



Refugee protection and
international migration:
a review of UNHCR's
role in the
Canary Islands,
Spain

Anna Marie Gallagher, Consultant
José Riera, PDES
Maria Riiskjaer, PDES

PDES/2009/01
April 2009

Policy Development and Evaluation Service

UNHCR's Policy Development and Evaluation Service (PDES) is committed to the systematic examination and assessment of UNHCR policies, programmes, projects and practices. PDES also promotes rigorous research on issues related to the work of UNHCR and encourages an active exchange of ideas and information between humanitarian practitioners, policymakers and the research community. All of these activities are undertaken with the purpose of strengthening UNHCR's operational effectiveness, thereby enhancing the organization's capacity to fulfil its mandate on behalf of refugees and other displaced people. The work of the unit is guided by the principles of transparency, independence, consultation, relevance and integrity.

Policy Development and Evaluation Service
United Nations High Commissioner for Refugees
Case Postale 2500
1211 Geneva 2
Switzerland

Tel: (41 22) 739 8433

Fax: (41 22) 739 7344

e-mail: hqpd00@unhcr.org

internet: www.unhcr.org

All PDES evaluation reports are placed in the public domain. Electronic versions are posted on the UNHCR website and hard copies can be obtained by contacting PDES. They may be quoted, cited and copied, provided that the source is acknowledged. The views expressed in PDES publications are not necessarily those of UNHCR. The designations and maps used do not imply the expression of any opinion or recognition on the part of UNHCR concerning the legal status of a territory or of its authorities.

Table of Contents

Summary of findings and recommendations	1
The review	5
Operational context	7
Protection challenges	15
UNHCR policy and activities	19
Organizational capacity	23
Cooperation	27
Conclusion	29
Annex A. Terms of Reference	31
Annex B. List of people interviewed.....	35
Annex C. Legal framework	39
Annex D. Asylum leaflet	45
Annex E. Statistics relating to asylum applications.....	46
Annex F. Statistics relating to sea arrivals	49

Summary of findings and recommendations

The first High Commissioner's Dialogue on Protection Challenges in December 2007 examined the task of protecting refugees amidst mixed migration flows. As a follow up to the Dialogue, UNHCR's Policy Development and Evaluation Service (PDES) is undertaking a series of reviews, focusing on the effectiveness of UNHCR's involvement in a number of mixed migration situations in different parts of the world. This review of UNHCR's role in the Spanish Canary Islands is the first in this series.

As one of the entry points to the European Union, the Canary Islands have received large numbers of irregular maritime migrants in recent years, more than 30,000 in 2006 alone. As a result of increased enforcement efforts off the coast of West Africa, a significantly lower number of people, some 8,300, arrived in 2008. In addition to reducing the number of migrants entering the Canary Islands, Spain has also been able to return a large number of them as a result of the many readmission agreements which it has concluded with their countries of origin.

Concerned by the fact that some of the new arrivals may have protection needs, UNHCR Spain has undertaken a number of activities to assure that they have access to asylum procedures. Such activities are fully consistent with the global policy framework developed by UNHCR and addressed in both the 2002 Agenda for Protection and the more recent 10-Point Plan of Action on Refugee Protection and Mixed Migration.

UNHCR does not play an operational role in the Canary Islands, and indeed has no permanent presence there. The Branch Office in Madrid monitors the situation closely, however, and advocates for improved access to asylum procedures and the humane treatment of those people arriving by boat.

The review found that UNHCR Spain has been effective in influencing the way that the authorities respond to irregular maritime migration in the Canary Islands. As a result of its monitoring and advocacy activities, the Branch Office has also made progress in addressing protection gaps. It has, for example, been successful in assuring that all those who are held in detention centres receive written information regarding their right to seek asylum. It has also succeeded in facilitating access to these centres by lawyers from the Spanish Commission for Refugee Assistance (CEAR). The capacity of the Branch Office, however, has not been commensurate with the challenges posed by the situation in the Canary Islands.

In its response to that situation, UNHCR Spain has developed strong relations with both the central government authorities in Madrid and the local administration in the Canary Islands. With few exceptions, the Branch Office has also established a firm working relationship with relevant NGOs. While UNHCR Spain cooperates effectively with relevant entities at UNHCR Headquarters, coordination between the three regional bureaux with an interest in the Canary Islands - Africa, Europe and MENA - could be strengthened.

Despite the undoubted progress that has been made in addressing mixed migrations to the Canary Islands, several protection challenges remain to be addressed, especially the following:

- While all new arrivals receive information on their right to seek asylum, many do not adequately understand the information they receive and as a result do not exercise their rights.
- There are continued concerns with respect to the accuracy of the procedures used to determine the nationality of new arrivals.
- Access to the detention centres by CEAR lawyers is limited and as a result they do not make contact with all potential asylum seekers.
- Unaccompanied minors in the Canary Islands are not adequately advised of their right to seek asylum, nor are there adequate procedures in place to identify asylum seekers among this population.

In order to strengthen UNHCR's ability to better address and resolve these challenges, the evaluation team makes the following recommendations. In the interests of brevity, these recommendations are not repeated in the main body of the report.

(i) *Improve access and information in detention centres.* As observed already, while CEAR lawyers are able to meet with detainees and discuss the issue of asylum with them, their access is in practice limited. Additionally, while written information on the right to seek asylum is provided to all detainees, few understand the information they are given. To address this issue it is recommended that UNHCR Spain work with the relevant stakeholders to develop and provide more understandable and user-friendly information for all new boat arrivals. Additionally, it is recommended that UNHCR Spain advocate for more open and regular access by CEAR lawyers to the centres.

(ii) *Advocate for enhanced nationality determinations.* In view of the concerns identified by the evaluation team in this area, UNHCR Spain should meet with Bar Association lawyers to discuss concrete ways of ensuring the highest possible levels of accuracy in the determination procedure. With the support of Headquarters, UNHCR Spain should also promote the development of standards on nationality determinations and provide training in relation to those standards.

(iii) *Protect unaccompanied minors.* UNHCR Spain should work with all relevant stakeholders to ensure that all unaccompanied minors arriving in the Canary Islands receive information regarding their right to seek asylum. More generally, UNHCR Spain should strive to promote a better understanding and awareness of the plight and protection needs of separated children.

(iv) *Address interception and diversion.* Little is currently known concerning the protection implications of the interception and diversion activities carried out by FRONTEX off the coast of West Africa. In order to ascertain whether refugees are being returned during these operations, UNHCR Spain should maintain regular

contact with relevant UNHCR offices, including those in Mauritania, Senegal and the UNHCR FRONTEX liaison Office in Warsaw.

(v) *Undertake more regular visits to the Canary Islands.* While there is no need for a permanent UNHCR presence on the islands, an increased monitoring presence is recommended. While recognizing the limitations of time and budget, UNHCR Spain should strive to conduct more visits to the islands and carry out a more structured and consistent follow-up to the findings and recommendations that emerge from such missions.

(vi) *Undertake a participatory stakeholder assessment.* In order to acquire a deeper and more comprehensive understanding of the protection challenges confronting new arrivals and to strengthen the partnerships needed to address these challenges, UNHCR should undertake a participatory stakeholder assessment of the mixed migration situation in the Canary Islands. UNHCR Spain should work with the Community Development, Gender Equality and Children's Section (CDGECS) at Headquarters to formulate the tools that are required to carry out this assessment.

(vii) *Strengthen internal coordination.* The Bureaux for Africa, Europe and MENA, in cooperation with the Division of International Protection Services, should develop a cross-regional action plan to share information, good practices and strategies in relation to mixed migrations to the Canary Islands. At the same time, UNHCR Spain should develop stronger relations with other UNHCR personnel who are working in the area of mixed migration, especially the UNHCR liaison officer at FRONTEX.

(viii) *Provide additional training.* Although current Branch Office staff are generally knowledgeable and competent on issues related to mixed migration and refugee protection, it is recommended that any new staff members who join the UNHCR team complete the 'Thematic Protection Learning Programme on Protection Strategies in the Context of Broader Migration Movements'.

(ix) *Review the balance of international and national staff.* In accordance with the recent reconfiguration of UNHCR's presence in Europe, only a small number of international staff members are deployed at the Branch Office in Madrid. The Regional Bureau for Europe should determine whether the existence of an almost entirely national team limits the strength and influence of the advocacy efforts and interventions undertaken by UNHCR Spain.

(x) *Reinforce external cooperation.* Although UNHCR Spain has developed strong relationships with many relevant stakeholders, there is scope for such cooperation to be strengthened. Greater contact with the Spanish Red Cross, for example, could facilitate UNHCR's access to the detention centre in Fuerteventura. More regular liaison with Bar Association lawyers in the Canary Islands would be of value in meeting the protection needs of unaccompanied minors. Interaction between UNHCR and IOM is currently very limited and a closer dialogue should be initiated.

(xi) *Reinvigorate coalition-building.* UNHCR Spain has in the past played an important role in bringing together those NGOs that work in the area of refugee protection. In recent times, however, staff reductions have limited the ability of the Branch Office to undertake such activities. Notwithstanding such capacity challenges, UNHCR Spain should relaunch the regular meetings it once hosted and held with

NGOs in Madrid and seek to organize similar events during monitoring missions to the Canary Islands.

The review

Purpose

1. This review is one of a series being carried out by UNHCR's Policy and Evaluation Service (PDES) focusing on UNHCR's involvement in mixed migration situations.¹ The reviews are being undertaken as a follow-up to the High Commissioner's Dialogue on Protection Challenges held in December 2007. Their purpose is to determine the extent to which UNHCR has effectively discharged its mandate for refugee protection and solutions and whether it has contributed to the task of addressing mixed migrations in a humane, equitable and rights-based manner.

Methodology

2. The evaluation was undertaken by Maria Riiskjaer, Associate Policy Development and Evaluation Officer in PDES, and an independent consultant, Anna Marie Gallagher, who specializes in refugee protection and mixed migration flows. Jose Riera, Senior Policy Advisor in PDES, participated in the Madrid portion of the field visit.

3. The evaluation team employed a range of methods to carry out the review and to verify its findings and recommendations. First, a desk review of all documents relevant to the Canary Islands mixed migration was undertaken. This included a thorough review of UNHCR Annual Protection Reports and Country Operation Plans, the 10-Point Plan of Action on Refugee Protection and Mixed Migration, and reports of various official UNHCR missions to the Canary Islands. Information from external sources, such as the Spanish government, the EU and NGOs, as well as academic articles and reports, were also reviewed.

4. Second, interviews were carried out with relevant staff at UNHCR Headquarters and with other stakeholders based in Geneva. Third, telephone interviews were undertaken with UNHCR offices and NGOs in North and West Africa. Fourth, a mission was undertaken to Madrid and three of the Canary Islands (Gran Canaria, Fuerteventura and Tenerife) to observe the situation on the ground and to carry out on-site interviews with a wide range of stakeholders.

5. In order to ensure that the voices and concerns of the people directly involved in the mixed migration were taken into account, the evaluation team carried out interviews in detention centres on the three islands visited. In keeping with UNHCR's policy on age, gender and diversity mainstreaming, the team spoke with 16 men, 14 women and four boys.² Those interviewed came from Bolivia, Chad,

¹ A mixed migration is one in which refugees, asylum seekers, victims of trafficking and smuggling, unaccompanied minors and people who leave their own country for primarily economic reasons move alongside each other, often in an irregular manner, making use of the same routes and means of transport.

² The evaluation team was only able to visit a minors' centre for boys and therefore could not interview any girls.

Colombia, Guinea, Ivory Coast, Liberia, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Sudan and Zambia. Most had arrived on the islands by boat with a small number arriving by air.

6. All of the people interviewed were informed about the nature and purpose of the review, were told that participation was voluntary and were informed that they could withdraw from the interview at any time. The team ensured that questions put to the children were adjusted to the age and intellectual capacity of those involved.³

Constraints

7. The evaluation was confronted with a number of constraints. The first was that no boat arrivals took place during the period of the mission, making it impossible to observe first-hand the procedures that are used to disembark, detain, interview the new arrivals, and to identify those who wish to claim asylum.

8. Second, owing to time and budget constraints, it was not possible to visit other parts of Spain affected by mixed migrations, most notably the Spanish enclaves of Ceuta and Melilla, adjacent to Morocco, as well as Andalusia on the southern coast of Spain. It was therefore not possible to compare and contrast the situation in the Canary Islands with that in other locations.

9. A third constraint was that the evaluation team was unable to examine the Canary Islands mixed migration from a broader regional perspective, involving countries of origin and transit in West Africa. It was consequently not possible for the team to examine the circumstances that have given rise to such high levels of irregular maritime migration or to witness the situation of people who have been returned to their country of origin from Spain or following interception off the West African coast.

³ Prior to its mission, the evaluation team familiarized itself with the article, 'Interviewing children' by Rosemary Vasquez, which provides useful advice on interviewing minors in different age groups.

Operational context

Asylum and migration in Spain

10. Spain is a party to the major international conventions relating to human rights and refugee protection, including the 1951 Convention Relating to the Status of Refugees, the 1954 Convention on the Status of Stateless Persons, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its protocols, and the 1989 Convention on the Rights of the Child. Spain passed its first asylum law in 1984 and has made several amendments to the law over the years.

11. Spain receives a relatively low number of asylum applications compared to other EU countries⁴ During the last decade, the highest annual number of applications was recorded in 2001, when 9,490 people sought asylum.

12. Since that time, however, the numbers have progressively decreased, with the exception of 2007, when 7,662 applications were lodged. During the first half of 2008, only 2,361 applications were filed by people seeking refugee status. The recognition rate is relatively low. In 2007, the recognition rate under the Refugee Convention was 3.14 per cent, and 5.13 per cent for complementary forms of protection.

The politics and economics of migration

13. The topic of mixed and irregular migration, especially the issue of boat arrivals in the Canary Islands, has been regularly evoked in the Spanish media. Immigration itself has also been an important issue in electoral politics in recent years. The public and political debate has centered on controlling irregular migration and there has been little attention or discussion given to the issue of asylum and refugee protection.

14. Spain has been under continued pressure from other EU members to stem irregular boat arrivals, leading to a variety of defensive measures such as joint coastal patrolling with Morocco, Senegal and Mauritania, the establishment of FRONTEX operations, electronic surveillance and a proliferation of readmission and migration agreements.

15. Like many other EU countries, Spain is also using financial incentives to gain the support of countries of origin in its efforts to prevent irregular migration. Spain has established six new embassies in West Africa countries and allocated some 700 million Euros in development aid to the region.

16. While the current economic crisis may induce a large number of people to leave West Africa in the hope of reaching Spain, the economic prospects for such migrants appear to be increasingly bleak. In recent years, Spain has benefited

⁴ For example, Germany recorded almost 19,000 applications in 2007. In the UK, almost 28,000 applications for asylum were filed in 2007. France recorded over 29,000 applications. See UNHCR, 'Asylum levels and trends in industrialized countries, first half 2008', October 2008.

considerably from cheap labour supplied by both documented and irregular migrants, especially in the booming construction sector.

17. However, unemployment in Spain now stands at some 13 per cent, compared with a European average of seven per cent, with some commentators predicting that it will peak at 18 per cent. In response to this situation, the government is now offering lump-sum payments to migrants to encourage them to go home.⁵

Maritime migration

18. The Canary Islands are an entry point to Spain and the EU for people on the move from West and North Africa.⁶ During the peak of the movement in 2006, an estimated 700 to 800 people set out every day from the northern Mauritanian coastal city of Nouadhibou in the hope of reaching the Canaries.⁷

19. While Mauritania has become a particularly popular departure point for those wishing to reach the Canary Islands by sea, such people also depart from coastal locations in Senegal and Morocco. The distances from Mauritania and Senegal to the Canary Islands are long: over 800 and 2,000 kilometres respectively. For those leaving Western Sahara or north-west Morocco, the distance is much shorter, approximately 90 kilometres.

20. In most cases, people wishing to go to the Canary Islands must pay a human smuggler a large sum of money, sometimes several thousand Euros. In other cases, groups of people will come together to organize the journey themselves. They travel in boats known as 'cayucos' for longer voyages and in 'pateras' for shorter journeys.

21. The crossing can take anywhere from five to 15 days depending on the currents. People place their lives at great risk in their efforts to reach the Canary Islands as they travel on overloaded boats with insufficient food and water and often with no lifesaving equipment. The disappearances and deaths which occur off the coast of West Africa remains a matter of deep concern. Estimates of the number of people who lose their life in this way range from around 400 to 1,000 each year.⁸

22. The number of people arriving in the islands has progressively decreased since its peak in 2006. According to Spanish authorities, over 12,000 persons arrived by sea in 2007, a 60 per cent reduction compared to the previous year, when the number of arrivals reached almost 32,000. In 2008, the number dropped even further, to 8,300 arrivals.

⁵ See The Economist, 'Spain's unemployment', 30 December 2008, and 'Global migration and the downturn: the people crunch', 15 January 2009.

⁶ The Autonomous Community of the Canary Islands is located on the southern border of the European Union, off the coast of West Africa, and is comprised of seven major islands, one minor island and several islets: Tenerife, Gran Canaria, Fuerteventura, Las Palmas, Lanzarote, El Hierro and La Gomera.

⁷ See Amnesty International, 'Nobody wants to have anything to do with us: arrests and collective expulsions of migrants denied entry into Europe, 1 July 2008, p. 9.

⁸ UNHCR Spain, Country Operations Plan 2009, p. 2; Derechos Humanos en la Frontera (APDHA 2008), p. 34.

23. The number of these people who apply for asylum is low.⁹ In 2006, 366 people submitted claims to refugee status in the Canary Islands. That number increased to 655 in 2007 but dropped again to 356 applications in 2008.¹⁰ The overwhelming majority of applicants are single men.¹¹

24. Despite the overall decrease in the number of boat arrivals in the Canary Islands, the number of unaccompanied minors arriving in the islands has escalated.¹² There were 137 unaccompanied minors who arrived in 2004. That number declined to 108 in 2005, but increased dramatically to over 1,000 in 2006. In 2007, 880 unaccompanied minors arrived by sea. The number remained more or less the same in 2008, when 886 minors arrived in the islands.

25. The majority of unaccompanied minors arriving in the Canary Islands are from Senegal, followed by others from Morocco, Mali, Mauritania and other sub-Saharan countries. Believing that it is less likely that minors will be deported from Spanish territory, African households are reportedly now pinning their hopes on adolescents and children, in the belief that they will be able to work and send money back home.

Movement by air

26. It is much more difficult to assess the number of people who enter the Canary Islands legally by air and who later become irregular migrants when their visas expire. Most air arrivals in the Canary Islands travel on flights departing from EU countries. As Spain is a party to the Schengen Agreement, these arrivals are not required to provide passports or visas in order to enter the islands.

27. Only a small number of air arrivals have claimed asylum at Canary Islands in the last few years.¹³ When a new arrival requests asylum at an airport in the Canary Islands, the police request a lawyer from CEAR to meet with the person concerned, to explain the asylum process and assist in preparing their application. Under Spanish law, the applicant can be 'retained' at a facility inside the airport for a period of one week, pending a decision on the admissibility of the claim.

28. If the claim is admitted, the person will be released and provided with accommodation and support pending a final decision on their case. If denied, the person will be returned to the country from which they departed. Decisions regarding the admissibility of an asylum claim are almost always made within a week.

⁹ The total number of asylum applicants in Spain in 2006 was 5,297. That number increased to 7,662 in 2007. In 2007, 3,454 of the total number of applications were admitted into the asylum process. Of that number, 204 were recognized as refugees under the Refugee Convention; 333 were granted complementary protection; and seven were granted humanitarian status.

¹⁰ Of the total of 356 applications filed in 2008, 140 were filed by people seeking entry at official border points in the Canary Islands, such as airport and sea ports.

¹¹ Between 2004 and 2008, some 94 per cent of asylum applications lodged in the Canary Islands were submitted by men. Few women arrive in 'cayucos' or 'pateras.'

¹² Unaccompanied minors as young as seven years of age have arrived in the Canary Islands by sea.

¹³ According to OAR statistics, a total of 156 applications for asylum were filed at airports and by people legally entering Spanish territory at ports in the Canary Islands between 2004 and 2008: six applications in 2004; four in 2005; three in 2006; three in 2007; and 140 in 2008. These numbers also include applications from stowaways on board boats which arrive in ports in the Canary Islands. The spike in the number of applications filed in 2008 resulted from the arrival of a large number of stowaways.

Interception, diversion and rescue at sea

29. The Spanish authorities, in collaboration with other states and the EU border agency FRONTEX, carry out 'interception' and 'diversion' activities off the coast of West Africa.¹⁴ Additionally, they closely monitor the arrival of 'cayucos' and 'pateras' off the shores of the Canary Islands in order to lead the boats to safety or to rescue the passengers, where necessary.

30. The Canary Islands Regional Coordination Centre (CCRC) is responsible for organizing measures to combat irregular migration by sea along the southern border of Spain. The CCRC brings together a number of different actors, including the Civil Guard, National Police, Customs Service, the Armed Forces' Air-Sea Group, the Maritime Safety and Rescue Service and FRONTEX, as well as agencies responsible for providing humanitarian assistance to new arrivals, such as the Spanish Red Cross. The CCRC coordinates missions that intercept and divert boats to the coast of West Africa as well as missions which rescue boats and lead them to the Canary Islands. The total area covered by the CCRC is approximately 425,000 square kilometres.

31. There is contradictory information regarding the response to boats that are found in international waters. Some sources suggested that such boats are intercepted and diverted to Mauritania or to the Canary Islands, depending on their proximity to those locations. However, representatives of the CCRC deny this practice and state that all boats found in international waters within its operational area are escorted to the Canary Islands. The CCRC and FRONTEX take the position that all 'cayucos' and 'pateras' are at risk and are therefore subject to rescue operations.

Reception arrangements

32. People who arrive in Spanish territorial waters off the Canary Islands are treated humanely and with respect. Upon arrival, medical attention and other forms of immediate assistance are provided by the Spanish Red Cross in an effort to save lives and alleviate suffering. Initial identification of minors is carried out by the police and those that are presumed to be unaccompanied are separated from the adults.

33. After the immediate needs of the new arrivals have been attended to, they are transported to a police station where they are interviewed by the police who seek information for the purposes of identification, determination of nationality and intelligence concerning the organization of irregular migration. Judicial procedures to authorize the detention of all migrants (with the exception of minors and those needing medical care) and to initiate the process of return also begun shortly after arrival.

¹⁴ Although there is no internationally accepted definition of interception, UNHCR has developed the following formula: "Interception is defined as encompassing all measures applied by a state outside its national territory, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea, and making their way to the country of perspective destination." In this report, diversion refers to any activities designed to impede boats from moving forward towards their intended destination including towing a boat back to another location or circling a boat and carrying out maritime manoeuvres to impede its forward movement.

34. Because new arrivals have the right to free legal assistance, the police ask the local Bar Association to provide lawyers who can advise and represent them in these proceedings. If a new arrival expresses a desire to seek asylum during the detention hearing, the judge will advise the director of the detention centre where that person has been accommodated so as to initiate the asylum application process.

35. Each lawyer is assigned five or six persons to represent during these initial proceedings, although the number can be considerably more when large groups of people arrive at the same time. Police interpreters are available to lawyers who would otherwise not be able to communicate with their clients. According to some interlocutors, lawyers generally spend little time with their clients and provide little more than a physical presence during both the detention and return proceedings. During the completion of the paperwork, new arrivals usually remain in police station cells for several days, prior to being transferred to a detention centre.

Detention

36. All irregular migrants who arrive by sea are detained in the Canary Islands.¹⁵ After a detention order is issued, the new arrival will be held for a period of up to 40 days, until a decision is taken to either deport the person or to transfer that person to the Spanish mainland. There are three detention centres in the Canary Islands: Barranco Seco in Las Palmas, Gran Canaria, with a capacity of some 170 people; El Matorral in Fuerteventura, with a capacity of around 1,100; and Hoya Fria in Tenerife, with a capacity of 320.

37. Each of these centres is staffed by members of the National Police, who are responsible for security, while a nurse and doctor attend to the detainees' medical needs. The Hoya Fria centre in Tenerife grants open access to an intercultural mediator from the Spanish Red Cross. Social workers are hired on a sporadic basis in all three centres, but at the time of the evaluation team's mission, none were present. FRONTEX personnel also regularly visit the centres to interview selected detainees to gather intelligence on human smugglers and migration routes.

38. Upon arrival in a detention centre, all arrivals receive written information in French, English and Arabic concerning their rights and obligations, as well as 'asylum leaflet' which explains the right to claim refugee status.¹⁶ This information is also posted on the walls of each detention centre.

39. CEAR lawyers have limited access to the detention centres. None of the CEAR offices in the islands have a full-time presence in any of the three centres; when new arrivals enter, the police call the CEAR lawyers and ask them to come and speak with potential asylum seekers. There are four CEAR attorneys working with detained migrants in the three islands (one in Tenerife, one in Fuerteventura and two in Gran

¹⁵ Under Spanish law, an irregular arrival is subject to 'internamiento' (internment) rather than 'detencion' (detention), which is a term reserved for people involved in criminal proceedings. This report refers to 'detention' and 'detention centres' throughout.

¹⁶ A copy of this leaflet is available as Appendix E.

Canarias). In 2008, four lawyers were responsible for attempting to identify refugees out of the total of 8,300 arrivals.¹⁷

40. When CEAR lawyers arrive at the centres, they are provided with a list of detainees indicating the name and nationality. Based on an analysis of at-risk categories, the lawyer will select individuals with whom to speak, usually selecting those from countries in conflict or where UNHCR has issued a position against return. The lawyer then interviews the detainee, asking about his/her background and what happened in his/her home country. If the attorney determines that a detainee may have a basis for asylum, she/he will then explain the right to seek asylum and his/her role in representing the detainee.

41. It is important to note that CEAR lawyers on the three islands interview all women who are detained. There are no screening procedures in place to identify trafficked women nor do any NGOs visit the centres to screen for potential victims. Only one claim for asylum based on trafficking has been filed by a detainee in the Canary Islands.¹⁸

Unaccompanied minors

42. The National Police or Civil Guard identify new arrivals that they believe to be minors and eventually separate them from the adult population. However, there have been reports that minors are held with adults in police stations for varying periods, several days to a week, until they are transferred to the appropriate minors' centres. During this period of detention, they are interviewed by the police, who ask them their name, age, the identity of their parents, their place of origin and how they arrived in the islands. While in police custody, they are taken to a hospital for an age determination test.

43. The Canary Islands administration places unaccompanied minors in three types of facilities: shared housing facilities for up to twelve children per house; immediate reception facilities; and, four larger emergency centres which can accommodate more than 75 children each.

44. Although centre staff interview all minors upon arrival for general purposes, no formal 'Best Interest Determination' (BID) is made. The information gathered by staff is used to determine if the minor can be reunited with his/her family or placed under the authority of the agency responsible for children's services in his/her country of origin. If there is a possibility of realizing either option, the government will attempt to do so. If not, the minor is formally placed under the authority of the agency responsible for child services in the Canary Islands and cared for until she/he reaches 18 years of age.

¹⁷ Although asylum seekers are generally represented by CEAR lawyers, Bar Association lawyers have on occasion identified asylum seekers either during their detention hearing or in the detention centre and have later assisted them in their application.

¹⁸ Spain has never granted asylum to anyone on the basis of being a trafficking victim. The application filed by one woman detained in the Canary Islands was denied because she was from an EU member state, Bulgaria, and was therefore not eligible for asylum under Spanish law.

Expulsion or transfer

45. If an irregular adult arrival does not pursue a claim for asylum which is deemed admissible, she/he is subject to return.¹⁹ Spain has signed agreements with several countries that have agreed to accept their own nationals who are deported from Spain.²⁰ Spain has also signed an agreement with the government of Mauritania whereby it has agreed to accept not only its own nationals but those non-nationals who have left Mauritania for the Canary Islands.²¹ According to the police, approximately 60 per cent of all arrivals are now returned to either their country of origin or departure.²²

46. Prior to deporting a detainee, the Spanish authorities attempt to confirm the person's nationality, although there appear to be no written standards or procedures governing such nationality determinations. The police use interpreters, many from the same countries as the arrivals, who are present during the initial police interview and who make the nationality determination. There have been allegations of corruption in nationality determinations in the past and complaints by detainees that the interpreters are mistaken in their analysis.

47. Prior to the deportation of a group of detainees to a particular country, delegations of consular officials from the country concerned visit the detention centres and speak with the potential deportees. They will either confirm the nationality and agree to their return or will reject the Spanish government's request.

48. If it is determined that a person cannot be deported, the police will then initiate a procedure to transfer him/her to the Spanish mainland for release. Once a detainee is transferred to the mainland, she/he is eligible for temporary shelter for a period of several weeks. After that, no additional services are available. Many of those who cannot be returned to their home country or country of departure run the risk of becoming destitute and homeless in Spain.²³

¹⁹ Asylum seekers with applications admitted into the asylum process are released from detention and provided accommodation in centres for asylum seekers. Those who are in the Canary Islands have the right to travel and reside on the mainland pending final adjudication of their application.

²⁰ For a list of these agreements see Appendix D.

²¹ In theory, Mauritania agrees to accept non-nationals who have departed from Mauritania. In practice, this does not occur very often and Mauritania generally only receives back those persons who are intercepted and diverted back to Mauritania within its territorial waters. Non-nationals identified in these groups are then deported to Mali or Senegal, regardless of their nationalities.

²² In 2006, the Spain returned a total of 52,814 persons. In 2007, the number increased to 55,938 but decreased to 46,426 in 2008. The government attributed this decrease to a reduction in the number of illegal entries.

²³ See ACCEM, 'Estudio sobre la población Africana llegadas a costas Españolas: trayectoria en España', 2007.

Protection challenges

Access to asylum

49. As indicated in the previous chapter, there are a number of protection challenges associated with the mixed migration to the Canary Islands. First and foremost, the practice of intercepting and diverting boats to countries of departure such as Mauritania and Senegal, raises basic questions about Spain's legal responsibilities under international refugee and human rights law.

50. Neither UNHCR nor NGOs have access to people who are travelling in 'cayucos' or 'pateras' in international waters. Due to the lack of information available on what actually occurs when interceptions and diversions take place, it is unclear what, if any, mechanisms exist to ensure that any refugees on those boats have access to asylum procedures.

51. UNHCR has been effective in promoting access to asylum by ensuring that all arrivals receive written information on their rights and by encouraging access to detention centres by CEAR lawyers. Nevertheless, the number of asylum applications filed in the Canary Islands remains low. While this may be due to the fact that the great majority of new arrivals are not refugees, certain obstacles exist for those who may be in need of asylum.

52. The most important of those obstacles is a lack of information that is readily understandable by all detainees. While all new arrivals do receive a leaflet (available in Arabic, English, French, and Spanish) which describes the right to seek asylum and the asylum procedure, this information is not made available orally, by means of video or group presentations.

53. During interviews with 30 recent arrivals in the three detention centres, the evaluation team was struck by the limited extent to which people understood their rights. While all reported that they received the information leaflet, few actually understood what it meant. Those who could read and write were able to decipher the words but were unable to explain key concepts such as that of 'asylum'.

54. A second obstacle is the limited access that CEAR lawyers have to the detention centres. They visit when they are called by centre personnel or when they learn of groups of new arrivals. But they do not have a permanent presence or a set daily or weekly visiting time. Nor are they given access to common areas where detainees gather. Several of the lawyers interviewed said that centre staff are reluctant to grant such regular and open access, fearing that it would lead to an avalanche of asylum claims.

55. A third obstacle is the limited capacity of CEAR staff to identify and adequately prepare all potential asylum cases. Upon arrival at a detention centre, CEAR lawyers receive and review the names and nationalities of the detainees, and based on a risk assessment of the country of origin, select certain individuals with whom to speak. This selection process generally excludes all those detainees who come from 'low-risk' countries or who may have non-traditional claims for asylum.

56. For example, during a visit to the Fuerteventura Detention Centre, the evaluation team interviewed two Liberians who had been recognized as refugees in Guinea and who had a possible claim to asylum in Spain. These two men had not been interviewed by a CEAR lawyer because Liberia is not considered to be a high-risk country and because the men themselves did not understand their right to seek asylum and did not ask to speak with a lawyer.

57. A fourth obstacle to asylum pointed out by certain interlocutors is the attitude of the detainees themselves. Some have suggested that potential refugees may view the asylum process as an obstacle to gaining entry to the European Union. Many believe it is better to remain outside the procedure during the required 40 days of detention and to be transferred to the Spanish mainland where they will be released if there is no readmission agreement in place to facilitate their deportation.

58. Others mistakenly believe that if they apply for asylum in the Canary Islands, they will have to remain there until a final decision is taken on their case. As a result, those with family and friends on the mainland prefer to wait for their transfer before applying for asylum.

59. Despite the generally good conditions to be found in the detention centres, a final obstacle relates to use of telephones. Although there are public phones in each centre and detainees are allowed to call their lawyer, detainees must generally pay for their calls. If they have no money, they are unable to make them.

Nationality determination

60. In processing new arrivals for ultimate deportation, the police and their interpreters undertake an initial nationality determination, which is subsequently confirmed or denied by consular officials from countries of origin. There have been persistent allegations of faulty nationality determinations at both stages of this process.

61. The evaluation team spoke to several detainees who alleged that their nationalities were listed incorrectly on the return orders issued by the police. Several detainees in the Hoya Fria centre in Tenerife who identified themselves as nationals of Burkina Faso, Chad, Gambia, Ivory Coast, Mali, Niger and the Sudan showed the evaluators their return orders. Most of the orders listed Mauritania as the country of nationality with a few listing Senegal - both countries with whom Spain has signed readmission agreements.

62. The director of the centre acknowledged that mistakes can be made in the determination process, referring in this context to an earlier strike by interpreters which led to the use of less qualified individuals. However, other sources indicated that this is an ongoing problem rather than a one-time occurrence.

63. At least one detainee interviewed by the evaluation team reported that he had been sent to the wrong country (Senegal) rather than his own country (Ivory Coast) during a previous return. While Amnesty International has also identified a small number of people who may have been deported to the wrong country, UNHCR Spain has no evidence of such occurrences in the Canary Islands. Even so, the absence of legal assistance during the nationality determination process, coupled

with the fact that detainees have no real opportunity to challenge the outcome of that process, does create a risk that people will be deported and left destitute and stranded, far from their real home.

Unaccompanied minors

64. In the Spanish legal system, autonomous communities such as the Canary Islands are responsible for the physical custody and legal guardianship of unaccompanied minors. Generally, the community which has guardianship over a minor will determine the possibility of repatriating that person. When that is not possible, the community assumes responsibility for the accommodation, education and welfare of the minor. Spanish law does not provide any specific guidance for formal Best Interest Determinations.

65. There are no procedures in place to identify refugees or potential asylum seekers amongst the unaccompanied minors arriving in the Canary Islands. Neither do those minors receive any information regarding their right to seek asylum at any time after their arrival. Unless a minor is aware of the right to seek asylum and proactively requests to apply for it, there is no access to the procedure.

66. During their period of guardianship, all unaccompanied minors are considered to be legal residents. They are entitled to a temporary residence permit, valid for a year and renewable nine months after referral to child protection services, as long as family reunification has not been possible. Children in guardianship are also eligible to seek Spanish citizenship two years after their guardianship followed by one year of continuous legal residence.

67. In practice, however, these provisions are not always applied. According to reports received by the evaluation team, it is rare for unaccompanied minors to obtain a temporary residence permit and there have been no reports of unaccompanied minors being granted Spanish citizenship. Moreover, because the temporary residence permit expires when minors reach the age of 18, with renewal being dependent on proof of adequate financial means or a job offer, many become irregular migrants once they become adults.²⁴

²⁴ For a more detailed discussion regarding the procedures for obtaining residency, see Human Rights Watch, 'Unwelcome responsibilities: Spain's failure to protect the rights of unaccompanied migrant children in the Canary Islands, 2007.

UNHCR policy and activities

Protection policy

68. UNHCR's role in relation to mixed migration has been the subject of considerable discussion in recent years, most notably in the context of the Global Consultations and the Agenda for Protection, which identified "the protection of refugees within broader migration movements" as one of its six main goals.²⁵

69. More recently, UNHCR has developed a 10-Point Plan on Refugee Protection and Mixed Migration which provides a framework for action that can be adapted and applied to specific national or regional scenarios.²⁶ Staff from UNHCR Spain were present in a meeting chaired by the Assistant High Commissioner for Protection in Mauritania, where the plan was first conceived.

70. The strategy adopted by UNHCR Spain is fully consistent with the Agenda for Protection and the 10-Point Plan, and provides some useful examples of the way that plan can be operationalized, especially in relation to protection-sensitive entry systems, reception arrangements, mechanisms for profiling and referral, as well as differentiated processes and procedures.

Activities

71. UNHCR does not have an office in the Canaries. Instead, it monitors the situation from its office in Madrid and undertakes monitoring missions to the islands. While the Branch Office has not carried out any specific situational analysis, participatory assessment or AGDM analysis to guide its work in the Canary Islands, UNHCR staff regularly meet with detainees to assess their needs and listen to their concerns.

72. Many decisions affecting the situation of new arrivals in the Canary Islands are taken by the central government in Madrid. UNHCR has played an active role at this level, especially in advocating for improved asylum legislation, for readmission agreements which incorporate human rights guarantees and for new arrivals to be given written information in a variety of languages relating to the right to seek asylum.

²⁵ The following seven specific objectives were suggested in order to reach this overall goal: better identification of and proper response to the needs of asylum seekers and refugees, including access to protection within the broader context of migration movement; strengthened international efforts to combat smuggling and trafficking; better data collection and research on the nexus between asylum and migration; reduction of irregular or secondary movements; closer dialogue and cooperation between UNHCR and IOM; information campaigns to ensure potential migrants are aware of the prospects for legal migration and the dangers of human smuggling and trafficking; and return of persons found not to be in need of international protection.

²⁶ The ten key areas are: cooperation among key partners; data collection and analysis; protection-sensitive entry systems; reception arrangements; mechanisms for profiling and referral; differentiated processes and procedures; solutions for refugees; addressing secondary movements; return of non-refugees and alternative migration options; and, information strategy.

73. UNHCR Spain has also carried out a significant amount of advocacy at local level in the Canary Islands, focusing on issues such as reception arrangements and detention conditions. There is a general consensus that such efforts, combined with those of NGOs, have led to substantive improvements in the situation of the new arrivals. With respect to the issue of access to asylum,

74. As a result of advocacy by UNHCR Spain and NGOs, combined with a visit by the Assistant High Commissioner for Protection in 2006, local governmental authorities now give CEAR lawyers limited access to detention centres in the Canary Islands. Significantly, the number of asylum applications filed there increased from 85 in 2005 to 344 in 2006.²⁷

Monitoring

75. UNHCR's role in monitoring the situation in the Canary Islands has been relevant, effective and efficient, given the limited resources available to the Branch Office. Staff have visited the islands on 26 occasions since 2000. In order to ensure continuity, one person is assigned to cover the Canaries and generally participates in all missions to the islands. After each visit, UNHCR staff prepare detailed mission reports to document their activities and to make specific recommendations that can be shared with other stakeholders. In subsequent visits, UNHCR personnel attempt to determine if those recommendations have been implemented.

76. According to a variety of different interlocutors, UNHCR's monitoring missions to the Canary Islands have had a significant impact on the way that the local authorities address the mixed migration phenomenon. Those authorities have, for example, agreed to carry out age determination tests on new arrivals whom they believed to be adults, but whom NGOs considered to be minors. On another occasion, UNHCR staff noticed that asylum leaflets were not being provided to new arrivals in one of the detention centres. After returning to Madrid, UNHCR contacted the Office of Asylum and Refuge (OAR) which accompanied UNHCR on a later trip to the islands and successfully resolved the problem.

Asylum processing

77. UNHCR is involved in the 'admissibility determination' of asylum claims filed in the Canary Islands. Under Spanish law, the government is required to inform UNHCR of all applications for asylum filed in Spain within 24 hours of their receipt. UNHCR is then permitted to gather information on the status of the applications, be present at interviews and file reports with the Ministry of the Interior relating to the applications. Prior to the government's final decision on admissibility, UNHCR must file a reasoned opinion on all applications filed at the border or in-country for all those applications which the OAR deems to be inadmissible. For asylum applications filed at border points, UNHCR has the power of veto.

78. If OAR intends to deny the admissibility of an application and UNHCR disagrees, the applicant will be permitted to enter the territory and file a judicial appeal. However, for applications filed in-country UNHCR has no such veto power and OAR can override a UNHCR recommendation to admit an application into the

²⁷ CEAR, 'CEAR informe 2006: la situación de los refugiados en España,' cuadro 3.

asylum procedure. Once an application is admitted, UNHCR also involved in an advisory capacity in the Interministerial Commission on Asylum and Refugee (CIAR) which makes recommendations on all asylum applications to OAR, which takes the final decision in all cases.²⁸

79. In addition to its role in the asylum process, UNHCR Spain plays an important role in promoting the legal representation of asylum seekers in the Canaries. CEAR lawyers in the islands maintain regular contact with UNHCR so as to discuss individual cases and the information that is required to support their claim.

80. UNHCR staff in Spain have also responded to emergency situations by interviewing people who arrive in large numbers by boat, so as to ascertain whether any should have access to the asylum procedure. In 2005, for example, UNHCR staff travelled from Madrid to Tenerife to interview 227 African passengers who had arrived on board the 'Olomne', while in 2007, they interviewed a group of 159 people who arrived on the 'Taboi Stara.' By all accounts, these interviews proved to be an effective means of identifying people with protection needs.

Training and capacity-building

81. UNHCR Spain has made particular efforts to provide other stakeholders with training on the broad principles of refugee protection, the legal representation of asylum seekers and the specific needs of unaccompanied minors. Since 2000, for example, six different training events have been held for Bar Association lawyers and NGO staff in Fuerteventura, Gran Canaria, Lanzarote and Tenerife. Participants in these events commented on their high quality and expressed a desire to have more of them. Such proposals should be acted upon, given UNHCR Spain's continued concerns about the quality of legal representation in the Canary Islands.

82. In 2008, UNHCR Spain, in association with Save the Children, held a training event for over 100 lawyers, youth workers and police personnel, focusing on the legal and social protection of minors in the Canary Islands. The course will be repeated in 2009, a commendable initiative in view of the fact that minors do not receive information on asylum, either upon arrival in the islands or after being placed in the centres where they are housed.²⁹

²⁸ For more details on the asylum process and UNHCR's role in it, see Appendix D.

²⁹ Only 43 applications for asylum have been filed by minors in Spain since 2004.

Organizational capacity

The Madrid office

83. UNHCR Spain has a staff of 13: the Representative, who is an international staff member, and 12 national staff.³⁰ These include six protection officers. The Spanish government provides funds to cover the salaries of five protection officers and one administrative clerk, thereby enabling the Branch Office to discharge its role in the Spanish asylum system.

84. Some of the stakeholders interviewed by the evaluation team expressed a concern that these staffing arrangements may limit UNHCR's ability to advocate assertively and effectively with the authorities on sensitive issues. While the team found no evidence to support this claim, the deployment of a single international staff member may have broader implications for the standing and credibility of UNHCR in Spain and its ability to engage with the authorities at the highest levels.

85. The UNHCR office in Madrid makes effective and efficient use of its human resources, with priority given to its participation in the Spanish asylum process. By designating one focal point for mixed migration and another for unaccompanied minors, the Office has also tried to equip itself to address the situation in the Canaries. While the number of refugees and asylum seekers arriving in the islands does not warrant a full-time UNHCR presence there, an increased capacity in the Madrid office would enable UNHCR to monitor the situation more closely and to visit the Canaries more regularly.

Staff training and support

86. While they have received little formal training on the matter, UNHCR staff in Spain are generally knowledgeable on the issue of mixed migration and have a good grasp of UNHCR policy in this area. Unfortunately, opportunities for further training on this issue are very limited in Spain, while budget and time constraints prevent staff from attending relevant courses that are available in other locations. No UNHCR staff members in Madrid who are working on mixed migration have participated in the organization's 'Thematic Protection Learning Programme' on Protection Strategies in the Context of Broader Migration Movements.³¹

87. The UNHCR office in Madrid participates in the annual EU focal point meetings organized by UNHCR Brussels, one day of which is devoted to new EU policy and legislation relating to asylum and migration. The meetings have been of particular value to the Madrid office as a means of sharing experiences and effective practices, as has the electronic mailing list maintained by UNHCR Brussels, which is used to provide relevant and regular information with all EU focal points.

³⁰ In 2005, there were three international staff: the Representative, a Senior Legal Protection Officer and a Legal Protection Officer. The Senior Legal Protection Officer position was eliminated in 2005. The Legal Protection Officer post will be eliminated in 2009, leaving only one international staff member, the Representative.

³¹ The programme is currently not being offered to any staff members as the UNHCR Protection Capacity Section at Headquarters is being restructured.

Headquarters and the field

88. UNHCR Spain benefits from the presence of a mixed migration focal point in the Protection Division at Headquarters,³² and who is currently administering an extensive EU-funded project on this issue.³³ The focal point has provided support to UNHCR Spain on a number of questions, including rescue-at-sea, readmission agreements and the activities of FRONTEX. In addition, the focal point has worked closely with the office in Madrid to respond to important incidents, such as the 2007 case of the 'Marine I', a boat which was carrying some 370 people from West Africa and which was refused entry to the Canary Islands.³⁴

89. Following a period of intense cooperation in 2006 and 2007, contact between the focal point and UNHCR Spain has in recent years decreased as the number of new arrivals in the Canary Islands has diminished and the Branch Office has been able to develop its own capacity in relation to the issue of mixed migration.

90. With the exception of specific instances of major boat arrivals, such as the 'Marine I', there has been limited concrete cooperation among the Regional Bureaux for Africa, Europe, and MENA in relation to the situation in the Canary Islands. While a Migration Working Group has been established at Headquarters with the intention of facilitating such cooperation, it is used almost exclusively as an information-sharing mechanism.

91. The Regional Bureau for Europe and UNHCR Spain both spoke highly of their cooperation and coordination in relation to the Canaries. At the time of the evaluation, however, no Bureau staff member had visited the islands.

Brussels

92. An effective working relationship has been established between the UNHCR offices in Madrid and Brussels, and it is hoped that this relationship will be

³² The focal point is responsible for a variety of issues related to mixed migration, including follow-up to the 10-Point Plan, trafficking and rescue at sea, as well as responding to specific queries and requests from the field.

³³ 'Fostering best practices in the international protection of asylum-seekers, refugees and stateless persons: UNHCR's Ten-Point Plan in Central America, Western Africa, Eastern Africa and Southern Asia'.

³⁴ In January 2007, the Spanish rescue service detected a boat with engine trouble in Senegalese waters. The boat, 'Marine I', was sailing under a Guinean flag and carried 369 passengers who appeared to be on their way to the Canary Islands. The passengers were subsequently disembarked in Mauritania. Most of the passengers were processed for voluntary return by IOM. Others were repatriated quickly to Guinea Conakry despite UNHCR advice to the contrary. Based on protection concerns raised by UNHCR, 35 passengers were transported to Las Palmas in the Canaries to determine their admissibility into the asylum process. A small group refused to be repatriated, claiming to be refugees. UNHCR consultants undertook a one-day screening of this group of 23 people in Mauritania, found that they were not persons of concern to UNHCR and communicated this assessment to the Spanish government. Many were critical of UNHCR's position, arguing that the assessment fell short of procedural standards and guarantees. CEAR filed a lawsuit in Spain alleging violations of due process. UNHCR ultimately undertook a review of the initial decision and found that ten cases should be subject to further examination.

reinforced once the Regional Bureau for Europe's planned move to the Belgian capital takes place. Staff in both locations expressed their satisfaction with the amount and type of information that they receive from each other, and which facilitates their respective advocacy efforts.

Branch office coordination

93. While there has not been significant cross-bureau cooperation on mixed migration to the Canary Islands, UNHCR Spain has been able to develop bilateral relations with UNHCR offices in North and West Africa. Moreover, UNHCR Spain, Morocco and Mauritania all participate in the '5+5 Dialogue' which brings together Southern European Union countries (France, Italy, Malta, Portugal and Spain) and Maghreb Union countries (Algeria, Libya, Mauritania, Morocco and Tunisia) to address the issue of mixed migration.

94. The relationship of UNHCR Morocco with the office in Madrid is focused on the task of arranging family reunification in Spain for minors whose parents have been granted refugee status in Morocco. UNHCR Morocco has very little access to the locations from which most people depart by boat to the Canary Islands. The Moroccan authorities are also reluctant for UNHCR to become more involved in the mixed migration off its coast, fearing that this might convert what it views as a 'migration' problem into a 'refugee' situation.

95. The Madrid office has also established regular communication with UNHCR Senegal, although to a lesser extent than with UNHCR Morocco. The main purpose of such communication is to keep the Dakar office apprised of boat arrivals in the Canary Islands, to inform the Madrid office of any large-scale departures from Senegal and to discuss individual cases that involve protection concerns.

96. UNHCR Spain and Mauritania maintain little contact regarding the mixed migration situation in the Canary Islands. However, the Madrid and Nouakchott offices did liaise closely during the resolution of the 'Marine I' case, when UNHCR's efforts were focused on the need to ensure that passengers with protection needs had access to asylum.

97. While information is regularly shared between UNHCR offices in the Mediterranean and Atlantic coast regions, other types of activity, such as study visits and lessons-learned workshops have not taken place to any significant extent, not least for financial reasons.

98. There were plans to enhance cooperation on the issue of reception capacity between UNHCR Spain and Italy as part of a joint mixed migration initiative established by UNHCR, IOM and the Italian authorities. However, a study trip to the Canaries envisaged in the context of this initiative did not take place, to the regret of UNHCR staff in Madrid and Rome, who feel that this exercise would have been a useful way to share experiences and effective practices.

Cooperation

Government

99. A key component of the 10-Point Plan is that of cooperation among key partners, including governmental and non-governmental agencies, international organizations and civil society institutions. The Canary Islands provides a valuable example of the benefits that are to be gained from this approach.

100. UNHCR Spain has developed a close and open relationship with both the central government in Madrid as well as the local authorities in the Canary Islands. The central government often seeks UNHCR's input and counsel on issues relating to refugee protection in Spain generally and in the Canary Islands specifically. It has worked closely with UNHCR Spain to make sure that arrivals receive written information regarding their rights upon arrival in the detention centres.

101. As a result of their many missions to the Canary Islands, UNHCR personnel have also been able to establish solid working relations with local authorities in most of the islands and with officials from the autonomous community government. All of the local government officials consulted during the evaluation were complementary with respect to UNHCR's work and encouraged the organization to visit on a more regular basis.

102. To a lesser degree, UNHCR has developed a working relationship with the local police in charge of the detention centres as well as with those police who are responsible for formalizing any asylum applications made by new arrivals. This is due in part to a general wariness on the part of the police towards the issues of asylum and refugee protection, and to the fact that high staff turnover acts as an obstacle to the establishment of long-term relations.

NGOs

103. UNHCR Spain has also developed close and effective relationships with the NGO community on the Spanish mainland and in the Canary Islands. In recent years, the Madrid office has been host to regular NGO protection meetings, with discussions focusing on mixed migrations to the Canary Islands, the enclaves of Ceuta and Melilla, as well as other points of entry. However, with the elimination of the Senior Protection Officer post in late 2005, less staff time has been available to organize these meetings and to ensure that follow-up action is taken.

104. At local level, UNHCR has developed a particularly close working relationship with the different CEAR offices in the Canaries. UNHCR staff meet with CEAR personnel during all of their missions to the islands and are in regular contact with CEAR in order to share information and resolve specific problems.

105. Although UNHCR Spain is in contact with the Spanish Red Cross in the islands, it has not developed as close a working relationship with them as the Red Cross would like. This may be due to the fact that the Red Cross focuses on the provision of humanitarian assistance to boat arrivals, while UNHCR is focused

primarily on the identification of refugees and access to asylum. According to Spanish Red Cross staff, a closer relationship with UNHCR would enable them to facilitate access to detention centres, provide information to detainees and help detainees to contact their family and friends.

Bar Association

106. As discussed elsewhere in this report, there have been persistent concerns regarding the quality of representation provided by Bar Association lawyers to new arrivals in the Canary Islands. While welcoming the training that UNHCR Spain has already provided, representatives of the Bar Association of Las Palmas commented on the need for these efforts to be expanded and for their lawyers to have great contact with UNHCR personnel who visit the islands.

107. Another proposal made by the Bar Association was a proposed agreement with local government ensuring the provision of legal assistance to unaccompanied minors in the different centres and locations where they are accommodated. The Association requested the support of UNHCR in establishing such an agreement and in processing residency applications for unaccompanied minors.

FRONTEX

108. UNHCR Spain has requested on several occasions to meet with FRONTEX personnel in the Canaries during visits to the islands. The requests have been denied, however, giving the impression that FRONTEX wishes to keep UNHCR at arms length. The FRONTEX position appears to be that it sees no real need to develop a working relationship with UNHCR as its role is limited to gathering information for border security purposes. Any queries or comments on the part of UNHCR, according to Frontex, should be directed to its Headquarters in Warsaw.

IOM

109. Somewhat surprisingly, the evaluation team found little evidence of cooperation between UNHCR and IOM in relation to the mixed migration situation in the Canary Islands. While IOM maintains an office in Spain it focuses primarily on issues such as labour migration and assisted returns from the mainland, which are not so high on the UNHCR agenda.

Conclusion

110. In comparison with other mixed migration situations, such as those in the Gulf of Aden, Andaman Sea and southern Mediterranean, the situation in the Canary Islands appears to be considerably less dramatic.

111. First, the number of people involved in irregular maritime migration around the west coast of Africa has diminished considerably since they peaked in 2006-7. Second, reception arrangements have improved considerably, both in relation to conditions in the detention centres and in terms of access to legal advice and the Spanish asylum procedure. Third, while recent months have witnessed a series of tragedies in those other locations, involving the drowning of hundreds of passengers and serious violations of their human rights, relatively few such incidents have been reported from the Canaries.

112. Even so, the situation continues to be of concern. As noted earlier in this report, the most conservative estimate suggests that almost 400 people died or disappeared while trying to reach the islands in 2008. In February this year, helicopters and rescue vessels were obliged to scour the waters off Lanzarote, looking for the bodies of up to 28 people, all of them thought to be Moroccan migrants. At the same time, it is evident that the reduction in boat arrivals and the consequent ability of the Spanish authorities and other actors to cope with the most recent arrivals is due primarily to increased surveillance, interception and diversion.

113. UNHCR's approach to this situation has been carefully crafted. On one hand, the organization has taken the position that Spain and other sovereign states of the EU have a right to control their borders, prevent irregular migration and counter the activities of human smugglers and traffickers, while at the same time calling for protection-sensitive border controls that enable people who are in need of protection to seek asylum. On the other hand, UNHCR has engaged very directly with the situation in the Canary Islands, contributing to the amelioration of conditions for new boat arrivals while avoiding the accusation that it is 'fishing' for refugees where none are to be found.

114. The 10-Point Plan of Action has contributed significantly to this task. It has clarified UNHCR's entry point to the issue of mixed migration in Spain, underlining the fact that refugee protection is the driver of UNHCR's concern. It has provided a common frame of reference for UNHCR staff in Madrid and for the other stakeholders involved in this scenario. And it has identified the key areas in which action is required to uphold the rights of refugees while ensuring that broader humanitarian concerns are addressed.

115. The 10-Point Plan was not, of course, designed to resolve the fundamental problem associated with the situation in the Canary Islands: the determination of some people to move from Africa to Spain and other EU states, and the very limited opportunities for them to do so in a safe and legal manner.

116. Finding a solution to this situation will not prove easy, especially in view of the hitherto unknown impact of the global financial and economic crisis on patterns of

human mobility. Amongst many European policymakers, it has become an article of faith that the problem of irregular migration can be addressed by means of strengthened border controls and anti-smuggling operations, combined with development initiatives in countries of origin and the limited provision of regular migration opportunities to foreign workers.

While such efforts may indeed affect the number and profile of people who are on the move, as well as the routes and means of transport which they take, it seems inevitable that a small number of people will both choose and pay significant amounts of money to set out on flimsy and overcrowded boats of the type that have been making their way from the west coast of Africa to the Canary islands.

Annex A

Terms of Reference

Review of Mixed Migration in the Canary Islands, Spain

Introduction

As a follow-up to the High Commissioner's Dialogue on Protection Challenges in December 2007, UNHCR's Policy Development and Evaluation Service (PDES) will undertake a review of UNHCR's operational involvement in mixed migration flows the Canary Islands in Spain.

Patterns of mixed migration flows arriving at Spanish points of entry have varied over the years. The greatest number of arrivals during the past several years has occurred in the Canary Islands with lower numbers arriving in Ceuta and Melilla and the Southern coast of the Spanish peninsula itself. Increased land and sea enforcement efforts in North Africa and the Mediterranean have resulted in a generally progressive decrease of the number of arrivals in the Canary Islands and other Spanish destinations during the past several years. For example, according to Spanish authorities, over 12,000 persons arrived in the Canary Islands as part of mixed flows during 2007. This number represents a 60.6% reduction from the previous year, when the numbers reached almost 32,000.

The number of applicants who apply for asylum arriving in these mixed flows generally remains low.³⁵ In 2006, 366 persons applied for asylum in the Canary Islands. That number, however, increased to 655 applicants in 2007. In Ceuta and Melilla, 612 persons applied for asylum and a similar number applied in 2007. Over the years, human rights groups and others have expressed concern that refugees are not being adequately identified among the large number of persons arriving in an irregular manner on the coasts of Spain. This concern is motivated, in part, by the fact that many come from countries with dismal human rights records, some of which continue to suffer ongoing consequences of many years of conflict.

Purpose

The overall purpose of the review will be to assess the extent to which the role and activities of UNHCR Spain have enabled the Office to exercise its mandate for refugee protection and solutions and contributed to the task of managing mixed movements in a humane and rights-based manner. The evaluation will address the following key question: What operational role has UNHCR Spain undertaken in responding to mixed migration in the Canary Islands and how relevant and effective has this engagement been?

Questions that will be addressed in the review

Introduction to the mixed migration situation in the Canary Islands

- What are the statistics for the number of arrivals broken down by nationality, gender and age in the Canary Islands from 2004 until present? How many of these arrivals have applied for asylum and with what result?
- What are the relevant laws, regulations and procedures which apply to the reception of those persons arriving in mixed flows and to the resolution of their situations?

³⁵ The total number of applicants for asylum in Spain in 2006 was 5,297. That number increased to 7,662 in 2007. In 2007, 3,454 of the total number of applications were admitted into the refugee status determination process. Of that number, 204 were recognized as refugees under the Geneva Convention; 333 were granted complementary protection; and seven were granted humanitarian status. The recognition rate for asylum in Spain in 2007 under the Geneva Convention was 2.6%. The grant rate under complementary protection was 4.3%.

- What readmission agreements have been signed by the Spanish government and other countries and how are they implemented?

Policy and strategy

- What is UNHCR's historical involvement in the mixed migration situation in the Canary Islands?
- What triggered UNHCR's involvement and was this based on a situational analysis?
- Were UNHCR's overall goals, strategy and priority objectives clearly defined in relation to the mixed migration situation in the Canary Islands?
- Were they appropriate and relevant to the situation in the Canary Islands?
- Did they form part of a coherent regional/situational approach?
- Were they in line with global policy guidance on mixed migration, including the Agenda for Protection, UNHCR's Global Strategic Objectives and the 10 Point Plan of Action?
- Did they appropriately take into account the roles and responsibilities of other actors?
- Did they appropriately take into account the roles and responsibilities of other actors?
- Were they in line with UNHCR's particular capacity and expertise?
- Has UNHCR's involvement in the mixed migration situation the Canary Islands changed over time?

Implementation

- What activities were undertaken in the Canary Islands to identify refugees and provide international protection and how were these activities decided upon (either directly by UNHCR or through implementing partners)?
- What specific activities were undertaken to meet the needs of vulnerable groups such as trafficking victims, unaccompanied minors or persons who became victims of torture, trauma or violence during the journey?
- Were the activities in line with UNHCR's overall strategy and relevant and appropriate to the objectives identified?
- How effective were they in meeting these objectives?
- Were there additional activities in which UNHCR could / should have engaged? What gaps are there in UNHCR's activities in relation to responding to mixed migration in the Canary Islands?

Cooperation with external partners

- To what extent was UNHCR's strategy developed as part of a broader inter-agency assessment and planning process?
- Were effective partnerships established with national and local government authorities?
- Were effective partnerships established with NGOs working on the situation in the Canary Islands?
- Were effective partnerships established with the European Union and Frontex on the situation in the Canary Islands?
- What kind of cooperation exists with partners in the sending countries?
- What kind of cooperation exists with relevant stakeholders in countries to which irregular migrants and rejected asylum-seekers are returned, for example, with Mauritania and Senegal?
- Do external partners see UNHCR's work in the Canary Islands in the mixed migration situation as an added value?
- Is there potential for greater collaboration on mixed migration in the Canary Islands?

Resources

- What financial and human resources has UNHCR allocated to address mixed migration in the Canary Islands?

- Were UNHCR's activities sufficiently resourced in the Canary Islands (in terms of staffing, funding, etc.)?
- Were UNHCR's activities sufficiently resourced (in terms of staffing, funding)?
- Does the agency and its staff have sufficient and appropriate expertise for the activities undertaken?
- Are the resources devoted to the operation commensurate with the outcome achieved? Is UNHCR involvement important in the mixed migration situation in the Canary Islands as seen from a cost benefit perspective? Could UNHCR use its resources better by focusing on other operations?

Internal cooperation UNHCR

- What kind of cooperation exists among the Regional Bureaus in UNHCR headquarters (Europe bureau and Africa Bureau)?
- Is there cooperation between UNHCR field offices operating in the sending countries and UNHCR offices operating in the receiving countries? What kind of cooperation exists on the mixed migration situation in the Canary Islands among UNHCR Spain and UNHCR Senegal and Mauritania?
- Is there potential for more collaboration?

Training and support

- Have staff in UNHCR Spain and implementing partners received appropriate training and/or headquarters support?

Capacity-building

- Have UNHCR's activities contributed to strengthen national capacity in Spain to address mixed migration? To what extent were issues relating to age, gender and diversity addressed in any trainings?
- Did UNHCR have the appropriate tools and expertise for this task?
- Have UNHCR's activities succeeded in sensitizing key stakeholders in the Canary Islands to refugee issues and facilitating the admission of persons in need of international protection into the refugee status determination process in Spain?
- Is there a disengagement strategy for UNHCR in the mixed migration situation in the Canary Islands? To what extent is the intervention sustainable?

10-Point Plan of Action

- How is the 10-point Plan of Action being operationalized by UNHCR in the Canary Islands? Has the 10-Point Plan of Action proven to be a relevant and useful tool? Are there issues not addressed in the 10-Point Plan which would be relevant to the situation in the Canary Islands?

Good practices

- Have the implemented activities draw on experience elsewhere either from other UNHCR office's experiences with mixed migration or from external partners?
- Are there examples of good practices by UNHCR or other organizations in the Canary Islands which could be replicated or adopted in other mixed migration situations?

Outputs

The primary output of the project will be an evaluation report with findings and recommendations. The review will also provide examples of effective practices that can be replicated or adopted in other operations relevant to UNHCR's 10-Point Plan of Action on refugee protection and mixed

migration. The evaluation report will be part of a series of reviews of UNHCR's operational involvement in a number of mixed migration situations.

Evaluation team

The review will be carried out by PDES staff member Maria Riiskjaer and an independent consultant, Anna Marie Gallagher, a refugee and migration attorney with many years experience working on these issues.

Methodology

The review will be based on a triangulation of methods including a desk review of relevant documents, interviews with key stakeholders and missions to Madrid and to the Canary Islands. The UNHCR documents that will be reviewed are the APR, COP, the AGDM Accountability Framework and other relevant material from UNHCR on the situation of mixed migration in Spain with a particular focus on the Canary Islands. Documents and reports from external partners such as NGOs, the Spanish government and the European Union will be reviewed. Interviews will also be carried out with relevant UNHCR staff in HQ and with UNHCR staff in Spain. Additionally, staff from relevant NGOs will be interviewed. Lastly, the evaluation team will go on mission to the Madrid and the Canary Islands to carry out the relevant interviews and to observe the situation on the ground.

Timeline

The review will begin in December 2008 and will be completed by the 15th of March 2009. The first two weeks of January will be used to carry out a desk review of available documents on the situation in the Canary Islands. During the third week, meetings with UNHCR HQ staff and other relevant stakeholders in Geneva will be carried out. A mission to Madrid and the Canary Islands will be undertaken during the third week of February. The report will be written up during the last two weeks of February with delivery of the draft to PDES at the latest on Friday the 13th of March, 2009. Staff from PDES, the UNHCR Europe Bureau and UNHCR Spain will comment on the report by March 20, 2009. The evaluation team will then finalize the report by March 24, 2009.

Norms

The review will be undertaken in accordance with UNHCR's evaluation policy, as well as the UN Evaluation Group's Norms and Standards for Evaluation in the UN Systems, as well as the UNEG Code of Conduct.

PDES

December 21, 2008

Annex B

List of persons interviewed

UNHCR Geneva

- Soufiane Adjali, Investigation Officer, IGO (former UNHCR Frontex Liaison)
- Jean Paul Cavalieri, Head of Unit , RSD Section
- Kamel Deriche, Senior Desk Officer, MENA Bureau
- Erika Feller, Assistant High Commissioner for Protection
- Betsy Greve, Head of Sub-Office Sudan (Previous Head of Unit, Africa Bureau)
- Anja Klug, Senior Legal Officer, PPLAS
- Angela Li Rosi, Head of Policy Unit, Europe Bureau
- Elisabeth Pelster , Senior Desk Officer, Europe Bureau
- Geraldine Salducci, Consultant, Africa Bureau
- William Spindler Senior Public Information Officer
- Andres Wissner, Senior Legal Officer, Europe Bureau

UNHCR Spain

- Juan Carlos Arnaiz, Assistant Protection Officer
- Agni Castro-Pita, Former Representative
- Maricela Daniel, Representative
- Marta Garcia, Protection Officer
- Francisco Ortiz, Assistant Protection Officer
- Margarita de la Rasilla del Moral, Assistant Protection Officer
- Pablo Zapata, Protection Officer

Other UNHCR Offices

- Paolo Artini, Senior Regional Protection Officer, UNHCR Italy
- Roseline Idowu , Regional Representative, UNHCR Senegal
- Judith Kumin, Director, UNHCR European Union Liaison Office, Brussels, Belgium
- Edward O'Dwyer, Protection Officer, UNHCR Mauritania
- Johannes van der Klaauw, Head of Operations, UNHCR Morocco
- Eduardo Yrezabal, Senior Protection Officer, UNHCR Turkey

International Catholic Migration Commission, Geneva

- John Bingham, Head of Advocacy
- Alanna Ryan, Policy Associate

International Organisation for Migration, Geneva

- Frank Laczko, Head, Research and Publications
- Michele Klein Solomon, Director, Migration Policy, Research and Communication
- Redouane Saadi, Regional Advisor for North Africa, Middle East, and the Gulf States
- Meera Sethi, Senior Regional Adviser for Sub-Saharan Africa

International Federation of Red Cross, Geneva

- Thomas Linde, Special Representative of the Secretary General on Migration
- Houssam Muallem, Senior Programme Officer on Migration
- Marco Toscanorivalta , Senior Policy and Advocacy Officer

European Council on Refugees and Exiles, Brussels

- María Duro Mansilla, Research Officer

Human Rights Watch, Geneva

- Simone Troller, Researcher, Children's Rights Division

International Organisation for Migration, Spain

- Teresa Botella, Advisor
- Manuel Pombo, IOM Representative in Spain

Save the Children Madrid, Spain

- Fabia Bello, Specialist, Department of Promotion and Protection for the Rights of the Child

Amnesty International, Madrid, Spain

- Ines Diez de Frutos, Member of the Refugee Team
- Angela Iranzo Dosdad, Institutional Relations and Home Affairs

Karibu, Madrid, Spain

- Father Antonio Diaz de Freijo Lopez, Director

ACCEM Madrid, Spain

- Reyes Castillo Fernandez, Director, International Division

Red Cross Madrid, Spain

- Almudena Echevarria, Specialist, Immigrant and Refugee Services
- Maruxa de la Roche, Coordinator, Immigrant and Refugee Services
- Mila Nunez Sachetich, Specialist, Immigrant and Refugee Services
- Javier Sanchez, Specialist, Immigrant and Refugee Services

Red Cross Gran Canaria, Spain

- Raquel Mateo Acosta, Provincial Director, Social Intervention Plan
- Josefina Martin Martin, Manager, Provincial Employment Program

Red Cross Fuerteventura, Spain

- Maria Lareo, Attorney
- Teresa Lopez, Contact for Activities
- Gerardo Mesa Noda, Director
- Leticia Quintana, Social Worker
- Abenuara Hernandez Toledo, Social Worker
- Pedro Sanchez, Social Worker

CEAR Madrid, Spain

- Estela García Cano, Coordinator, Legal Services
- Marta Arroyo Contreras, Programme Coordinator
- Mauricio Valiente Ots, Advocacy Coordinator

CEAR Gran Canaria, Spain

- Beatriz Alfonso Camacho, Attorney
- Kimi Aoki, Coordinator, Legal Services
- Juan Carlos Lorenzo, Coordinator

CEAR Fuerteventura, Spain

- Leonor Pulido Santana, Attorney

CEAR Tenerife, Spain

- Rocio Cuellar Moreno, Attorney

Canary Islands Regional Coordination Center

- Juan Francisco Gabella Marota, Coordinator for Immigration

FRONTEX Gran Canaria

- Pedro Herrera Gómez, Director, FRONTEX

Bar Association Gran Canaria

- Javier Monzon Garcia, Attorney
- Carolina Gonzáles Gonzáles, Manager

Office of the Ombudsman, Madrid, Spain

- Yolanda Cancil Galan, Advisor, Immigration and Foreign Affairs
- Bartolomé José Martínez, Advisor, Immigration and Foreign Affairs

Ministry of Interior, Madrid, Spain

- Adolfo Hernandez Lafuente, Director General of Interior Affairs

Office of Asylum and Refuge, Madrid, Spain

- Julian Prieto Hergueta, Subdirector General

Provincial Government, Gran Canaria, Spain

- Juan Carlos Martín Artiles, Secretary General, Provincial Government
- Vicente Oliva Morales, Provincial Representative

Provincial Government, Fuerteventura, Spain

- Benito Garcia Portela, Secretary General

Provincial Government Tenerife, Spain

- Jose Antonio Batista, Provincial Representative

Office of Social Welfare and Immigration, Government of the Canary Islands

- Natividad Cano Perez, Assistant Advisor, Tenerife, Spain

Child and Family Protection Directorate, Government of the Canary Islands

- Carmen Steiner, General Director, Tenerife, Spain

Special Center for Unaccompanied Minors, Tegueste, Tenerife, Spain

- Jose Manuel Barreiro, Director
- Andrea del Pino Ramos, Social Worker
- Ruth Tamara Perdomo, Psychologist

El Matorral Internment Center, Fuerteventura

- José Luis Pula, Director

- Jesús Redondo, Police Chief

Hoya Fria Internment Center, Tenerife

- Manuel Jiménez Jiménez, Director

Barranco Seco Internment Center, Gran Canaria

- Manuel Miguel Marco, Director

Beneficiaries

- 14 women in the Barranco Seco Internment Center (Gran Canaria), El Matorral Internment Center (Fuerteventura) and the Hoya Fria Internment Center (Tenerife)
- 16 men in the Barranco Seco Internment Center (Gran Canaria) El Matorral Internment Center (Fuerteventura) and the Hoya Fria Internment Center (Tenerife)
- 4 unaccompanied boys, Special Center for Unaccompanied Minors, Tegueste, Tenerife

Annex C

General legal framework governing asylum and list of relevant laws and readmission agreements

National legal framework

1. Spain is a party to the all relevant international and regional human rights conventions as well as to those relating to international refugee protection and rescue at sea. Spain is a member of the European Union and since the entry into force of the Treaty of Amsterdam in 1999, is bound by the decisions of the European Union regarding the harmonization of asylum and immigration issues. The government is currently in the process of transposing EU legislation with respect to both the Qualification Directive and the Asylum Procedures Directive, as well as finalizing transposition of the Reception Conditions Directive.³⁶
2. The Spanish government takes the position that Spanish laws relating to asylum and immigration have no effect beyond the 12 nautical mile limit off Spain's shores. Spain has imposed a number of measures which may act to impede the entrance of refugees to its territory. For example, individuals from 134 countries, including all 53 African countries, are required to obtain a visa to enter Spain. This is the only continent where all inhabitants are required to obtain a visa in order to travel to any country in the European Union.³⁷
3. Spanish law provides for the granting of refugee status in accordance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Under Spanish law, an application for asylum can be lodged at a Spanish Embassy abroad, at a border point of entry to Spain or inside the territory depending upon the particular circumstances of an applicant. Asylum applications filed in the Canary Islands by persons who arrive in 'cayucos' or 'pateras' are considered to be in-country applications.
4. Asylum is a two-step process in Spain involving an admissibility phase and the status determination procedure. During the admissibility phase, the criteria used to determine the admissibility of the claim are of both a procedural as well as a substantive nature. Admission into the asylum process can be denied for the following reasons: the claim does not fall under the 1951 Convention; the application is a repeat of one already filed and rejected by the authorities; the application is based on facts, data or allegations which are manifestly unfounded, incredible or outdated; the

³⁶ The Qualification Directive contains criteria for qualifying for either refugee or subsidiary protection status and sets out what rights are attached to each status. The Asylum Procedures Directive establishes procedures and standards for asylum applications. Standards include the right to have a personal interview, access to interpreters and the right to legal assistance. The Reception Conditions Directive includes minimum standards for the reception of asylum seekers, including health, housing and education.

³⁷ See, CEAR Euskadi, Rights under threat – Campaign against the refusal of refugees' access to protection in Europe (2008).

responsibility for the examination of asylum lies with another state under the Dublin Convention; the applicant is recognized as a refugee or is authorized to reside or be granted asylum in another country; and, the applicant comes from a third country in which protection could have been sought, where there is no risk to his/her life or freedom, and where there is protection from refoulement.

5. Under Spanish law, the government is required to inform UNHCR of all applications for asylum filed in Spain within 24 hours of receipt. UNHCR is permitted to gather information on the status of the applications, be present at interviews and file reports with the Ministry of the Interior relating to the application. Prior to the government's decision on the admissibility of an application, UNHCR must file a reasoned opinion on all applications filed at the border or in-country for all those applications which the Office of Asylum and Refuge (OAR) deems to be inadmissible. For applications filed at the border, UNHCR is also required to issue a reasoned opinion following administrative review of applications not admitted into the asylum procedure. For applications filed at the border, UNHCR has veto power. Thus, if OAR intends to deny admission of an application filed at the border and the UNHCR disagrees, the applicant will be permitted to enter the territory and file a judicial appeal from the OAR's denial of admissibility. However, this veto power does not apply to decisions taken by the OAR for applications filed in territory, such as those filed in the Canary Islands. UNHCR plays only an advisory role in those decisions.
6. If a claim is found to be admissible, the application is then admitted into the refugee status determination process for full consideration of the claim. The full evaluation of the claim is carried out by OAR. If it so chooses, it can interview the applicant or request that the local immigration office or police department in the province where the applicant resides do so. The applicant, UNHCR or the relevant NGO can also request that a second interview be conducted. Once the interview and file review have been completed, it is submitted to the Inter-Ministerial Commission for Asylum and Refugee (CIAR), composed of representatives of different government ministries. UNHCR attends the monthly meetings of CIAR in an advisory capacity. CIAR will review the files and forward its recommendations to the OAR within the Ministry of Interior for a final decision. Generally, the Minister follows the recommendation of CIAR. Where a request for asylum is denied, an applicant can file an administrative or a judicial appeal.
7. Spanish law provides foreign nationals without sufficient resources the right to free assistance of an attorney and an interpreter in any administrative or judicial process, be it return, expulsion or asylum.³⁸ Additionally, all foreign nationals are required to receive information

³⁸ Organic Law 4/2000 (amended by LO 8/2000), articles 22.1, 63.2; Asylum Law, art. 4.1; Asylum Regulations, articles 8.4, 19.2.

about their rights and the administrative and judicial decisions concerning them in a language that they understand.³⁹

8. In Spain, legal assistance to foreign nationals, including asylum-seekers, is provided by either a specialized NGO or by attorneys from the local Bar Associations. Attorneys from the Bar Associations are funded by the Ministry of Justice, which delegates the management of these funds to the Autonomous Communities. Bar Association attorneys receive payment from their respective autonomous communities for providing legal assistance to asylum-seekers. Most asylum-seekers have formal legal representation during the admissibility phase of the procedure. However, according to UNHCR Spain, less than 5% of those admitted into the process have legal assistance during the regular RSD processing.⁴⁰
9. In general, asylum-seekers in Spain enjoy freedom of movement under the same terms as any person who is legally staying on Spanish territory. However, there are two exceptions to this rule. Irregular arrivals and those who arrive at an international airport are detained pending a decision on the initial admissibility of their cases into the regular RSD procedure. In the context of the Canary Islands, all irregular arrivals by sea are placed in what are called internment centers after a judicial decision is taken by a local judge to do so.
10. Internment centers are run by the National Police. Under Spanish law, an arrival can only be detained for a maximum of 40 day after which time he or she must be released. These centers only hold administrative detainees and are not considered under the law to be penitentiaries. If an arrival applies for asylum, he/she will remain detained until a decision is reached on the admissibility to the RSD procedure or if the 40 day time period expires, whichever occurs first. If the application for asylum is declared admissible, the person will be immediately released, and provided with accommodation and support until the claim is finally decided.
11. If the person does not apply for asylum and instead is issued a final return order of expulsion, he does have the right to appeal the decision. If within the 40 day detention period, he has not been returned to his or her country of origin or transit, he will be transferred to the mainland and can remain for a period of two weeks in NGO-run temporary shelters, depending on availability.
12. Spain does not deport all persons who are issued return orders unless it has a readmission agreement with the arrivals' countries of origin or transit. Over the years, Spain has signed a number of bilateral agreements with countries of origin and transit, including the following: Algeria; Bulgaria; Cape Verde; Estonia; Equatorial Guinea; France; Ghana; Gambia; Guinea Bissau; Italy; Letonia; Lithuania; Macedonia; Mali; Morocco; Mauritania; Poland; Portugal; Romania; Senegal; Slovakia; and, Switzerland. It has

³⁹ Organic Law 4/2000 (amended by LO 8/2000), art. 63.2; Immigration Regulations at 127.7.

⁴⁰ UNHCR Spain, Annual Protection Report 2005, p. 27.

also signed operational memoranda of understanding with Senegal and Mauritania. Under the terms of several of these agreements, Spain provides them with material, economic and humanitarian assistance so that they control emigration from their countries and accept the readmission of irregular migrants. As a result of these agreements, Spain has been able to increase the number of expulsions of arrivals who do not qualify for refugee status or other forms of immigration relief.⁴¹

List of relevant laws, regulations and decrees

- *Spanish Constitution, Art. 13.4* – recognizing the right to asylum in Spain for citizens of other countries and stateless persons.
- *Spanish Constitution, Art. 149* – conferring jurisdiction on the central government for issues relating to nationality, immigration, and the right to asylum.
- *Organic Law 5/1984 of 26 March 1984* – Right to Asylum and Refugee Status, amended by Law 9/1994 – implementing Art. 13.4 of the Constitution and offering protection to persons in Spain seeking asylum under the 1951 Convention relating to the Status of Refugees.
- *Organic Law 1/1996 of 10 January 1996* – Law on Free Legal Assistance
- *Organic Law 1/1996 of 15 January 1996* – Law on Legal Protection of Minors
- *Organic Law 29/1998* – law establishing jurisdiction for judicial procedures under administrative law
- *Organic Law 4/2000, amended by Law 8/2000 and by Law 4/2003 of 20 November 2003* – Law on the Rights and Liberties of Aliens in Spain and their Social Integration
- *Organic Law 3/2007* – Law on Effective Equality between Men and Women, includes a provision which establishes gender as a basis for refugee status
- *Royal Decree 203/1995 of 10 February 1995* – regulations for the implementation of Organic Law 5/1984, amended by Organic Law 9/1994, relating to the right to asylum and refugee status
- *Royal Decree 865/2001 of 20 July 2001* – regulations for the stateless status determination procedure.
- *Royal Decree 1325/2003 of 24 October 2003* – regulations transposing the EU Directive on Temporary Protection into national legislation
- *Royal Decree 2393/2004 of 30 December 2004* – regulations for the implementation of the Aliens Law 14/2003
- *Royal Decree 1019/2006 of 8 September 2006* – modifying art. 13 (right to housing assistance) of the regulations implementing Organic Law 4/2000
- *Instruction, 9 April 2002* – treatment of alien stowaways
- *Instruction 3/2003* – return of minors who enter Spain illegally who are not unaccompanied
- *Instruction, 14 July 2005* – procedures relating to alien stowaways right to seek asylum

⁴¹ In 2006, Spain deported 4,616 persons based on readmission agreements. In 2007, that figure rose to 6,248 persons, representing a 35.4% increase. The number dropped slightly in 2008 to 6,178. Ministerio del Interior; Balance de la Lucha Contra La Inmigracion Ilegal 2007; Ministerio del Interior; Balance de la Lucha Contra La Inmigracion Ilegal 2008.

- *Instruction, 3 August 2002* – illegal entry of aliens on ‘pateras’
- *Order of 13 January 1989 relating to Refugee Reception Centers*
- *Order of 22 February 1999 relating to the functioning and internal regimen governing internment centers for foreigners*
- *Amendment to Art. 42.5 of Royal Decree 1/2005* – governing judicial actions providing jurisdiction to the first instance tribunals on duty to address expulsions of asylum-seekers and irregular migrant.

Readmission and bilateral agreements

- *Algeria* – Protocol between the Government of Spain and the Government of the Democratic Republic of Algeria regarding circulation of persons, 31 July 2002
- *Bulgaria* – Provisional application of the agreement between the Kingdom of Spain and the Republic of Bulgaria relating to the readmission of persons in irregular status, 16 December 1996.
- *Slovakia* – Agreement relating to readmission of persons in irregular status, 3 March 1999
- *Estonia* – Agreement relating to readmission of persons, 28 June 1999
- *France* – Agreement relating to the admission at border points of persons in illegal status, 8 January 1988; Agreement between the Republic of France and the Kingdom of Spain relating to the readmission of persons in irregular status
- *Guinea Bissau* – Agreement relating to immigration, 7 February 2003
- *Italy* – Agreement relating to readmission of persons in irregular status, 4 November 1999
- *Letonia* – Agreement relating to the readmission of persons in irregular status, 30 March 1999
- *Lithuania* – Agreement relating to the readmission of persons in irregular status, 18 November 1998
- *Macedonia* – Agreement between the Government of Spain and the Government of Macedonia relating to the readmission of persons in irregular status, 6 February 2006
- *Morocco* – Agreement between Spain and Morocco, relating to the circulation of persons, the transit and readmission of foreigners who have illegally entered, 13 February 1992
- *Mauritania* – Provisional application of the Agreement between the Kingdom of Spain and the Islamic Republic of Mauritania relating to immigration, 1 June 2003
- *Poland* – Agreement between the Kingdom of Spain and the Republic of Poland relating to the readmission of persons in irregular status, 21 May 2002
- *Portugal* - Agreement relating to the readmission of persons in irregular status, 15 February 1993
- *Romania* – Agreement relating to the readmission of persons in an irregular situation, 29 April 1996
- *Switzerland* – Agreement between the Kingdom of Spain and the Swiss Confederation relating to the readmission of persons in irregular status, 17 November 2003

Agreements relating to cooperation in immigration matters

- ***Gambia*** – Provisional application of the agreement relating to immigration matters between Spain and Gambia, 6 October 2006
- ***Guinea*** – Provisional application of the agreement relating to immigration matters between Spain and Guinea, 6 October 2006
- ***Mali*** – Provisional application of the agreement of cooperation relating to immigration matters between the Kingdom of Spain and the Republic of Mali, 23 January 2007
- ***Niger Republic*** – Provisional application of the agreement of cooperation relating to immigration matter between Kingdom of Spain and the Republic of Niger, 10 May 2008
- ***Peru*** – Provisional application of the agreement between the Kingdom of Spain and the Republic of Peru relating to immigration matters, 6 July 2004

Annex D



MINISTERIO
DEL INTERIOR



DIRECCIÓN GENERAL
DE LA POLICÍA.
COMISARIA LOCAL
PUERTO DEL ROSARIO
Centro de Internamiento de
Extranjeros "EL MATORRAL"
(FUERTEVENTURA)

ANNEXE

OTHER INFORMATION WHICH COULD BE OF YOUR INTEREST

If you:

- Have had problems or difficulties in your country due to your race, religion, national origin, or political ideas or due to being member of a specific social group, or
- Have fled from your country due to a war or a serious conflict situation, or
- If, for any other reason, you fear suffering threats to your life, your physical integrity or your freedom if you go back to your country of origin.

You can request international protection from the Spanish authorities, To do so, you should:

- Address the lawyer who assists you or has assisted you during the expulsion procedure, or
- Address the Alien Internment Centre where you are, in writing and in your own language if you desire so. You should keep a stamped copy of this document.

Either your lawyer or the personal at the Alien Internment Centre will explain to you how to file your request.

CORREO ELECTRÓNICO:
elmatorral.cie@policia.es

Ctra. Sur km 6
35.600 -Puerto Rosario
Tlf.: 928/85.88.02
Fax.: 928/53.11.19

Annex E

Solicitantes de Asilo en Canarias 2004-2008

Nacionalidad	2004			2005			2006			2007			2008			Totales		
	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total
ALBANIA	1		1				1		1							2		2
APÁTRIDA				1		1	1		1							2		2
ARGELIA	1		1	1		1				2		2	1		1	5		5
ARGENTINA	1		1	1		1										2		2
BANGLADESH	8		8													8		8
BOLIVIA									1		1		1	1	1	1	1	2
BRASIL												1		1	1	1		1
BULGARIA				1		1										1		1
BURKINA FASO									2		2	1	1	2	3	1	1	4
BURUNDI													1	1			1	1
CAMERUN							1		1	1		1				2		2
CENTROAFRICANA REP.									1		1					1		1
COLOMBIA	9		9	3		3	4	1	5	3		3	4	1	5	23	2	25
CONGO										3		3	4	2	6	7	2	9
COSTA DE MARFIL	1		1	5		5	66		66	73		73	50	61	111	195	61	256
CUBA	3		3	10		10	8		8	6		6	23	3	26	50	3	53
CHAD										2		2		2	2	2	2	4
CHILE				1		1										1		1
CHINA				1		1	2		2				1		1	4		4
ECUADOR										1		1				1		1
EL SALVADOR	1		1													1		1
ESTADOS UNIDOS							1		1							1		1
ETIOPIA														1	1		1	1
GAMBIA	1		1				2	1	3	7		7	6	5	11	16	6	22
GEORGIA							1		1				1		1	2		2

GHANA													2	4	6	2	4	6
GUINEA							1		1	35		35	9	4	13	45	4	49
GUINEA BISSAU							1		1	1		1	2	2	4	4	2	6
GUINEA ECUATORIAL	1		1													1		1
INDIA	16		16							144		144				160		160
IRAN	1		1	2		2										3		3

Nacionalidad	2004			2005			2006			2007			2008			Totales		
	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total
IRAQ							1		1	2		2				3		3
ISRAEL							1		1	1		1				2		2
KENIA													1	2	3	1	2	3
LIBERIA	3		3				1		1	6		6	2	2	4	12	2	14
MALI							1		1	1		1	1	1	2	3	1	4
MARRUECOS	6		6	40		40	247		247	241	2	243	88		88	622	2	624
MAURITANIA	2		2	1		1	3		3	21		21	5	13	18	32	13	45
MEXICO				1		1										1		1
MOLDAVIA				1		1										1		1
MYANMAR										2		2				2		2
NIGER														3	3		3	3
NIGERIA					1	1	1		1	6		6	3		3	10	1	11
NO RECO. (PALESTINA)													1		1	1		1
PAKISTAN					1	1				2		2				2	1	3
PERU				1		1								1	1	1	1	2
R.D.CONGO	10		10	4		4	1		1	1	1	2		4	4	16	5	21
RUANDA										1		1				1		1

RUSIA	3		3		1	1									3	1	4	
SENEGAL				2		2	4		4	22		22	1	1	2	29	1	30
SIERRA LEONA	1		1				3		3	23		23	1	3	4	28	3	31
SIRIA													3		3	3		3
SOMALIA	1		1							3		3		1	1	4	1	5
SRI LANKA		6	6				3		3	11		11				14	6	20
SUDAN							4	1	5	6		6		12	12	10	13	23
TOGO										7		7		2	2	7	2	9
TUNEZ													1		1	1		1
TURQUIA										1		1				1		1
UCRANIA	2		2													2		2
VENEZUELA	3		3	1	1	2	4		4	13		13	3	7	10	24	8	32

Nacionalidad	2004			2005			2006			2007			2008			Totales		
	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total	T Nac	P. Fron	Total
VIETNAM													1		1	1		1
Totales	75	6	81	77	4	81	363	3	366	652	3	655	216	140	356	1.383	156	1.539

APPENDIX H

Statistics on sea arrivals (adults and minors) to the Canary Islands

NACIONALIDAD	AÑO 2004	AÑO 2005	AÑO 2006*	Tenerife*	Las Palmas*	AÑO 2007	Tenerife*	Las Palmas*
ANGOLA	0	13	11	1	10	9		9
ARGELIA	37	0	4		4	3		3
BENIN	0	2	5		5	13	2	11
BURKINA FASO	125	5	64	5	59	315	78	237
BURUNDI	0	1	0					
CABO VERDE	0	4	5	2	3	8	7	1
CAMERUN	18	4	7		7	13	6	7
CHAD	0	1	2		2	26	2	24
CONGO (ZAIRE)	44	10	17		17	45	18	27
COSTA DE MARFIL	308	264	1.698	1.098	600	751	253	498
ERITREA	0	0	1		1	1		1
ETIOPIA	0	2	5		5	5		5
GABÓN	0	0	15	3	12	29	3	26
GAMBIA	1.654	1.228	3.633	2.378	1.255	2.309	1.659	650
GHANA	363	201	189	92	97	393	341	52
GUINEA BISSAU	351	328	1.448	1.085	363	569	346	223
GUINEA CONAKRY	519	200	717	337	380	925	521	404
GUINEA ECUATORIAL	0	0	37	36	1	161	130	31
INDIA	301	77	23	23		144	144	
KENIA	0	0	2		2	2		2
LIBERIA	70	24	62	13	49	50	23	27
LIBIA					1			
MALI	2.830	1.299	3.423	1.770	1.653	1.046	975	71
MARRUECOS	902	784	1.237	17	1.220	864	4	860
MAURITANIA	187	65	190	86	104	414	315	99
MOZAMBIQUE						1		1

NIGER	100	6	71	3	68	147	25	122
NIGERIA	81	23	70	19	51	77	45	32
PAKISTAN	0	0	123	123		2	2	
PALESTINA	0	1	0					
REP. CENTROAFRICANA						2		2
RUANDA	0	2	5		5	3		3
STO. TOMÉ Y PRINCIPE						1	1	
SENEGAL	21	117	16.237	15.041	1.196	2.683	2.426	257
SIERRA LEONA	54	27	74	20	54	65	41	24
SOMALIA	0	3	7		7	19	3	16
SRI LANKA	0	0	11	11				
SUDAFRICA	0	0	5	3	2			
SUDAN	219	14	32	5	27	46	12	34
TANZANIA	0	0	1		1	1		1
TOGO	0	6	10	1	9	22	8	14
UGANDA	0	0	2		1	2		2
ZIMBABWE	0	0	1		1	1		1
OTROS	335	7	2.415	1.101	1.314	579	60	519
TOTAL	8.519	4.718	31.859	23.273	8.586	11.746	7.450	4.296

**INMIGRANTES CUYA ENTRADA SE HA REALIZADO POR LUGARES
DISTINTOS A LOS LEGALMENTE HABILITADOS. ACUMULADO AÑO 1994- AÑO 2008**

INMIGRANTES	AÑOS														
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	10	29	27	112	737	2.165	2.240	4.129	9.929	9.555	8.519	4.718	31.859	11.746	8.300

**MENORES INMIGRANTES CUYA ENTRADA SE HA REALIZADO POR LUGARES
DISTINTOS A LOS LEGALMENTE HABILITADOS. 2004 -2008**

AÑO 2004													
PROVINCIA	ENE	FEB	MAR	ABR	MAY	JUN	JUL	AGO	SEPT	OCT	NOV	DIC	TOTAL
LAS PALMAS	13	3	3	8	4	8	4	20	3	37	24	10	137
TENERIFE	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	13	3	3	8	4	8	4	20	3	37	24	10	137

AÑO 2005													
PROVINCIA	ENE	FEB	MAR	ABR	MAY	JUN	JUL	AGO	SEPT	OCT	NOV	DIC	TOTAL
LAS PALMAS	20	7	0	2	12	4	1	1	6	23	10	21	107
TENERIFE	0	0	0	0	0	0	0	1	0	0	0	0	1
TOTAL	20	7	0	2	12	4	1	2	6	23	10	21	108

AÑO 2006													
PROVINCIA	ENE	FEB	MAR	ABR	MAY	JUN	JUL	AGO	SEPT	OCT	NOV	DIC	TOTAL
LAS PALMAS	12	39	22	6	22	29	15	42	106	129	98	24	544
TENERIFE	6	6	21	3	60	12	52	139	156	19	15	29	518
TOTAL	18	45	43	9	82	41	67	181	262	148	113	53	1.062

AÑO 2007													
PROVINCIA	ENE	FEB	MAR	ABR	MAY	JUN	JUL	AGO	SEPT	OCT	NOV	DIC	TOTAL
LAS PALMAS	57	21	9	14	54	24	2	70	54	68	127	29	529
TENERIFE	5	3	8	4	23	19	41	47	49	59	69	24	351
TOTAL	62	24	17	18	77	43	43	117	103	127	196	53	880

AÑO 2008													
PROVINCIA	ENE	FEB	MAR	ABR	MAY	JUN	JUL	AGO	SEPT	OCT	NOV	DIC	TOTAL
LAS PALMAS	30	55	8	17	40	13	8	4	176	15	27	7	400
TENERIFE	40	17	20	45	38	55	43	59	80	19	60	4	480
TOTAL	70	72	28	62	78	68	51	49	256	34	87	11	866

AÑO 2009													
PROVINCIA	ENE	FEB	MAR	ABR	MAY	JUN	JUL	AGO	SEPT	OCT	NOV	DIC	TOTAL
LAS PALMAS	5	8											13
TENERIFE	28	56											84
TOTAL	33	64											97