

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 35th Session

SPAIN

I. BACKGROUND INFORMATION

Spain acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1978. Spain also ratified the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1997 and in September 2018 Spain acceded to the *1961 Convention for the Reduction of Statelessness* (the *1961 Convention*). Spain has not acceded to the *1997 European Convention on Nationality*.

The Spanish national framework on international protection is based on Article 13.4 of the *Constitution*, which recognizes the right to seek asylum. This constitutional provision is implemented through the *2009 Asylum Law*, which is complemented by the *1995 Implementing Decree* to the former *1984 Asylum Law (5/1984)*. The issuance of the *Implementing Decree* to the current *2009 Asylum Law*, almost nine years overdue (in May 2019), is likely not to take place as announced by the authorities. Instead ad-hoc measures to address gaps will be adopted.

The *2009 Asylum Law* foresees access to rights for asylum-seekers and refugees including health, work and legal assistance. It also prescribes, for the first time, the legal obligation for the Government to approve an annual resettlement quota. Nonetheless the *2009 Asylum Law* lacks an implementing regulation which delays access to the asylum procedure, documentation, services and rights. Protection gaps persist, such as lack of access to asylum at embassies, procedural safeguards of persons with specific needs, difficulties in accessing family reunification procedures for spouses of different nationalities, the narrow interpretation of humanitarian reasons or the regulation of the reception system and its management.

Spain registered 55'668 asylum applications in 2018 representing a 75% increase in asylum applications compared to the number of applications in 2017. More than 20'000 applications were submitted by Venezuelan nationals. In 2018 the Government was only able to issue 12,000 decisions on pending cases, which led to the year closing with an overall backlog of approximately 78,000 applications. Just in the first semester of 2019 55,616 applications were registered, the same number as in all of 2018, the main nationalities of these arrivals continuing to be Venezuela, Colombia and Central American countries.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 131.9: "Accede to the 1961 Convention on the Reduction of Statelessness" (Azerbaijan, Paraguay, Portugal)

UNHCR would like to commend Spain on its accession to the *1961 Convention on the Reduction of Statelessness* in September 2018.

Additional positive developments

UNHCR would like to commend the Government of Spain for the recently announced national plan on citizenship and integration focusing on migrants and refugees. Spain also approved the first community-based sponsorship pilot programme implemented jointly with the Basque regional government and UNHCR. The pilot programme counts on local sponsoring groups and communities to support the integration of refugees.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Protection challenges in Ceuta and Melilla

Linked to 2nd cycle UPR recommendation no.131.181: “Ensure that the Spanish legal framework concerning migrants, refugees and asylum-seekers with particular attention to the autonomous cities of Ceuta and Melilla, complies with its international human rights obligations, including with regard to procedural safeguards.” (Canada)

The cities of Melilla and Ceuta each host a temporary holding centre (CETI) designed for short-term stays of persons arriving irregularly. The centres are heavily overcrowded, particularly in Melilla, and offer limited availability of basic services, including access to hot water, electricity, minimum comfort and adequate shelter, as well as limited access to legal, medical or psychological assistance. While the centre in Ceuta has capacity for up to 510 persons, it accommodates on average 600 persons (including children). The centre in Melilla has a capacity of 480 persons and, during the last years, has regularly accommodated nearly three times its capacity (15 per cent children and 20 per cent women). Asylum-seekers are often accommodated with migrants in open spaces or large tents housing up to 200 men at a time, including male adolescents. In addition, families are not jointly accommodated. The average length of stay in the holding centres depends on the authorities' capacity to process transfers to the mainland, and can last between two to four months or longer. Moreover, as transfers are not regulated by law, no accurate information on the length of stay is provided to residents until a few days before their departure to the mainland. This situation causes high levels of uncertainty, anxiety and frustration among residents leading to onward movements once these persons are on the mainland.

Recommendations:

UNHCR recommends that the Government of Spain:

- (a) Take measures to effectively improve reception conditions for asylum-seekers in the temporary reception centres (CETI) in Melilla and Ceuta;
- (b) Guarantee adequate mechanisms for early identification and support of persons with specific needs arriving to the temporary holding centres;
- (c) Promote awareness on gender and age related issues in reception centres, including in relation to prevention and response to sexual and gender-based violence and human trafficking, and provide adequate referral mechanisms;
- (d) Transform the CETI into registration, protection sensitive identification and referral centers where persons in need of international protection should only need to stay for a few days before they are transferred to adequate reception centers for asylum-seekers on the mainland;
- (e) Ensure freedom of movement for asylum-seekers from the temporary holding centres to the mainland in the same terms as the rest of asylum-seekers in the country and regulate the transfers from the enclaves to the mainland by law;

- (f) Ensure sufficient human and material resources to ensure access to asylum procedures and process asylum applications swiftly; and
- (g) Enhance capacity-building for police law-enforcement officers dealing with asylum-seekers.

Issue 2: Protection of children

Linked to 2nd cycle UPR recommendation no.131.185: “Take legislative and administrative measures to better protect unaccompanied migrant children” (Togo) and **no. 131.187:** “Take the appropriate measures so that international standards and the principle of best interests of the child are observed in the cases of repatriation of unaccompanied children, and adopt legislative measures to prevent that they become victims of trafficking” (Honduras);

In 2018, out of the more than 65’000 arrivals to Spain by sea and land, around 11 per cent were children of whom more than 75 per cent were reportedly unaccompanied and separated children (UASC).¹ Many UASC claim to be adults to avoid referral to child protection authorities in Ceuta and Melilla where they would have to remain until they are 18 years old in substandard conditions and with restricted freedom of movement within the enclave’s territory. UNHCR is, thus, concerned about the shortcomings of the child protection system with respect to the early identification and adequate treatment of children upon arrival, access to rights and the asylum procedure, and the identification of international protection needs.

On the other hand, in cases where children identified themselves as UASC, authorities in some regions (including Ceuta and Melilla) continue to conduct age assessment solely based on methods such as the Greulich & Pyle test, which are questioned for their authority and reliability. Age assessment procedures in Spain also differ among the country’s 17 regions and 2 autonomous cities. Those presumed to be children are not always properly informed on the method of examination, its possible outcomes, or the consequences of refusal to undergo a medical examination. If an individual disagrees with the outcome of the assessment there is not, in most cases, an opportunity for them to challenge the decision.

Reception conditions of children in the CETI in Ceuta and Melilla, are substandard and, due to chronic overcrowding, these centres are highly inappropriate places for children. Overcrowding poses risks to health and security, hinders the identification of protection and specific needs, and exposes children to high risks, including significant risks of sexual and gender-based violence (SGBV) and exploitation (i.e. prostitution or even trafficking). Very limited measures are in place to respond to or prevent such situations. Family unity is not guaranteed, and families are often housed in separate rooms. Children under 16 years old are housed together with their mothers, while boys with ages between 16-17 years old are housed separately with their fathers.

In Melilla, authorities have adopted the practice of separating children from their families when children arrive at the border post by themselves (in general between 15 and 17 years old). These children (mainly of Syrian origin) remain separated from their families until a DNA² test is conducted and proves the family links. The procedure can prolong the separation for more than two months. In cases in which the child is accompanied by family members other than their parents (i.e. siblings), the competent authorities do not take any measures (not even DNA test) to facilitate the reunification of the child with the family member.

¹<https://data2.unhcr.org/en/documents/download/67552>.

² According to the data furnished by the administration, a total of 456 DNA.

Regarding family tracing and family reunification of refugee children with family members within the European Union countries or abroad, in most cases, professionals in charge of the child wellbeing do not follow up often due to lack of knowledge of the procedure and lack of instructions from their managers. The application of the Dublin III Regulation³ for reunification purposes in cases of unaccompanied asylum-seeking children within the EU, is not applied automatically by the Spanish authorities unless there is a specific request and follow-up by UNHCR to do so.

Recommendations:

UNHCR recommends that the Government of Spain:

- (a) Take measures to ensure that children have safe access to the territories of Ceuta and Melilla and to fair and efficient asylum procedures, regardless of their country of origin or mode of entry;
- (b) Establish child-friendly reception centres for unaccompanied children in Ceuta and Melilla, with effective mechanisms to receive and address complaints from children, and effectively investigate reported cases of ill-treatment of children;
- (c) Promote the regular transfer of identified unaccompanied asylum-seeking children with international protection needs to centers on the mainland where their special needs could be properly addressed;
- (d) Guarantee the right of family unity of refugee children;
- (e) Improve the early identification of the protection needs of foreign unaccompanied or separated children in Spain and their treatment; and
- (f) Ensure mechanisms for prevention and response to SGBV in all reception centres

Issue 3: Prevention and response to sexual and gender based violence

Linked to 2nd cycle UPR recommendation no.131.67: “Take all necessary measures to eliminate gender-based violence including violence against foreign women and to assess the functioning of the relevant specialized courts in this regard”. (Namibia)

UNHCR has advocated for the need to plan and design interventions which take into consideration SGBV prevention and response (including trafficking-related issues) in all reception centres for persons of concern to UNHCR and particularly in the CETIs of Ceuta and Melilla, in emergency shelters for sea arrivals and in the asylum-seekers’ premises at Madrid and Barcelona airports. Despite some efforts by the State Secretary for Migration within the Ministry of Labour and Social Welfare, the national SGBV standard operating procedure for all centres is still not in place. Also lacking are a code of conduct and a policy on prevention from sexual exploitation and abuse for workers in reception centres as well as an independent and confidential complaints mechanism for asylum seekers and refugees.

Recommendations:

UNHCR recommends that the Government of Spain:

- (a) Provide adequate services for women and girls asylum-seekers with specific needs, including an identification and referral mechanism, as well as adopt a gender perspective when developing programmes for their assistance, protection and empowerment;
- (b) Adopt and implement standard operating procedures for prevention and response to sexual and gender based violence, including trafficking related issues, in all reception centres, in emergency shelters for sea arrivals and airport premises;
- (c) Adopt and implement a code of conduct for workers and a policy on prevention from sexual exploitation and abuse in reception premises;

³ Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (the “Dublin III Regulation”) available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>.

- (d) Adopt an independent and confidential complaints mechanism for asylum-seekers and refugees;
- (e) Improve the identification by competent authorities of victims of trafficking in persons;
- (f) Guarantee the presence and active role of NGOs specialised in assisting victims of trafficking and SGBV, and establish protocols to ensure coordination among key actors and referral to adequate reception premises and services.

Additional protection challenges

Issue 4: Asylum system: decision making, reception conditions and integration

Despite the efforts undertaken by the Spanish authorities to scale up the resources of the Office for Asylum and the number of reception places from less than 500 to now 8'251 within the last two years, the available capacity is insufficient to adequately address the current increase in the number of asylum applications which unduly prolongs the duration of the refugee status determination process, while also impacting on the quality of its decision-making. Furthermore, the resource limitations have serious negative repercussions with regard to reception services and integration perspectives for those who are recognized in or resettled to Spain. For instance, the challenges to access the asylum procedure directly impacts on the access to the reception system and to other rights, such as the right to work or to family reunification, causing unnecessary additional hardship to persons under UNHCR's mandate. The aforementioned situation usually leads to important levels of onward movements to other European countries.

Despite the efforts undertaken by the Spanish authorities to scale up the resources in the Office for Asylum and the number of reception places from less than 500 to now 8,251 within the last two years, the available capacity is insufficient to adequately address the current increase of asylum applications and the needs of asylum seekers, particularly those of families and persons with specific needs. The decentralization of the reception and integration system was announced in early 2019 by the competent authorities.

Recommendations:

UNHCR recommends that the Government of Spain:

- (a) Ensures adequate and timely access to asylum procedures avoiding long waiting periods, inter alia by ensuring adequate material and human resources and continued capacity-building on refugee issues;
- (b) Establishes a quality assurance processes and adopt measures to ensure adequate quality of refugee status determination procedures, with the support UNHCR;
- (c) Adapts the current reception and integration system for asylum-seekers and beneficiaries of international protection, in order to meet the increasing demand, address specific needs of those in need of protection in line with international and EU law, including by developing a national integration plan, involving regional and local administrations along with civil society and private sector actors, establishing an evaluation mechanism, and ensuring the voices of refugee women, men, and youth are heard;
- (d) Ensures adequate funding to expand reception places according to real needs;
- (e) Elaborates an integration strategy which includes the piloting of integration projects, improve integration perspectives and limit onward movements; and
- (f) Ensures that the decentralization process of the reception system does not result in the deterioration of reception conditions of asylum-seekers and refugees and that regional authorities comply with EU and international law, while ensuring the system includes a fair distribution process and new reception and integration mechanisms.

UNHCR, July 2019

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

SPAIN

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to SPAIN.

I. Universal Periodic Review (Second Cycle – 2015)

Recommendation ⁴	Recommending State/s	Position ⁵
Refugees, asylum-seekers, internally displaced and stateless persons		
131.4. Consider the possibility of ratifying ICRMW (1990), and acceding to the Convention on the Reduction of Statelessness (1961);	Ecuador	Noted
131.9. Accede to the Convention on the Reduction of Statelessness;	Azerbaijan; Paraguay; Portugal	Noted
131.166. Adopt effective measures to stabilize the situation in the area of rights of migrants, including the end of the practice of unauthorized forced repatriation of migrants;	Russian Federation	Supported
131.168. Continue its efforts to ensure that treatment of migrants and asylum-seekers is in accordance with relevant international standards;	Japan	Supported
131.177. Ensure access to effective asylum procedures in line with international law and that migration policies respect the principle of non-refoulement and European Union legislation;	Norway	Supported
131.178. Ensure access to effective asylum procedures in line with international law and ensure that migration policies fully respect the principle of non-refoulement and are in line with European Union legislation;	Sweden	Supported
131.179. Fully respect the principle of non-refoulement and ensure effective access to asylum procedures for those fleeing human rights violations;	Uruguay	Supported
131.180. Review the current deportation practices for migrants in Ceuta and Melilla as well as the proposed amendment of Spain's national security law to ensure the right of an individual to seek asylum;	Austria	Supported (partially)
131.181. Ensure that the Spanish legal framework concerning migrants, refugees and asylum seekers, with particular attention to the autonomous cities of Ceuta and Melilla, complies with its international human rights obligations, including with regard to procedural safeguards;	Canada	Supported
131.182. Ensure that the immigration law and its proposed amendments are in compliance with the principle of non-refoulement and the prohibition of inhuman or degrading treatment, most importantly the provisions allowing for summary return of migrants and refugees without due process;	Czech Republic	Supported

⁴ All recommendations made to Spain during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Spain" (13 April 2015), A/HRC/29/8, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/61/PDF/G1507661.pdf?OpenElement>.

⁵ Spain's views and replies, in English, can be found in: *Addendum* (17 April 2015), A/HRC/29/8/Add.1, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/079/67/PDF/G1507967.pdf?OpenElement>.

Prevention of torture and ill-treatment		
131.52. Adopt legislative, judicial and administrative measures to ensure the right to an effective remedy for anyone who claims to have been subjected to torture or other ill-treatment and to provide the necessary administrative and judicial framework to prevent impunity for officers charged with such crimes;	Netherlands	Supported (partially)
131.56. Ensure effective monitoring of detention and custody procedures by the law enforcement forces;	Poland	Supported
131.57. Establish a control mechanism for the police authorities with regard to signs of possible torture and ill-treatment committed by individual members;	Germany	Supported
131.58. Elaborate further concrete, meaningful practical measures and mechanisms that effectively prevent any ill-treatment by the police and prison guards, including the possibility of revision of the practice of incommunicado detention;	Hungary	Supported (partially)
SGBV		
131.67. Take all necessary measures to eliminate gender-based violence, including violence against foreign women, and to assess the workings of the relevant specialized courts in this regard;	Namibia	Supported
Trafficking in Persons		
131.75. Adopt a new bill amending the Criminal Code on the issues of gender-based violence, human trafficking, sexual exploitation and forced marriage;	Ukraine	Supported
131.90. Improve the procedures used to identify victims and to address the special needs of child victims of trafficking;	Albania	Supported
131.93. Continue its efforts regarding human trafficking for sexual exploitation, and consider drafting a new version of the comprehensive plan to fight trafficking for sexual exploitation;	France	Supported
Children`s Rights		
131.150. Take necessary measures to improve access to education for children belonging to minorities and for children from immigrant families as well as to develop programmes to reduce school drop-out rate;	The former Yugoslav Republic of Macedonia	Supported (partially)
131.185. Take legislative and administrative measures to better protect unaccompanied migrant children;	Togo	Supported (partially)
131.187. Take the appropriate measures so that international standards and the principle of the best interests of the child are observed in cases of repatriation of unaccompanied children, and adopt legislative measures to prevent that they become victims of trafficking;	Honduras	Supported (partially)
Freedom of religion and freedom of expression		
131.109. Strengthen the Government`s commitment to ensuring fundamental rights of freedom of expression, peaceful assembly and association, and continue its cooperation with civil society, particularly with human rights defenders, by investing further efforts in creating a favourable environment for the members of the civil society organizations;	Serbia	Supported
Non-discrimination, racism and xenophobia		
131.37. Strengthen legislation against discrimination by adopting a comprehensive law against racism, racial discrimination, xenophobia and related intolerance;	Cote d`Ivoire	Supported (partially)
131.38. Redouble its efforts in combating contemporary forms of racism, racial discrimination, xenophobia and related intolerance including criminalizing hate speech, and all forms of incitement to hatred and violence;	Malaysia	Supported

131.45. Provide full access to justice to people belonging to racial and religious minorities and to combat racial and religious profiling and strengthen anti-discrimination legislation through adoption of a comprehensive law on racism, racial discrimination, xenophobia and related intolerances which addresses hate speech and includes measures to effectively investigate and prosecute such offences;	Pakistan	Supported (partially)
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II. Treaty Bodies

Committee on Economic, Social and Cultural Rights

Concluding Observations, 2018, [E/C.12/ESP/CO/6](#)

Austerity measures

13. The Committee takes notes of the fact that the State party is engaged in a process of economic growth recovery. It is concerned, however, that the extended application of certain austerity measures continues to affect disadvantaged and marginalized groups and individuals disproportionately with regard to the effective enjoyment of their economic, social and cultural rights, and has created further inequality. It is also concerned that five years after having introduced such measures, the State party has not carried out a full evaluation, in consultation with the persons affected, of the impact, proportionality, duration and possible withdrawal of those measures (art. 2 (1)).

14. With reference to its previous recommendation (E/C.12/ESP/CO/5, para. 8) the Committee urges the State party to ensure that the austerity measures it adopts are temporary, necessary, proportionate and non-discriminatory, and are compatible with the core content of the rights recognized in the Covenant, with the aim of ensuring that such measures do not impinge, disproportionately, on the rights of the most disadvantaged and marginalized groups and individuals. In that regard, the Committee recommends that the State party conduct a full evaluation of the effects of such measures on the enjoyment of economic, social and cultural rights, especially by disadvantaged and marginalized groups and individuals, including women, children, persons with disabilities, Gitanos and Roma, as well as refugees, asylum seekers and migrants; and that, in consultation with the persons affected, it consider the possible withdrawal of those measures. The Committee also draws the State party's attention to the recommendations contained in its open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis, with regard to the criteria for austerity measures, and to its 2016 statement on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights.

Non-discrimination

17. The Committee takes note of Act No. 62/2003, which transposes European Union equal treatment directives into a diverse set of fiscal measures. It is concerned, however, that this is a little-known and incomplete law that fails to ensure protection against multiple forms of discrimination or to provide procedural safeguards or lay down adequate penalties, leaving the State without a comprehensive anti-discrimination law. The Committee is also concerned that the measures adopted have not been successful in combating the persistent de facto discrimination still being experienced by certain groups, including the Gitano population, persons of African descent, persons with disabilities, migrants, refugees and asylum seekers (art. 2). 18.

The Committee draws the State party's attention to its previous recommendation (E/C.12/ESP/CO/5, para. 11) and urges it to adopt a comprehensive law on non-discrimination that guarantees adequate protection and explicitly includes all the prohibited grounds for

discrimination referred to in article 2 (2) of the Covenant; defines multiple discrimination, as well as direct and indirect discrimination, in accordance with the State party's obligations under the Covenant; prohibits discrimination in both the public and the private spheres; and incorporates provisions under which redress can be obtained in cases of discrimination, including by judicial and administrative means. It also recommends that the State party redouble its efforts to prevent and combat persistent discrimination, in particular against Gitanos and Roma, persons with disabilities, migrants, refugees and asylum seekers, including by conducting awareness-raising campaigns, in order to guarantee full exercise of the rights recognized in the Covenant by such persons. The Committee draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Migrants and asylum seekers

39. The Committee is concerned at the difficulties faced by migrants, asylum seekers and refugees with regard to the enjoyment of their economic, social and cultural rights, in particular the right to an adequate standard of living. The Committee is particularly E/C.12/ESP/CO/6 8 GE.18-06514 concerned at the inadequate living conditions of migrants and asylum seekers in temporary migrant reception centres in Ceuta and Melilla (arts. 2 and 11).

40. The Committee recommends that the State party adopt specific measures to promote the social integration of migrants, asylum seekers and refugees, in order to ensure their enjoyment of their economic, social and cultural rights, in particular access to employment, education, housing and health. The Committee also urges the State party to step up its efforts to ensure adequate living conditions for migrants and asylum seekers in temporary migrant reception centres in Ceuta and Melilla.

Committee on the Rights of the Child

Concluding Observations, 2018, [CRC/C/ESP/CO/5-6](#)

Non-discrimination

14. The Committee is seriously concerned about persisting de facto discrimination against children on the grounds of disability, national origin and socioeconomic status. It further expresses its concern at the persistence, despite efforts undertaken by the State party, of racial discrimination against and stigmatization of Roma children and children with migrant backgrounds.

15. The Committee urges the State party to strengthen measures to prevent and combat discrimination against children in all sectors of society and ensure the full implementation of relevant existing laws prohibiting discrimination. It also recommends that the State party strengthen public education campaigns to combat stigmatization and discrimination against, particularly, children from ethnic minorities, including Roma children, children with foreign backgrounds, asylum-seeking and refugee children and children with disabilities.

Asylum-seeking and refugee children

42. The Committee is concerned about the lack of information regarding the implementation of the Committee's previous recommendation to afford adequate protection to all children, irrespective of their nationality (see CRC/C/ESP/CO/3-4, para. 58). The Committee is also seriously concerned at:

- (a) The absence of an updated implementing decree for the asylum law and the fact that children are not recognized as applicants for international protection in their own right;
- (b) Substandard reception and accommodation conditions and neglect in overcrowded temporary holding centres for foreigners, denial of freedom of movement to travel onward in the State party and delays in transfers from the autonomous cities of Ceuta and Melilla to mainland Spain for asylum-seeking children and their families;

- (c) The absence of accessible complaints mechanisms for children in cases of allegations of violations of their rights in protection centres;
- (d) Children travelling with family members other than their parents being separated from those family members at the border, particularly in the autonomous city of Melilla.

43. Taking into account its general comments No. 22 (2017) on the general principles regarding the human rights of children in the context of international migration and No. 23 (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, both issued jointly with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee urges the State party to facilitate access to fair and efficient asylum procedures for children in need of international protection, regardless of their country of origin, including by providing information to children on their right to international protection. In particular, the Committee urges the State party to:

- (a) Expedite the adoption of an updated implementing decree for the asylum law and include in the decree the recognition of children as applicants for international protection in their own right;**
- (b) Train all professionals involved in international protection and migration on the Convention, the rights of the child and the duty to protect children seeking international protection;**
- (c) Establish adequate reception facilities for children, principally in the autonomous cities of Ceuta and Melilla and for those children arriving in Andalusia by sea, with specialized legal assistance, adequately trained interpreters and child-friendly services and expedite the processing and transfer of asylum-seeking children and their families;**
- (d) Develop effective mechanisms to receive and address complaints from children in protection centres, take measures to prevent cases of ill-treatment and effectively investigate any reported cases;**
- (e) Build the capacity of border guards and relevant professionals to adequately identify children and their specific protection needs, taking into account their age, gender and diversity, and ensure a swift transfer to adequate reception centres;**
- (f) Establish differentiated and prompt procedures and resources for children, especially to prevent separation of children from their families, and expedite status-determination procedures in urgent cases of family tracing and reunification, especially in the autonomous city of Melilla;**
- (g) Consider acceding to the Convention on the Reduction of Statelessness.**

Unaccompanied children

44. The Committee is seriously concerned that, under Spanish legislation, the Attorney General is empowered to undertake age-determination procedures for foreign unaccompanied children. While noting the information provided to the Committee by the State party delegation, the Committee is nevertheless concerned about the use of intrusive age-assessment methods, even in cases where the identification documents appear to be authentic, particularly in the autonomous cities of Ceuta and Melilla, and despite several Supreme Court decisions on this practice. The Committee is also concerned about:

- (a) Unaccompanied children who are excluded from the child-protection system as a result of age assessment and who may consequently fall victim to trafficking;
- (b) The inadequate and uneven protection standards for unaccompanied children across autonomous communities, including cases of lack or delay of legal assistance, or of provision of inadequate information to children;
- (c) The high levels of violence, the inadequate nature of the treatment and protection provided by professionals in reception centres for children, including allegations of prostitution of girls

and insufficient access to regular education and leisure activities, and the lack of a complaints mechanism;

- (d) The practice of the automatic pushback of children seeking international protection in the autonomous cities of Ceuta and Melilla, without the necessary guarantees;
- (e) Insufficient information-sharing and coordination concerning the referral of unaccompanied children by police to child-protection agencies;
- (f) The situation of about 100 foreign unaccompanied children in street situations in the vicinity of the harbour of the autonomous city of Melilla.

45. Taking into account its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin and its general comments No. 22 (2017) and No. 23 (2017), and recalling its previous recommendations (see CRC/C/ESP/CO/3-4, para. 60), the Committee urges the State party to review Act No. 26/2015 and the framework protocol for unaccompanied foreign minors to ensure that they are in line with the provisions of the Convention. It also urges the State party to:

- (a) Ensure effective legal protection for unaccompanied children across all its territory and ensure that the principle of non-refoulement is applied and that the best interests of the child are taken into account as a primary consideration, and provide additional training and guidance to relevant professionals on assessing the best interests of the child;
- (b) Develop a uniform protocol on age-determination methods, for all territory of the State party, that is multidisciplinary and respectful of human rights and used only in cases of serious doubt about the claimed age and in consideration of documentary or other forms of evidence available;
- (c) Establish child-friendly reception centres for children, with accessible and effective complaints mechanisms, and thoroughly investigate any cases of violations of children's rights;
- (d) End the practice of the automatic pushback of some children, ensuring that all procedures and standards are in accordance with their status as children and with national and international legislation;
- (e) Improve information-gathering and -sharing to ensure referral to child protection services of unaccompanied children, child victims of trafficking in persons and child applicants for international protection;
- (f) Strengthen cooperation with the Office of the United Nations High Commissioner for Refugees for the implementation of these recommendations.

Sale, trafficking and abduction

46. Welcoming that the children's observatory recently approved a protocol for victims of trafficking in persons, the Committee recommends that the State party:

- (a) Implement the national framework protocol for identifying and providing care and protection for child victims of trafficking;
- (b) Take effective measures to safeguard children's rights in its territory, especially those of unaccompanied children, to ensure that they do not fall prey to traffickers and expedite status-determination procedures for children who may be victims of trafficking for the purposes of exploitation;
- (c) Strengthen the capacity of, inter alia, police officers, border guards, consular service officials, labour inspectors and social workers to identify child victims of trafficking;
- (d) Promote measures for increased collaboration among autonomous communities and resources to provide child victims with free legal aid and the support of child psychologists and social workers in shelters that cater for the needs of child victims.

Committee on the Elimination of Discrimination against Women

Refugee and asylum-seeking women

36. While noting the information provided by the State party that refugee status was granted in 48 cases on the grounds of gender-based persecution pursuant to Law No. 12/2009 on asylum and subsidiary protection, the Committee is seriously concerned about the practice of expulsion of people crossing the border at Ceuta and at Melilla, including women and girls, with no individual gender-specific evaluation of each case.

37. In line with the provisions of the Convention and its general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee calls upon the State party: (a) To improve protection for women and girl asylum seekers in the autonomous cities of Ceuta and Melilla by ensuring that no violence is used at border controls, by ensuring access to asylum procedures for all claimants, regardless of their country of origin or mode of entry, by establishing a fair and efficient asylum procedure and by improving reception conditions and ensuring that gender is taken into account; (b) To establish contingency plans and preparedness for arrivals at land and sea borders in order to deal with increasing mixed migration flows, while ensuring protection-sensitive entry systems that also have a gender and age perspective; (c) To provide adequate treatment for women and girl asylum seekers with specific needs and adopt a gender perspective when developing programmes for assistance.

Human Rights Committee

Foreigner internment centres

15. The Committee is concerned at the persistent use of deprivation of liberty for immigrants in an irregular situation. The Committee is concerned at the complaints of ill-treatment by State officials at foreigner internment centres and the cases of violence among detainees that occur without intervention by the staff of the centres (arts. 7 and 9).

The State party should adopt all necessary measures to avoid the persistent use of detention for asylum seekers, and ensure that the detention of foreigners is always reasonable, necessary and proportionate, in the light of their individual circumstances, and that detention is resorted to for the shortest period possible and only where existing alternatives have been duly considered and deemed inappropriate. It should also take all necessary measures to ensure that all complaints of torture or ill-treatment are investigated promptly, thoroughly and independently and that those responsible are brought to justice.

Conditions of deprivation of liberty

16. The Committee is disturbed by reports of poor conditions in some foreigner internment centres and the lack of adequate standards of hygiene there (art. 10).

The State party should ensure that sanitary facilities are available in all centres, in accordance with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Incommunicado detention

17. The Committee reiterates its concern at the practice of court-authorized incommunicado detention. The Committee notes the initiative to reform the Code of Criminal Procedure and the information provided by the State party concerning the reduced use of incommunicado detention, but regrets that the reform does not abolish incommunicado detention or

guarantee all the rights set out in article 14 of the Covenant, including the right to legal aid (arts. 7, 9, 10 and 14).

The Committee reiterates its previous recommendations (CCPR/C/ESP/CO/5, para. 14) and recommends once again that the State party should take the necessary legislative measures to put an end to incommunicado detention and to guarantee the rights of all detainees to medical services and to freely choose a lawyer whom they can consult in complete confidentiality and who can be present at interrogations.

Expulsion of asylum seekers and undocumented immigrants

18. The Committee is concerned about the practice of summary return, also known as “hot expulsion”, which takes place at the borders of Ceuta and Melilla. In particular, the Committee notes with concern the first final provision of the Public Security Act, which establishes a special regime for Ceuta and Melilla, authorizing the summary return of immigrants identified at the borders of the two autonomous cities. The Committee is also concerned about the practice of carrying out so-called “express deportations” by air, including by joint flights planned by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX). The Committee is concerned that these summary expulsions are carried out without sufficient guarantees of respect for the principle of non-refoulement, where relevant. The Committee is also concerned at reports of cases of non-Syrian asylum seekers being denied access to asylum offices in Ceuta and Melilla (arts. 6 and 7).

The State party should review the Public Security Act and ensure that all persons seeking international protection have access to fair and personalized assessment procedures, to protection against refoulement without discrimination and to an independent mechanism with the authority to suspend negative decisions.

Ill-treatment and excessive use of force in the expulsion of asylum seekers and undocumented immigrants

19. The Committee expresses concern about frequent reports of allegations of ill-treatment in the context of the expulsion of immigrants, including asylum seekers in Ceuta and Melilla, both by the Spanish authorities and by the Moroccan authorities acting on Spanish soil. In particular, the Committee deplores the deaths of 15 immigrants who died on 6 February 2014 as they attempted to reach the beach of El Tarajal in Ceuta (arts. 6 and 7).

The State party should take all appropriate measures to ensure that immigrants are not subjected to ill-treatment during their deportation and expulsion. The State party should take the necessary steps to ensure that foreign authorities do not commit human rights violations on Spanish soil and that police and border control personnel receive suitable training on the use of force during interactions with immigrants and should make certain that any excessive use of force is investigated and the perpetrators punished, where necessary. It should also conduct a full and effective investigation into the events at El Tarajal and, if necessary, prosecute the perpetrators and provide appropriate redress for the victims.

Unaccompanied minors

23. The Committee welcomes the adoption of a framework protocol on procedures applying to the treatment of unaccompanied minors but is concerned about the methods used to determine the age of such children (art. 24).

The State party should develop a standard protocol for determining the age of unaccompanied children and ensure that age-determination procedures are based on safe and scientific methods, take the children’s feelings into account and avoid all risks of violating their physical integrity. In addition, the State party should ensure

that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children.

Committee against Torture

Concluding Observations, 2015, [CAT/C/ESP/CO/6](#)

Non-refoulement

13. The Committee is seriously concerned at the practice of summary forced return — known as “hot expulsion” — from the autonomous cities of Ceuta and Melilla, carried out with no prior risk assessment and preventing access to the refugee status determination procedure. In that regard, it notes with concern that the first final provision of the Public Security Act, adopted in March 2015, amends the Aliens Act to put a veneer of legality on such summary expulsion, in the form of the new legal concept of “rejection at the border” (art. 3).

The Committee urges the State party to revise its immigration and asylum legislation to give unconditional effect to the right of non-refoulement, in accordance with article 3 of the Convention, and to take all necessary measures to fully observe that right in all circumstances. It should also ensure proper evaluation of each individual case, including the identification of possible victims of torture, and guarantee to all persons in need of international protection access to asylum procedures, including refugee status determination.

Temporary migrant holding centres

16. While welcoming the overhaul of temporary migrant centres to cater for the dramatic increase in the number of arrivals since mid-2014, the Committee is concerned about the continuing high level of overcrowding in the centres and the appalling condition of the facilities, which in the Committee’s view pose a threat to the safety and physical and psychological integrity of those housed there. The Committee appreciates the information from the delegation to the effect that the centres have been visited by several NGOs and international human rights bodies since 2014. Nevertheless, on at least one occasion an international NGO has apparently been denied access, though it was suggested that it request another visit at a later date (art. 11).

As a matter of urgency the State party should step up its efforts to reduce overcrowding in temporary migrant holding centres and take all necessary measures to improve the material condition of the facilities there, particularly those designed for people with special needs such as single women and women with children. It should also ensure the physical and psychological integrity of all individuals in those centres. The Committee also encourages the State party to facilitate oversight activities by NGOs in the centres.

Solitary confinement

17. The Committee takes note of the information provided by the State party during the dialogue, to the effect that prolonged solitary confinement requires judicial authorization and strict monitoring by medical personnel. The State party also informed the Committee that solitary confinement is applied only after three very serious disciplinary offences. Nevertheless the Committee is concerned that prisoners may be placed in solitary confinement for up to 42 days at a stretch. The Committee draws the State party’s attention to the fact that excessive use of solitary confinement constitutes cruel, inhuman or degrading punishment or even torture in some cases (art. 11).

In the light of the recommendations of the Special Rapporteur on the question of torture (A/66/268, para. 88), the Committee urges the State party to place a total ban

on solitary confinement of more than 15 days. The State party should also ensure that detention in solitary confinement is used as a measure of last resort, for the shortest possible length of time and under strict judicial oversight and control.

Excessive use of force by law enforcement officials

18. The Committee is concerned at reports alleging excessive use of force by law enforcement officials, with particular reference to the protests against austerity measures in 2011 and 2012. It is also concerned at information received on abuses carried out against immigrants by border officials in the autonomous cities of Ceuta and Melilla. In particular, the Committee deplores the deaths of at least 14 immigrants trying to swim to the beach at El Tarajal, Ceuta, on 6 February 2014. According to information at the Committee's disposal, as they were swimming Civil Guard officers fired rubber bullets and smoke devices to try to deter them.

The State party should take effective measures to prevent and put a stop to the disproportionate use of force by law enforcement officials, and ensure that there are clear, binding rules governing the use of force that are fully compatible with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The State party should also ensure the prompt, thorough and impartial investigation of all acts of brutality and excessive use of force by law enforcement personnel and prosecute those who appear to be responsible.

Undocumented migrant women

22. The Committee welcomes the amendment to Organic Act No. 4/2000 on rights and freedoms of foreigners in Spain and their social integration, by Organic Act No. 10/2011 of 27 July, which aims to encourage foreign women to bring complaints concerning acts constituting gender violence. However, the Committee is concerned that undocumented migrant women can avoid proceedings being taken against them for irregular residence only if they can prove their status as victim in court, and that may discourage them from filing complaints of gender violence for fear of being deported from the territory of the State party (arts. 2, 13 and 16).

The State party should revise the laws relating to migrant women in an irregular situation, so as to ensure the protection of migrant women victims of gender violence from proceedings being taken against them for irregular residence or the reopening of a case already under way but suspended on receipt of a complaint by them of gender violence.

III. Special Procedures Mandate Holders

Report of the Working Group of Experts on People of African Descent

Addendum: Mission to Spain, 2018, [A/HRC/39/69/Add.2](#)

Conclusions and recommendations

50. Deeply ingrained in the official discourse is the belief that racial discrimination is mostly experienced by non-Spanish migrants and refugees of African descent, and that there is no structural and institutional racial discrimination against Spanish citizens of African descent. Civil society reported that people of African descent were invisible and the laws did not offer any protection from the racism they faced every day. Despite some important progress being made in terms of the review of the Criminal Code and institutional measures to combat hate crimes, some important deficits remain. The development of a global action plan, the strengthening of legislation and the enforcement of both could result in further advances in Spain in

combating racism, racial discrimination, xenophobia, Afrophobia and related intolerance.

64. The Working Group urges the Government to put an end to all forms of collective expulsions and pushbacks of asylum seekers and migrants. The Spanish authorities must respect the right of non-refoulement and the right of access to identification procedures. The summary returns should be carried out with a prior evaluation of the risk of return that allows access to the procedures for determining refugee status, since the pushbacks are contrary to the principle of non-refoulement.

65. The Government of Spain should facilitate the relevant procedures for identification and referral of persons in need of international protection at border posts, including their safe access to the territories of Ceuta and Melilla.

66. The Working Group recommends that the Spanish authorities adopt measures to shorten the delay in processing asylum requests. People of African descent should have access to procedural safeguards to challenge their detention and the Working Group recommends the introduction of alternatives to the detention of migrants and a scaling down of immigration detention facilities, which should be resorted to only when necessary and proportionate.

67. The Working Group recommends that the Aliens Law be reviewed, with a view to making it more respectful of the rights of asylum seekers and migrants. The overly long period of 10 years to qualify for citizenship could be shortened. Pathways to citizenship for migrants, including those in an irregular situation, should be created and strengthened.

68. The Government should introduce measures to include more people of African descent among officials at the centres of administrative detention for foreigners subject to deportation proceedings, administrative officials involved in refugee status determination and officials at ports, as well as all others involved in the expulsion process.

69. The State must develop a comprehensive human rights approach to dealing with the trafficking of people of African descent. Women who are victims of trafficking must be identified and accorded international protection in Spain. There is a need for specialized training of the border police, asylum officials and all civil servants, as well as interpreters, social workers, lawyers and the judicial authorities dealing with potential victims of trafficking.

70. The Government should as a matter of priority facilitate language and interpretation services in the immigration detention centres and temporary migrant reception centres corresponding to the language spoken by those arriving in Spain. Asylum seekers experience language difficulties that limit their understanding of their rights and the services offered to them by the Spanish authorities. Centres in Ceuta and Melilla should have the same standards in language and training courses as asylum seekers are entitled to and receive on the mainland.

71. The Government should seriously consider eliminating all forms of detention for migrants and asylum seekers. Pathways to work permits, residency and citizenship should be created. Furthermore, Spain should shape its foreign relations with Morocco and other States towards an international consensus to end pushbacks of migrants and asylum seekers.