



Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
(Excerpts of Treaty Body Concluding Observations and Special Procedure
Reports) - Universal Periodic Review:

Spain

We would like to bring your attention to the following excerpts of Treaty Body Concluding Observations and Special Procedure reports relating to issues of interest and concern to UNHCR with regards to Spain.

Treaty Body Concluding Observations

CAT/C/ESP/CO/5 (CAT, 2009)

4. El Comité observa con satisfacción los esfuerzos que sigue realizando el Estado parte para reformar la legislación, las políticas y los procedimientos a fin de velar por una mejor protección de los derechos humanos, en particular el derecho a no ser sometido a tortura ni a otros tratos o penas crueles, inhumanos o degradantes, en particular:

- c) La instrucción conjunta, en diciembre de 2005, del Secretario General del Estado y del Comisionado General de Policía con un folleto informativo sobre el procedimiento de asilo para distribuir a todas las personas que llegan a España de manera irregular por mar e internados en los Centros de Internamiento para Extranjeros de Canarias o Andalucía;

No devolución (non refoulement)

13. El Comité toma nota de la posición del Estado parte según la cual las garantías diplomáticas no contravienen al precepto del artículo 3 de la Convención - si, por ejemplo, se establecen mecanismos de supervisión adicionales expresamente aceptados y respetados por el país concernido. Al respecto, el Comité quiere reiterar su posición anteriormente expresada de que bajo ninguna circunstancia se debe recurrir a las garantías diplomáticas como salvaguardia contra la tortura o los malos tratos cuando haya razones fundadas para creer que una persona estaría en peligro de ser sometida a tortura o malos tratos a su regreso (artículo 3).

El Estado Parte, si recurriera a las garantías diplomáticas en cualquier situación distinta de las que deben excluirse en virtud del artículo 3 de la Convención, debe facilitar en su siguiente informe al Comité información sobre el número de casos de extradición o expulsión que han estado sujetos a la recepción de seguridades o garantías diplomáticas desde la consideración de este informe; los requisitos mínimos del Estado Parte para dichas seguridades o garantías; las medidas de seguimiento que ha adoptado posteriormente en tales casos, así como la exigibilidad jurídica de las seguridades o garantías dadas.

14. El Comité toma nota de la información proporcionada por la delegación sobre las alegaciones de que algunos aeropuertos españoles fueron utilizados desde 2002 para el traslado de prisioneros bajo el programa denominado “rendiciones extraordinarias”, como asimismo del rechazo del Estado parte del empleo de tales métodos y su compromiso de investigar y esclarecer los hechos alegados (artículos 3 y 12).

El Comité insta al Estado parte a que continúe su cooperación sobre las investigaciones que las autoridades judiciales están llevando a cabo al respecto e proporcione todas las relevantes informaciones al Comité en su próximo informe periódico.

15. El Comité acoge con beneplácito la adopción, en Octubre de 2009, de la Ley Reguladora del derecho de asilo y de la protección subsidiaria cuyo objetivo es alcanzar un sistema europeo común de asilo que garantice el máximo nivel de protección a los refugiados y a las personas perseguidas. Sin embargo, está preocupado por el posible uso en la nueva Ley, como base para rechazar las demandas de asilo, de la cláusula de excepción a la prohibición de devolución contenida en el artículo 33 (2) de la Convención de Refugiados de 1951. Al Comité le preocupa en particular que, conforme a esta Ley, las evaluaciones de rechazo pueden ocurrir en la fase del procedimiento acelerado, incluso en la misma frontera, sin que una valoración sustancial de cada demanda y cada posible elemento de inclusión haya podido llevarse a cabo (artículo 3).

El Estado parte debe revisar la aplicación de las cláusulas de exclusión en la nueva Ley, para asegurar que en ningún caso se pueda contravenir al principio de no devolución contenido en el artículo 3 de la Convención.

16. El Comité toma nota de los acuerdos bilaterales de retorno asistido de menores que España ha firmado con Marruecos y Senegal. Sin embargo, al Comité le preocupa la falta, en la implementación de estos acuerdos, de salvaguardas que aseguren la identificación de los niños que puedan necesitar protección internacional y, por lo tanto, tener derecho al procedimiento de asilo (artículo 3).

El Estado parte debe asegurar que los acuerdos bilaterales de retorno asistido de menores firmados por España contengan adecuadas garantías para asegurar la protección contra la devolución de los niños víctimas de trata, prostitución y pornografía, así como a los que han sido involucrados en conflictos o que se han escapado de su país para un fundado temor de persecución. El Comité quiere subrayar que el retorno al país de origen solo debe llevarse a cabo si es en el interés superior del niño.

Trata de personas

28. El Comité valora la aprobación del Plan contra la Trata para fines de Explotación Sexual, (véase supra, párrafo 4 (f)). Sin embargo, el Comité nota que éste tiene un enfoque de prevención del crimen más que de derechos humanos y protección de las víctimas. También le preocupa al Comité la falta en el Código Penal de un tipo penal que se dedique específicamente a temas de trata de seres humanos con fines de explotación sexual (artículo 16).

El Comité alienta al Estado parte a que finalice el anteproyecto del Código Penal con un título específicamente dedicado a los temas de trata de seres humanos con fines de explotación sexual y laboral. El Estado parte también tendría que asegurar que el Plan contra la Trata reconozca la posibilidad que las víctimas de trata puedan necesitar de protección internacional. A este respecto, el Estado parte debería:

- a) Establecer un mecanismo nacional para la identificación de todas las víctimas;**
- b) Adoptar las medidas necesarias para asegurar el acceso al procedimiento de asilo para las mujeres extranjeras víctimas de trata - o expuestas al riesgo de ser sometidas a trata - que demuestren su necesidad de protección internacional.**

CCPR/C/ESP/CO/5 (HRC, 2009)

16. While taking into account the State party's efforts to guarantee the rights of foreigners, as attested by, for example, the provisions of Royal Decree No. 2393/2004 on legal aid for foreigners, the Committee remains concerned at reports that judicial supervision of asylum applications has been reduced to a mere formality and that some decisions on the detention and expulsion of foreigners are arbitrary (art. 13).

The State party should ensure that the decision-making process in matters concerning the detention and expulsion of foreigners complies fully with the procedure set out by law, and that humanitarian reasons can always be invoked in asylum proceedings. The State party should also ensure that the new asylum law is in full conformity with the Covenant.

21. The Committee is concerned at the reports describing the situation of unaccompanied children arriving in Spanish territory who are repatriated with no heed to the best interests of the child. These children are allegedly ill-treated in the reception centres and sometimes detained on police or Guardia Civil premises without the benefit of a lawyer's assistance and without being brought promptly before a judge.

The State party should ensure that the rights of unaccompanied children who enter Spanish territory are respected. Among other things, it should: (a) ensure that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings, and, more generally, the expulsion proceedings; (b) take into account the best interests of the child

in any such proceedings; and (c) establish a monitoring mechanism for the reception centres to ensure that minors are not subjected to abuse.

CRC/C/OPSC/ESP/CO/1 (CRC, 2007)

General principles on the Convention on the Rights of the Child (arts. 2, 3, 6 and 12)

6. The Committee is concerned that the general principles of the Convention on the Rights of the Child have not sufficiently been taken into account in the design and implementation of the measures adopted by the State party under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and child Pornography. The Committee is particularly concerned that non-discrimination against foreign unaccompanied children who have been victims of trafficking is not given due consideration.

7. The Committee recommends that the general principles of the Convention of the Rights of the Child, in particular the child's right to non-discrimination, be included in all the measures of the State party to implement provisions of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, including judicial or administrative proceedings.

Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)

33. Finally, the Committee urges the State party to take into account the recommendations issued by the Committee in its Concluding Observations in 2002 (CRC/C/15/Add.185, para. 46), the Committee's General Comment No. 6 (2005), in particular paras. 50-53, on the treatment of unaccompanied and separated children outside their country of origin, as well as the recommendations of the Committee on the elimination of discrimination against women in 2004 (A/59/38, para. 337).

CRC/C/OPAC/ESP/CO/1 (CRC, 2007)

Measures adopted with regard to disarmament, demobilization and social reintegration

Social reintegration measures

11. The Committee notes the efforts of the State party to process asylum requests from children. However, the Committee is concerned that identification of children who may have been recruited or used in hostilities prior to arrival in Spain is inadequate and that data on these children are not systematically collected. The Committee is concerned that failure to identify such children could result in a breach of the principle of non-refoulement.

12. Furthermore, the Committee regrets that asylum-seeking children who have been recruited or used in armed conflict are poorly informed about the asylum

process and have insufficient access to specialized professionals who can provide multidisciplinary assistance for their physical and psychological recovery and social reintegration. The Committee is concerned that the heavy workload on the office of the ombudsman may have a negative impact on the best interests of the child.

13. The Committee recommends that the State party;

(a) Take steps to identify and systematically collect data on refugee, asylum-seeking and migrant children within its jurisdiction who may have been recruited or used in armed conflict;

(b) Pay particular attention to refugee and asylum-seeking children in Spain who may have been involved in hostilities and increase the number of professionals in order to provide children with adequate multidisciplinary assistance for their physical and psychological recovery and social reintegration;

(c) Improve access to information, including help lines, for asylum-seeking children and reinforce the legal advisory services available to them, including within the office of the ombudsman;

(d) Safeguard full implementation of the Optional Protocol in all autonomous regions;

(e) Ensure that the best interests of the child and the principle of non-refoulement are primary considerations taken into account in the case of a decision to repatriate a child.

14. In this regard, the Committee recommends that the State party take note of the Committee's General Comment No. 6 (CRC/GC/2005/6), in particular paras 54-60, on treatment of unaccompanied and separated children outside their country of origin.

E/C.12/1/ADD.99 (CESCR, 2004)

8. The Committee is concerned that the rise in the number of immigrants arriving in the State party over the last years has been accompanied by negative and hostile attitudes towards foreigners and the occurrence of xenophobic incidents.

25. The Committee recommends that the State party continue to closely monitor the incidence of and combat racism and xenophobia, and continue to promote intercultural understanding and tolerance among all groups in society.

CERD/C/64/CO/6 (CERD, 2004)

11. Concern is also expressed about allegations received of instances of police misbehaviour towards ethnic minorities or persons of non-Spanish origin, including abusive and insulting speech, ill-treatment and violence.

The Committee draws the State party's attention to its general recommendation XIII on the training of law enforcement officials in the protection of human rights and recalls that law enforcement officials should receive intensive training to ensure that in the performance of their duties they respect and protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin.

13. While the Committee commends the ongoing cooperation between the State party and the United Nations High Commissioner for Refugees as well as the commitment of the State party to improve the country's asylum system by transposing into Spanish law, by February 2005, European Union Directive 2003/9, laying down minimum standards for the reception of asylum-seekers, it is concerned about the poor conditions encountered by asylum-seekers due to the overcrowding of reception centres, in particular in Ceuta and the Canary islands.

The Committee recommends that the State party take adequate measures necessary to improve the situation of asylum-seekers, especially in Ceuta and in the Canary islands. It also invites the State party to provide further information on this issue in its next periodic report.

14. While the Committee warmly welcomes the 2003 Memorandum of Understanding between Spain and Morocco on assistance in the repatriation of unaccompanied foreign children, it expresses concern about the situation of these children, particularly in relation to the poor conditions in the reception centres for minors (especially in Ceuta and Melilla).

The Committee recommends that the State party take all necessary measures to improve the conditions in reception centres for minors and ensure respect for the existing laws so that regular procedures in the expulsion of unaccompanied foreign children are carried out. The Committee also invites the State party to provide clarification on the issue of the reported reduction of the age of majority from 18 to 16 years for the purpose of expulsion.

A/59/38(SUPP) (CEDAW, 2004)

336. While commending the State party for its legal and other measures against trafficking in women and girls, the Committee expresses its concern about increasing incidence of trafficking in women and girls. It is concerned about the situation of trafficked women, particularly those who claim refugee status on grounds of gender-based persecution.

337. The Committee urges the State party to increase its efforts at international cooperation with countries of origin and transit, within and outside of the European Union, both for dealing with the economic forces that make women victims of trafficking and for the prevention of trafficking through information exchange. The Committee further calls on the State party to take all appropriate measures to suppress exploitation of prostitution of women,

including discouraging the demand for prostitution. The Committee also urges the State party to continue to collect and analyse data from the police and international sources, prosecute and punish traffickers, and ensure the protection of the human rights of trafficked women and girls. The Committee calls on the State party to ensure that trafficked women and girls have adequate support to be in a position to provide testimony against their traffickers. It further urges the State party to afford full protection under the 1951 Geneva Convention on Refugees, inter alia, to trafficked women who seek asylum on grounds of gender-based persecution in line with the latest developments in international refugee law and the practice of other States.

CRC/C/15/ADD.185 (CRC, 2002)

Committee's previous recommendations

11. The Committee regrets that some of the concerns and recommendations it made upon consideration of the State party's initial report (CRC/C/8/Add.6) have been insufficiently addressed, particularly those contained in paragraphs 12 (coordination), 13 (data collection), 14 (resources for children), 16 (non-discrimination), 18 (legislation), 22 (child asylum-seekers and unaccompanied children) and 23 (ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families). Those concerns and recommendations are reiterated in the present document.

12. The Committee urges the State party to make every effort to address its recommendations contained in the concluding observations on the initial report that have not yet been implemented and to address the list of concerns contained in the present concluding observations on the second periodic report.

Resources for children

17. The Committee notes with concern that there is not yet a balanced redistribution of resources at the central, regional and local levels and that not all the Autonomous Communities provide the same level of social policies and services for the most marginalized groups in society, in particular, poor families, single-parent families, Roma children and children of migrant families. It notes with particular concern the budgetary problems affecting the autonomous cities of Ceuta and Melilla with reference to care of unaccompanied migrant children.

18. In light of article 4 of the Convention and in line with its previous recommendation (ibid., para. 14), the Committee encourages the State party:

(a) To consider ways through which all children can be guaranteed equal access to the same standard of services, irrespective of where they live for example, by establishing nationwide minimum standards for, and allocation of resources to, the implementation of the Convention's provisions, in particular in the areas of health, education and other social welfare services;

(b) To identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated to the maximum extent of available resources for the full implementation of the economic, social and cultural rights of children, in particular for children belonging to the most vulnerable groups in society; and [...]

Data collection

19. The Committee, while welcoming the creation of Basic Statistics on Child Protection and of a database on children and the efforts of the Observatory for Children to harmonize the system with the Autonomous Communities, remains concerned at the fragmentation of information, which is also due to the various systems and indicators used in each Autonomous Community.

20. In line with its previous recommendation (ibid., para. 13), the Committee reiterates its recommendation that the State party:

(a) Strengthen its mechanism for collecting and analysing systematically disaggregated data on all persons under 18 for all areas covered by the Convention, with special emphasis on the most vulnerable groups, including Roma children, children belonging to migrant families, unaccompanied migrant children and children of economically and socially disadvantaged households; [...]

Non-discrimination

27. The Committee is concerned that the principle of non-discrimination is not fully implemented for children of Roma origin, children of migrant workers, particularly when they are not legal, and unaccompanied foreign children, especially with regard to their access to adequate health care and educational facilities.

28. The Committee recommends that the State party:

(a) Monitor the situation of children, in particular those belonging to the above-mentioned vulnerable groups, who are exposed to discrimination; and

(b) Develop, on the basis of the results of this monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination.

Family reunification

34. The Committee expresses its concern at delays in the procedure for family reunification of recognized refugees, in particular for the issuance of the necessary visa and travel documents by the Ministry for Foreign Affairs.

35. In light of article 10 of the Convention and in line with its previous recommendation (ibid., para. 22), the Committee reiterates its recommendation that applications for asylum made for the purpose of family reunification be dealt with in a positive, humane and expeditious manner.

Unaccompanied foreign children

45. The Committee is deeply alarmed about the conditions of unaccompanied foreign children, mostly Moroccans, especially in the autonomous cities of Ceuta and Melilla. In particular, it expresses its concern at reports of:

(a) Ill-treatment of children by police during forced expulsion to the country of origin where, in some cases, they were deported without access to legal assistance and interpretation;

(b) Failure to provide for these children the temporary legal residency status to which they are entitled under the law because the Department of Social Welfare, as their legal guardian, did not apply for it;

(c) Overcrowding and bad conditions of residential centres and cases of ill-treatment by residential centre staff and other children;

(d) Denial of access to health care and education, although guaranteed by law;

(e) Summary expulsions of children without ensuring that they are effectively returned to family or social welfare agencies in their country of origin.

46. **The Committee recommends that the State party urgently take the necessary measures in order to:**

(a) Ensure the implementation of Organizational Act 4/2000 and other laws by providing to unaccompanied foreign children access to residential care, education, emergency services and other health care, and temporary residency documents;

(b) Provide the autonomous cities of Ceuta and Melilla with the necessary financial and human resources for the care of these children;

(c) Coordinate with the Government of Morocco to ensure that when children are repatriated from Spain to Morocco, they are returned to family members willing to care for them or to an appropriate social service agency;

(d) Take all measures to prevent irregular procedures in the expulsion of unaccompanied foreign children;

(e) Investigate in an effective way reported cases of ill-treatment of these children;

(f) Provide unaccompanied foreign children with information about their rights under Spanish and international law, including the right to apply for asylum;

(g) Take all necessary measures to improve the conditions and safety of residential centres and adequately train residential centre staff;

(h) Establish effective mechanisms to receive and address complaints from children in care, monitor standards of care and, in light of article 25 of the Convention, establish regular periodic review of placements;

(i) Consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as previously recommended (ibid., para. 23).

CAT/C/CR/29/3 (CAT, 2002)

6. The Committee also notes with satisfaction:

[...] d) The new Instruction from the Secretary of State for Immigration on the treatment of foreign stowaways, replacing the Instruction of 17 November 1998 on the same subject. This establishes a series of safeguards concerning the right to official legal representation in administrative or judicial proceedings which may lead to the acceptance of possible asylum applications, refusal of entry or expulsion from Spanish territory; [...]

11. The Committee also expresses its concern at the following:

[...] (c) Cases of ill-treatment during enforced expulsion from the country, particularly in the case of unaccompanied minors; [...]

17. The Committee encourages the State party to take the necessary measures to ensure that the process of expulsion from the country, in particular in the case of minors, is in keeping with the Convention.

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Division of International Protection Services
UNHCR
November 2009**