

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, 47th Session*

Portugal

I. BACKGROUND INFORMATION

Portugal ratified the *1951 Convention relating to the Status of Refugees* in 1960 and its *1967 Protocol* in 1976 (hereinafter jointly the *1951 Convention*). Portugal acceded to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* (the *1954 Convention* and *1961 Convention* respectively) in 2012.

In 2023, there were 2,598 new asylum requests lodged in Portugal, by applicants from 84 countries, of whom 72% were male and 28% were female, including 108 unaccompanied children. As of June 2023, there were 3,284 refugees and beneficiaries of subsidiary protection living in Portugal, as well as 56,027 beneficiaries of temporary protection, which is granted to persons fleeing the war in Ukraine. Additionally, according to official statistics, 21 stateless persons resided in Portugal in 2022. However, the lack of a statelessness determination procedure in the country significantly hampers the accuracy of the available data.

Portugal has consistently engaged in solidarity mechanisms including resettlement (with 277 arrivals in 2023), relocation (with approximately 30-60 arrivals per year within the regular programme and 370 unaccompanied children additionally received from Greece in 2020-2023) and humanitarian admissions of Afghans (with over 1,000 arrivals since 2021 when it was established).

Portugal is undergoing a comprehensive reform of its migration and asylum management system, leading to significant changes in the institutional setup and asylum procedures. After the Immigration and Borders Service had ceased to exist on 29 October 2023, border control responsibilities were transferred to three police entities, while the Agency for Integration, Migration and Asylum was created to *inter alia* conduct asylum case processing, manage the asylum reception system, and support the integration of refugees. UNHCR has noted several challenges in the course of this restructuring, including in ensuring the continuity of processes and programs in some areas related to refugee protection and integration, impacting interinstitutional coordination as well as funding related to reception.

II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Detention of asylum-seekers, including children and persons with specific needs

Linked to 3rd cycle UPR recommendation no. 137.189 "Take measures to end detention of refugee, asylum-seeking and migrant children and adopt alternatives to detention that adhere to the principle of the best interests of the child and are in line with the Committee on the Rights of the Child."

According to the *Asylum Act*,¹ border procedures may be applied to asylum-seekers: (i) for reasons related to national security, public order, or public health; (ii) when there is a risk of abscondment; or (iii) when the asylum application is made at the border, is made following a decision of removal from national territory, or in the course of Dublin procedures. The border procedure entails an accelerated consideration of asylum claims and, under the *Asylum Act*, implies the detention of asylum-seekers during such assessment.² Since March 2020, when the border procedure was suspended due to COVID-19, and up until the abovementioned restructuring of the asylum and migration management system on 29 October 2023, the detention of asylum-seekers at airports was occasionally applied solely within the framework of removal procedures and where detention was considered necessary on public security grounds. Following the transition of border control responsibilities to police entities, border procedures were resumed and are currently applied to all individuals who do not meet entry requirements and express their intention to apply for international protection at the border, including at the airport, with very few exceptions. Contrary to the obligations imposed by the *Asylum Act*,³ detention measures at the border, which must be validated by criminal courts, are not underpinned by an assessment of the individual circumstances of the applicant and the determination that detention would be necessary and proportionate in those circumstances, and, if detention grounds do apply, that no less severe alternative measures are available.

UNHCR is concerned with the systematic use of detention for asylum-seekers arriving at the border. In UNHCR's view, the use of detention for asylum-seekers and refugees should remain an exceptional measure and should not be used by default or be mandatory.⁴

Detention is also applied to children accompanied by their families, contrary to Portugal's international obligations. In line with the views expressed by the Committee on the Rights of the Child,⁵ UNHCR's position is that children (whether accompanied or unaccompanied) "should not be detained for immigration related purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests. Appropriate care arrangements and community-based programmes need to be in place to ensure adequate reception of children and their families."⁶

UNHCR's position is that vulnerable applicants require special consideration in border procedures. Border procedures should not be applied to unaccompanied and separated children, as well as children accompanied by their families, including for cases of security or public order. The use of accelerated border procedures is also not suitable for victims of trauma or trafficking and persons with mental disabilities; they should therefore be exempted from these procedures.⁷ Other categories of vulnerable persons with specific needs may require additional support or access to services during border procedures to ensure that they can effectively present their claim for adjudication. If such support or services cannot be

¹ Act No. 27/2008 of 30 June 2008 establishing the conditions for granting asylum or subsidiary protection, last amended by Act No. 53/2023, of 31 August 2023, articles 23-26 and 35-A.

² Articles 26(1) and 35-A of the *Asylum Act*.

³ Article 35-A of the *Asylum Act*.

⁴ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012.

⁵ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, available at: www.refworld.org/docid/5a12942a2b.html; See also the Committee's Concluding Observations on the combined fifth and sixth periodic reports of Portugal, 9 December 2019, CRC/C/PRT/CO/5-6, where it expresses concern for "[t]he practice of holding in temporary detention unaccompanied children and families with children requesting asylum or arriving irregularly at the borders of the State" (para. 41(a)) and where it recommends that Portugal: [r]evoke Law No. 23/2007 to ensure that any form of detention of migrants and asylum seekers under the age of 18 or of unaccompanied children and families with children is avoided, and guarantee the provision of alternatives to detention." (para. 42(a)).

⁶ UNHCR, UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, <https://www.refworld.org/policy/legalguidance/unhcr/2017/en/115250>

⁷ UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, available at: <https://www.refworld.org/policy/polrec/unhcr/2020/en/123361>

provided in this context, the applicants must be channelled out to the regular procedure. Should the conditions under which border procedures are implemented rise to detention, vulnerable persons should be exempted. In the absence of a mechanism and standardized procedures for the identification and referral of asylum-seekers with specific needs in Portugal, UNHCR is concerned that vulnerable groups for whom accelerated procedures at the border and the use of detention are not suitable have been included in border procedures, which runs counter to the Portuguese *Asylum Act*.⁸

Recommendations:

UNHCR recommends that the Government of Portugal:

- (a) End the immigration-related detention of children, including those accompanied by family members, and instead consider providing appropriate care arrangements and community-based programmes for adequate reception of both children and their families.
- (b) Establish a mechanism for the identification and referral of asylum-seekers with specific needs to adequate reception arrangements and support services.
- (c) Ensure referral mechanisms for asylum-seekers with specific needs are available both at border control posts and in the national territory, and there is a harmonized application of vulnerability criteria.
- (d) Ensure asylum-seekers with specific needs are not detained or held in conditions amounting to detention during border procedures.

Issue 2: Refugee integration through effective access to employment and education

Linked to 3rd cycle UPR recommendation no. 137.225 “Ensure the establishment of more effective mechanisms, which would strengthen the quality of integration of refugees.”

Access to employment and education are among the main indicators of refugee integration. While these areas have merited increased attention in legal and policy reforms, obstacles remain. These relate to burdensome administrative requirements for the recognition, validation and certification of qualifications and skills, as well as challenges with Portuguese language training. Concern with said barriers was expressed by the Committee on Economic, Social and Cultural Rights in its recent Concluding Observations on Portugal,⁹ recommending the endorsement of more comprehensive and flexible approaches in law and policy.

The absence of original documents attesting academic qualifications, which is frequent among refugees, hampers enrolment in academic and/or professional and vocational training courses and prevents refugees from applying for job offers when these documents constitute an indispensable requirement. Existing original documents in certain foreign languages, such as Farsi or Arabic, are subject to certified translation, and so too photocopies of original documents, thus imposing considerable costs, which add to applicable registration fees. The entities responsible for the recognition and validation of said documents are difficult to access and may request additional documentary evidence, which can be challenging for refugees to provide.

Portugal could capitalize on, and extend to asylum-seekers and refugees, the legal and policy developments achieved in response to displacement of refugees from Ukraine. Notably, in order to facilitate the reception and integration of beneficiaries of temporary protection, the Government endorsed¹⁰ a simplified process for the recognition, validation and certification of professional skills, waiving a number of legal requirements, namely:

⁸ Article 17-A(4) of the Asylum Act.

⁹ Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Portugal, 30 March 2023, E/C.12/PRT/CO/5.

¹⁰ Decree-Law N. 24-B/2022, of 11 March.

- Formal requirements regarding the legalization of documents issued by foreign entities;
- Certification/authentication of translations to Portuguese of documents issued in a foreign language;
- Certification/authentication of the copies of original documents;
- Any fees related to registration.

Portugal could moreover consider implementing the European Qualification Passport for Refugees,¹¹ a special tool developed by the Council of Europe to assess refugees' qualifications for which documentation is either insufficient or missing.

Furthermore, the Institute for Employment and Vocational Training does not have a particular system in place for the recognition and certification of asylum-seekers' and refugees' professions and skills. This could be overcome by carrying out practical tests to that effect, to verify specific skills and competences, including in foreign languages that individuals could understand. A holistic approach could be envisaged, so as to combine such a mechanism with a parallel Portuguese language learning program, endorsing a pragmatic approach oriented towards labour market integration.

The lack of knowledge of the Portuguese language, which is common among asylum-seekers and refugees, creates further difficulties in accessing the abovementioned recognition and validation procedures, as well as vocational training opportunities. The past years have shown that Portuguese language training has not been tailored to persons who have only a basic level of education, are illiterate, or have limited knowledge of the Latin alphabet. Moreover, there is limited availability of alphabetic training for foreigners, as well of training at B1 and B2 levels.¹² Despite policy developments in 2020 aimed at addressing some of these challenges,¹³ including through the creation of new learning opportunities across the country, UNHCR understands that access to such new schemes remains challenging and that the design of some of the trainings requires improvement. It is of note that, in recognition of the persisting challenges related to access and quality of Portuguese language training, Portugal pledged at the 2023 Global Refugee Forum to further improve and adapt language training to refugees' needs.

Recommendations:

UNHCR recommends that the Government of Portugal:

- (a) Improve access to the labour market and the right to work for asylum-seekers and refugees, including by adopting more comprehensive and flexible approaches for the recognition, validation and certification of academic and professional skills.
- (b) Simplify the recognition of academic and professional qualifications of refugees, including by simplifying procedures, increasing flexibility and reducing costs.
- (c) Review and adapt the national program of Portuguese language learning in order to adapt it to the needs of refugees, in line with Portugal's pledge at the 2023 Global Refugee Forum.
- (d) Diversify language training available to asylum-seekers and refugees to ensure a flexible, needs-based, and modular approach, including through increased

¹¹ See: <https://www.coe.int/en/web/education/recognition-of-refugees-qualifications>. The EQPR is a tool that was developed in 2017, to help Member States address the challenges brought by the refugee crisis. The EQPR enables refugees to have their qualifications assessed even in the absence of full documentation. The EQPR, as a document, can be used by refugees when they wish to enter further studies or when they seek employment. It is a standardized document that explains the qualifications a refugee is likely to have based on the available evidence. Although this document does not constitute a formal recognition act, it summarizes and presents available information on the applicant's educational level, work experience and language proficiency. The evaluation methodology is a combination of an assessment of available documentation and the use of a structured interview. Thus, the document provides credible information that can be relevant in connection with applications for employment, internships, qualification courses and admission to studies.

¹² Portuguese Refugee Council, AIDA Country Report: Portugal, 2022, p. 115, available at: <https://asylumineurope.org/reports/country/portugal/>.

¹³ E.g. Ministerial Order N. 183/2020, of 5 August.

collaboration between national and municipal governments, NGOs and the private sector.

Additional protection challenges

Issue 3: Asylum reception system and access to housing

The responsibility for ensuring the reception of asylum-seekers is distributed among several ministries, according to the various stages of the asylum procedure. An increase in the number of new asylum applications in recent years has put a strain on the reception system. The COVID-19 pandemic further exposed poor reception conditions and overcrowding, especially as concerns accommodation such as hostels, often used due to the lack of capacity of existing reception centres. While some measures have been undertaken to address these issues, for instance towards better coordination of reception stakeholders, comprehensive and sustainable solutions to the reception challenges are yet to be reached. A further difficulty relates to the special reception needs of asylum-seekers with vulnerabilities, including persons with severe mobility constraints, addiction, or in need of permanent health support, for whom there are no accessible and effective responses. More resources are required to upgrade the asylum reception system, along with the establishment of an effective identification and referral mechanism for persons with specific needs and the adoption of protocols with entities that could provide adequate reception and care.

Securing private housing for both asylum-seekers and refugees, not only in the Lisbon area but also across the country, with conditions that comply with minimum standards, has become increasingly challenging, as reported by public authorities, reception entities, NGOs and refugees. This issue has been linked to the dynamics of the housing market, notably, the shortages of accommodation and rising cost of rents. An additional limitation are generally low entry-level salaries of asylum-seekers and refugees in comparison with current costs of living and housing rents, high amounts of requested deposits, need for guarantors and proof of income, all of which constitute requirements that refugees find difficult to meet, thus being placed at a risk of marginalization.

A few programs of the Institute for Housing and Urban Rehabilitation (IHRU), a public entity, have been implemented in the past years to guarantee access to adequate housing for vulnerable groups in poor living conditions. For those in need of urgent accommodation, which is a problem increasingly affecting asylum-seekers and refugees, a recent program called “Open Door” (Porta de Entrada) offers noteworthy solutions, but only in municipalities that have signed a protocol with IHRU. Generally, these programs entail strong engagement of municipalities, which, with some exceptions, have not been typical actors in the asylum space in Portugal. While up until now critical problems of access to housing have been addressed on a case-by-case basis, it is of fundamental importance to:

- Create a comprehensive and more sustainable housing strategy for vulnerable groups including asylum-seekers and refugees in need of State support, notably by ensuring accessibility and support;
- Establish a solid interinstitutional coordination mechanism allowing for early identification and swift referral of cases at risk of homelessness;
- Promote the wider engagement of municipalities in these processes, including by conducting awareness-raising campaigns, providing training to municipal officials in affordable housing models and solutions, and adopting new protocols to that effect;
- Make available financial support for the payment of initial fees, deposit/guarantee, and other costs associated with the signing of a lease agreement, to facilitate access for refugees to the private rental market.

Recommendations:

UNHCR recommends that the Government of Portugal:

- (a) Increase the resources allocated to the reception system, to ensure adequate reception solutions for asylum-seekers, including with specific needs.
- (b) Develop and implement a comprehensive strategy for ensuring adequate and sustainable housing solutions for vulnerable individuals, including refugees and asylum-seekers, through, *inter alia*, Government and local policies/programs to support asylum-seekers' and refugees' access to housing.¹⁴
- (c) Enhance municipalities' capacities to provide affordable housing solutions and complementary holistic integration support to refugees and asylum-seekers, by ensuring their access to adequate and predictable longer-term funding.

Issue 4: Identification and registration procedures for unaccompanied children

Unaccompanied children have unhindered access to the asylum procedure and legal representation in Portugal. However, UNHCR remains concerned with a number of elements that jeopardize the quality of identification and registration procedures affecting children, previously identified by the Committee on the Rights of the Child in its 2019 Concluding Observations on Portugal,¹⁵ notably: the absence of child protection case management procedures prior to the registration of asylum claims; the lack of an independent guardianship system; and procedural gaps in age assessments.

Under the *Asylum Act*, unaccompanied children are entitled to apply for asylum in the absence of a legal representative. Upon arrival in the national territory, unaccompanied children are typically referred to the asylum procedure, without any prior engagement of entities of the national child protection system to provide counselling, assess the child's best interest, specific needs and the applicability of alternative avenues. Once the asylum claim is registered, family courts usually appoint the director of the receiving institution to act as their legal representative, including for the purposes of the asylum procedure and reception conditions. Such practice may give rise to potential conflict of interest and, based on UNHCR's observations, has on occasions negatively impacted the relationship between unaccompanied children and their caregivers. Moreover, according to current practice, once the children leave reception centers and move to other care arrangements, they lose the protection of their previous legal representative.

According to UNHCR, unaccompanied children should receive access to legal and asylum counselling, performed in a child-friendly manner, on their options following their arrival in Portugal. Moreover, an independent guardianship system should be established, enabling the distinction between the role of the guardian and the child's caregiver and the role of the legal representative within the asylum procedure, thereby ensuring that the best interests of the child and general well-being are considered at all times. The appointment of a guardian would also provide a continuum in protection that the current model does not envisage, i.e., it would ensure that the children have a single adult reference that they can trust and seek support from throughout every stage of the asylum process.

In relation to age assessments, the Portuguese legal framework falls short in regulating such procedures in a comprehensive and detailed manner. Hence, in practice, and contrary to international standards, when there is a reasonable doubt regarding a child's stated age at the point of arrival, there is no engagement of child protection actors, through cultural mediators, to conduct a preliminary age assessment with a view to ensuring fast and effective placement in the appropriate first reception stream. This assessment should largely build on the statements of, and documentation presented by the child, but also on the impression of the cultural mediator/ child protection specialist. With regard to second stage age assessments,

¹⁴ The present recommendation has been endorsed by the Committee on Economic, Social and Cultural Rights, in its Concluding observations on the fifth periodic report of Portugal, 30 March 2023, E/C.12/PRT/CO/5, para. 17(a).

¹⁵ Concluding observations on the combined fifth and sixth periodic reports of Portugal, 9 December 2019, CRC/C/PRT/CO/5-6, paras. 41(c)(e) and 42(c).

to UNHCR's knowledge, these have been carried out many times beyond cases where there is a reasonable doubt regarding the minority of the applicant. Moreover, and as also noted by the Committee on the Rights of the Child in its 2019 Concluding Observations on Portugal,¹⁶ such procedures fail to meet the holistic and multidisciplinary standards recommended by UNHCR, since the methods used include wrist and dental X-rays, as well as extremely invasive practices such as the evaluation of sexual development, including the measurement of genitals.

Age assessment procedures should enable the balancing of a range of physical, psychological, developmental, environmental and cultural factors. As medical age assessments are highly contested and are subject to a considerable margin of error, they should not be generally used. If used, this should be done with the express consent of the child, using the least invasive option, and as a measure of last resort. Such procedures should be clearly documented, including reasons for doubting the declared age and for undertaking the assessment, the methodology used, the outcome and possible margin of error.

Recommendations:

UNHCR recommends that the Government of Portugal strengthen policies and practices to improve identification and registration of unaccompanied children and safeguard their best interests by, *inter alia*:

- (a) Establishing an independent guardianship system, to be activated immediately after identification of an unaccompanied child.
- (b) Ensuring access to legal and asylum counselling to unaccompanied children upon arrival in the country.
- (c) Engaging the national child protection system before the registration of an asylum request with a view to ensuring that the best interests of the child are assessed, as well as guiding further procedural steps and any decisions regarding the child.
- (d) Adopting a legal framework to regulate age assessment procedures, clearly determining the conditions for their use and requiring holistic and multidisciplinary methodologies for evaluation, in line with international standards.

UNHCR
April 2024

¹⁶ *Ibidem*, para. 42(e).