

## CHILDREN ARRIVING ALONE IN SPAIN

### PROGRESS SINCE 2010

On previous UPR cycles, Spain received 44 recommendations on children's rights, among which 12 urged it to improve the situation of unaccompanied migrant children. The majority of them been accepted proves Spain's commitment towards this topic. In 2019, despite government's various reform proposals and efforts, **these children continue to suffer grave and systematic violations of their rights** as a consequence of a discriminatory migration policy that prioritizes their condition of migrants over their condition of children, and prevents them from receiving an adequate protection. This practice becomes visible at the border, when they are rejected upon entry, in the age assessment procedure, in the way they are treated within the child care centers and residences, when accessing their most basic rights (education, healthcare, employment), all of which end up criminalizing them. Spanish Public Administrations keep breaking their legal obligations, at both national and international levels, regarding the protection of the most vulnerable children.

### NATIONAL FRAMEWORK

Legislation, policies and practices of Spanish Public Administrations fundamentally focus on the control of migration flows, which clashes with their obligation to provide effective protection and care to children arriving alone in Spain. As a consequence, these children are headed towards social exclusion, to become victims of trafficking, and to end up disappearing. In 2018, the Ministry of Internal Affairs denounced that more than 8.000 out of 10.000 children whose disappearance was denounced were unaccompanied migrant children nationals from Morocco and the sub-Saharan countries. The following identified violations of their rights as well as the recommendations elaborated aim at preventing their disappearance in the future by providing a better an effective protection.

## MAIN CHALLENGES AND RECOMMENDATIONS

# 1

### SUMMARY RETURNS AT THE BORDER

Summary returns at the border have been a common practice from Spain's border police until in 2015 it was legalized through a Law on Foreigners reform. Section three of the European Court of Human Rights released its first judgment on the case ND and NT v. Spain in which unanimously concluded that "summary returns" ("hot push-backs") break Protocol IV and the Covenant. Also, they violate Schengen Border Code, Spain's obligations towards the Convention on the Rights of the Child, the Convention of Civil and Political Rights, the Convention against Torture, and the Geneva Convention on the Rights of Refugees. Spanish Ombudsman, National Preventive Mechanism under the UN OPCAT, has taken a stance against this practice since 2003.

- ***1.1) Immediate repeal of the legal provisions on "rechazos en frontera" and apply the devolution process under article 58 of the Law on Foreigners ( the normal framework as to refusal of entry).***
- ***1.2) Until then, immediately issue instructions to the Guardia Civil (an "Orden de Servicio" and/or "Protocolo Operativo") so that persons apprehended between the real borderline and the "operative border" be a) identified, b) registered, c) have their protection needs assessed individually and d) have access to an effective remedy, including to access to an interpreter and a lawyer before being returned.***

## MAIN CHALLENGES AND RECOMMENDATIONS

# 2

## AGE ASSESSMENT

Art. 35 of the Foreigners Rights Act and the Framework Protocol on Unaccompanied Migrant Children allow Authorities to doubt on the minority of age of these children and subject them to invasive medical tests (such a physical exploration of the genitals) to assess their age, despite holding original documents issued by the Authorities of their countries of origin. This procedure lacks the minimum legal guarantees to protect their rights and opposes Spanish Supreme Court jurisprudence, the Spanish Ombudsman and the Committee of the Rights of the Child recommendations. Most children are determined adults despite holding valid documents proving their age, which places them in a legal and social limbo where they are exposed to social exclusion, unable to directly appeal the decision on the age in court.

- **2.1) Follow Non-Legislative Motion number 161/001190 and 161/002170, approved on November 2017 by Commission on Children of the Congress of Deputies, and:**
  - **Immediately repeal the Protocol on Unaccompanied Migrant Children.**
  - **Amend article 35 of Foreigners Rights Act and transfer the responsibility on the age assessment to the Legal Power (courts and tribunals),**
  - **Amend article 12.4 of the Child Protection Act so the age assessment procedure will not be initiated on documented children.**
  - **Within the procedure, guarantee their right to legal assistance and to be heard, to an effective judicial remedy to directly appeal the decision on the age, the validity of the original documents issued by the Authorities of children's countries of origin unless evidence to the contrary, and prohibit subjecting children to medical tests when they hold valid documents and to invasive medical tests, according to the Supreme Court Jurisprudence and the recommendations from the Spanish Ombudsman and the Committee of the Rights of the Child.**

## MAIN CHALLENGES AND RECOMMENDATIONS

### 3

#### CHILD CARE SYSTEMS

Child Care facilities are managed by regional governments which systematically delay and refuse to guard unaccompanied migrant children who are alone in Spain, preventing them from effectively accessing their rights: education, healthcare, adequate housing and satisfaction of their needs, their personal documents and their residence permit, among others. Many children suffered from physical assaults and are obstructed to denounce, and professionals fail to identify vulnerable children such as asylum seekers and alleged victims of trafficking, especially girls, whose situation remains invisible.

- ***3.1) Ensure that regional governments guard these children immediately upon their entry to the child care facilities, have enough resources to adequately satisfy their needs, issue their residence permits in line with the law and their professionals treat them according to the Convention on the Rights of the Child.***
- ***3.2) Immediately set up prevention, detection, complaint, intervention and reparation mechanisms against violence in child care and juvenile justice facilities, including complaint mechanisms accessible for children with automatic appointed lawyers.***

## MAIN CHALLENGES AND RECOMMENDATIONS

# 4

## RESIDENCE AND EMPLOYMENT

Art. 196 of the Foreigners Rights Regulation includes the concession of a residence permit to foreign minors guarded by the regional governments, but excludes an automatic concession of a working permit to those from 16 years old. This exclusion discriminates them against 16 year-old Spanish and foreign children reunified with their families. Applications for residence permits on the basis of social ties and working permit modifications have their resolutions pending for months, and the exigent requirements to apply for a working permit, in which a job offer is needed, prevent companies from hiring migrants. Also, asylum seekers (both children and adults) cannot have a residence permit because Spanish Authorities consider both permits (asylum seekers temporary residence and working permit and general residence permit) incompatible.

- **4.1) Amend art. 35 of the Foreigners Rights Act to:**
  - ***Automatically concede residence and working permit to migrant children arriving alone in Spain from the moment they access the child care facilities if they are 16 years old already or from the moment they turn 16.***
  - ***Erase the requirements to apply and be granted with a working permit (modification from “residence permit” to “residence and working permit”).***
  - ***Concede the nationality to all guarded children meeting the legal requirements.***
  - ***Include the Best Interest of the Child as a guideline for action when regularizing the administrative status of children.***
- **4.2) Concede the correspondent residence permit (according to the Foreigners Rights legislation) to asylum seekers whose asylum application is still pending and apply for a residence permit using they asylum card as “identification document”.**

## MAIN CHALLENGES AND RECOMMENDATIONS

# 5

### INTERNATIONAL LEGAL OBLIGATIONS

Fundación Raíces and Noves Vies submitted 21 individual communications to the CRC representing unaccompanied migrant children whose rights had been violated according to the CRC. In 18 of them provisional measures were requested and adopted by the Committee, but none of them has been implemented by the Spanish government considering they are not legally binding. As a consequence, many of these children have disappeared.

The Committee's recent decisions on the cases 11/2017, 16/2018, 22/2018, 27/2018 and 17/2018 condemn Spain for violation of art. 6 of the III Optional Protocol, following Human Rights Council's General Observation Nº 33, and for several violations of rights contained in the Convention. Up until now, Spain has not developed an internal mechanism to comply with these provisional measures and decisions.

- ***5.1) Immediately comply, either through the government or the local, regional or national administrations, with the provisional measures and decisions taken by the Committee of the Rights of the Child and by other UN Treaty Bodies.***
- ***5.2) Set up an administrative procedure in which individuals can request Spanish Authorities to comply with provisional measures and decisions adopted by any UN Treaty Body.***