

THE RIGHTS OF UNACCOMPANIED AND SEPARATED CHILDREN AT SPAIN'S SOUTHERN BORDER



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EXECUTIVE SUMMARY

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An exhaustive list of all interviewees
is included in the annex of the original report.

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A PARADOXICAL RESPONSE

Over the last two years, the influx of unaccompanied and separated children at Spain's southern border (mainly Andalusia, Melilla, and Ceuta), has increased substantially. Between 2017 and 2018, sea arrivals increased by 158%, with the number of unaccompanied and separated children in the child protection system rising by 103%. At the end of 2018, there were 13,012 according to the "Unaccompanied Foreign Minors Registry".

Despite the serious limitations of the data in this registry, and the fact that there is no official data on children irregularly entering Spain by land, these figures highlight the dimension that this phenomenon has taken on in Spain.

Unlike other countries, **Spain is addressing the issue of unaccompanied and separated children from a child protection perspective**, through regulatory instruments and targeted policies. In this regard, the case of Spain could be seen as good practice. In other countries, migration logic prevails from arrival, with unaccompanied and separated children not referred to child protection systems, or at least not with due speed. Many end up in detention centers with adults for long periods of time.

However, the situation is paradoxical since the reality on the ground presents problems, contradictions, and deficits, in some cases highly significant, which hamper the protection of the human rights of children.

Purpose and nature of the report

PURPOSE: It seeks to offer a comprehensive view of the situation of migrant children arriving at Spain's southern border, to analyze the main policies and practices that are being implemented, and to identify the barriers they face in exercising their fundamental rights, with a particular focus on unaccompanied and separated children.

It is an overall assessment of the main achievements, challenges, gaps, breaches, and needs of the protection system, which aims to enable Spain to comply with international commitments made, as well as offering proposals and recommendations which contribute to the search for solutions.

This report and the field work carried out at the southern border, form part of the work of the Spanish National Committee for UNICEF with regards to the monitoring of the

recommendations of the Committee on the Rights of the Child to Spain, and are also anchored within the overarching framework of the two UN Global Compacts on Migrants and Refugees, as well as the 2030 Agenda on the Sustainable Development Goals.

METHODOLOGY: The investigation included a preparatory phase, field work (from 20 September 2018 to 16 October 2018 in Melilla, Ceuta, Madrid, and various provinces of Andalusia), and subsequent processing and analysis. This involved visits to 20 different types of child protection and migrant reception facilities, in addition to semi structured interviews with unaccompanied and separated children, young migrants (who were formerly in the child protections system), public officials at state, regional, and local levels, the judiciary, civil society, ombudspersons, and United Nations agencies.

The child protection system is, in theory, intended to protect unaccompanied and separated children and to ensure their full and proper integration. However, this cannot be achieved due to the presence of obsolete, insufficient (due to a lack of resources), and uncoordinated regulations and policies. The context of saturation exacerbates shortcomings, making them particularly visible.

Therefore, entry into the child protection system constitutes a stage in which, in many cases, the vulnerabilities of these unaccompanied and separated children are heightened, and their rights are affected by practices that can go so far as to hamper their future opportunities and living conditions.

However, the shortfalls and the unsuitability of the response to the needs of the children in the current context are by no means restricted to the regional child protection systems of the Autonomous Communities. The system as a whole was ill-equipped to correctly respond from both a quantitative and qualitative perspective. This is noted with regards to the data management tools used at state level, the human and material resources available in various state and regional institutions, delays in procedures (and the shortcomings of some of them, including age assessment), and a lack of coordination among competent authorities at various administrative levels.

This contradiction between the general protection approach, and the practices and policies implemented on the ground, would appear to suggest that there is an imperative need to find proposals which give coherence, efficiency, and legitimacy to the response of Spain to unaccompanied and separated children (whether they are asylum seekers or not). That response, must be based on a comprehensive protection approach, as required by the Convention on the Rights of the Child and other international standards.

In the recommendations made to Spain in 2018, the United Nations Committee on the Rights of the Child stated that Spain must make adequate care for unaccompanied and separated children one of its main priorities in the coming years. According to the Committee, there are numerous challenges, related both to rules and procedures (lack of a tool for best interest determination, asylum and age assessment procedures, push-back practices, and a lack of complaints mechanisms in child protection centers), and issues on the ground (overcrowding of centers, absence of lawyers, insufficient and unspecialized personnel, children living on the streets, trafficked children who aren't being identified)¹.

In Spain, there is political willingness to deliver appropriate and effective protection to unaccompanied and separated children, as evidenced by the adoption of normative, programmatic, and operational tools. The work being carried out within the Childhood Observatory of Spain clearly reflects this. This dynamic should not be interrupted in spite of political changes which may take place at European, national, regional, and local levels.

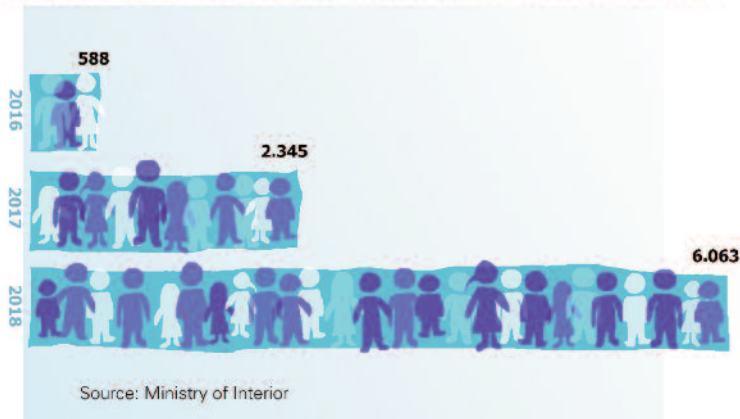
However, on this basis, further action is required, starting with a discussion on the need to adopt a National Action Plan, which includes long-term political and budgetary support at state and regional level.

The term “unaccompanied and separated children”

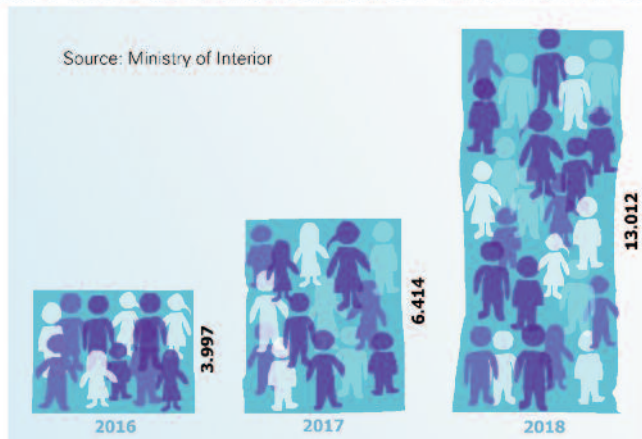
When mentioning unaccompanied and separated children, the report refers to any foreign national under 18 years of age, who seeks access to or finds themselves in Spain, without an adult responsible for them, whether legally or according to the customs of the country of origin. It is a broad definition which does not distinguish between the different reasons for migration, and therefore encompasses other categories, such as asylum-seeking children.

¹ Committee on the Rights of the Child (2018): Concluding observations and recommendations to Spain. CRC/C/ESP/CO/5-6, 5 March 2018.

ARRIVALS BY SEA OF UNACCOMPANIED AND SEPARATED CHILDREN TO SPAIN

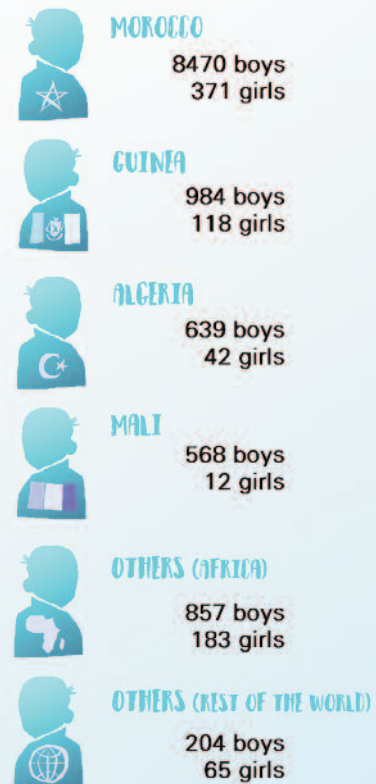


UNACCOMPANIED AND SEPARATED CHILDREN IN THE PROTECTION SYSTEM



MAIN NATIONALITIES

Unaccompanied and separated children's Registry (as of 31.12.2018)



A plan which guarantees the effective and full protection and integration of unaccompanied and separated children, in line with international standards. This plan should also include a National Referral Mechanism, which guarantees a coordinated response throughout the country, and a more balanced sharing of responsibilities among Autonomous Communities.

What is the profile of these children?

Throughout the investigation, relevant stakeholders referred to certain "profiles" of unaccompanied and separated children based on their reasons for migration, objectives, and priorities, in addition to their greater or lesser predisposition to adapt to centers, study, or integrate themselves into Spanish society.

These so-called "profiles" are only relevant as long as they serve to tailor policies and practices from a rights-based

perspective, and when they help to ensure the attention, protection, and individualized monitoring of children.

However, the reality is that there is no disaggregated data nor sufficient and trustworthy quantitative and qualitative information to establish these kinds of classifications. The situation of migrant children is far more complex and changeable, and does not respond to predetermined profiles or labels.

FIVE MAJOR UNRESOLVED CHALLENGES

#01. The need for a coordinated framework, based on updated policies, quality data, and common minimum standards.

#02. The principles of the Convention on the Rights of The Child should guide all the procedures applicable to them.

#03. An inadequate child care model. The reality of child protection centers.

#04. The need to strengthen monitoring mechanisms for child rights.

#05. The integration of unaccompanied and separated children when they reach the age of eighteen: A medium and long-term investment.

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#01

THE NEED FOR A COORDINATED FRAMEWORK, BASED ON UPDATED POLICIES, QUALITY DATA, AND COMMON MINIMUM STANDARDS

1ST ISSUE: Overcome a strictly regional-based approach in child protection and improve intersectoral coordination, as well as between the State and Autonomous Communities.

The investigation highlights numerous differences among regional child protection systems, as well as between centers in the same region, which implies unequal protection of migrant children depending on their place of residence. This is largely due to the fact that the legal framework on migration, child rights, and other related topics, lacks common minimum standards, effective monitoring, and interinstitutional coordination and supervision mechanisms. Although the decentralization of competencies with regards to child protection is a positive factor, it should not be forgotten that the obligation which emanates from international treaties corresponds to Spain as a State.

Throughout the investigation, some actors frequently alluded to the inaction or lack of responsibility and solidarity shown by authorities at different administrative levels to explain the inadequate conditions in which the unaccompanied and separated children in their region found themselves. Although the root of the problem lies in these interrelated failings of the system, the first question should be how to guarantee these rights, and only then can we address what every agent should do within a more homogenous and coordinated framework.

A long-term focus, reaffirms the need for coordination across various levels since, when they reach majority age, the young migrants may leave the region of residence, and the regional-based approach loses its relevance. From that moment, general social, employment-related, and economic policies come into play, both at a national and European level.

In addition, their care and opportunities cannot be conditioned by the region in which they reside, not only to avoid discrimination in terms of the enjoyment of their rights, but also because their social and labor integration is the objective of other national and European policies. Without questioning the existing distribution of competencies within Spain, it is necessary to overcome a strictly regional outlook due to the fact that this phenomenon is based on mobility. To achieve this, the following is required:

NECESSARY COORDINATION OF ALL ACTORS TO GUARANTEE INTEGRAL PROTECTION



- Common minimum guidelines and standards (in foster /residential care, reception, identification, referral, guardianship, and permits management, among other areas).
- Coordination mechanisms which ensure the same quality level of policy across the country.
- Coordination across all areas involved at Autonomous Community and State level for efficient fulfillment of the rights of unaccompanied and separated children and their integration into Spanish society (education, justice, employment, health, social services, youth, etc.).
- Greater 'solidarity' among Autonomous Communities in order to achieve a more balanced sharing of responsibility, since it involves a constitutional legal commitment, whose in compliance may constitute a breach of international obligations.
- Analyze the extent to which the Spanish State can take on greater political and financial responsibilities, not only because international commitments correspond to the State, but also because the State is adopting the migration policy, a national policy that has a direct impact on child protection policies (regional competence).
- Adopt political and budgetary measures at a European level in order to create or strengthen coordination mechanisms, cross-border protection of children, and family reunification. Some of the difficulties facing migrant children and the protection system are related to European Union border policies (particularly evident in Ceuta and Melilla)².

² In line with European Commission's Communication (2017): Communication from the Commission to the European Parliament and the Council. *The protection of children in migration*. COM (2017) 211 final.

2ND ISSUE: Strengthen transparency and generate disaggregated and accessible data

As recommended by the Committee on the Rights of the Child and the UN Global Compact for Safe, Orderly and Regular Migration, it is fundamental to collect and disseminate disaggregated data on unaccompanied and separated children. Not only to better adapt the formulation, monitoring, and evaluation of policies to the reality they address, but also to break up ill-founded social narratives and biases.

Although Spain has a “Childhood Observatory” and an “Unaccompanied Foreign Minors Registry,” there are serious challenges regarding the production of and access to quality data, which can only be addressed through the creation of a single, comprehensive, and coordinated system with quantitative and qualitative homogenous and accessible data. Only a comprehensive information system would guarantee that all policies be based on children’s best interests. This would also facilitate better knowledge of child facility occupation levels across the country, and enable decisions regarding transfers among Autonomous Communities.



#02

THE PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD SHOULD GUIDE ALL PROCEDURES APPLICABLE TO THEM

1ST ISSUE: The child best interest principle is blurred

One of the main principles of the Convention is the best interest of the child, which is a substantive right, an interpretive principle, and a rule of procedure, and should guide all the decisions which affect unaccompanied and separated children.

There has been an increasing adoption of legislation regarding migrant children's rights. Nonetheless, the migration legislation is the one mainly regulating migrant children's rights, and therefore migration control objectives (coupled with the current saturation of the child care system) hinder the implementation of the child best interest principle as provided by the Committee on the Rights of the Child.

As observed in Andalusia, Ceuta, and Melilla, in the current context of over-occupation, few best interest assessments are carried out. The majority of the decisions that affect them are not made based on this evaluation, but according to other criteria (availability of places, for example). This is further aggravated by the absence of adequate mechanisms to guarantee the carrying out of these assessments, and also due to the lack of specific guidelines to conduct them.

All the procedures carried out and decisions made must also comply with the principle of non-discrimination, and keep in mind the impact they have on the right to life, survival, development and the right to be heard. In addition, they must respect the legal safeguards of the due process (adapted information, interpreter, free legal assistance, reasoned decisions and the possibility to appeal).

The limited implementation of best interest assessments, a total absence of free legal assistance, high levels of misinformation (as expressed by the children themselves) and a scarce presence of interpreters and mediators, aggravates the situation and results in the denial of the child as a rights holder.

It's therefore necessary to update the legal framework (with regards to children, immigration, asylum and even education) and ensure its implementation, in accordance with the most recent international principles and standards applicable to migrant children³.

3. Committee on the Rights of the Child and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2017): General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families No. 22 (2017) of the Committee on the Rights of the Child for the general principles of the human rights of children in the international migration context. CMW/C/GC/3CRC/C/GC/22, 16 November 2017. Committee on the Rights of the Child and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2017): General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families No. 23 (2017) of the Committee on the Rights of the Child on state obligations regarding human right of children in the context of international migration in the countries of origin, transit, destination and return. CMW/C/GC/4CRC/C/GC/23, 16 November 2017.

2ND ISSUE: At the border: Reception, identification and referral to the child protection system

- During sea rescue operations, there is no specific focus on children.
- There are no representatives from the child protection system, nor lawyers, nor other professionals specialized in children (psychologists, social workers, or cultural mediators).
- During referral procedures to the child protection service (which averages between 1 and 12 hours depending on the case and place), children remain in closed centers or police stations.
- Informants warned of push-back practices involving children in Ceuta and Melilla. However, they also alluded to the difficulty of documenting these practices.
- Failure to pass information on health care provided at the docks to the child protection authorities.
- There are cases of separation of children from accompanying adults who are unable to prove that they are parents, during the carrying out of DNA testing.

3RD ISSUE: Age Assessment Procedures

The Committee on the Rights of the Child⁴, highlighted its concerns to Spain regarding these procedures because of their impact on identity and access to children's rights. Any error has devastating consequences for these children since they could be wrongly identified as an adult and hence be deprived of access to accommodation and food, protection, residence permits, education, or possibilities of family reunification. Although the problems associated with these procedures have been excessively documented by various Spanish stakeholders (including the Office of the Ombudsperson), the investigation corroborates or identifies the following problems:

- They almost exclusively consist of x-ray tests with a margin of error of up to 4 years. No other experts (such as psychologists or social workers) are involved except the health worker.
- They are intrusive for children.
- In some places, children are subjected to observations of the maturity of sexual organs, and they are even required to undress.
- There is a lack of common criteria across provinces.
- In some places systematic x-ray tests are carried out (and not just in cases of substantiated doubt) on all unaccompanied and separated children, even when they have valid documentation which provides proof of their age.
- They are always carried out without the basic safeguards of the due process (informed legal assistance, or the right to be heard).
- In the majority of cases, the prosecutor has no direct meeting with the child at any point. On many occasions, not even a medical-forensic expert is involved.
- The delays in carrying out these tests (in some places up to several months) sometimes leads to the cohabitation of children in child protection centers with adult migrants. It also entails delays to name guardians and issue residence permits.
- Sometimes, the margin of error works in favor of adult migrants who are consequently identified as children (in a small number of cases).

⁴ Concluding Observations to Spain (2018): op. cit.

4TH ISSUE: Guardianship

Though the situation is not the same in all Autonomous Communities, there are considerable delays in the naming of guardians, particularly in the current context of an overstretched system.

5TH ISSUE: Residency and employment permits

Obtaining the residence permit is crucial for these children. It is essentially the aim of their 'odyssey' and a guarantee of the effective and timely fulfillment of their rights. There is too much disparity in the criteria and implementation for action on behalf of the different authorities involved: Regional Directorate Generals for Children, the Prosecution Offices, and the Central Government Delegations (in charge of migration decisions).

Major delays have been observed, some linked to delays in the naming of guardians, and others related to the overcrowding of centers: the heavy burden on cultural mediators and social workers, the absence of lawyers, the lack of identity documents, or the failure to apply for a "Foreigner Registration Certificate"⁵.

During field work, widespread misinformation and concern was noted among children regarding these procedures. This creates a sense of uncertainty or distress, impinging on their mental health, and even on their decision to leave the center. This situation is heightened when these departures take place before the naming of the guardian. Leaving the centers on their own opens up a cycle of invisibility and vulnerability, which may be reversed should they be detected in another region, but which may also result in their abscondment, living on the streets, trafficking, etc.

It is therefore essential that there be clear and common guidelines in order to ensure that all authorities act appropriately, and that the management of the files of children approaching the age of majority are prioritized.

6TH ISSUE: The right to asylum

There were barely any records of asylum applications by unaccompanied and separated children in the child protection centers visited. There were very few places offering informational material or sessions on international protection. This accounts for the fact that in 2016, just 30 unaccompanied and separated children applied for asylum in Spain, and 20 in 2017.

7TH ISSUE: Returns to country of origin

In recent years, there have been relatively few returns of unaccompanied and separated children to their countries of origin. Several years ago, the Spanish legal framework was reinforced in order to prevent returns without sufficient guarantees and to ensure compliance with international and national standards. Return decisions must be based on a best interest determination, provided the family guarantees their host and the protection system in the country of origin is capable and willing to support their reintegration, and guarantee their rights. The return must not entail risk of exploitation, violence, or trafficking.

⁵ The foreigner registration certificate (Cédulas de Inscripción) is a printed document which is given to a foreign national who cannot be formally documented by their country of origin (they will not provide them with identity documentation or a passport for various reasons) and which enables them to be documented in Spain, once they have been registered in the Central Registry of Foreign Nationals.



#03

AN INADEQUATE CHILD CARE MODEL. THE REALITY OF CHILD PROTECTION CENTERS

Protection measures concerning unaccompanied and separated children in Spain are mainly residence-based (centers, care homes, and flats). There are very few unaccompanied and separated children in foster care programs, not even when there are members of the extended family present in the country.

Residential care must always be a fallback and is not just an administrative process, but an opportunity for the child. This care aims to reestablish a home-like secure environment, in an adequate space and with friendly support, which guarantees the right to their full development and adequate monitoring based on their best interests. This opportunity arises through the emotional ties, which form between children who are suffering and the teams of professionals who want to provide them with this opportunity⁶.

In order to fulfil this objective, the residence-based child protection system must fully internalize children's rights. This includes the choice of a specific infrastructure, center size, team of professionals, and activities carried out at centers.

1ST ISSUE: There are no minimum standards at national level in child protection facilities

The disparity between residential, human, and professional resources is significant and affects:

- The management of the centers: The centers can be managed by public entities (Autonomous Communities), companies (on the increase), or non-governmental organizations. In the two latter cases, the public child protection system would delegate the management of the centers to private entities through agreements or contracts.
- The characteristics of the centers: There are first reception centers and facilities providing medium and long-term support. However, in Andalusia there are also "emergency" facilities created in a provisional context of increasing arrivals. In Ceuta and Melilla, host centers have a double function (first reception and long-term care).
- The number of children resident at each center (the majority overcrowded).
- The ratios of staff per child resident.
- The number and qualifications of professionals.
- Curfews and time spent outside the center.
- The existence and use of a direct complaints mechanism.
- The use of mobile phones, internet, and communication with families.
- Educational, sport, or recreational activities on offer.
- Policies on transition to majority age.

⁶. Horno Goicoechea, Pepa ; Romeo Biedma, F. Javier ; Ferreres Esteban, Áurea (2017): *Fostering as a Life Opportunity: Good practices and recommendations for the appropriate care of children and adolescents in foster and residential care.* Madrid: Spanish National Committee for UNICEF.

2ND ISSUE: The child protection system is not suited to the reality of the children it seeks to care and protect

This mismatch was particularly noted with regards to intervention models, procedures, quantity and characteristics of infrastructures and professionals. The following situations were observed:

a) General delays in procedures and processing of residence and work permits

There are not only delays in the naming of guardians, the management of residence, work permits, school enrollment, but also in proceedings, decisions taken by the prosecutor (age determination), and central government delegations (residence and work permits). Furthermore, they are hardly ever granted work permits at the age of 16, since they are required to comply with extra conditions when compared to Spanish children⁷.

b) Oversaturation

The overstretching of some centers directly impacts the conditions in which these children sleep, shower, live together, interact with the team, or carry out their activities. There are multiple risks that can affect their mental health; from suicide attempts to addictions, or their abscondment from the center, which in many cases implies their formal departure from the child protection system. In one of the most overcrowded centers, for example, the staff reported that the children had chosen to shower with their clothes on, since they were forced to wash in communal showers with no privacy.

Especially dramatic is the situation in the larger centers in Melilla and Ceuta. In one of them, which has a capacity of 180, there are over 630 children with just one psychologist and two social workers. The children share mattresses (up to three children per mattress). In addition, this center receives on average between 10 and 15 new children every day. In these cases of high levels of overcrowding, the existing conditions could be classified as a risk in themselves.

This level of system saturation implies the cohabitation of children at various stages of the integration process, or of varying ages. This situation requires centers to carry out two or three tasks at the same time, and affects daily life, the organization of work, the dimension of the team and their training, and other available resources.

This overloading of the system has driven child protection authorities in Melilla, Ceuta, and Andalusia, to set up bedrooms in communal areas or passageways of some existing centers, install prefabricated 'igloos' to increase center capacity (Ceuta) or open a significant number of diverse "emergency" facilities (Andalusia).

However, these temporary solutions risk becoming semi-permanent. In the case of emergency centers, they could become stable or permanent facilities, despite not having the necessary services and provisions to soundly guarantee child rights in the long term. It was confirmed that some children had spent a number of months at emergency centers.

⁷ Article 41.1 j) of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration.

c) Unsuitable or even dangerous locations

The site of the centers is by no means an irrelevant issue. Their location can contribute to the impairment of the integration process, and even impinge on their protection, and therefore should be decided upon in accordance with policies and measures with regards to safe routes to school. The investigation has revealed the remoteness of some first reception centers from town centers (with high levels of abscondment) and the conditions of insecurity in the surrounding area of one of them.

d) Insufficient number of specialized professionals

The uprooting created by migration, family separation, traumas associated with the journey or situations of violence or persecution (asylum seekers), the anguish and uncertainty regarding their future, solitude, and personal difficulties of each child, require proper identification and appropriate psycho-emotional attention and treatment, throughout the whole period in which the child is cared for by the protection system.

- **Cultural mediators:** Many centers have no permanent cultural mediators (in some, they are only there once a week). This figure is key to creating an adequate and trustworthy environment for dialogue and for working with children, as well as to facilitate the work of other professionals (psychologists or social workers). Without them, the exchange of information and care management are hindered, and best interest assessments cannot be carried out. These failings can also lead to a situation of isolation due to an inability to converse in a language they understand. Some children were even unaware of where they were or were unable to express the fact that they had had no contact with their family since the trip. No mediator of Sub-Saharan origin was detected and there were very few center staff, other than cultural mediators, with a working knowledge of Arabic or French.
- **Psychologists:** Some centers do not have psychologists. Others have just one for hundreds of children, and do not usually specialize in child psychology. No protocols for the psychosocial therapy of children were detected.
- **Social workers:** There are a small number, which also impacts on residence case management in a timely manner. This is particularly serious when children approach the age of majority, as if they do not get their permits, they risk ending up on the streets.
- **Lawyers:** No specialized legal advice is offered in almost all protection centers. The only option they have is to find this legal assistance outside the center, should there be expert non-governmental organizations in the same city.

e) The center staff do not have sufficient training

Those working in the centers do not have sufficient training. There are specialized training initiatives, but they need to be reinforced, particularly as regards migrant children's rights and international standards.

f) Need to strengthen support mechanisms for professionals

The vast majority of professionals have a sensitive, vocational, and committed attitude. In some cases, they even supply personal resources (time or materials). However, many express difficulties in working with insufficient resources in saturated child care centers. It is also important to support the mental health of these teams.

g) Problems concerning health care

After the primary care that the children receive from the Red Cross upon arrival, there is no permanent or periodic presence of professionals from the public health care system in the centers. During this primary care treatment given by the Red Cross, an individual sheet is completed with basic information and the care received by each child, which is then sent to the corresponding regional health authorities.

In this phase, difficulties have been observed with regards to the exchange of information between health authorities and the child protection system. Once they are in the center, it is often the nurses who diagnose and medicate them, since there are no professionals from the public health system in the centers.

h) Delays in school enrollment and few educational opportunities in some centers

During the interviews and focus groups carried out during the investigation, the children communicated their unquestionable eagerness and interest in studying.

There are differences between the centers as regards the initiatives they put in place to facilitate entry into the education system and to vocational training. Further barriers also transpire through overcrowding, and as a result of the rigid conditions regarding access to formal education (which requires two years of compulsory schooling for enrollment in official vocational training programs) and a lack of coordination between the protection and education systems.

Language is an essential component of the integration process as a whole, and in particular with regards to education. Immediate schooling without a basic knowledge of Spanish may lead to failure and school drop out, as well as feelings of humiliation, frustration or sadness. One child went so far as to express that he was going to 'explode' after spending six hours in class every day without understanding a single thing.

Many schools currently have limited, or no educational support resources and some child protection centers are not even able to organize Spanish classes for the children resident there. This situation leads to a high number of children going days and days without any kind of educational activity, which is exacerbated by the absence of sufficient places for recreational and sports activities in the centers, as well as minimal access to the internet.

It's also important to strengthen support and protection mechanisms against xenophobic bullying in schools. This is something being experienced by some of the children interviewed.

i) Insufficient consideration for the situation of unaccompanied girls

Although the majority are boys, the number of girls arriving has increased over the last few months (especially in Melilla), and so the gender perspective is essential in order to prevent their invisibility. The absence of a gender perspective, can lead to undesirable situations (which have been observed), such as the presence of male workers in parts of the residence where the girls sleep and shower, inappropriate ways of addressing them with regards to their sexual and reproductive health, ineffective mechanisms for the identification and prevention of girls who are victims of trafficking, or the absence or scarcity of leisure opportunities and entertainment programs (which could lead to situations of sexual exploitation in some cases), etc.



j) Little attention paid to specific needs

The absence of best interest assessments means that in many centers specific needs are not properly identified, or that there is a lack of sufficient specialized resources to deal with child trafficking victims, beneficiaries of international protection, and those who have mental health, behavioral or addiction problems.

k) Disciplinary rules, curfews and conditions for spending time outside centres

The rules for coming and going, cohabitating, behavior or discipline significantly determine the reception conditions and the activities that each child carries out. The principles and standards of children's rights in the context of migration should act as a guideline for harmonious cohabitation, rather than an environment conditioned by disciplinary rules. The generation of a "safe space" is a relevant element of the intervention, but should not be viewed as an exercise of control.

The non-compliance with these rules should not mean the restriction or negation of their fundamental rights. The investigation has detected that a disciplinary focus is most common in the centers (system based on prizes and punishments – in one case the punishment prevented children from leaving the center for a month).

In some cases, the children can come and go as they please during the day (with stricter rules after dark), meanwhile in others, free time outside the center was limited to a few hours in the afternoon, for 3 or 4 days a week, or always to the same places. In other cases, time outside the center was temporarily vetoed depending on the phase in which the child was in. The growing neighborly and social rejection of these children, is also contributing to the increasing restrictions put in place by these centers.

l) Excessive referrals between centers and with no prior best interest assessments

Overcrowding has made referrals a daily practice in Andalusia. These referrals among centers are often decided upon without the carrying out of a best interest assessment, based instead on external criteria (availability of places, registry order, logistics, budgets, identification of children as 'problematic'). However, the priority criteria when deciding upon a referral should be the best interest of the child, and should be accompanied by necessary and adequate information, in a language they understand.

m) Deterioration of center climates

Although the vast majority of the children interviewed allude to the good treatment provided by the staff in the centers, and their dedication and vocation, information has also been collected regarding isolated cases of mistreatment – mainly verbal, (although sometimes physical too), committed by staff, such as educators or security guards, etc.

These situations are not necessarily linked to the overcrowding of centers, but they are aggravated by them, as well as by ill-equipped complaints and supervision mechanisms, or children's fear of suffering other consequences in the case of reporting these issues. Situations of violence among the children are also often aggravated by the overcrowding of centers. In isolated cases, there have been aggression shown to members of staff by the children. Robberies between children (mainly phones and clothes) are growing due to overcrowding.

3RD ISSUE: Mixed or specific centers for unaccompanied and separated children?

There are increasing numbers of centers which only host migrant children. This is occurring in practice, despite the fact that, until now, there is a general understanding that so called 'mixed' centers (with Spanish and migrant children), facilitate social integration. Once again, the saturation of the system is paving the way for new models of working, to those that do not necessarily prioritize the search for solutions adapted to every specific need (both for Spanish children and migrant children). In the search for solutions, it is necessary to combine a comprehensive system of protection with special protection mechanisms which ensure equal rights, taking diversity into account.

Centers exclusively for migrant children, are only justified in the first reception phase, during a limited period, if it is in the best interest of the child, and as long as they boost integration.

4TH ISSUE: The deterioration of situations of extreme vulnerability

a) Absconding (children leaving the centers)

Children absconding from centers is a daily occurrence across Andalusia, Melilla, and Ceuta. In Ceuta and Melilla, due to their geographical isolation from the mainland, the risk of ending up on the streets when trying to reach the Iberian Peninsula in container ships ("hacer el risky" as they call these attempts) is heightened. Once they are back in the center (either voluntarily or because they have been intercepted), the children begin a cycle of entering and leaving which makes them more vulnerable and reduces their hopes of integrating into society in the future. The reasons alleged by the children include:

- Their migratory project. When the place in which they find themselves is just one step away from family reunification in another Autonomous Community or European country (especially in Ceuta and Melilla where they are "trapped in the regional child protection system" until they reach majority age).
- The uncertainty regarding their future, lack of communication in centers, and misinformation. In many occasions, they have not received any information regarding their residency application, or have had problems making themselves understood, or they have lost hope and trust in the protection system.
- The conditions of the centers.
- Lack of access to educational activities.

The consequences are serious, including dangers of falling into smuggling and trafficking networks, and invisibility if they leave before their guardian is named (which will deprive them of protection and rights as a child) and the disruptive effect on the daily work of educators and other professionals.

b) Children in street situations

It is a growing and worrying phenomenon, whose associated risks range from drug consumption, to commercial sex exploitation or abuse.

In an attempt to address this issue, a number of street education programs have been put in place, although their emerging nature means the evaluation of their results is still difficult. These programs are very positive, and, with permanent monitoring, they can be crucial in finding solutions, particularly keeping in mind the context of growing stigmatization towards these children, especially those living on the streets.

c) Stigmatization and xenophobia

The unaccompanied and separated children at Spain's southern border show worrying signs of stigmatization, especially in Ceuta and Melilla, and increasingly so in Andalusia. Negatively encompassed under the general term "MENA" (an abbreviation of term "Menores Extranjeros No Acompañados"), they are treated as a general threat and an issue of public order. Sometimes, institutional and social rejection is shown towards their presence, or the opening of new centers, or they are subject to discriminatory practices which impede their integration (use of uniforms or clothing unsuitable for the environment, always spending their free time in the same places, prohibition from going out onto the balcony). This social rejection also has an impact at schools, where these children are labelled as "MENA" in addition to "care home children".



#04

THE NEED TO STRENGTHEN MONITORING MECHANISMS FOR CHILD RIGHTS

a) The supervisory role of the guardian (Regional Child Protection Directorate General)

In the existing system, the leading regional agency for child protection is mandated both to act as a guardian for these children, and to carry out regular inspections of the centers themselves.

There is a challenge in guaranteeing the independence of the monitoring arrangements put in place by the child protection authorities. Other challenges include insufficient coordination between regional administrations and the absence of protocols or other tools for the regular and independent oversight and monitoring of all centers (infrastructures, workforces, application statuses, rules of conduct, abuse situations, schooling, etc.). Improving transparency, together with quality and accessibility of data, is also crucial.

b) The monitoring role of the prosecutor (children section)

In Spain, the person responsible for ensuring the fulfillment of the rights of these children is the prosecutor. There might be a conflict of interest when a public prosecutor initiates a proceeding against children in conflict with the law, and on the other hand, exercises a protective role in terms of the rights of children who are in the protection system. Since they exercise both functions, there is particular concern when the same prosecutor carries out both tasks in the same center.

In Spain, very few unaccompanied and separated children address prosecutors, among other reasons, due to the lack or non-existence of complaints mechanisms or information about them. It has also been noted that prosecutors do not visit centers as regularly as it is provided, due to a lack of personnel.

Other challenges are related to the scarcity of binding mechanisms to enforce implementation of their recommendations in order to prevent, halt or repair damages related to violations of these children's rights. There is also a need to make their findings and proceedings accessible to the public, beyond the information included in their annual reports.

c) The ombudsperson and civil society organizations

The ombudsperson, at state level, and the regional ombudsperson (likewise the children's ombudsperson, in the case of Andalusia) carry out regular monitoring of the situation of these children, being important actors in the general supervision of the situation and a direct child complaint mechanism.

Civil society has a twofold essential role in monitoring public policies, and as specialists who provide services to the children. Nonetheless, it has been found that various non-governmental organizations face difficulties in observing the conditions of children in child protection centers, or in carrying out certain activities.



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#05

THE INTEGRATION OF UNACCOMPANIED AND SEPARATED CHILDREN WHEN THEY REACH THE AGE OF EIGHTEEN: A MEDIUM AND LONG-TERM INVESTMENT

Young migrants who were formerly in the child protection system, without family support or other social networks, assume responsibilities before other youth, and reach independence alone and at a greater risk. Thus, as the Committee on the Rights of the Child and the European Commission highlight, preparatory programs regarding independence from two years before reaching majority age are crucial. The absence or limitation of these programs may cause serious harm to them. They are in an irregular migratory situation (with risk of deportation) and may even fall into the hands of mafia or criminal organizations.

These programs should lead to educational, accommodation, social-labor, and psychological support, as well as economic assistance. The regional initiatives investigated show worrying results since, they are either not being implemented, or there are no follow-up mechanisms once majority age is reached, or if they exist, the percentage of children truly benefitting from them is extremely low.

Therefore, the majority of age constitutes a dividing line for many young migrants, which once again leaves them in a particularly vulnerable situation, due to difficulties in finding work, accommodation, social protection, or to gain sufficient livelihoods which enable them to have their residency permit renewed.

From what has been observed, it has been noted that the successful cases, have been preceded by positive experiences of planning, resources, coordination between stakeholders, and age and need sensitive procedures. These positive experiences (many of which were supported by NGOs) should be consolidated as state policy whose success will not only benefit these children, but also society as whole, in the short, medium, and long term.

In the current context of global governance initiatives such as the UN Global Compact for Safe, Orderly and Regular Migration, and the 2030 Sustainable Development Agenda, Spain has among its main challenges, the integration of unaccompanied and separated children. Also, as a signatory to the Convention on the Rights of the Child, the Committee has requested that Spain addresses this concern.

As the European Commission states, early integration is key for their development towards adulthood, it is a social investment and an essential factor which contributes to social cohesion across Europe⁸.

⁸. Communication from the European Commission (2017). op.cit.

TOWARDS A NATIONAL ACTION PLAN FOR THE PROTECTION AND INTEGRATION OF UNACCOMPANIED AND SEPARATED CHILDREN

Unaccompanied and separated children in Spain constitute a vulnerable group which must be urgently protected by public authorities, as the UN Committee on the Rights of the Child acknowledges. A National Plan supported by all public administrations and competent authorities, which guarantees effective protection and full social integration, in accordance with international commitments regarding migrant children, is therefore required. The investigation carried out highlights the need for a series of measures:

1. Harmonize regulatory frameworks with international standards

To this end, amendments should be made to the Law on the Legal Protection of Children and to the Aliens' Act and Decree, as regards certain aspects on the rights of children (e.g. age determination, employment permits at 16, deprivation of liberty, and push-back practices in Ceuta and Melilla, etc.). The Education Law should also be reformed so as to guarantee more flexible access to education and individual support during schooling.

Likewise, the Asylum Decree and the Decree on the Children's Rights Act must finally be adopted, as well as a specific law on the protection of children and adolescents against violence. This law should reinforce the protective role of the prosecutors and create specialized Children, Family and Disability Courts. Finally, a specific law on human trafficking should also be adopted.

A specialized and independent legal representative (individual guardian or counselor) for unaccompanied and separated children should also be incorporated. This person must complement the functions of the regional child protection authority (the formal guardian in the Spanish guardianship system) and should ensure compliance with individual rights and best interest during the entire period in which they are in the child protection system, in accordance with recommendations of the Committee on the Rights of the Child and the European Commission.

2. Ensure a comprehensive coordinated policy at the different administrative levels

It is necessary to ensure coordination of all entities in charge of children and related matters (education, health, migration, asylum, justice, trafficking, gender equality, etc.) to guarantee comprehensive protection of unaccompanied and separated children. To this end, the “Framework Protocol on Certain Actions in relation to Unaccompanied Foreign Minors” should be updated and adapted to the regional and local context, or an alternative coordination instrument should be adopted.

3. Set common standards for the homogenous protection of their rights at the national level

A common procedure for the best interest determination of each child, specifically for unaccompanied and separated children, should be adopted. There must be also sufficient resources to establish an individualized monitoring and accompaniment plan, which guarantees a durable solution.

To guarantee children's rights, it is necessary to adopt specific guidelines for children in the rescue, reception, identification and referral operations, as well as for guardianship and processing of documents. The following provisions should be included:

- representatives of the child protection system at the points of arrival and guarantee that interviews are carried out by specialized personnel;
- supervision to avoid push-backs;
- provisional guardianship and naming of permanent guardians without delay, avoiding termination of guardianship until it is assumed by another Autonomous Community;
- immediate processing of the residence authorization in situations of helplessness;
- harmonized criteria for granting documentation and permits to unaccompanied and separated children and to young migrants who were formerly in the child protection system, giving priority to these cases;
- right to non-separation of accompanying adults when there is no risk of trafficking; proactive identification of international protection needs;
- free legal assistance.

Common Protocol for Age assessment: Based on a multidisciplinary method and best interest assessment, and with full respect for dignity and all the legal safeguards that must always accompany these processes (presumption of minority, legal assistance, possibility of direct appeal, etc.).

Minimum standards for centers at national level that ensure a protective physical and emotional environment, and a safe space for the full development of children, including:

- type and size of the centers (including more facilities for children with specific needs);
- minimum criteria of hygiene, infrastructure, food, health, accessibility and safety;
- ratio and type of specialized professionals with common hiring criteria; norms of cohabitation, sanctions and containment measures (with a socio-educational rather than punitive approach);
- compliant, prevention and action mechanisms in case of abuse and mistreatment; training plan for professionals involved;
- referral protocol between centers according to the best interests of the child;
- guidelines to speed up provisional and permanent guardianship, as well as residence permits.

4. Promotion of foster care

Promotion of foster care through targeted policies, resources and practices that promote fostering by extended family members, as well as family tracing procedures and protocols to find family members in Spain or other European countries, based on best interest assessments.

5. Establish a National Referral Mechanism, consisting of:

- A single, comprehensive and coordinated system to collect quantitative and qualitative data on unaccompanied and separated children with the aim of ensuring individualized follow-up during the entire reception process, providing information on the availability of protection facilities in the Autonomous Communities, facilitating decisions on referrals, and guiding the design and evaluation of child protection policies. To this end, an in-depth review of the current “Unaccompanied Foreign Minors Registry” (RMENAS) can be carried out or new specific data tools can be created.
- A protocol or coordinated referral mechanism among different Autonomous Communities.

6. Prepare a contingency plan for the arrival of a significant number of migrant children in coordination with the National Referral Mechanism.

7. Measures to guarantee the right to education and more streamlined and flexible school enrollment

Education enrollment must be facilitated through a reception plan and itinerary, based on the psycho-pedagogical evaluation of the educational needs of the child, and consisting of: a) a previous learning of the host language; b) a period of adaptation to the center; c) educational integration activities; d) support measures to prevent school dropout and encourage access to post-compulsory education.

For children over 16 years of age, the continuity of their training in post-compulsory education should be facilitated, as well as the promotion of specific educational activities that facilitate their socio-occupational integration and avoid social marginalization for those who reach the age of 18.

With the aim of preventing xenophobia and bullying towards unaccompanied and separated children, tools and protocols should be established, such as the creation of a “welfare and protection coordinator” at schools, responsible for providing information on the protocols, promoting measures and training plans, carrying out risk assessments, and guaranteeing coordination with social services.

8. Other measures of socio-labor integration and facilitation of the transition to adult life:

In order to achieve full integration into society, it would be necessary to adopt measures such as:

- guaranteeing and expediting the processing of their documentation and residence and work permits (giving priority to those approaching the age of majority);

- formal recognition of acquired skills through education and training;
- agreements or joint initiatives with actors from civil society and the private sector for professional and occupational promotion, and access to work for children over 16 years of age;
- expansion of the number of places in support programs facilitating the transition to adult life;
- extension of the programs of accommodation, training, psychosocial support, intercultural mediation.

9. Set goals and indicators to periodically assess progress

In order to periodically assess the impact and progress of the policies of first reception, protection, education and integration, goals and indicators should be established. These indicators should be based on the principles and international standards of children's rights in the context of migration. Disaggregated data on age, nationality, gender, disability, and other criteria should ensure targeted solutions that avoid any kind of discrimination towards unaccompanied and separated children.



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10. Strengthen monitoring and evaluation mechanisms

It is essential to establish minimum standards to guarantee dissemination and access to information on unaccompanied and separated children, as well as on the measures adopted and the budgetary resources used. It is also necessary to strengthen the monitoring mechanisms for child protection systems:

- Regarding the prosecutors (children section), the same prosecutor in the same establishment should not both initiate actions against children in conflict with the law and adopt measures to guarantee the rights of the children. It is also necessary to strengthen their protective and supervisory functions. To do so, it is essential that they conduct the visits with the frequency that is set out, and that they be granted powers to adopt preventive and reparatory measures of rights, when there are inadequate conditions in the centers, or failures occur in the residency procedures, determination of age or others. It is also necessary for public prosecutors to publicize the evaluation and monitoring reports, as well as to have the budgetary or human resources that are necessary to carry out their tasks.
- Guarantee the right of children to have access to justice and effective judicial protection.
- Guarantee the existence of independent monitoring mechanisms of a varying nature: internal monitoring mechanisms of the child protection systems with sufficient autonomy, follow-up of compliance with the recommendations made by the ombudsperson, and facilitation of monitoring by specialized organizations of civil society.

11. Promote agreements and other international cooperation mechanisms

to facilitate the processing of documentation, family tracing, and family reunification.

Returns and family reunifications in the country of origin can only be carried out if: it is the result of a prior best interest assessment, the reception by the family and the protection services is organized, access to health, education and social protection in the country of origin is guaranteed, and there is no risk of violence, exploitation or trafficking.

Likewise, bilateral and global initiatives should be promoted to address the structural causes of migration from a rights-based perspective, and within the framework of the UN Global Compact for Safe, Orderly and Regular Migration.

12. Plan against racism and xenophobia at national and regional levels

National authorities and Autonomous Communities must develop plans of action, with short and long-term goals, for the prevention of xenophobia, stigmatization and all forms of social and communicational criminalization of migrant children, in particular unaccompanied and separated children

13. Predictable and sustainable budget support

It is necessary to ensure budgetary and material resources necessary to guarantee the implementation of this Plan, both by the Autonomous Communities and by the General State Administration.

