



**Submission by the Office of the United Nations High Commissioner for Refugees  
in the cases of *N.D. and N.T. v. Spain* (Appl. Nos 8675/15 and 8697/15) before the  
European Court of Human Rights**

**1. Introduction\***

1.1 UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions for the problem of refugees.<sup>1</sup> Moreover, UNHCR is responsible for supervising the application of international conventions for the protection of refugees.<sup>2</sup> UNHCR welcomes the opportunity to intervene in this case, as granted by the European Court of Human Rights ('the Court') by its letter of 9 October 2015.

1.2 In this submission, UNHCR addresses the domestic legislative framework and practice applicable to the non-admission or 'push back' of persons at the border in the Melilla enclave at the material time (part 2) and provides UNHCR's interpretation of the relevant principles of international refugee and human rights law governing such situations (part 3) to inform the assessment of the Court of the cases pertaining to Article 4 Protocol 4 to the European Convention on Human Rights (ECHR).

**2. The domestic legislative framework and practice regarding the treatment of foreigners, including asylum-seekers, who try to enter or are in the Melilla enclave**

**2.1. Legislative framework regarding the status of the Spanish enclave of Melilla**

2.1.1 The enclave of Melilla is a Spanish city located on the northwest coast of Africa, and shares a border with Morocco. Melilla has been a part of Spanish territory since 1497<sup>3</sup>, and became an 'Autonomous City' in 1995.<sup>4</sup> Melilla enjoys the same constitutional status as any other 'Autonomous Community or City' of Spain and, as stated in Melilla's Statute of Autonomy, is 'an integral part of the Spanish nation with indissoluble unity'.<sup>5</sup>

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\* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, <http://www.refworld.org/docid/3ae6b3902.html>.

<sup>1</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1, <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

<sup>2</sup> *Ibid.* para. 8(a).

<sup>3</sup> Gil-Bazo MT., *The Practice of Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited*, *International Journal of Refugee Law* 2006, 18 (3-4) at 576. See also Said Saddiki (2010) 'Ceuta and Melilla Fences: a EU Multidimensional Border?', Canadian Political Science Association, Annual Conference, 2010, Ottawa, at 2, available at: <http://www.cpsa-acsp.ca/papers-2010/Saddiki.pdf>.

<sup>4</sup> In accordance with transitional provision 5 of the Spanish Constitution, 'The cities of Ceuta and Melilla may set themselves up as Self-governing Communities if their respective City Councils so decide in a resolution adopted by the overall majority of their members and if the Cortes Generales so authorize them by an organic act, under section 144.' Melilla is now one of the nineteen 'Autonomous Communities and Cities' in which Spain is divided. [https://www.essex.ac.uk/armedcon/world/europe/western\\_europe/spain/SpainConstitution.pdf](https://www.essex.ac.uk/armedcon/world/europe/western_europe/spain/SpainConstitution.pdf).

<sup>5</sup> See Article 1 of the Organic Law 2/1995, 13 March, BOE n° 62, 14 March 1995, which established the Statute of Autonomy of Melilla, pursuant to Articles 144 and 147 of the Spanish Constitution.

2.1.2 In 1985, the Kingdom of Spain joined the European Economic Community, and so with it did Melilla.<sup>6</sup> Likewise, in 1991, Melilla became part of the Schengen area when Spain acceded to the Convention implementing the Schengen Agreement<sup>7</sup> which specifically acknowledges the ‘declarations made by the Kingdom of Spain’ regarding the town of Melilla and allows for the visa exemption and entry of Moroccan nationals resident in the province of Nador to Melilla.<sup>8</sup> It should be noted that although Melilla is part of the Schengen area, additional border checks are in place for any further sea or air travel to mainland Spain or other European destinations.<sup>9</sup>

## **2.2 Legislative framework regarding the treatment of foreigners, including asylum-seekers, who try to enter or are in Melilla<sup>10</sup>**

2.2.1 The Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration 4/2000 (‘Aliens Act’),<sup>11</sup> governs the treatment of foreigners who try to access or stay on Spanish territory irregularly, including in the enclaves, in three ways: a) expulsion;<sup>12</sup> b) refusal of entry;<sup>13</sup> and c) returns.<sup>14</sup> Although the Aliens Act and its regulations provide a number of guarantees<sup>15</sup> for the re-

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<sup>6</sup> The Treaty of accession of the Kingdom of Spain, (1985), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11985L/TXT&rid=1> Article 25 of the Treaty specifically notes that the ‘the treaties and the acts of the institutions of the European Communities shall apply to ... Melilla’ subject to certain derogations.

<sup>7</sup> *Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement*, OJ L 239, 22.9.2000, p. 69–75, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1446817755720&uri=CELEX:42000A0922%2804%29>.

<sup>8</sup> *Ibid.*, see Part III, 1 (a)-(e). Also see: Article 36 of European Union: Council of the European Union, *Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)*, 15 March 2006, OJ L. 105/1-105/32; 13.4.2006, (EC) No 562/2006, <http://www.refworld.org/docid/47fdfb0525.html>, which states: ‘the provisions of this Regulation shall not affect the special rules applying to the cities of Ceuta and Melilla, as defined in the Declaration by the Kingdom of Spain on the cities of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985’.

<sup>9</sup> *Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement*, Part III, 1(e): ‘Spain shall maintain checks (on identity and documents) on sea and air connections’ departing from Melilla ‘to any other place on Spanish territory’, and ‘to a destination in another State party to the Convention’.

<sup>10</sup> This part of UNHCR’s submission is based on the report ‘“Hot Returns”: When the State Acts outside The Law’, published by a group of 16 prominent Spanish legal academics, and supported by the Research and Development Project I+D+i IUSMIGRANTE, dated 27 June 2014, <http://eprints.ucm.es/27221/1/HOT%20RETURNS.%20WHEN%20DE%20STATE%20ACTS%20OUTSIDE%20THE%20LAW.%20Legal%20report.pdf>.

<sup>11</sup> Ley Orgánica 4/2000, de 11 de enero, sobre Derechos y Libertades de los Extranjeros en España y su Integración Social, BOLETÍN OFICIAL DEL ESTADO (B.O.E), Jan. 12, 2000, as amended by Organic Law 2/2009, <http://www.boe.es/buscar/act.php?id=BOE-A-2000-544>. It has been amended several times and further implemented by Royal decree 557/2011, (RLOEx).

<sup>12</sup> Article 57 of the Aliens Act provides for the possibility of expelling foreigners where it is established that they committed a serious administrative breach of the Act by staying or residing without authorization on Spanish territory. Article 57.1 of the Aliens Act states that, as a result of this breach, ‘the expulsion from Spanish territory can be applied based on the principle of proportionality, instead of a fine, after the corresponding administrative file is processed and a reasoned resolution is made that assesses the facts that constitute the breach’.

<sup>13</sup> Article 26.2 of the Aliens Act establishes that foreigners who try and enter Spain through the authorized border posts, but do not meet the entry requirements shall be refused entry. It also provides for a number of rights such as the right to a ‘reasoned resolution, with information about the appeals that they can file against the decision’, as well as legal assistance (and legal aid) and interpretation. This legal regime is set out in greater detail in article 15 of the RLOEx. However, this Article is not applicable to persons who have entered over the fence, since the fence perimeter is not an ‘authorized border post’ within as the definition of the Act.

<sup>14</sup> Article 58.3.b of the Aliens Act provides that no expulsion file is required for foreigners ‘who plan to illegally enter the country’, whereas Article 23.1.b of the RLOEx further clarifies that this applies to ‘foreigners who are intercepted at the border or in the vicinity’.

<sup>15</sup> The guarantees found in Articles 23.2 and 23.3 of the RLOEx are as follows: (i) these foreigners must be taken to a police station (of the national police force), (ii) a lawyer must be appointed for them, (iii) where applicable, an interpreter must be provided for them, (iv) they must be identified, (v) a resolution for their return must be issued by the Government Sub-Delegate or Delegate, where applicable, and (vi) the return itself must be carried out by the national police force. Article 22.2 of the Aliens Act also provides for the right to legal assistance (which is free of charge when the person lacks sufficient economic means) and the right to an interpreter.

turn of foreigners who intend or attempt to enter Spain through an unauthorized border post, these have not been applied to ‘the push backs’, i.e. summary returns without access to any procedural or other safeguards, that have occurred at the Melilla fence notably at the time of the events at stake in the present cases. These guarantees have never been operationalized nor do they exist in reality at the Spain-Morocco land border at Melilla.<sup>16</sup>

2.2.2 While the material time for the Court’s examination of the present cases is August 2014, UNHCR considers it appropriate to briefly describe the newly established legal regime applicable to the Spanish enclaves. In October 2014, the Spanish authorities proposed to amend the Aliens Act which seeks to legalize the summary returns or ‘push backs’ which were taking place in the Spanish enclaves, and introduced a new legal concept of ‘rejections at the border’.<sup>17</sup> The amendment, which came into force on 1 April 2015, provides that third country nationals, who are detected in the border area of the territorial area of Ceuta and Melilla while trying to cross the border irregularly, may be rejected in order to prevent their illegal entry to Spain, provided it is in compliance with international human rights standards and other international protection obligations of Spain. The Amendment further states that ‘applications for international protection will be formalized on the premises established to this end at the border posts, and will be processed according to the legal framework on international protection’. According to UNHCR, the duty to ensure that ‘rejections at the border’ are in compliance with international human rights standards, has not been fully implemented in practice<sup>18</sup> because procedures allowing for the fair and efficient identification of persons in need of international protection are absent. The Spanish authorities are committed to implement a protocol for all actors involved (mainly the Guardia Civil and Policia Nacional). This protocol has not yet been issued, resulting in legal uncertainty for the security forces tasked with implementing the new amendment. Furthermore, the amendment does not formally abrogate the relevant provisions in the Aliens Act.

#### *The Spain-Morocco Readmission Agreement*

2.2.3 The Agreement between the Kingdom of Spain and the Kingdom of Morocco ‘regarding the circulation of people, the transit and the readmission of foreigners who enter illegally’, was signed in Madrid on 13 February 1992 and entered into force on 21 October 2012 (‘Readmission Agreement’).<sup>19</sup> Thus, while the Aliens Act establishes the proceedings whereby a foreigner can be expelled from Spanish territory, the Spain-Morocco Readmission Agreement regulates the way in which expulsions must be carried out between the two countries.

2.2.4 The Readmission Agreement establishes a number of reciprocal obligations for the requesting State and the requested State regarding the identification of the persons concerned. For example, Article 1 requires a formal request from the border authorities of the requesting State (for example Spain),

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<sup>16</sup> On this issue see, UN Committee Against Torture (CAT), Concluding observations on the sixth periodic report of Spain, 29 May 2015, CAT/C/ESP/CO/6, paras. 13 and 18, <http://www.refworld.org/docid/564595214.html>; UN Human Rights Committee (HRC), Observaciones finales sobre el sexto informe periódico de España, 23 July 2015, CCPR/C/ESP/CO/6, paras. 18 and 19, <http://www.refworld.org/docid/5645936a4.html>; UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the combined seventh and eighth periodic reports of Spain, 29 July 2015, CEDAW/C/ESP/CO/7-8, para. 36, <http://www.refworld.org/docid/5645918c4.html>; and Press release of the Ombudsman’s intervention at the Senate, April 2014, available at: <https://www.defensora-delpueblo.es/noticias/la-defensora-del-pueblo-concluye-en-el-senado-el-tramite-parlamentario-del-informe-anual-2/>. See also: Report “Hot Returns”: *When the State Acts outside The Law*, published by a group of 16 prominent Spanish legal academics, and supported by the Research and Development Project IUSMIGRANTE, dated 27 June 2014, Pages 3-5, <http://eprints.ucm.es/27221/1/HOT%20RETURNS.%20WHEN%20DE%20STATE%20ACTS%20OUTSIDE%20THE%20LAW.%20Legal%20report.pdf>, and Human Rights Watch, Spain: Halt Summary Pushbacks to Morocco, 18 August 2014, available at: <http://www.refworld.org/docid/53f30ecf4.html>.

<sup>17</sup> For critiques of the new Act, see: UNHCR, *UNHCR concerned over attempt to legalize automatic returns from Spanish enclaves*, 28 October 2014, <http://www.refworld.org/docid/54575fd44.html>; CoE Commissioner for Human Rights, [http://www.coe.int/en/web/commissioner/home%3Fp\\_p\\_id%3D101\\_INSTANCE\\_iFWYWFoeqhvQ%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D2](http://www.coe.int/en/web/commissioner/home%3Fp_p_id%3D101_INSTANCE_iFWYWFoeqhvQ%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D2), Letter to the UN Special Rapporteur on the rights of migrants, François Crépeau, from 13 established and reputable NGOs: <http://ecre.org/component/downloads/downloads/941.html>.

<sup>18</sup> Aliens Act amended by Organic Law 4/2015, 30 March, on the protection of citizens’ security, Official State Bulletin N° 77, March 31, 2015, pp. 27242-27243, <https://www.boe.es/boe/dias/2015/03/31/pdfs/BOE-A-2015-3442.pdf>

<sup>19</sup> See: in Spanish, <http://www.boe.es/buscar/doc.php?id=BOE-A-1992-8976> and in English, <https://therightsangle.files.wordpress.com/2013/12/19920213-spain-morocco-readmission-agreement-eng.pdf>.

which, as per Article 2.2, must include ‘all the available identity details, the personal documentation that the foreigner may have and how they illegally entered the territory of the requesting State, as well as any other information about him or her that may be available’. Likewise, it is stated that ‘when the readmission is accepted, this is documented by a certificate or any other document issued by the border authorities of the requested State (for example Morocco), stating the identity and, where applicable, the documents the foreigner may have in his/her possession’ (Article 2). However, notwithstanding all of these procedural guarantees of the Aliens Act and the Readmission Agreement, it is UNHCR’s understanding that none of them were applied to returns at the border in Melilla, the subject of this case.

### **2.3 The treatment of foreigners, including asylum-seekers, who try to enter or are in Melilla**

2.3.1 The Spanish cities of Ceuta and Melilla, situated as enclaves in Northern Africa, are the only land borders between the European Union and Africa. Melilla is separated from Morocco by three fences.<sup>20</sup> The outer and inner fences are six meters high, and the fence in the middle consists of a three dimensional border barrier (known as ‘sirga tridimensional’) which is a structure of steel cables tied to stakes of different heights (between one to three metres). It prevents passage by tightening when any weight is placed on it, including the placement of blankets or ladders which could facilitate climbing over it.<sup>21</sup> Until November 2014, when authorized asylum border posts were created by the Spanish authorities,<sup>22</sup> there was no mechanism for persons in need of international protection to safely and legally access the territory and apply for asylum. Such persons were left to either jump the fence with serious physical consequences in many cases, or seek the services of smugglers to cross the border post irregularly.<sup>23</sup> Entering the enclaves could be even more dangerous for women, children and persons with special needs such as the elderly or persons with disabilities.

2.3.2 During 2014, including at the time of the events at stake in the present cases, the border environment in the enclaves, particularly in Melilla, featured increasing violence and lawlessness, resulting in casualties and numerous injuries.<sup>24</sup> Border control measures have been strongly reinforced to prevent attempts to jump the fence, mostly in Melilla.<sup>25</sup> However, throughout 2014 there were a number of successful attempts by large groups of over 100 persons to enter the enclaves. In this context, the practice of ‘push backs’ considerably increased during that year.

2.3.3 In the latter part of 2013 and in 2014, the presence of persons potentially in need of interna-

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<sup>20</sup> The Spanish authorities have created a legal fiction through the use of the concept of an ‘operational border’ which is interpreted to mean that one only enters Spanish territory once the third fence is crossed. This legal fiction lacks any merit or legal foundation. All three fences are built on Spanish territory, and any interception or return is performed by Spanish enforcement authorities.

<sup>21</sup> For more information on the fence, see: [http://www.eldiario.es/desalambre/Inmigracion-inmigrantes-valla-Melilla-Marruecos-saltos\\_0\\_194580660.html](http://www.eldiario.es/desalambre/Inmigracion-inmigrantes-valla-Melilla-Marruecos-saltos_0_194580660.html). In addition to the fences, asylum-seekers and migrants are deterred from swimming to Melilla, or intercepted by the Integrated System of External Surveillance (SIVE). The SIVE is designed to detect and identify any vessel approaching the Spanish coast and according to the Guardia Civil who operate the system, its purpose is to ‘intercept alleged delinquents or provide assistance to irregular migrants’. See: <http://www.guardiacivil.es/es/prensa/especiales/sive/funciones.html>. The SIVE includes ‘long-distance radar systems, advanced sensors [that] can detect heartbeats from a distance, thermal cameras, night viewfinders, infrared optics, helicopters and patrol boats.’ S. Saddiki, ‘Border Fences as an Anti-Immigration Device: A Comparative View of American and Spanish Policies’ in E. Vallet, *Borders, Fences and Walls: State of Insecurity?* (Farnham, Ashgate, 2014), 175 at 186. [https://www.academia.edu/10251749/Border\\_Fences\\_as\\_an\\_Anti-immigration\\_Device\\_A\\_Comparative\\_View\\_of\\_American\\_and\\_Spanish\\_Policies](https://www.academia.edu/10251749/Border_Fences_as_an_Anti-immigration_Device_A_Comparative_View_of_American_and_Spanish_Policies).

<sup>22</sup> The offices were created so that asylum-seekers could make their claims at this border just like they do at any other official border post (be it airports or harbours) in Spain, and to allow for the accelerated asylum border procedures provided for in the law to be applied. See Official Press Release issued by the Ministry of Interior announcing the creation of the asylum offices at the border posts of Ceuta and Melilla, available at: [http://www.interior.gob.es/prensa/noticias/-/asset\\_publisher/GHU8Ap6ztgsg/content/id/2765345](http://www.interior.gob.es/prensa/noticias/-/asset_publisher/GHU8Ap6ztgsg/content/id/2765345). See also UNHCR’s Press Release, available at: <http://acnur.es/noticias/noticias-de-espana/1927-acnur-da-la-bienvenida-a-la-creacion-de-oficinas-de-asilo-en-puestos-fronterizos-de-ceuta-y-melilla>.

<sup>23</sup> Human Rights Watch, Spain: Halt Summary Pushbacks to Morocco, 18 August 2014, <http://www.refworld.org/docid/53f30ecf4.html>.

<sup>24</sup> *Ibid.*

<sup>25</sup> For example, the authorities added a fine mesh to the external fence which makes it harder to climb. See: <http://www.npr.org/sections/parallels/2015/04/16/393577925/the-fences-where-spain-and-africa-meet>, and [http://elpais.com/elpais/2014/07/23/inenglish/1406105112\\_893252.html](http://elpais.com/elpais/2014/07/23/inenglish/1406105112_893252.html).

tional protection increased dramatically in Melilla.<sup>26</sup> However, applications for international protection remained extremely low, following the trend of previous years.<sup>27</sup> A number of considerations contribute to the fact that many persons who may have been in need of international protection did not make an application. First, asylum-seekers in Melilla were subject to restrictions on their freedom of movement such that they are not permitted to enter Spanish mainland territory. Hence asylum-seekers in Melilla could not leave the enclave of Melilla<sup>28</sup> without authorization, despite being registered by the Ministry of the Interior as an asylum-seeker and having received documentation to that effect. This was in contrast to asylum-seekers on the mainland, who could move freely throughout the territory. UNHCR, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Spanish Ombudsman's Office have all expressed their concerns about this practice.<sup>29</sup> The practice of denying access to Spanish mainland territory was not governed in law. Furthermore, decisions by the Superior Courts of Andalusia and Madrid, as well as by the local court of Ceuta establishing the right to freedom of movement of asylum-seekers in the enclaves<sup>30</sup> have not been implemented by the authorities. While asylum-seekers have been systematically excluded from transfers to the mainland, persons who did not make an asylum claim and were regarded as 'irregular migrants' were transferred to the mainland. The consequence of this practice has been to deter some persons potentially in need of international protection from applying for asylum. Another consequence is that some individuals who did apply for asylum subsequently withdraw their applications. Of concern are also the delays and very long waiting periods for having one's asylum application processed,<sup>31</sup> and lastly, the requirement to stay in the heavily overcrowded reception centres, which were neither meant nor designed for asylum-seekers or for longer stays pending the processing of their asylum claim.<sup>32</sup>

2.3.4 All irregular arrivals in Melilla, including persons who may be in need of international protection, are accommodated in the so-called 'CETI' (Temporary Reception Centre), originally designed

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<sup>26</sup> This is based on data gathered by UNHCR during missions to Melilla (prior to the establishment of our office in Melilla in July 2014), and on information on nationalities of persons in the Temporary reception centre (CETI) shared with UNHCR by the Ministry of Labour and Social Security. UNHCR Press Release 13 March 2014, available at: <http://acnur.es/noticias/noticias-de-espana/1629-acnur-pide-que-el-debate-migratorio-sobre-ceuta-y-melilla-no-olvide-a-los-refugiados>

<sup>27</sup> According to the monthly statistics provided by the Spanish Ministry of Interior, there were 33 asylum applications in Melilla in 2012; 41 in 2013; and during the first semester of 2014 (Jan-June), 16 asylum applications were lodged in Melilla. Since November 2014, and the establishment of asylum offices, applications increased to 141 in November; 284 in December and 4071 applications between January and August 2015.

<sup>28</sup> Which is an area of 12.3 square kilometres. "Las acciones estructurales comunitarias en España y sus Comunidades Autónomas" Part. II page 345 published by the Representation in Spain of the European Commission, [http://ec.europa.eu/spain/pdf/tomo\\_2\\_es.pdf](http://ec.europa.eu/spain/pdf/tomo_2_es.pdf)

<sup>29</sup> As per UNHCR recommendations concerning the situation of the international protection system in Ceuta and Melilla, shared with the Ministry of Interior in February 2014, letter available with UNHCR; UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Addendum: Visit to Spain, 6 June 2013, pages 11-13 and 19, <http://www.refworld.org/docid/51b5c49d4.html>; Summary of the 2010 Ombudsman's Annual Report, page 84, [https://www.defensordelpueblo.es/wp-content/uploads/2010/12/resumen\\_informe\\_anual\\_2010.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2010/12/resumen_informe_anual_2010.pdf) and the 2013 Ombudsman's Annual Report, pages 220 to 222, [https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013\\_Informe\\_Anuual\\_Vol\\_I\\_Informe\\_2013.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013_Informe_Anuual_Vol_I_Informe_2013.pdf).

<sup>30</sup> See for example, Sentencia del Tribunal Superior de Andalucía de 20 Marzo 2014, n° recurso de apelación: 51/2014; and Sentencia del Tribunal Superior de Justicia de Madrid, de 11 de Mayo de 2015, procedimiento ordinario 1088/2014 sentencia 490/2015.

<sup>31</sup> Even though Spanish asylum law establishes that applications should be processed within three to six months (depending on the procedure: ordinary or urgent), in 2014, the average time for resolving asylum applications was 15 months (plus an additional three months to be notified of their decision). Moreover, UNHCR is aware of asylum-seekers in Melilla who have been waiting for the finalization of their asylum claim for more than two years and has called on asylum-seekers to be transferred to the mainland without delay if their application has not been resolved within the established legal time frames.

<sup>32</sup> Human rights organizations, Spanish asylum NGOs, the Ombudsman and the Special Rapporteur on Contemporary forms of racism, have all expressed concern over this policy and recommended its review in order to ensure access to asylum. See: UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Addendum: Visit to Spain, 6 June 2013, pages 11-13 and 19, <http://www.refworld.org/docid/51b5c49d4.html>. Also see, CoE HR Commissioner on his visit to Spain January 2015, <http://www.coe.int/en/web/commissioner/-/spain-legislation-and-practice-on-immigration-and-asylum-must-adhere-to-human-rights-standards>.

for short periods of stay for irregular migrants.<sup>33</sup> During 2014, due to heavy overcrowding,<sup>34</sup> reception conditions in CETI remained below minimum standards and were far from the quality of other reception centres in Spain. Basic services (including access to hot water, electricity, minimum comfort and adequate shelter) were very precarious, as well as access to legal, medical or psychological assistance.<sup>35</sup> Moreover, concerns regarding privacy and the absence of family units meant that family life was not possible. These deficiencies make this centre completely unsuitable for asylum-seekers, in particular for those with specific needs. Given the conditions in the reception centre, there were serious concerns regarding the identification of specific needs, such as survivors of gender violence, exploitation, abuse and trafficking, as well as their referral for treatment and/or other appropriate care.<sup>36</sup>

2.3.5 In summary, until November 2014, there was no possibility of applying for asylum at the Melilla border and there were no mechanisms to identify persons in need of international protection. In November 2014 with the creation of asylum offices at the border posts in Melilla, it became possible to apply for asylum there. While this constitutes a positive step, structural challenges remain to ensure access to international protection and a fair and efficient asylum procedure for all persons who may wish to apply for asylum. For instance, the National Police, responsible for receiving and processing asylum claims at the border, did not receive any training in international protection until the end of 2014,<sup>37</sup> and as far as UNHCR is aware, the Guardia Civil has not received training on international refugee and human rights.

### 3. Relevant principles of international and European law

#### 3.1 *The obligation of non-refoulement and access to asylum procedures under international refugee and human rights law*

3.1.1 The right to seek and enjoy asylum, derives from Article 14(1) of the Universal Declaration of Human Rights, and is supported in particular by the legal framework of the 1951 Convention and its 1967 Protocol, to which Spain is a State party. Central to the realization of the right to seek asylum is the obligation of States not to expel or return (*refouler*) a person to territories where his or her life or freedom would be threatened. *Non-refoulement* is a cardinal protection principle, most prominently

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<sup>33</sup> The CETI is run by the Ministry of Labour and Social Security (Secretary General for Migration) and there are two NGOs operating there, the Red Cross and Comisión Española de Ayuda al Refugiado (CEAR). Since July 2014, UNHCR Spain has maintained a permanent presence in Melilla and works in the CETI on a daily basis.

<sup>34</sup> During 2014, the centre in Melilla regularly accommodated 1,500 persons, but has even quadrupled at its peak, including more than 350 children. These figures were obtained by UNHCR Spain through its regular field missions to Melilla, its permanent presence in the CETI since July 2014, and through the Ministry of Labour and Social Affairs. It should also be noted regarding the over-crowding of the CETI, that the authorities have undertaken “humanitarian transfers” to the mainland, however, the transfers policy lacks transparency on the criteria being applied, if any.

<sup>35</sup> See, the 2014 Ombudsman’s Annual Report, pages 201, 202, and 212 to 2014, <http://www.defensordelpueblo.es/Documentacion/Publicaciones/anual/Documentos/Informe2014.pdf>. See also, UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Addendum: Visit to Spain, 6 June 2013, pages 11-13 and 19, <http://www.refworld.org/docid/51b5c49d4.html>. CoE HR Commissioner on his visit to Spain January 2015, <http://www.coe.int/en/web/commissioner/-/spain-legislation-and-practice-on-immigration-and-asylum-must-adhere-to-human-rights-standards>. AI: España ni acoge debidamente a los solicitantes de asilo ni ha sido generosa ofreciendo sirios refugiados en los países de la región, February 2015, <https://www.es.amnesty.org/paises/arabia-saudi/noticias-relacionadas/articulo/espana-ni-acoge-debidamente-a-los-solicitantes-de-asilo-sirios-ni-ha-reasentado-a-ninguno-de-los-ca/>; UNHCR, Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity, 11 July 2014, page 9, <http://www.refworld.org/docid/53b69f574.html>; UNHCR Spain recommendations concerning the situation of the international protection system in Ceuta and Melilla, shared with the Ministry of Interior in February 2014; and CEDAW Concluding Observations (2015) CEDAW/C/ESP/CO/7-8, para. 37, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ESP/CO/7-8 &Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ESP/CO/7-8 &Lang=En)

<sup>36</sup> This is significant in light of Article 24 of the Asylum Procedures Directive (recast) which introduces safeguards for applicants in need of special procedural guarantees as well as Recital 29 Asylum Procedures Directive (recast) which makes it clear that the need for such special procedural guarantees can be “[d]ue, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other forms of psychological, physical or sexual violence.” European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, <http://www.refworld.org/docid/51d29b224.html>.

<sup>37</sup> There are now specialized and trained National police officers who receive the asylum-seeker and register and interview them and complete the standard interview form which is then sent to the asylum Office in Madrid.

expressed in Article 33 of the 1951 Convention and recognized as a norm of customary international law.<sup>38</sup> The *non-refoulement* obligation is also restated in international and European human rights law.<sup>39</sup>

3.1.2 Importantly, given that a person is a refugee within the meaning of the 1951 Convention as soon as s/he fulfills the criteria contained in the refugee definition, refugee status determination is declaratory in nature.<sup>40</sup> It follows that the prohibition of *refoulement* applies to all refugees, including those who have not formally been recognized as such, and to asylum-seekers whose status has not yet been determined.<sup>41</sup>

3.1.3 The prohibition on *non-refoulement* applies wherever a State exercises jurisdiction.<sup>42</sup> Consequently, States have a duty to establish, prior to implementing any removal measure, including at the border, that persons under their jurisdiction are not at risk of such harms covered by the prohibition on *refoulement*.<sup>43</sup> If such a risk exists, the State is precluded from forcibly removing the persons concerned, and shall not deny their entry or admission, but shall ensure protection from *refoulement*.<sup>44</sup>

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<sup>38</sup> See, in particular, UNHCR, *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, HCR/MMSF/2001/09, para. 4, <http://www.unhcr.org/refworld/docid/3d60f557.html>; ExCom Conclusions No. 15(XXX) – 1979, (b); 17 (XXXI) – 1980 (b); 25 (XXXIII) – 1982, (b); 68 (XLIII) – 1992, (f). See also, Concurring Opinion of Judge Pinto de Albuquerque in European Court of Human Rights, *Hirsi Jamaa and Others, Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, 23 February 2012, p. 67, <http://www.unhcr.org/refworld/docid/4f4507942.html>; UNHCR, *UNHCR Note on the Principle of Non-Refoulement*, November 1997, <http://www.unhcr.org/refworld/docid/438c6d972.html>; and UNHCR, *The Scope and Content of the Principle of Non-Refoulement (Opinion)* [Global Consultations on International Protection/Second Track], 20 June 2001, paras. 193-253, <http://www.unhcr.org/refworld/docid/3b3702b15.html>.

<sup>39</sup> More specifically, States are bound not to transfer any individual to another country if this would result in exposing him or her to serious human rights violations, notably arbitrary deprivation of life, or torture or other cruel, inhuman or degrading treatment or punishment. See also the jurisprudence of this Court, which has held that *non-refoulement* is an inherent obligation under Article 3 of the ECHR in cases where there is a real risk of exposure to torture, inhuman or degrading treatment or punishment, including, in particular, the Court's judgment in *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, 23 February 2012, para. 114, <http://www.refworld.org/docid/4f4507942.html>.

<sup>40</sup> UNHCR Handbook, para. 28. See also, Executive Committee of the High Commissioner's Programme (ExCom), Conclusion No. 6 (XXVIII), 1977, para. (c); ExCom Conclusion No. 79 (XLVII), 1996, para. (j); ExCom Conclusion No. 81 (XLVII), 1997, para. (i), <http://www.unhcr.org/pages/49e6e6dd6.html>. See also, *Note on International Protection (submitted by the High Commissioner)*, A/AC.96/815, ExCom Reports, 31 August 1993, para. 11, <http://www.unhcr.org/refworld/docid/3ae68d5d10.html>; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, January 2007, paras. 26-31, <http://www.unhcr.org/refworld/docid/45f17a1a4.html>.

<sup>41</sup> Executive Committee of the High Commissioner's Programme (ExCom), Conclusion No. 6 (XXVIII), 1977, para. (c); ExCom Conclusion No. 79 (XLVII), 1996, para. (j); ExCom Conclusion No. 81 (XLVII), 1997, para. (i), <http://www.unhcr.org/pages/49e6e6dd6.html>. See also, *Note on International Protection (submitted by the High Commissioner)*, A/AC.96/815, ExCom Reports, 31 August 1993, para. 11, <http://www.unhcr.org/refworld/docid/3ae68d5d10.html>; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, January 2007, paras. 26-31, <http://www.unhcr.org/refworld/docid/45f17a1a4.html>.

<sup>42</sup> See, e.g., UN Human Rights Committee General Comment No. 31, Nature of the General Legal Obligations imposed on States parties to the Covenant, CCPR/C/21/Rev.1/Add.13, para. 10, <http://www.refworld.org/docid/478b26ae2.html>; Inter-American Court of Human Rights, Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, 19 August 2014, para. 61, <http://www.refworld.org/docid/54129c854.html>; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, paras. 24, 26, 32-43, <http://www.unhcr.org/refworld/docid/45f17a1a4.html>; UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Hirsi and Others v. Italy*, March 2010, paras. 4(1)(1)-4(2)(3), <http://www.unhcr.org/refworld/docid/4b97778d2.html>. UNHCR, *Submissions to the Inter-American Court of Human Rights in the framework of request for an Advisory Opinion on Migrant Children presented by MERCOSUR*, 17 February 2012, para. 2(4), <http://www.refworld.org/docid/4f4c959f2.html>.

<sup>43</sup> ExCom Conclusion No. 6 (XXVIII), 1977, para. (c), reaffirming the fundamental importance of the observance of the principle of non-refoulement at the border.

<sup>44</sup> ExCom Conclusion No. 6 (XXVIII), 1977, para. (c); ExCom Conclusion No. 22 (XXXII), 1981, para. II.A.2; ExCom Conclusion No. 81 (XLVIII), 1997, para. (h); ExCom Conclusion No. 82 (XLVIII), 1997, para. (d)(ii); ExCom Conclusion No. 85 (XLIX), 1998, para. (q); EXCOM No. 99 (LV), 2004, para. (l). See also, *Summary Conclusions: The Principle of Non-Refoulement*, Global Consultations on International Protection, June 2003, para. 4, <http://www.refworld.org/docid/470a33b00.html>.

The Executive Committee of the High Commissioner's Programme (ExCom) has confirmed that the obligation includes a duty not to reject an asylum-seeker at the frontier.<sup>45</sup> Moreover, there is no single correct formula or phrase for how the fear of persecution needs to be expressed.<sup>46</sup> States have a duty to inquire into the reasons an individual seeks to enter the territory and to keep the situation in the possible State of return under deliberative review, in order to conform with that obligation.<sup>47</sup>

3.1.4 Furthermore, the prohibition on *refoulement* applies not only with respect to return to the country of origin but also with regard to forcible removal to any other – third – country where a person has reason to fear persecution, serious human rights violations or other serious harm, or from where he or she risks being sent to his or her country of origin (indirect or chain *refoulement*).<sup>48</sup> Under the obligation of *non-refoulement*, States have a duty to establish, prior to implementing any removal measure, that the person whom they intend to remove from their territory or jurisdiction is not at risk of such harms covered by the prohibition on *refoulement*.

3.1.5 While the 1951 Convention does not indicate what type of procedures are to be adopted to ensure a proper inquiry is made, it is accepted that, as a general rule, in order to give effect to their obligations under the 1951 Convention, including the prohibition on *refoulement*, refugees have to be identified.<sup>49</sup> Furthermore, according to ExCom, asylum procedures should satisfy a number of basic requirements, aimed at allowing an individual assessment of an asylum application by a competent authority.<sup>50</sup> The State is required to consider, in good faith and with due diligence, the individual circumstances of the person concerned.

3.1.6 In addition to the ECHR and the 1951 Convention, the Charter of Fundamental Rights of the European Union, applicable to Spain, provides a number of important rules: Article 4 prohibits torture and inhuman or degrading treatment, Article 18 provides for the right to asylum, Article 19 prohibits collective expulsions and Article 47 provides for the right to an effective remedy.<sup>51</sup> Furthermore, the recast Asylum Procedures Directive provide for a series of important principles and guarantees in or-

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<sup>45</sup> ExCom Conclusion No. 6 (XXVIII), 1977, para. (c); ExCom Conclusion No. 22 (XXXII), 1981, para. II.A.2; ExCom Conclusion No. 81 (XLVIII), 1997, para. (h); ExCom Conclusion No. 82 (XLVIII), 1997, para. (d)(iii); ExCom Conclusion No. 85 (XLIX), 1998, para. (q).

<sup>46</sup> UNHCR, *UNHCR's oral intervention at the European Court of Human Rights - Hearing of the case Hirsi and Others v. Italy*, 22 June 2011, Application No. 27765/09, <http://www.refworld.org/docid/4e0356d42.html>. Furthermore, as this Court has considered, the failure of people to expressly apply or request for asylum does not relieve a State from its obligations under the ECHR. See, ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, 23 February 2012, para. 133, <http://www.refworld.org/docid/4f4507942.html>.

<sup>47</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Appl. no. 30696/09, 21 January 2011, para. 359, <http://www.refworld.org/docid/4d39bc7f2.html>. See also, Final Appeal Nos 18, 19 & 20 of 2011 (Civil) between C, KMF, BF (Applicants) and Director of Immigration, Secretary for Security (Respondents) and United Nations High Commissioner for Refugees (Intervener), Hong Kong: Court of Final Appeal, 25 March 2013, paras. 56 and 64, <http://www.refworld.org/docid/515010a52.html>; UNHCR, *Intervention before the Court of Final Appeal of the Hong Kong Special Administrative Region in the case between C, KMF, BF (Applicants) and Director of Immigration, Secretary for Security (Respondents)*, 31 January 2013, Civil Appeals Nos. 18, 19 & 20 of 2011, paras. 74 and 75, <http://www.refworld.org/docid/510a74ce2.html>.

<sup>48</sup> The prohibition of indirect or 'chain refoulement' has been recognized by the Court in its decision *T.I. v. The United Kingdom*, Appl. No. 43844/98, 7 March 2000, page 15, <http://www.refworld.org/docid/3ae6b6dfc.html> and reiterated in *Abdolkhani and Karimnia v. Turkey*, Appl. No. 30471/08, 22 September 2009, paras. 88-89, <http://www.refworld.org/docid/4ab8a1a42.html> and in *M.S.S. v. Belgium and Greece*, Appl. no. 30696/09, 21 January 2011, paras. 286, 298 and 321, <http://www.refworld.org/docid/4d39bc7f2.html>.

<sup>49</sup> UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, para. 189, <http://www.unhcr.org/3d58e13b4.html>.

<sup>50</sup> ExCom Conclusion No. 8 (XXVIII) 1977, para. (e); ExCom Conclusion No. 30 (XXXIV) 1983, para. (e) (i).

<sup>51</sup> European Union: Council of the European Union, *Charter of Fundamental Rights of the European Union (2007/C 303/01)*, 14 December 2007, C 303/1, <http://www.refworld.org/docid/50ed4f582.html>.



der to ensure effective access to the asylum procedure, including at the border.<sup>52</sup>

### 3.2 *The non-refoulement obligation and the prohibition of collective expulsion*

3.2.1 Article 33(1) of the 1951 Convention prohibits states from expelling or returning a refugee *in any manner whatsoever*, including situations in which refugees or asylum-seekers are being expelled collectively.<sup>53</sup> Similarly, the obligation of non-refoulement developed by this Court under Article 3 ECHR is reinforced by the prohibition of collective expulsion under Article 4 Protocol No. 4 ECHR.<sup>54</sup> This article prohibits the removal of aliens as a group and requires States to take an expulsion measure only after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group.<sup>55</sup>

3.2.2 In the context of the present case, the Court's judgment in the case of *Hirsi and Others v. Italy* is of particular importance. The Court held that 'according to the established case-law of the Commission and of the Court, the purpose of Article 4 of Protocol No.4 is to prevent States being able to remove certain aliens without examining their personal circumstances and, consequently, without enabling them to put forward their arguments against the measure'.<sup>56</sup> The Court went on to find that the push-backs of the applicants by the Italian authorities to Libya were 'carried out without any form of examination of each applicant's individual situation' and that there were no identification procedures by the Italian authorities. Moreover, the Court noted that 'the personnel aboard the military ships were not trained to conduct individual interviews and were not assisted by interpreters or legal advisers'.<sup>57</sup> The lack of identification procedures and individual examination, coupled with the lack of training and knowledge, was further exacerbated by the lack of interpretation and legal assistance. All of which lead the Court to conclude that there were insufficient 'guarantees ensuring that the individual circumstances of each of those concerned were actually the subject of a detailed examination'.<sup>58</sup>

### 3.3 *The right to an effective remedy*

3.3.1 This Court has held that the prohibition of *refoulement* under Article 3 in conjunction with Article 13 ECHR includes the obligation of the returning State to provide effective guarantees to protect the applicant against *refoulement*, be it direct or indirect, to the country from which s/he has fled.<sup>59</sup>

3.3.2. Of particular relevance in the present case, the Court held that the exercise of the right to an effective remedy enshrined in Article 13 ECHR must not be unjustifiably hindered by the acts or

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<sup>52</sup> These principles and guarantees are stipulated in Chapter II (basic principles and guarantees) of the European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, <http://www.refworld.org/docid/51d29b224.html>.

<sup>53</sup> EXCOM Conclusion No. 85 (XLIX), 1998, para. (q).

<sup>54</sup> The prohibition of collective expulsions is also stipulated under Article 19(1) of the Charter of Fundamental Rights of the European Union.

<sup>55</sup> ECtHR, *Becker v. Denmark*, No. 701175, Decision of 3 October 1975. (p.235). Notably, each person concerned must have been given the opportunity to put arguments against their expulsion to the competent authorities on an individual basis, See ECtHR, *Vedran Andric v. Sweden*, Appl. no. 45917/99, 23 February 1999, <http://www.refworld.org/docid/3ae6b7048.html>.

<sup>56</sup> ECtHR, *Hirsi Jamaa and Others v. Italy*, Appl. no. 27765/09, 23 February 2012, para. 185, <http://www.unhcr.org/refworld/docid/4f4507942.html>.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibidem.* para. 185.

<sup>59</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Appl. no. 30696/09, 21 January 2011, para. 286, <http://www.refworld.org/docid/4d39bc7f2.html>.

omissions of the authorities of the respondent State.<sup>60</sup> Article 13 requires “independent and rigorous scrutiny” of any complaint made by a person in such a situation, where “there exist substantial grounds for fearing a real risk of treatment contrary to Article 3” and secondly, “the possibility of suspending the implementation of the measure impugned.”<sup>61</sup> The Court also recognized that the haste with which a removal is carried out might render the available remedies ineffective in practice and therefore inaccessible.<sup>62</sup>

3.3.3 Furthermore, while the guarantees under Article 13 are only applicable to persons with an arguable claim pursuant to one of the other relevant rights in the ECHR, the Court held that the person concerned should have an effective opportunity to make such a claim, notably in terms of material conditions, access to information,<sup>63</sup> legal assistance and interpretation.<sup>64</sup> The Court also recognized that the absence of these safeguards undermines the quality of the submission and consequently the quality of the examination by the authorities.<sup>65</sup>

#### 4. Conclusion

4.1 UNHCR considers that the practice of rejecting at the border and pushing back persons who may be in need of international protection without proper inquiries in individual cases, and without taking into account the circumstances, rights and needs of each individual is at variance with the prohibition of *non-refoulement* and the prohibition of collective expulsion.

**UNHCR**  
**15 November 2015**

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<sup>60</sup> *Ibid.*, para. 290.

<sup>61</sup> ECtHR, *Hirsi Jamaa and Others v. Italy*, Appl. no. 27765/09, 23 February 2012, para. 198, <http://www.unhcr.org/refworld/docid/4f4507942.html>. ECtHR *M.S.S. v. Belgium and Greece*, Appl. no. 30696/09, 21 January 2011, para. 293, <http://www.refworld.org/docid/4d39bc7f2.html>.

<sup>62</sup> ECtHR, *De Souza Ribeiro v. France*, Appl. no. 22689/07, 13 December 2012, para. 95, <http://www.refworld.org/docid/511cf0a22.html>.

<sup>63</sup> In its *Hirsi* judgment, the Court observed that the lack of access to information is a ‘major obstacle in accessing asylum procedures’ and reiterated ‘the importance of guaranteeing anyone subject to a removal measure, the consequences of which are potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints.’ ECtHR, *Hirsi Jamaa and Others v. Italy*, Appl. no. 27765/09, 23 February 2012, para. 204, <http://www.unhcr.org/refworld/docid/4f4507942.html>. See also ECtHR, *M.S.S. v. Belgium and Greece*, Appl. Nn. 30696/09, 21 January 2011, para. 304, <http://www.refworld.org/docid/4d39bc7f2.html>.

<sup>64</sup> ECtHR, *Hirsi Jamaa and Others v. Italy*, Appl. no. 27765/09, 23 February 2012, para. 202, <http://www.unhcr.org/refworld/docid/4f4507942.html>

<sup>65</sup> ECtHR, *I.M. v. France*, Appl. no. 9152/09, 2 February 2012, para. 155, <http://www.refworld.org/docid/4f2932442.html>.