2022. With the humanitarian status included, the protection rate rose to 56%, up from 39% in 2022. From January to August 2024, the recognition rate reached 13%. With the humanitarian status included, the protection rate stood at 54%. Individuals from Mali, Somalia, Sudan and, after September 2023, Palestine are predominantly granted subsidiary protection in Spain.

¹ Additionally, the legal framework established in *Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration* (with its various amendments) and its 2011 Implementing Decree, includes provisions related to asylum-seekers and beneficiaries of international protection.

² That should have been in force in May 2010 according to final provision number three of law 12/2009

³ For more details, see dashboard attached on asylum applications in 2023 and in 2024.

Refugees from Ukraine continue to be granted temporary protection (33,915 in 2023, and 18,035 in the first six months of 2024).

Irregular sea and land arrivals increased by 80% in 2024 compared to the period January - July 2023, with 29,430 people arriving irregularly by the end of July 2024, many hailing from Mali, departing from Mauritania and Senegal and claiming asylum in Spain.

Amidst an increasing political polarization mostly around migration, and to a lesser extent asylum, the Government of Spain has announced its intention to implement the EU Asylum and Migration Pact with a protection sensitive and rights centered approach which has been welcomed by UNHCR.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Gender-Based Violence (GBV): Linked to 3rd cycle UPR recommendations no. 150.170 and 150.177⁴

In 2022, MISSM agreed to initiate the Semilla 2022 project⁵, with UNHCR and active NGO participation to enhance prevention and response to GBV in the asylum reception system through the effective implementation of the 2021 standard operating procedure (SOP) on the prevention and response to GBV. The project enabled strengthening of data collection on GBV cases, networking and collaboration with key actors, and facilitating refugees' and asylum seekers' access to relevant information, including on their rights and obligations. Protection and reporting mechanisms have been reinforced. The scope of the SOP only applies to cases of violence between former or current spouses or partners in Spain and should be expanded to other forms of violence against women. UNHCR also considers it should apply to GBV suffered by other groups such as girls and boys, LGTBIQ+ people, men etc.

The project was extended as "SEMilla2023"⁶ for which a protocol was adopted in November 2023, to apply to migrant women survivors of GBV in first-line reception centres for sea and land arrivals, this time including all forms of violence against women in accordance with the Istanbul Convention, and applied also to cases of violence in the country of origin, transit and potentially in a third country of destination. It also includes a data collection tool, a chapter on asylum, and a guide to prevent and respond to sexual exploitation and abuse – a tool that urgently needs to be put in place, as many centres have not adopted specific measures to prevent and respond to such situations. Asylum seeking women are often hosted in these reception centres.

Temporary Protection: Linked to 3rd cycle UPR recommendation 150.255 and 150.264⁷

⁴ See A/HRC/44/7/Add.1: "150.170 Continue taking concrete measures to prevent gender-based violence against women and girls, including domestic violence, and ensure that women and girls who are victims of violence have access to means of redress and protection (Italy)"; 150.177 Continue the implementation of measures to combat domestic violence and provide adequate assistance to the victims of such violence as stipulated in the national covenant on combating gender-based violence (Bulgaria)".

⁵ See, <https://www.acnur.org/es-es/acnur-en-espana/nuestro-trabajo/proteccion/violencias-por-motivos-de-genero/proyecto-semilla-2022>.

⁶ See, <https://www.acnur.org/es-es/acnur-en-espana/nuestro-trabajo/proteccion/violencias-por-motivos-de-genero/proyecto-semilla2023>.

⁷ See A/HRC/44/7/Add.1: "150.255 Ensure access to basic services for migrants and refugees and commit sufficient resources for authorities to fairly and effectively evaluate the claims of asylum seekers (United States of America)"; and "150.264 Ensure asylum claims are processed as quickly as possible, and that administrations work together to ensure that asylum seekers and refugees have sufficient access to social protection and services (United Kingdom of Great Britain and Northern Ireland)".

Spain implemented the above recommendations successfully and effectively with regard to the procedure for temporary protection (TP) to address the needs of arriving Ukrainian refugees. Spain registered and issued temporary protection to 219,370 persons from March 2022 to 31 August 2024. Spain effectively allocated means and resources to facilitate issuance of TP status in 24 hours, using technological means to guarantee swift access to protection and documentation as well as resources for accommodation, while establishing a one roof approach among competent authorities in four Centres (CREADE) strategically located in four cities (Alicante, Barcelona, Madrid, Valencia) where most Ukrainians are known to reside or have easy access to. UNHCR considers it as a good practice that could be replicated to address access and documentation gaps in the regular asylum system.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Access to asylum and fair and efficient procedures

Linked to 3rd cycle UPR recommendations no. 150.260, 150.249, 150.264, 150.271 and 150.272⁸

Despite efforts to streamline the asylum procedure, access to it remained challenging with waiting periods of sometimes nine months to register asylum claims, impacting on access to associated rights (protection against refoulement, documentation, reception, health, access to banking services and work). Specific measures were implemented in 2023 to ease asylum registration appointments with the police and to combat the illicit sale of these appointments. Nonetheless, significant delays continued in 2024. In some provinces asylum seekers may wait months only with a provisional registration document, until they are interviewed and can be documented as asylum seekers with full access to associated rights. Additional difficulties exist for persons with specific needs, including unaccompanied children, despite some prioritization mechanisms established in 2024 on an *ad hoc* basis.

While official statistical data on registration delays is not available, UNHCR estimates that several thousand persons are affected by this challenge and is particularly concerned about persons who may be facing language and cultural barriers in Spain. In parallel, there have also been positive practices, including registration and documentation of Ukrainian refugees for temporary protection status, and the emergency plan launched in February 2024 in Madrid and Malaga, coordinated by the two ministries, facilitating access to the registration procedure for persons arriving to the Canary Islands and transferred to humanitarian centers on the mainland.

In terms of fair and efficient procedures, insufficient human and technological resources to process applications with adequate quality levels, have resulted in lengthy decision making and a backlog of over 250.000 pending asylum applications at the end of June 2024. Asylum decisions are based mostly on interviews carried out by the police instead of by the status determination authority (Office for Asylum), often in inadequate premises that do not guarantee confidentiality, or other necessary procedural guarantees, like interpretation or sufficient training of staff, posing challenges to the fairness of the procedure. Identification of persons with specific needs in the procedure, regular use of differentiated procedures, swift

⁸ See A/HRC/44/7/Add.1, including: “150.272 Consider amending legislation to guarantee access for asylum seekers to fair and individualized assessment procedures, and to protection against refoulement, without discrimination (Brazil)”; and “150.264 Ensure asylum claims are processed as quickly as possible, and that administrations work together to ensure that asylum seekers and refugees have sufficient access to social protection and services (United Kingdom of Great Britain and Northern Ireland)”.

access to documentation and use of regular data analysis for contingency planning are also aspects needing the asylum authorities' attention.

Recommendations

UNHCR recommends that the Government of the Kingdom of Spain:

- a) Take the necessary measure to ensure swift, easy and safe access to the asylum procedure for all persons who wish to apply for international protection, using technological means for registration and case management as necessary.
- b) Ensure mechanisms to swiftly identify persons with specific needs and enable a channel for their access to the asylum procedure and to associated rights.
- c) Provide sufficient resources for the Police and the Office for Asylum to conduct interviews of asylum seekers in a quality and efficient manner, to process asylum claims within the legal timeframe of six months with an age, gender and diversity focus, and to facilitate access to documentation.
- d) Adopt a quality assurance mechanism which that ensures quality standards are integrated and met in the asylum procedure, including for asylum interviews and decision making, and in relation to procedural fairness.⁹
- e) Ensure continued specialised training of all civil servants dealing with international protection claims and applicants, in line with the legal requirements.

Issue 2: Prevention of refoulement and respect of international obligations

Linked to 3rd cycle UPR recommendation no. 150.259, 150.270, 150.273, and 150.275¹⁰

The applicable law and jurisprudence provide for the identification of persons with specific needs, including children and pregnant women, among irregular arrivals, and ensuring that those who express their intention to seek asylum are able to access asylum procedures. Despite the legal and procedural requirements, UNHCR received testimonies by persons who were returned from Ceuta and Melilla to Morocco without any prior administrative procedure. The Ombudsperson's Office and media reported and documented summary automatic returns in the context of attempted group entries to the two cities in 2021 and 2022, including in the context of the tragic incident of 24 June 2022 in Melilla that resulted in the loss of at least 23 lives. In addition, there are direct testimonies and media reports indicating instances of returns without due process of persons who had already entered Ceuta or Melilla. Some of the persons affected by these return practices hailed from countries affected by armed conflict such as Sudan, Yemen, Mali, Syria or Burkina Faso and were trying to access Spain to seek asylum. Alternative ways to access Spain provided for by the law, such as requesting asylum at diplomatic posts for persons at risk in a third country, lack clear and effective administrative procedures and guidance, which greatly impact their implementation.

Recommendations:

UNHCR recommends that the Government of the Kingdom of Spain:

- a) Ensure that individuals expressing intention to seek international protection are admitted to the territory, referred to asylum procedures and are protected against

⁹ This mechanism should follow the preliminary steps in quality enhancement initiated in 2023 by the asylum authorities through the work of a specialised consultant with the support of UNHCR.

¹⁰ See A/HRC/44/7/Add.1, including: "150.270 Ensure full respect of its international obligations with regard to the protection of the rights of migrants and asylum seekers, in particular the principle of non-refoulement (Switzerland)"; "150.259 Ensure that immigration procedures and procedural safeguards concerning irregular immigration, refugees and asylum seekers, particularly in the autonomous cities of Ceuta and Melilla, are consistent with its international human rights obligations (Canada)"; "150.273 Put an end to all forms of collective expulsion and refoulement of asylum seekers and migrants (Côte d'Ivoire)"; and "150.275 Ensure that all those seeking international protection have access to just and individualized assessment procedures; to protection from involuntary return, without discrimination; to an independent mechanism to suspend negative decisions; and in particular, that the practice of summary return of migrants in Ceuta and Melilla be prohibited (Ecuador)".

refoulement; and that any returns are implemented with the application of legal and procedural safeguards in accordance with the international and European law.

- b) Guarantee an efficient identification and referral mechanism is in place for all arrivals, facilitating safe access to territory and to fair and efficient asylum procedures, regardless of their country of origin or mode of entry.

Issue 3: Protection of asylum-seeking children including unaccompanied children

Linked to 3rd cycle UPR recommendation no. 150.195, 150.209, and 150.211¹¹

Responsibility for child protection is decentralized in Spain and belongs to the competency of regional authorities. The legal framework is rights based; however, its practical implementation presents many challenges. Unaccompanied children stay in the region of their initial arrival, where reception conditions often become inadequate and overwhelmed, while the children's transfer to other regions is exceptional, slow and insufficient.

Access to asylum for unaccompanied children is difficult due to challenges to identify international protection needs (particularly of girls) by the professionals working with the children who often have insufficient expertise in international protection. Provision of child friendly information on asylum, specialized legal assistance and child-friendly interpretation are also necessary. There is also a clear need for adequate age assessment procedures, best interest procedures and mechanisms to access family reunification as established by the Spanish Asylum Law¹² and the EU Procedures Directive¹³ as well as for family tracing.

The increasing arrivals of unaccompanied and separated children (UASC) to the Canary Islands since the end of 2023, have overwhelmed the regional child protection system, hindering the identification of international protection needs and specific needs of the children through best interest assessment and determination procedures. Other regions/cities receiving unaccompanied children such as Madrid, Andalusia, Ceuta and Melilla have also experienced similar challenges. The relocation of these children to other regions has become the subject of a political debate affecting solutions for the children's protection and wellbeing.

Recommendations:

UNHCR recommends that the Government of the Kingdom of Spain:

- a) Ensure early identification of UASC and adequate response by facilitating structural training to border police and civil servants on identification of children and their specific needs.
- b) Accelerate the adoption of legislation ensuring a uniform multidisciplinary procedure at national level for age assessments.
- c) Develop national level procedures to ensure harmonized assessment of the best interest of each child by competent authorities, allowing to identify protection needs, and specific needs, including regarding the right of family unity.
- d) Ensure that all unaccompanied foreign children receive specialized legal assistance, appropriate information on the right and the procedure to apply for asylum and have effective access to the asylum procedure with specific safeguards for children and guidelines for asylum and police officers.

¹¹ A/HRC/44/7/Add., including: "150.195 Increase the annual budget to invest in the child and adolescent protection system (Somalia)"; 150.209 Enhance support services for migrants, in view of particular needs for the protection and promotion of the rights of migrant children (Nepal)"; and "150.211 Protect unaccompanied migrant children and refrain from age determination tests contrary to human rights standards, taking into account Sustainable Development Goals 10 and 16.2 (Paraguay)".

¹² Articles 25, 46 y 48, Spanish Asylum Law 12/2009.

¹³ See Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013L0032>.

- e) Strengthen communication and coordination between child protection authorities and the Office for Asylum.
- f) Ensure sufficient resources are invested in reception services for children and meeting their specific needs to guarantee compliance with their rights under the Convention on the Rights of the Child.
- g) Ensure that legal and procedural framework for the protection of unaccompanied children is implemented through an effective and collaborative action and coordination of responsible authorities at all levels and in a way that achieves the best outcomes for the protection and wellbeing of children.

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