



CONVIVE - CEPAIM FOUNDATION and RED ACOGE

# Joint Submission to the United Nations Human Rights Committee

Examination of Spain

International Covenant on Civil and Political Rights

144th session (June 23 - July 25, 2025)

**CONVIVE Cepaim Foundation:** Independent, cohesive and sustainable organization that aims to promote a model of inclusive and intercultural society that facilitates full access to citizenship rights for the most vulnerable people and, in particular, migrants, developing policies to combat any form of social exclusion and collaborating in the development of local territories and countries of origin of migrants. It develops its activities in the areas of reception and international protection; employment and training; entrepreneurial culture; intervention with youth and families; development cooperation and co-development; rural development; equality and non-discrimination; interculturality and community development; and housing.

Website: <https://www.cepaim.org> Mail: [incidencia@cepaim.org](mailto:incidencia@cepaim.org)

**Red Acoge:** Federation of social entities specialized in the accompaniment, integration and defense of the rights of migrants and refugees in Spain that promotes the construction of a diverse and intercultural society in which all people have the same rights regardless of their migratory status. Red Acoge, founded in 1991, has 20 federated organizations present in 10 autonomous communities.

Website: <https://redacoge.org> Mail: [acoge@redacoge.org](mailto:acoge@redacoge.org)

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## INTRODUCTION

The signatory organizations, CONVIVE Fundación Cepaim and Red Acoge, together with the entities that adhere, present this joint contribution to the United Nations Human Rights Committee, in the framework of the examination of the Seventh Periodic Report of Spain (hereinafter, the Report) regarding the International Covenant on Civil and Political Rights (ICCPR). The presentation includes the main concerns regarding the effective guarantee of the civil and political rights of migrants, from a perspective based on human rights, equal treatment and non-discrimination.

This report documents multiple violations, omissions and structural inadequacies in legislation, public policies and administrative practices that limit or deny the effective exercise of the rights enshrined in the Covenant. The main areas of concern include structural discrimination, obstacles in access to justice and international protection, lack of legal and safe channels, exclusion in areas such as employment, health, education and housing, as well as practices contrary to the principle of non-refoulement and lack of protection for unaccompanied minors.

Each thematic section contains recommendations to the Human Rights Committee, through which it is requested to urge the Spanish State to adopt concrete and urgent measures to ensure effective compliance with the relevant articles of the ICCPR. These recommendations reflect the direct experience of the signatory and adhering organizations, and reflect the demands of the communities we accompany, with the aim of advancing towards a more just, inclusive and respectful society with the fundamental rights of all people, without discrimination of any kind.

## NON-DISCRIMINATION

(Articles 2, 20 and 26 of the ICCPR)

### A. POLICY DEVELOPMENT

#### **Comprehensive law for equal treatment and non-discrimination**

In July 2022, the *Integral Law for Equal Treatment and Non-Discrimination* was approved. The law represents a step forward in the fight against discrimination and in the fulfillment of the principle of equality in a broad and comprehensive manner, in line with international and European standards.

The social entities that have promoted this legislative process consider that this regulation lacks measures that address issues such as accessibility, child protection, dialogue with society and training of key agents in the fight against discrimination. The effective protection of victims and the sanctioning regime have important gaps and issues such as intersectionality, reversal of the burden of proof, reparation, discrimination in the public sphere or structural discrimination are missing.

Furthermore, despite the fact that the law recognizes the right of all persons to equal treatment and non-discrimination *regardless of their nationality, whether they are minors or adults, or whether or not they have legal residence*, it includes an additional provision that does not affect the legislation on foreigners, the consequence of which is discrimination in access to rights and services for migrants without residence authorization. One of the areas of particular gravity is their limited access to justice.

The Law provides for the creation of the Independent Authority for Equal Treatment and Non-Discrimination, responsible for monitoring compliance with equal treatment regulations, conducting investigations into the existence of possible situations of particularly serious discrimination, bringing legal action in the most serious cases of discrimination and requesting action by the State Administration to sanction conduct constituting an administrative offense.

With more than two years of delay, given that the Law established that this body should be established by January 2023 at the latest, the Council of Ministers (April 2, 2025) has proposed a person as the head of this body who still has to be endorsed by the Parliament. The Authority's Statute has yet to be drafted and approved.

**Recommendations.** The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Enable effective measures that comprehensively develop the Integral Law for Equal Treatment and Non-Discrimination.

- Approve the regulatory development of Law 15/2022 of July 12, 2002, Integral for Equal Treatment and Non-Discrimination.
- Make the Independent Authority for Equal Treatment and Non-Discrimination operational and provide it with an adequate budget.
- Harmonize the body of legislation to guarantee the right to equal treatment and non-discrimination of migrants without authorization of residence in all areas.

### **Organic Law against Racism, Racial Discrimination and Related Forms of Intolerance**

The *Proposed Organic Law against racism, racial discrimination and related forms of intolerance* was submitted for public consultation in March 2022 and its approval by the Congress of Deputies has been paralyzed since March 2024.

The lack of an adequate legal framework hinders the development of public policies for the prevention, attention to victims, punishment and elimination of all forms of racial discrimination and related intolerance.

**Recommendations.** The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Approve without further delay the Organic Law against racism, racial discrimination and related forms of intolerance, aligned with international standards and with the binding adoption of the opinions of international organizations.

### **B. MEASURES TO PREVENT AND COMBAT DISCRIMINATION AGAINST PERSONS BELONGING TO ETHNIC MINORITIES**

The different studies on the way in which forms of racism, racial discrimination, xenophobia and other related forms of intolerance affect the enjoyment of fundamental rights, which are indicated in the Report, show that inequalities persist in education, employment, housing and access to basic public services such as health care for foreigners in Spain.<sup>1</sup>For people in an irregular administrative situation, which a recent report estimates at 700,000<sup>2</sup>, the situation of discrimination and violation of rights is even greater.

However, the Report presented by Spain lacks a description of specific measures related to migrants aimed at reversing this situation, both in terms of legislation and public policies. This is despite the fact that in the

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<sup>1</sup>Mahía, R. and Medina, E. (2024). [Analysis of the economic impact of discrimination and inequality between the population native and foreign residing in Spain](#). Spanish Observatory of Racism and Xenophobia - OBERAXE.

<sup>2</sup>[Notas de coyuntura social. May 2024](#). FUNCAS

*List of issues prior to the presentation of the seventh periodic report of Spain issued by the Committee expressly indicates the need to report on the efforts made during the period under review, and their results, to prevent and combat discrimination, particularly against people of African descent, foreigners and members of ethnic minorities, especially the Roma community, in all areas, including access to housing, employment, education, equal pay and health care, and to ensure their integration.*

We therefore summarize those areas of particular concern in a very concise manner.

### **Discrimination in access to justice**

Articles 14 and 24 of the Spanish Constitution enshrine "access to justice" and "judicial protection" as cornerstones on which to guarantee the full enjoyment of rights. In spite of this, *Organic Law 4/2000, of January 11, on the rights and freedoms of foreigners in Spain and their social integration* (LOEX) and its regulations provide for a sanctioning and/or expulsion procedure for persons in an irregular administrative situation (art. 57 et seq. LOEX) which, with some exceptions, does not recognize guarantees in access to justice for persons who are victims of a crime. The LOEX has not been amended even by the sanction of Law 4/2015, of April 27, of the Statute of the victim of crime, with administrative law prevailing over criminal law, which lacks any legal logic and places the victim of crime in a situation of absolute defenselessness and vulnerability. The consequence is that there are high rates of under-reporting and impunity.

There are three cases in which the legislation provides for exemption from administrative liability and the non-initiation of sanctioning proceedings for irregular stay or suspension of previously initiated proceedings, as the case may be, but in all of them there are conditioning elements that limit the guarantees<sup>3</sup>:

#### **1. Foreign women victims of gender-based violence or sexual violence (art. 31 bis LOEX)**

The Spanish report notes that *foreign victims of gender-based violence can file complaints and have the same access to the rights to which they are entitled as victims.*

However, the suspension of the sanctioning file for unlawful residence is subject to a conviction. Therefore, this article, which offers guarantees at the time of the complaint, makes them subject to a conviction, which can be difficult to obtain for women in an irregular situation who often lack proof of violence.

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<sup>3</sup>In these three cases, the granting of residence and work permits for exceptional circumstances on a temporary basis for the victims of these crimes and their children is also contemplated.

## 2. Collaboration against organized networks (art. 59 LOEX)

*In the case of a victim, injured party or witness of an act of illicit trafficking in human beings, illegal immigration, labor exploitation or illicit trafficking in labor or exploitation in prostitution by abusing his situation of need, he may be exempted from administrative responsibility and **shall not be expelled if he denounces the perpetrators or cooperators of such trafficking, or cooperates and collaborates with the competent authorities**, providing essential information or testifying, if necessary, in the corresponding proceedings against the perpetrators.*

## 3. Victims of human trafficking (art. 59 bis LOEX)

In force both during the victim identification phase and during the recovery and reflection period to allow the victim to decide whether he/she wishes to cooperate with the authorities in the investigation of the crime and, if necessary, in the criminal proceedings.

The competent authority may declare the victim exempt from administrative responsibility and may facilitate, at its option, the assisted return to his or her country of origin or the authorization of residence and work for exceptional circumstances when it deems it necessary because of his or her cooperation for the purposes of investigation or criminal proceedings, or in view of his or her personal situation, and facilities for his or her social integration, in accordance with the provisions of this Law.

In this case, there are additional difficulties in the phase of the identification of the victims of trafficking whose competence lies exclusively with the police units, an aspect that is highly questioned due to the conflict of interests involved in the formal identification of the victims and the lack of active participation of other key actors<sup>4</sup>. This point has been the subject of concern and recommendations by other UN bodies, such as the Committee on the Elimination of Discrimination against Women (CEDAW)<sup>5</sup>.

In other words, the only guarantees for safe reporting for victims of some crimes who are in an irregular administrative situation are subject to:

- a conviction that may be highly conditioned by the very situation of vulnerability of the victims, who may have little evidence;
- to the police's own identification as a victim;
- to the obligation to collaborate with the authorities and that such collaboration is considered relevant;
- to the personal situation of the victim, a concept not limited by the regulatory source and, therefore, legally uncertain and subject to discretion.

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<sup>4</sup>Diez Velasco, Isabel. [\*La protección de personas víctimas de trata en el anteproyecto de ley orgánica integral contra la trata y la explotación de seres humanos: el caso de la infancia y las personas solicitantes de asilo\*](#). IgualdadES Magazine. No. 8, January/June 2023. Center for Political and Constitutional Studies

<sup>5</sup>Committee on the Elimination of Discrimination against Women (CEDAW). [\*Concluding observations on the ninth periodic report of Spain\*](#) (2023).

**Recommendations.** The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Modify the immigration regulations, following the recommendations of the Ombudsman, to guarantee access to justice and comprehensive protection for ALL victims of crime, including those in an irregular administrative situation, avoiding the initiation of sanctioning and/or expulsion proceedings for irregular stay.
- Eliminate the conditional requirements in the three cases in which safe reporting guarantees are recognized, applying a human rights approach whereby neither reporting nor participation in criminal prosecution is necessary to provide protection to victims.

### Employment discrimination

The "Analysis of the economic impact of discrimination and inequality between the native population and foreigners residing in Spain"<sup>6</sup> promoted by the Secretary of State for Migration and coordinated by the Spanish Observatory of Racism and Xenophobia (OBERAXE) highlights the existence of high labor discrimination with an important gender dimension. *There is a notable labor integration gap for foreigners with a specifically accentuated discrimination against women, reflecting significant inequalities in access to and permanence in the labor market, as well as in over-qualification and salary differences with respect to the native population.*

The lower number of years of contributions of the foreign population, the higher levels of unemployment, and the possible performance of jobs in the underground economy, all contribute to unemployment protection that is very different from that of Spanish nationals<sup>7</sup>.

**Recommendations.** The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- To develop employment and training policies at the state, autonomous community and municipal levels that take into account the specific socio-labor circumstances of the population of migrant origin.
- Advance in programs that reduce the waiting time in the processes of homologation and accreditation of educational degrees.
- Strengthen the Labor Inspectorate to ensure compliance with labor rights and put an end to situations of labor and wage exploitation suffered by the most vulnerable migrants.

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<sup>6</sup>Mahía, R. and Medina, E. (2024). [Analysis of the economic impact of discrimination and inequality between the native and foreign population residing in Spain](#). Spanish Observatory of Racism and Xenophobia.

<sup>7</sup>Forum for the Social Integration of Immigrants (2024). [Situation of migrants and refugees in Spain. Annual Report 2023](#)



## Educational discrimination

School segregation is a long-standing problem. Different committees of the United Nations, the Council of Europe, the OECD or the European Union have made multiple recommendations derived, in many cases, from residential segregation that disproportionately affects gypsy children and adolescents, as well as migrants<sup>8</sup>.

There are inequalities in educational access and school dropout rates. The foreign population has a lower school enrollment rate and a higher probability of dropping out of school due to their origin.

Educational discrimination can be observed when comparing the maximum levels of education attained by natives and foreigners, with a greater relative presence of foreigners at the lowest educational levels and less in higher education<sup>9</sup>.

**Recommendations.** The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Support the universalization of public early childhood education and adopt compensatory education measures that pay due attention to the groups most affected by school failure and dropout.
- To develop a State Plan against educational segregation, with indicators, concrete measures and budget, to improve the conditions of gratuity, quality and equity in public and subsidized schools, ensuring the control and effective sanctioning of abusive practices in the form of quotas and allowing the distribution of teachers taking into account equity and inclusion, as a special measure or affirmative action and promoting the stability of qualified staff in the most segregated schools.

## Health discrimination

Health exclusion continues to be a reality faced by thousands of migrants in Spain, as attested to by various reports from social organizations. Doctors of the World<sup>10</sup> has documented that 28,744 people have suffered some barrier that has hindered or prevented their access to the healthcare system between January 2022 and August 2024, of which 97% of the cases correspond to foreigners. It is also noted that discriminatory barriers constitute the bulk of the total number of documented barriers with 40.84%.

This situation is a consequence of the regulatory framework established by Royal Decree-Law 7/2018. It should be recalled that this regulation had already been described as insufficient by the

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<sup>8</sup>PHYS (2024).

<sup>9</sup>OBERAXE (2024).

<sup>10</sup>Doctors of the World. [III Report on barriers to the national health system in vulnerable populations.](#)

The Committee on Economic, Social and Cultural Rights of the United Nations considered that it had failed to overcome all the restrictions imposed by the regressive reform of 2012. The Committee also warned that the regulation requires *certain conditions, which constitute barriers for migrants in an irregular situation, and does not overcome the setbacks of the previous decree as it establishes two new requirements for migrants in an irregular administrative situation: the obligation to prove that the person has been in Spain for more than three months and the non-existence of a third party obliged to pay.*

The National Health System Universality Bill to restore universal access to health services continues to be paralyzed.

**Recommendations.** The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Approve the Bill on the Universality of Health Care, currently in process, which recovers the wording of Article 3 of Law 16/2003, on cohesion and quality of the National Health System prior to 2012, and recognizes the right to health care for all persons effectively living in Spain, regardless of their administrative situation and without requiring a minimum length of stay. Ensure in all cases the care of minors, pregnant women and emergency care at public expense.
- To guarantee equitable access and, in this sense, to decouple registration from the right to health care.
- To amend the Law on Guarantees and Rational Use of Medicines and Health Products to ensure access to pharmaceutical services for people in situations of social vulnerability.

### **Discrimination in access to housing**

Housing is the area in which most people report feeling discriminated against, according to the latest report of the Council for the Elimination of Racial or Ethnic Discrimination (CEDRE).

Discriminatory practices have been documented in various studies on the real estate market, such as the one recently published by the association Provivienda *¿Se alquila? (2) Racism and segregation in the rental housing market*<sup>11</sup>, which indicates that 99% of real estate agencies accept discriminatory practices that either directly prevent access to housing for foreigners (in 65% of cases) or make it more difficult by increasing the requirements.

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<sup>11</sup>Provivienda: [\*Is it for rent? \(2\) Racism and segregation in rental housing\*](#) (2025)

**Recommendations.** The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Adopt measures so that the competent authorities effectively apply Law 15/2022, of July 12, 2002, Integral Law on Equal Treatment and Non-Discrimination, when individuals, companies or real estate companies prevent access to rental and purchase of housing due to racial or ethnic discrimination.
- To regulate the maximum requirements and documentation necessary to access rental or purchase housing in order to avoid discriminatory procedures.
- Increase resources to exercise effective surveillance of the real estate market and sanctioning efforts as a deterrent to discriminatory real estate practices.
- Promote accessible, effective and safe procedures to facilitate the reporting of victims of residential discrimination, including the simplification of procedures, as well as the allocation of free legal assistance.

#### C. MEASURES ADOPTED TO ERADICATE AND SANCTION THE PRACTICE OF IDENTITY CHECKS AND OTHER FORMS OF DISCRIMINATORY OR UNEQUAL TREATMENT

##### **ICCPR)** (Articles 2 and 26 of the

Despite the fact that Spain's Report to the Covenant notes that the Law for the Protection of Citizen Security (LOPSC) establishes the principles of legality, equal treatment and non-discrimination, opportunity, proportionality, effectiveness, efficiency and accountability, and that actions will be subject to administrative and jurisdictional control, no substantial changes have been adopted regarding the practice of police stops by racial profiling since the United Nations Working Group of Experts on Afro-descendants considered them an "endemic" practice following its visit to Spain in 2018.

Despite multiple warnings from international human rights bodies such as the United Nations Human Rights Committee in 2015, or the European Commission Against Racism and Intolerance of 2018, police stops by racial profiling are not expressly prohibited in the Organic Law 4/2015, of March 30 on the protection of citizen security (art.16), nor in Law 15/2022, of July 12, comprehensive for equal treatment and non-discrimination (art.18).

The absence of clear guidelines to determine when there is sufficient cause for a police stop causes a great deal of arbitrariness. To make matters worse, these stops are a mechanism to carry out express deportations at a reduced rate of

The law is a violation of the judicial guarantees of deported persons and a restrictive practice of the right to freedom of movement.

As indicated in the Report, there are complaint and suggestion forms available in all the offices of the State Security Forces and Corps, through which situations of dissatisfaction in relation to the quality of the service provided can be communicated. However, this measure does not constitute an independent mechanism without party action.

**Recommendations.** The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Expressly prohibit the use of racial profiling in Organic Law 4/2015 of March 30 on the protection of citizen security and in Law 15/2022 of July 12, comprehensive for equal treatment and non-discrimination.
- Clearly define the circumstances that may be considered reasonable suspicion by police officers before proceeding with a check.
- To put an end to the police practice of withdrawing the passport or identification of the country of origin of persons who are identified in police stations in order to force their subsequent appearance in order to initiate a sanctioning file for irregular stay in their case or to notify them of an infraction of the law on citizen security, since it represents an added aggravation for the persons identified and it is an illegal action.
- Create autonomous mechanisms for oversight of police actions, with sufficient resources, with the power to receive and process complaints, provide advice and accompaniment, and facilitate redress processes.

## **RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

**(Articles 6, 7 and 19 of the ICCPR)**

Spain has made significant progress in consolidating a legal and operational framework aimed at protecting the right to life and personal integrity, as well as the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

However, the development of a migration policy that does not provide safe entry routes and is oriented towards the closure of borders puts people's lives at serious risk. The increasing securitization of the border and the lack of sufficient control mechanisms for police operations have led to excessive and disproportionate use of force in episodes of mass entries through border crossings, with serious consequences.

## Infringement of the right to life due to lack of legal and safe roads

The serious insufficiency of legal and safe ways to migrate or apply for international protection forces thousands of people to undertake irregular routes every year, with a dramatic human cost. In 2024 alone, at least 10,457 people died trying to reach Spain, of whom 9,757 on the Atlantic route to the Canary Islands (93% of the total), 421 women and 1538 minors, according to the independent observatory Caminando Fronteras.<sup>12</sup> The IOM's official Missing Migrants project corroborates the lethality of the region: between 2018 and 2023 it documented more than 8.600 deaths or disappearances on the western and Atlantic routes to the Peninsula and the Canary Islands.<sup>13</sup> On the land border, the tragedy of June 24, 2022 in Melilla, with at least 23 confirmed fatalities and 70 people still missing, shows that the pressure on closed crossings pushes to extremely dangerous attempts.<sup>14</sup> The IOM project has also documented the number of deaths or disappearances on the western and Atlantic routes to the Peninsula and the Canary Islands.<sup>15</sup> The IOM project has also documented the number of deaths and disappearances on the western and Atlantic routes.

These figures reveal a breach of the State's positive duty to protect life (art. 6 ICCPR): denying safe channels of access (humanitarian visas, effective family reunification, resettlement programs and embassy procedures) forces people to expose their integrity at sea, in the desert or in front of border fences, feeding networks of trafficking and violence. The UN High Commissioner for Human Rights and the Commissioner for Human Rights of the Council of Europe have repeatedly urged Spain and the European Union on the need to expand safe and legal routes to avoid more preventable deaths<sup>15</sup>.

## Recommendations

The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Establish and expand legal and secure pathways for regular migration, such as recruitment programs at origin, temporary work visas, visas for vocational training and effective family reunification. These routes should be available from countries of origin and transit, with clear criteria and non-discriminatory access. Strengthening them is key to avoiding dangerous irregular routes and complying with the duty to protect life (art. 6 of the ICCPR).
- Open and strengthen legal, safe and accessible asylum application mechanisms, including embassies, consulates, humanitarian visas and resettlement quotas, in coordination with UNHCR and IOM.

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<sup>12</sup>Caminando Fronteras. *Diálogo "o a la Vida 2024 - Daños de víctimas en las rutas "acia España* (dec. 2024).

<sup>13</sup>International Organization for Migration (IOM). *Missing Migrants - Wssisín Msdísíansan & Éilaníic Rouís* (database, update: Jan. 2025).

<sup>14</sup>Amnesty International (2024). *Maíiuscos / España: Rsvslsn la susís ds los ½igianís qus sigusn dssapaísndos a½os dsspuís ds la ½asacís ds Mslilla*, 24 de junio de 2024: <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/maííuecos-espana-íevelen-la-sueite-de-los-migiantes-que-siguen-despuen-desapaíecidos-dos-anos-despuen-del-moítifeío-incidente-de-la-fionteía-de-melilla/>

<sup>15</sup>OHCHR. *Spain: UN sxpsíís uígs sars, lsgal ½igíáíion paí "waQs ío písvsní dsaí "s aí ssa* (communiqué, 3 Jul. 2023); Council of Europa, Comisaía de Deíechos Humanos. *Rspoíí rollowing visíí ío Spain, Novs½bsí 2022*.

- Provide sufficient resources to Maritime Rescue and ensure safe disembarkations with immediate access to the security procedure;
- Repeal or reform regulatory provisions that permit or protect border practices that endanger the life or physical integrity of migrants, such as summary returns or the disproportionate use of force, in compliance with Article 6 of the ICCPR.
- Ensure prompt, independent, impartial and thorough investigations into all deaths occurring in the context of police or security forces, including the events in Melilla in June 2022, ensuring accountability and full reparations to the victims and their families.
- Establish an independent mechanism to oversee police actions in immigration control operations, with the capacity to receive complaints, issue binding recommendations and ensure adequate reparations.

## HUMAN TRAFFICKING

(Articles 7, 8, 9 and 24 of the

ICCPR)

Spain has developed important initiatives to combat human trafficking, making progress in recognizing the rights of victims and strengthening the legal framework. However, there are still key issues that need to be addressed to effectively reduce this serious phenomenon, especially when considering the situation of migrants, who face greater vulnerabilities.

It is essential to improve the mechanisms for identifying victims of trafficking, to guarantee their real and effective access to information on their rights, and to ensure their access to justice with all guarantees, including the protection of their personal integrity and, as far as possible, their anonymity.

One of the main barriers is the victims' lack of access to rights, which is largely due to the absence of a formal identification procedure managed by authorities independent of criminal prosecution, as indicated in section VI of the Framework Protocol for the Protection of Victims of Trafficking in Human Beings<sup>16</sup>.

The Preliminary Draft of the Comprehensive Organic Law against Trafficking and Exploitation of Human Beings<sup>17</sup> mentions the need to decouple identification from criminal investigation and victim collaboration, but this statement does not guarantee, in practice, that the two procedures are independent. This separation can only be ensured if the authorities in charge of identifying the victims are not involved in the investigation of the crime, if the authorities in charge of identifying the victims are not involved in the investigation of the crime, if the

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<sup>16</sup>Interinstitutional Coordination Protocols:

<https://violenciagenero.igualdad.gob.es/wp-content/uploads/protocoloTrata.pdf>

<sup>17</sup>Draft Bill of the Comprehensive Organic Law against Trafficking and Exploitation of Human Beings:

<https://www.mjusticia.gob.es/es/AreaTematica/ActividadLegislativa/Documents/Anteproyecto%20de%20Ley%20Org%C3%A1nica%20Trata%20TAIP.pdf>

initial interviews are conducted from a protective approach, and if the victim's refusal to cooperate does not affect her access to rights, benefits or residence permits.

Trafficked persons seeking international protection face structural obstacles<sup>18</sup>: poor training of border personnel on trafficking and asylum<sup>(19)</sup> lack of specialized places in the reception system<sup>(20)</sup> and serious difficulties in accessing procedures with all the necessary guarantees, which severely limits the exercise of their rights.

Reliable and disaggregated data is essential for designing effective public policies against human trafficking. The clandestine nature of this crime can no longer be an excuse for the lack of accurate information. Currently, each institution collects data in isolation, without coordination or exchange between agencies, resulting in inconsistent statistics and no disaggregation by age, sex, nationality or type of exploitation<sup>21</sup>.

It is essential to move towards a comprehensive system to combat trafficking and exploitation of human beings, with a special focus on the effective protection of victims, including the following elements.

## Recommendations

The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- To provide specialized resources for victims of trafficking seeking international protection.
- Ensure that people arriving at our borders receive adequate information about their rights, the possibility of being identified as victims and the option of applying for asylum.
- Incorporate the best interest of the minor in all procedures, adopting protection measures in accordance with his or her age, maturity and personal situation<sup>22</sup>.
- Guarantee specialized psychological care for victims of trafficking and/or exploitation.
- Strengthen training and awareness-raising on new forms of recruitment and exploitation, such as online trafficking or sugar dating.

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<sup>18</sup>Castaño Reyero, M. J., Díez Velasco, I., & Barrio Lema, C. I. (2019). *Vulnerable groups in the system asylum : An approach to the needs of children, LGTBI+ persons and victims of trafficking*. Instituto Universitario de Estudios sobre Migraciones, Universidad Pontificia Comillas and Fundación La Merced Migraciones.

<sup>19</sup>European Council on Refugees and Exiles (ECRE). (2018). *Asylum Information Database. Country report: Spain* (p. 46).

<sup>20</sup>Santos Olmeda, B. (2019). *Victims of trafficking in Spain: The international protection reception system*. CIDOB Immigration Yearbook 2019, 158.

<sup>21</sup>Castaño Reyero, M. J., et al. (2022). *Data culture in human trafficking: Technical report research*. University Institute for Migration Studies and UNICEF Spain.

<sup>22</sup>Castaño Reyero, M. J., et al. (2017). *They are boys and girls. They are victims. Situación de los menores de edad víctimas de trata en España* (Cuadernos para el debate [05]). UNICEF Spanish Committee and University Institute for Migration Studies.

- Unify and centralize the collection and analysis of data on trafficking and exploitation in a single institution.
- Disaggregate data according to age, sex, nationality, type of operation, and recruitment methods, among others.

## **TREATMENT OF FOREIGNERS, INCLUDING REFUGEES AND ASYLUM-SEEKERS**

**(Articles. 7, 9, 10, 12, 13, 14 and 24 of the ICCPR)**

### **Detention and deprivation of liberty of migrants based on their immigration status. The Centros de Internamiento de Extranjeros (CIEs)**

Despite the formal advances reflected in Spain's Report, there is a significant omission regarding the situation of migrants deprived of their liberty in Detention Centers for Foreigners (CIE), in violation of Articles 7, 9, 10, 13, 14 and 24 of the ICCPR, as described below.

According to data from the Directorate General of Police, analyzed by the Jesuit Migrant Service in its report *Internamiento muteado* <sup>(23)</sup> (published in 2024), 2,085 people were interned in the Centros de Internamiento de Extranjeros (CIE) in 2023. This figure is slightly lower than the 2,276 persons registered in 2022, reflecting a trend of stability in detention since 2020.

The measure of internment in the CIE is disproportionate and violates the principles of last resort and proportionality recognized in the Spanish legal system, as well as the international commitments assumed by the Spanish State, in particular Article 9 of the ICCPR, which enshrines the right to liberty and security of person.

During 2023, at least the following situations of vulnerability and human rights violations were also detected in the context of CIE detention:

- **Detention of minors:** Age determination tests were only performed on nine minors in the Valencia CIE and one in the Murcia CIE. Two minors were identified at the Valencia CIE. The detention of minors contradicts the enhanced protection afforded to them under Article 24 of the ICCPR.
- **Interned persons seeking international protection:** 877 applications for international protection were processed, representing 42% of the total number of interned persons.
- **Internment of European Union nationals:** 77 persons from European Union member states (mainly Bulgaria, Croatia and Romania).

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<sup>23</sup> Service Jesuit a Migrants (2024). Report CIE 2023. Internment "muted". <https://sjme.org/2024/06/10/informe-cie-2023-internamiento-muteado/>



were interned in 2023, generally for reasons of public order or public safety, in accordance with the provisions of the Citizen Security regulations applicable to the community regime.

Regarding the reasons for detention: 71.37% were due to expulsion proceedings, 26.7% to return orders, 1.9% to compulsory departure orders.

Regarding the violation of rights:

- Social organizations present in the CIE continue to denounce cases of physical and verbal aggression between inmates, as well as from police personnel towards inmates. These practices directly violate Article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment.
- Restrictions on visitation by civil society organizations and legal counsel in centers such as the CIE of Las Palmas limit access to legal counsel and hinder the exercise of the right to defense, in violation of articles 13 and 14 of the ICCPR.

Currently, there is still a lack of alternatives to immigration detention, despite the fact that they are more respectful of rights, more efficient and less costly<sup>24</sup> than detention or internment.

The adoption in 2024 of the European Pact on Migration and Asylum, in a southern border context such as the Spanish one, may imply an added risk of an increase in immigration detention, particularly during the screening procedure (triage) at the border.

### **Centers for the Temporary Attention of Foreigners (CATEs)**

Short-term measures of deprivation of liberty in the management of migration control are configured as an increasingly frequent practice at the Southern Border. In 2018, Temporary Alien Attention Centers (CATEs) are opened as a tool for the detention of newly arrived persons by sea. There are currently 10 CATEs open and operational.

Between 2017 and 2022, a total of 126,707 people have been deprived of liberty in a CATE, including 7,280 minors.

The 2024 *Human Rights on the Southern Border Report*<sup>25</sup> by Asociación Pro Derechos Humanos

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<sup>24</sup>International Detention Coalition (2015). There are alternatives. A handbook for preventing unnecessary immigration detention (revised edition).

<https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>

<sup>25</sup>Pro Human Rights Association of Andalusia (APDHA) (2024). *Human Rights in the Southern Border*

The Andalusian Human Rights Association (APDHA) points out that these centers have been introduced de facto and without the existence of specific regulations to establish their nature and the legal framework that regulates them. Despite this, they have expanded throughout the territory, with the consequences that this entails.

The National Mechanism for the Prevention of Torture places it as a Detention Center for Foreigners and the report of 2022<sup>26</sup> points out that the General Directorate of the Police has informed that in the CATEs the security protocols of any detention center will be followed, which means recognizing its true nature. In this sense, the aforementioned report warns of the serious non-compliances that occur in the CATEs.

Among the most serious situations are the use of collective cells, the separation of families, the lack of infrastructure, spaces and furnishings, and the lack of a system for calling custody agents. There is also a lack of instruments to file complaints or denunciations, among other reasons, due to the lack of a specific legal framework.

## **Recommendations**

The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Promote alternative measures to detention guaranteeing respect for human dignity (art. 10 of the ICCPR) and the right to liberty (art. 9 of the ICCPR) of migrants. These should be measures that in no case involve deprivation of liberty. Closure of Alien Detention Centers as contrary to the principles of non-discrimination and equal treatment before the law. Measures involving deprivation of liberty should be restricted to the cases provided for in the Criminal Code for the corresponding criminal offenses.
- Ensure that screening (triage) and international protection procedures at the border and return do not involve deprivation of liberty, in compliance with the principles of necessity and proportionality, as enshrined in the new European Pact on Migration and Asylum, and prioritize alternative measures to detention.
- Reducing the number of detentions, limiting them to exceptional cases and avoiding detention for mere irregular administrative status, especially in the case of European Union nationals and new arrivals on boats.
- Document and regularize the administrative situation of "non-returnable" persons.
- Provide comprehensive health care services (physical and mental) within the CIE by the public health system, ensuring the continuity of medical treatment initiated prior to internment.
- Guarantee the effective and regular access of civil society organizations to CIEs and any other immigration detention facilities, in order to guarantee the rights of detainees, including their right to legal defense.

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<sup>26</sup>Ombudsman. National Mechanism for the Prevention of Torture. [Annual Report 2024](#)

effective (arts. 13 and 14 of the ICCPR).

- Articulate faster and more guaranteed complaint procedures to avoid the repatriation of interned persons.
- Define the legal framework for the regulation of CATEs, establishing all the guarantees for detainees and adequate facilities.

## **RIGHTS OF PERSONS SEEKING INTERNATIONAL PROTECTION AND REFUGEES**

### **A- ACCESS TO THE INTERNATIONAL PROTECTION PROCEDURE.**

**(Articles 2, 7, 9, 13, 14, 17 and 26 of the**

#### **ICCPR) Obstacles to access to the foster care system**

Difficulties in accessing the international protection procedure in Spain persist and, in some cases, have worsened. The scarcity or absence of telematic appointments, together with the obstacles to present the application in person, generate significant delays<sup>27</sup>. The delay in obtaining the first appointment for the expression of will can reach up to five months, and the subsequent appointment to formalize the application can take between six months and a year, and even approach two years in certain cases<sup>28</sup>.

These delays constitute a violation of the right recognized in Article 6 of Directive 2013/32/EU on asylum procedures, which establishes a period of three days (extendable to six) for the registration of the application. This situation directly affects the exercise of fundamental rights, such as access to the reception system, health care or the right to work<sup>(29)</sup> especially in the case of persons in a situation of vulnerability, thus violating Articles 2.3, 9 and 26 of the ICCPR.

In addition, those who manage to obtain an appointment and formalize their application face serious difficulties in communicating with the Asylum and Refugee Office and accessing information on the status of their file. The submission of additional documentation must be done by telematic means, but this is recorded with delays of more than five months<sup>30</sup>. This circumstance is aggravated in the case of persons outside the reception system or without legal accompaniment, which means that many applications are resolved without the investigating body having had knowledge of said documentation.

Another serious problem is the delay in resolving international protection cases. Out of the applications submitted by persons with Ukrainian nationality,

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<sup>27</sup>CEAR (2024). *Report 2024: Refugees in Spain and Europe*, p. 74.

<sup>28</sup>Ombudsman (2024). *Annual Report 2023*.

<sup>29</sup>ECRE (2024). *Asylum Information Database - Country Report: Spain*

<sup>30</sup>UN Human Rights Committee. General Comment No. 31 (2004).

who receive exceptional treatment, the rest of the applicants may wait several years for a response. As of July 2024, the number of pending cases amounted to approximately 170,000<sup>31</sup>; however, this figure has continued to grow, exceeding 270,000 pending files in January 2025<sup>32</sup>.

Also of particular concern is the entry into force of the new Alien Regulation (Royal Decree 1155/2024 of May 20), whose transitory provisions and substantive reforms have introduced additional obstacles for international protection applicants. In particular, the Fifth Transitory Provision conditions access to the residence authorization for exceptional circumstances (*arraigo*) to those persons who have received a final denial decision prior to the entry into force of the regulation, also requiring the accreditation of at least six months of residence in an irregular situation immediately prior to the application. This provision expressly excludes from the calculation the time elapsed during the asylum procedure, which disproportionately penalizes those who have already endured undue delays, pushing them into a situation of supervening irregularity.

In addition, in certain cases, express renunciation of the asylum application is required as a condition for access to regularization channels, a requirement that violates the principle of non-refoulement and can generate undue pressure to abandon the international protection channel. These administrative restrictions seriously compromise the exercise of fundamental rights protected by the ICCPR, in particular Articles 9 (liberty and security of person), 26 (equality before the law) and 2.3 (right to an effective remedy).

### **Obstacles to access to the asylum procedure at the border**

Effective access to the international protection procedure at border posts and diplomatic delegations is still not guaranteed, despite repeated denunciations by international organizations. The Commissioner for Human Rights of the Council of Europe, after her visit to Spain in November 2022, pointed out that "there seems to be no other way to enter Melilla and request protection from the authorities than swimming or jumping the fence, risking one's life"<sup>33</sup>. This finding reflects a serious violation of Article 13 of the ICCPR, which requires an individual examination prior to expulsion, as well as of Article 7, by putting at risk the physical and psychological integrity of those seeking protection.

The approach adopted by the European Union and its member states through the

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<sup>31</sup>Ministry of the Interior (January 2025). *Monthly preview of international protection - Cumulative data up to December 2024*.

<sup>32</sup>El País (January 12, 2025). *The collapse of the asylum system keeps more than 270,000 people in limbo*.

<sup>33</sup>Council of Europe Commissioner for Human Rights (2022). *Statement after her visit to Spain*: <https://elpais.com/espana/2022-11-29/el-consejo-de-europa-advierte-a-espana-que-no-debe-contribuir-a-la-violacion-de-derechos-humanos-en-sus-fronteras.html>

European Pact on Migration and Asylum, approved in May 2024, which reinforces border closure policies and externalization of migration control through agreements with third countries<sup>34</sup>. In April 2025, the European Commission proposed a common list of safe countries of origin, including Morocco, Tunisia and Senegal, which allows accelerated procedures to be applied to their nationals, on the unfounded presumption that they do not require protection<sup>3</sup>.

In the case of Spain, this strategy is reflected in agreements with countries such as Morocco, Mauritania, Mali, Gambia and Senegal, many of which lack effective judicial guarantees<sup>(35)</sup> which compromises respect for the principle of non-refoulement and may result in returns without individualized assessment, in contravention of Articles 7 and 13 of the International Covenant on Civil and Political Rights.

## Recommendations

The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Guarantee real and non-discriminatory access to the international protection procedure, respecting the maximum time limit of 6 days for registration of the application in accordance with Article 6 of Directive 2013/32/EU, and avoiding structural delays that violate the right to an effective remedy (art. 2.3 ICCPR) and to equality before the law (art. 26).
- Increase the human and material resources of the competent asylum authorities, ensuring specialized training to guarantee individualized procedures with all the guarantees (arts. 14 and 13 ICCPR).
- Maintain the Reception, Attention and Referral Centers (CREADE) as a permanent infrastructure, accessible to all applicants regardless of nationality, to facilitate access to the procedure and reduce delays (art. 26 ICCPR).
- Enable effective access to international protection at border posts and diplomatic delegations, guaranteeing individual examination prior to any refoulement, in accordance with the principle of non-refoulement (arts. 7 and 13 ICCPR).
- Review bilateral agreements with third countries (such as Morocco, Mauritania or Senegal) that externalize border control without effective guarantees, within the framework of the new European Pact on Migration and Asylum, to ensure respect for the right to life, integrity and a fair procedure (arts. 6, 7 and 13 ICCPR).
- Modify Royal Decree 1155/2024 to eliminate the requirement to renounce the asylum application as a requirement for access to regularization procedures and ensure that the time spent in the procedure counts for legal residence purposes (arts. 9 and 26 ICCPR).

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<sup>34</sup>European Commission (2025). *The Commission proposes to advance elements of the Pact on Migration and Asylum, as well as a first EU list of safe countries of origin*. Press release, April 16, 2025. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_25\\_1070](https://ec.europa.eu/commission/presscorner/detail/en/IP_25_1070)

<sup>35</sup>Fundación porCausa (2024). *Report on the externalization of migration control*: [https://porcausa.org/wp-content/uploads/2024/04/InformeExternaliz\\_COMPLETO\\_04\\_25.pdf](https://porcausa.org/wp-content/uploads/2024/04/InformeExternaliz_COMPLETO_04_25.pdf)

- Establish a national protocol for the early identification of situations of vulnerability -in accordance with international standards- that ensures legal, medical, psychological and social care from the beginning of the procedure and during all its phases (arts. 7 and 17 ICCPR).

## B- LACK OF INTERNATIONAL PROTECTION MECHANISMS FROM EJ ABROAD.

### (Articles 2, 7, 13 and 26 of the ICCPR)

Despite the fact that Law 12/2009, which regulates the right to asylum and subsidiary protection, provides for the possibility of accessing international protection from abroad - through resettlement programs, visa applications for humanitarian reasons, extension of refugee status to family members or the mechanism provided for in Article 38 for processing from embassies and consulates - these instruments remain largely inoperative.

The lack of regulatory development and the obsolescence of the regulatory framework in relation to European and international standards have made these channels exceptional and, in many cases, ineffective. This is compounded by the arbitrary and discretionary application by administrative authorities, especially in diplomatic representations. It is worth noting the repeated refusal of embassies in countries such as Morocco, Pakistan or Greece to process transfer requests under Article 38 of the Asylum Law, even when there were favorable court rulings, such as STS 3445/2020 and SAN 230/2021.

Official data reinforce this finding: in 2024, 94% of applications for international protection were formalized on national territory; 4.4% at border posts, 0.5% in Immigration Detention Centers (CIE), and 1.08% through embassies, by way of family extension<sup>36</sup>. These figures show that, in practice, there are still serious limitations to access the procedure from abroad, forcing many potential beneficiaries of international protection to resort to irregular, often dangerous, ways of initiating their application, in contradiction with the articles of the Convention on the Rights of Persons with Disabilities. 2.3 and 26 of the ICCPR.

Likewise, the resettlement program remains far below the capacities of the Spanish reception system. In recent years, the annual number of people resettled has not exceeded one thousand. This insufficiency is aggravated by the lack of coordination of the system with the autonomous communities and local entities, despite the fact that many of them have the resources and political will to assume a greater involvement in the reception.

This absence of legal and secure channels from the outside violates, in addition to the right to a safe

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<sup>36</sup>Ministry of the Interior (2024). *Avance de datos de protección internacional a 31 de diciembre de 2024*, Dirección General de Protección Internacional, p. 2.  
[https://proteccion-asilo.interior.gob.es/documentos/estadisticas/ultimos-datos/Avance-Trimestral-PI\\_diciembre.pdf](https://proteccion-asilo.interior.gob.es/documentos/estadisticas/ultimos-datos/Avance-Trimestral-PI_diciembre.pdf)

effective remedy (art. 2.3), the principle of equality before the law (art. 26), and may compromise the principle of non-refoulement when it prevents access to proceedings to persons at risk of treatment contrary to article 7 of the ICCPR.

### **Recommendations**

The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Adopt a comprehensive regulatory development of the mechanisms for access to international protection from abroad provided for in Law 12/2009, ensuring their clarity, applicability and compliance with international standards (arts. 2.3 and 13 ICCPR).
- Ensure that Spanish embassies and consulates process requests for transfer for reasons of protection quickly, transparently and without discrimination (art. 38 of the Asylum Law), complying with court rulings and avoiding arbitrary practices (arts. 2.3 and 26 ICCPR).
- Establish legal and secure channels for requesting international protection from third countries, including humanitarian visas, elimination of transit visas for nationals of countries in conflict and relaxation of the requirements for family reunification (arts. 2.3, 7 and 13 ICCPR).
- Substantially expand the quota of resettlement places, diversify the eligible nationalities and coordinate closely with autonomous communities, local entities and third sector organizations for a decentralized and effective reception system (arts. 2.3 and 26 ICCPR).

### **C- VIOLATION OF THE PRINCIPLE OF NON-DEPORTATION.**

#### **(Articles 2, 7, 13 and 26 of the ICCPR)**

At border posts, especially in Ceuta and Melilla, repeated practices of summary refoulement or collective expulsions without individualized procedure or effective access to a legal remedy have been documented. These practices directly violate the principle of non-refoulement established in article 7 of the ICCPR, as well as the right to an effective remedy (art. 2.3) and to an individual review prior to any expulsion (art. 13).

Various bodies have expressed concern about this situation. The Ombudsman has pointed out, in its 2023 and 2024 reports, the persistence of hot returns without identification of vulnerable profiles, without legal assistance or minimum guarantees. The Committee on the Rights of the Child warned in 2023 of the existence of violence against migrants at the border with Morocco, and criticized the Spanish legal framework for allowing "automatic deportations" without individual assessment. The ECtHR has also condemned in previous judgments the absence of effective guarantees in Ceuta and Melilla.

These practices are normatively covered by the tenth additional provision of Organic Law 4/2000, introduced by Organic Law 4/2015, which allows exceptions to the general regime of guarantees at the border. Likewise, cooperation and readmission agreements with Morocco continue to be applied without judicial control or transparency, facilitating returns under conditions that do not respect the principle of non-refoulement or the principle of non-discrimination (art. 26 of the ICCPR).

The most paradigmatic case is still the one that occurred on June 24, 2022 at the Melilla fence, in which, according to the Ombudsman, at least 470 summary returns took place and at least 23 people died, without anyone having taken responsibility for an action with terrible consequences that violated international law<sup>37</sup>. The tenth additional provision of Organic Law 4/2000 and the agreements with Morocco remain in force, allowing immediate expulsions without procedural guarantees.

Although judicial proceedings have been opened, multiple bodies, including the Council of Europe and international human rights organizations<sup>(38)</sup> have urged that investigations meet the standards of independence, thoroughness and speed, as established in Article 2.3 of the ICCPR.

## Recommendations

The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Review or annul the bilateral agreement with Morocco that allows immediate returns without effective guarantees, under conditions that violate the principle of non-refoulement (arts. 7 and 13 ICCPR).
- Repeal the tenth additional provision of the regime applicable to Ceuta and Melilla, which allows summary expulsions without individualized procedure (arts. 2.3 and 13 ICCPR).
- Repeal the tenth additional provision of Organic Law 4/2000, introduced by Organic Law 4/2015, and ensure that all persons accessing Spanish territory have the right to an administrative procedure with all guarantees before being expelled or returned (arts. 2.3, 7, 13 and 26 ICCPR).
- Guarantee the presence of independent monitoring mechanisms at land and maritime borders, with full access to refoulement procedures, including human rights bodies and organizations with accredited experience, as a preventive measure against arbitrary expulsions (arts. 2.3 and 13 ICCPR).

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<sup>37</sup>Ombudsman (2022). *Resolution on the events of June 24, 2022 at the fence of Melilla*, October 14, 2022:

<https://www.defensordelpueblo.es/wp-content/uploads/resolucion/2022/173365.html>

<sup>38</sup>Amnesty International (2024). *Morocco / Spain: Reveal the fate of the migrants who are still missing two years after the massacre of Melilla, 24 of June 24 from 2024:*

<https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/marruecos-espana-revelen-la-suerte-de-los-migrantes-que-estill-missing-two-years-after-the-mortifier-incident-at-the-melilla-border/>



## UNACCOMPANIED FOREIGN MINORS

(Articles 7, 8, 9 and 24 of the

ICCPR)

The Seventh Periodic Report of Spain to the International Covenant on Civil and Political Rights focuses part of its analysis on the current configuration of the age determination procedure. It also includes a brief reference to the Migratory Contingency Management Model for Unaccompanied Children and Adolescents, approved in 2022 by the Sectoral Conference on Children and Adolescents. Finally, it highlights the Humanitarian Care Program, managed by the Directorate General for Humanitarian Care and Social Inclusion of Immigration - within the scope of the Secretariat of State for Migration - and developed in the cities of Ceuta and Melilla, which includes, among its reception services, support for the reestablishment of contact between children and adolescents and their family and social references.

Spain has made significant legislative advances in the fight against the trafficking and exploitation of children. However, this serious violation of rights continues to be a reality that is insufficiently addressed. The country does not have effective mechanisms to assess the specific protection needs of migrant children, which makes it difficult to identify minors who are victims of trafficking and exploitation. This situation contravenes Article 3 of the Convention on the Rights of the Child and Article 2 of the Organic Law for the Legal Protection of Minors<sup>(39)</sup> which establish the obligation to attend to the best interests of the minor.

The protection centers do not have specialized personnel to detect signs of trafficking or clear protocols for communicating these cases to the State Security Forces and Corps. For their part, entities specialized in the care of victims of trafficking do not have effective access to these centers, a restriction that does not have legal backing according to the Framework Protocol for the Protection of Victims of Trafficking<sup>40</sup> and Instruction 6/2016<sup>41</sup>.

The MENA Protocol<sup>42</sup> and the Framework Protocol on Trafficking establish that, upon detection of a child who may be a victim of trafficking, the child must be referred immediately to a specialized resource that guarantees his or her safety, physical and psychological recovery, as well as the comprehensive assistance he or she needs. Along the same lines, the Organic Law on the Legal Protection of Minors establishes the obligation to attend to the special situation of vulnerability of unaccompanied children, especially when they are in need of international protection and/or have been victims of trafficking or smuggling, with regard to basic social protection benefits.

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<sup>39</sup>Organic Law 1/1996, of January 15, 1996, on the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Law.

<sup>40</sup>Framework Protocols for the Protection of Victims of Trafficking in Human

Beings: <https://violenciagenero.igualdad.gob.es/wp-content/uploads/protocoloTrata.pdf>

<sup>41</sup>National Police web portal. Human trafficking. Regulatory framework.

<sup>42</sup>Framework Protocol on Certain Actions Concerning Unaccompanied Foreign Minors

These provisions are not effectively enforced due to a lack of specialized resources. This is compounded by persistent administrative malpractice, which assumes that the protection offered by child protection services is sufficient, preventing many unaccompanied children from accessing key procedures such as the application for international protection or the process of identification as victims of trafficking.

## **Recommendations**

The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- To provide specialized resources for the comprehensive care of child victims of trafficking, to ensure their safety, recovery and psychosocial support.
- Design and implement a systematic procedure for the evaluation and determination of the best interests of the child, which will serve as a mandatory reference in any decision affecting them.
- Establish a specific protocol for the identification of protection needs, including international protection, trafficking, exploitation and unaccompanied or separated children.
- To guarantee the effective access of entities specialized in trafficking to the centers for the protection of minors managed by the Autonomous Communities, in accordance with the provisions of the Framework Protocol.

The Convention on the Rights of the Child prohibits the detention of children for immigration reasons (General Comment No. 6 of the Committee on the Rights of the Child).

The United Nations Special Rapporteur on Torture has warned that the detention of minors is never in their best interests and can amount to cruel, inhuman or degrading treatment<sup>43</sup>.

## **Age determination procedure**

The age determination procedure in Spain has not experienced significant advances since 2020, despite the observations included in the report and the recent presentation of the Draft Bill for the Regulation of the Age Assessment Procedure<sup>44</sup>, currently in the amendment phase, and which largely incorporates the proposals made by social organizations. This delay implies the abandonment of the determination of the age based exclusively on the conducting of tests.

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<sup>43</sup>Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2015). Report A/HRC/28/68 on the effects of detention on migrant children. United Nations.

<sup>44</sup>Draft Law amending Law 1/2000, of January 7, on Civil Procedure, to regulate the procedure for determining age (121/000040) (121/000040).

The Greulich and Pyle method<sup>45</sup>, which has been widely questioned due to its high margin of error and invasive nature, compromising the privacy of the child<sup>46</sup>.

The European Economic and Social Committee in its opinion published in the Official Journal of the European Union on December 11, 2020<sup>47</sup>, along the same lines as the experts in the field, have pointed out the need to adopt a holistic and multidisciplinary approach in the determination of age. Despite this, respect for the principle of presumption of minority, set out in Article 12.4 of the Organic Law on the Legal Protection of Minors, which establishes that, in case of doubt as to the age of majority, the person must be considered a minor until his or her age is determined, is still not guaranteed.

This principle is systematically violated, as the United Nations Committee on the Rights of the Child has denounced in multiple condemnatory opinions addressed to Spain<sup>48</sup>. Added to this is the recurrent administrative practice of rejecting the documentation presented by persons claiming to be minors, which aggravates the defenselessness and the lack of guarantees in the procedure.

## **Recommendations**

The Human Rights Committee is requested to recommend to the Spanish State the adoption of the following measures:

- Urgently approve the Bill regulating the Age Assessment Procedure with a holistic approach to age determination.
- Integrate the participation of different professionals throughout the process, taking into account not only the physical development, but also the maturity and psychosocial aspects of the child.
- To guarantee the application of the principle of presumption of minority in those cases in which reasonable doubts remain after the corresponding tests have been carried out.
- Recognize the presumption of validity of documents issued by foreign civil registries presented by prospective minors, unless there is duly substantiated evidence to the contrary.

We hope that the observations contained in this report will help the Committee to urge the Spanish State to adopt urgent and structural reforms that will guarantee the

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<sup>45</sup>Aliens Unit of the State Attorney General's Office: Internal Note No. 2/2018.

<sup>46</sup>European Parliament Resolution on the situation of unaccompanied minors in the European Union and Report of the Mineur en exil Platform (2017) "L'estimation de l'âge des MENA en question: problématique, analyse et recommandations.

<sup>47</sup>Opinion of the European Economic and Social Committee on "The protection of unaccompanied migrant minors in Europe".

<sup>48</sup>CRC/C/87/D/115/2020, CRC/C/86/D/63/2018, CRC/C/82/D/27/2017, CRC/C/81/D/22/2017, CRC/C/81/D/16/2017, CRC/C/80/D/4/2016, CRC/C/79/D/11/2017, among others.

dignity, equality and fundamental rights of all people, with special attention to migrants, refugees and asylum seekers.

We, the undersigned organizations, reiterate our commitment to the promotion of a society based on equality, inclusion and the full exercise of fundamental rights.