

CHILDREN ARRIVING ALONE IN SPAIN

novesixes



Andalucía Acoge



UPR INFO PRE-SESSION ON SPAIN

3RD CYCLE

UNIVERSAL PERIODIC REPORT

10TH DECEMBER 2019

COALITION OF NGOS

- **Fundación Raíces** (Madrid, Spain): legal defense, social support and support on access to employment of children arriving alone in Spain and youth suffering from social exclusion
- **Asociación Nove Vies** (Cataluña, Spain): legal defense of children arriving alone in Spain
- **Federación Andalucía Acoge** (Andalucía, Spain): platform of NGOs supporting migrant people at the social, legal and labour level to promote their social integration.
- **European Center for Constitutional Human Rights (ECCHR)**, (Berlin, Germany): legal defense of grave violations of Human Rights

CONTEXT: CONFLICT BETWEEN TWO POLICIES

MIGRATION POLICY vs. CHILD PROTECTION POLICY

- The control of migration flows determines how public administrations in Spain will protect migrant children
- Condition of “foreigner” over condition of “child”.
- Failures at legislative, public policy and practice level
- Consequences: grave and systematic violations of migrant children’s rights.

1. SUMMARY RETURNS AT THE BORDER

CHALLENGE:

- Summary returns of migrants (adults and children) at the Spanish borders of Ceuta and Melilla
- Lack of legal safeguards: no legal assistance and interpreter, no access to an effective legal remedy, no possibility to seek asylum, no identification of needs & special vulnerabilities.

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- × Practice turned into law in 2015 through a reform of the Foreigners Rights Act.
- × Spain appealed ECtHR judgment of the case ND NT v. Spain: pending Grand Chamber J.

RECOMMENDATIONS:

- 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.

2. AGE ASSESSMENT

CHALLENGES

- Art. 35 of the Foreigners Rights Act and the Framework Protocol on Unaccompanied Migrant Children
- Systematic doubt of the information contained in the identification documents held by migrant children from: Morocco, Guinea, Malí, Ghana, Gambia, Ivory Coast, Cameroon, Bangladesh...
- Unreliable and invasive medical tests to assess their age: exploration of the genitals upon arrival.
- Against this practice: Spanish Supreme Court, Spanish Ombudsman, Committee on the Rights of the Child.

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× Amendment proposal of the age assessment procedure: not following CRC recommendations.

RECOMMENDATIONS

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 Child Legal Protection Act and prohibit initiating age assessment procedure to 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.**

3. CHILD CARE SYSTEMS

CHALLENGES

- Upon entry in child care facilities, regional governments do not recognise these children to be in a situation of abandonment and refuse to guard them/delay it for several months
- Malpractices and violations of their legal obligations towards children
- No identification of vulnerable children: asylum seekers, girls victims of trafficking...
- As a result, children in complete exclusion from society, at risk of becoming victims of abuse or trafficking, and might end up disappearing.
- Abandonment at 18 years old: no residence and working permit, sometimes homeless.

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- X Amendment proposal : separated child care facilities for migrant and Spanish children.
- ✓ Elaboration of a comprehensive law on all forms of violence against children: includes institutional violence.

RECOMMENDATIONS

- 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.**

4. ACCESS TO EMPLOYMENT

CHALLENGES

- Art. 196 of the Foreigners Rights Regulation excludes an automatic concession of a working permit to 16-years old migrant children guarded by the regional governments, **discriminating** them against 16 year-old Spanish and foreign children reunified with their families.
- Exigent requirements to gain working permit (modification of residence p. to working p., application of residence through social ties)
- Gvt's instruction considering asylum seekers card incompatible with a residence&working permit following Foreigners Rights Regulation.

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X None.

RECOMMENDATIONS

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".**

5. INTERNATIONAL LEGAL OBLIGATIONS

CHALLENGES

- Fundación Raíces + Noves Vies: 21 pending cases on unaccompanied migrant children before the Committee of the Rights of the Child: 18 provisional measures adopted by the Committee and requested to Spain -> **Spain non-compliance.**
- Absence of an internal mechanism to implement them.

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- X No compliance with CRC interim measures and decisions.
- X No internal mechanism & specific authority to implement these decisions.

RECOMMENDATIONS

- 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.**

6. CRIMINALISATION

CHALLENGE

- Discriminatory policies towards these children -> social exclusion, defencelessness, indigence + no residence and working permit issued by Authorities -> criminalisation
- Recent increase in hate speech against them.

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- X Deterioration of society's perception -> worsened by media's dissemination
- X Rise of far-right political party -> monopolisation of this hate speech & direct references to these children as criminals, rapists, etc.
- X Rise of violent acts against them, the facilities where they live...

RECOMMENDATION

- 6.2) Create a National Plan to prevent, investigate and fight against the criminalization of Migrant Children, encouraging media to treat the situation of these children in a serious, accurate and verified way, preventing the spread of hate speech and unfounded rumors.**

CONCLUSIONS

- Systematic practices from Public Administration that violate children's rights.
- Resulting in migrant children's abandonment, defenselessness, social exclusion, victims of trafficking and exploitation, to end up disappearing:
 - **30.000 unaccompanied children, asylum seekers** among them (European Commission: between 2014 – 2017)
 - **+ 8.000 only in Spain** (Ministry of Interior: 2018)
- Government's recent reform proposal of the protection system, the age assessment procedure: positive but insufficient.
- At their whole disposal to collaborate on behalf of an effective protection of children.

THANK YOU FOR YOUR ATTENTION

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