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TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS

Report on

THE SITUATION OF UNACCOMPANIED MIGRANT CHILDREN IN SPAIN

October 2019

FUNDACIÓN RAÍCES¹ is a Spanish non-profit organization created in 1996 that promotes and protects the rights of Spanish and migrant children, youth, and families who suffer from violations of their rights and social exclusion. Since 2003, Fundación Raíces has been providing both legal defence and social support and accompaniment to children arriving alone in Spain and suffering from social exclusion as a result of the violation of their rights by Spanish Authorities.

The following information is based on the testimonies of children subjected to or forced to undergo the age-assessment procedure in Spain, children living under the guardianship of the Autonomous Communities and placed in child-care Centres and residences, and lastly, children, who were guarded when they were minors, rendered homeless and left on the street upon reaching the age of majority. The violations of unaccompanied migrant children's rights are a direct consequence of migration policies, whose priority is to control the migration flows over the protection of children's rights.

These information has been communicated to national institutions as well as international mechanisms of Human Rights protection. Recently, Fundación Raíces have submitted [two joint reports](#) for the Universal Periodic Report on Spain that will take place in January 2020.

1. THE AGE ASSESSMENT PROCEDURE ON UNACCOMPANIED MIGRANT CHILDREN

According to art. 35 of the [Aliens Act](#), upon identifying an undocumented third-country national whose age is unclear, the Attorney General can initiate an age-assessment procedure to determine whether the person is a minor or an adult. The procedure is regulated by the [Framework Protocol of Unaccompanied Migrant Minors](#), which since 2014 determines how various Ministries, the State Attorney and the Police must treat unaccompanied migrant minors arriving in Spain. In practice, the Protocol allows the State Attorney to pursue medical examinations despite the individual holding a valid and authentic passport or identification

¹ www.fundacionraices.org

documents issued by the Authorities of his country of origin², opposing Spanish Supreme Court Jurisprudence³. Besides, it presents the following main **shortcomings**:

- **Inaccuracy of medical tests currently used, according to national and international institutions**⁴. These medical tests are wrist, teeth and collar bone X-rays, and examination of the genitals (considered very invasive) and are carried out systematically, even on individuals holding valid documents.
- **Lack of the necessary legal safeguards to protect children's rights**⁵: right to be heard, no access to legal counsel before, during or after the procedure, no access to an effective legal remedy (the decision on the age cannot be directly appealed in court), translation services to individuals' mother tongue are frequently not provided, no access to the file, sometimes deprivation of liberty while the age assessment procedure is ongoing and presumption of minority and benefit of the doubt not respected.
- **Absence of consultations from the State Attorney to the individual's country of origin Authorities** in order to confirm their age and identity.

Some of the most **serious consequences**⁶ on children's lives are:

- **Complete defencelessness and abandonment: a "limbo situation"**. Children are expelled from child care facilities to the streets and they have only access to accommodation services for adults (mainly shelters for homeless people), but those holding valid passports proving they are minors are rejected from those places, since these institutions cannot host minors holding valid documents.
- **Difficulties in accessing justice**, which is not facilitated by the Authorities (no direct judicial appeal against decision on the age), and no free legal assistance provided.
- **Exposure to serious threats to their lives and disappearance**: drug addiction, trafficking, prostitution, sexual abuse, and disappearance in our streets and cities⁷. Many of them have gone missing already. Also, they can be detained, placed in detention centres for adults, and face expulsion to their countries of origin.

² This Protocol has been judicially appealed by Fundación Raíces, and has just been declared inadmissible by the Spanish Constitutional Court.

³ «a foreign individual whose passport or equivalent identification document indicates his minority of age cannot be considered an "undocumented alien" and be subjected to age assessment medical tests"[...] See [article](#) on this matter.

⁴ The Committee of the Rights of the Child decisions on individual communications [11/2017](#), [16/2017](#), [22/2017](#), [17/2017](#) and [27/2017](#) as well as their [General Observations on Spain](#) (2018).

European Asylum Support Office (EASO) report "[Age Assessment practice in Europe](#)". (2018)

The [Spanish](#) and the [French](#) Ombudsmen.

The Spanish Institute of Legal Medicine. [Good Practice Consensus Document](#) with conclusions of the Workshop on the Determination of Forensic Age of Unaccompanied Foreign Minors (2010)

⁵ [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#)

⁶ These practices have been gathered in Fundación Raíces' report "[Sólo por estar solo](#)", with 50 cases of unaccompanied migrant minors who went through the age assessment procedure since 2009.

⁷ European Migration Network's [report on unaccompanied migrant minors 2017](#): 30.000 unaccompanied minors gone missing between 2014 and 2017. EUROPOL [denounces the disappearance of 10.000 unaccompanied children in Europe 2015](#). The Spanish Ministry of Interior's [Report on Missing Persons](#): 10.000 missing children, 8.419 unaccompanied migrant children among them.

2. THE SITUATION OF CHILDREN CARE FACILITIES

This information comes from children who have lived in Child Care Centres placed in Madrid, Ceuta, Melilla and Andalucía and from anonymous employees working there. The detected failures of the child protection system are known to be extended to other regions of Spain and affect both Spanish and migrant children who are guarded by regional governments, but its impact on unaccompanied migrant children is magnified and aggravated since they are subjected to specific forms of discrimination and institutional mistreatment.

- **Lack of minimum child-protection standards and material conditions of child care centres as a structural problem:** as an example, since 2016, the 1st Reception Centre of “Hortaleza” (in Madrid) has been continuously overcrowded, hosting of 130 children for only 35⁸. Children sleep on air mattresses on the floor and on bare mattress base, have no pillows and only a blanket to cover them. They are unable to maintain their personal hygiene due to the limited shifts permitting the use of showers. They are not provided with soap, toothbrushes or toothpaste. In winter, they do not receive winter clothes (a coat) and they can only wear flip flops with socks. There is insufficient cleaning and maintenance services, and children often stand in lines of over two hours in order to eat or to take a shower.
- **Lack of available placements in apartments and other residences, so protracted periods at the 1st Reception Child Care facilities:** children should not spend more than 3 months in the first reception centre, as it is not adapted for long stays (insufficient spaces for daily routine, places to study and rest, common areas, etc.). Some have spent a period of eight or nine months there.
- **Absence of automatic assumption of the guardianship (“tutela”) by regional government:** it prevents them from fully accessing and exercising their rights, as minors need authorisation from their parents or tutors for everything. Guardians refuse to assist them until the “tutela” is official. As a consequence, any attention to be provided is delayed, including **the issuance of passports and residence permits**. Both the passport and the tutor are necessary conditions for the residence permit to be granted. This delay makes that some children turn 18 without any proof of their identity and legal residence, making them vulnerable to an expulsion order to the country of origin.
- **Lack of specialised and individualised educational support and attention.** The lack of sufficient public investment, of trained professionals, and the variety of children’s profiles and backgrounds make it impossible to provide appropriate and individualised care and support.
- **Absence of prevention and attention plans to deal with drug use or addiction:** in an effort to cope with their situation, many migrant children resort to snorting glue at the park nearby, and at times in front of the mediators and the educators.

⁸ <http://www.rtve.es/alacarta/videos/programa/denuncian-hacinamiento-centro-menores-inmigrantes-no-acompanados-madrid/4752251/>

- **Absence of a children's rights perspective:** the staffs of the centre does not inform them about their rights and how to effectively access and exercise them (how to obtain identification documents, the residence permit, how to seek asylum...).
- **High levels of violence against children.** The deplorable material conditions, the overcrowding and the insufficient place for the number of children constantly provoke situations of irritation and tension that should be handled by educators (shelter staff). But they quickly request the presence of the centre's security guards, who use controversial contention methods. In this context, since 2017 we have testimonies of around 40 children who claimed to be assaulted by the staff, with their batons and being handcuffed unjustifiably. Some of the cases have been brought to court and are now being investigated. Others were never sued because children were too afraid to go back to the centre and disappeared soon after the assault.
- **Psychological and degrading treatment, often racist.** Many children recount being insulted, screamed at, threatened and treated, literally, like "dogs"; they are "invited to leave the Centre," for example, if they know someone else in town or in Spain, offering to pay the bus ticket if necessary, and return to other child protection Centres where they previously resided.
- **Isolation and separation as punishment:** "el Nido" ("the net") is a small room in the 1st basement floor of the Center of "Hortaleza" where children are sent upon arrival but also when they do not comply with the rules. They are forced to remain there for several days without any reprieve or access to the outside, except to take a shower or use the bathroom. Educators bring them food.
- **Absence of protocols and available denunciation mechanisms for children aggressed by staff members:** first, children fear of denouncing and losing their spot as a reprisal. Also, they need specific authorisation to go to the hospital for medical attention, a transportation and identity card, which are kept under custody by the manager. When they say they want to go to the Police to file a report, they are prevented from going outside of the Centre and they are not accompanied; and if they make it to the Police station, Police often requires identity documents and the presence of the legal guardian in order to proceed. This shows the permanent and underlying conflict of interests between the guardian and the child. Only those who were accompanied by a lawyers could denounce.
- **Obstacles in accessing justice:** migrant children have no automatic right to a lawyer (in any case, a lawyer working for the tutor may be appointed), the guardian must be present at the denunciation to complete the legal capacity of the minor (even if said guardian is the perpetrator of the aggression...); sometimes, there is an ongoing parallel age assessment procedure, so by the time the child denounces the incident, the complaint is initially filed by an individual with minor status but then, once the court analyses it, the denunciation will be treated as one filed by an adult, according to the decision from Attorney General.
- **Absence of legal proceedings adapted to the reality of unaccompanied migrant children.** The excessive length of the proceedings prevents them from being effective in granting the appropriate protection measures to children, given that children end up fleeing the Centre either when forced to return to the Centre where the offender still works or upon failing to see results for a very long time.

- **Ineffective mechanisms to prevent, detect, intervene and monitor situations of violence against children within the Children Care Facilities.** Lack of transparency and no efficient supervision by the State Attorney as the guarantor of the protection of the fundamental rights of children.
- **Obstacles to access justice for those assessed to be adults after the age assessment procedure:** they are expelled from the Child Centre and provided with the decision from the State Attorney, but not with the resolution of expulsion, preventing them from accessing court to appeal it, violating their right to a legal effective remedy.
- **Delays in the documentation and regularisation procedures.** Many children turn 18 without been helped to issue their identification documents at the Embassies or Consulates of their countries of origin, plus they do not receive assistance to issue their residence permit, to which they are entitled by law. AS a consequence, most of them turn 18 and become irregular migrants, exposed to be returned to their country of origin, to labour exploitation, to be abused, etc.

These degrading and inhumane conditions in which children are living in many parts of Spain is exposing them to **grave risks for their lives (trafficking, sexual abuse and prostitution)** and forcing them **to disappear**⁹.

3. SITUATION OF ABANDONMENT UPON REACHING 18.

After being guarded by the correspondent regional government, many migrant children turn 18 facing the following problems:

- **The law does not grant 16 year old migrant children automatic right to work, unlike 16 year old aliens who have been reunified with their families and Spanish youth.** Previously they must be granted with the residence permit and once they get a job offer (full time, a year-long position), they can apply for a modification of their permit. So when they turn 18 years old they hardly hold a residence and working permit to be able to live on their own.
- **Consequences of previous negligent practices:** those who have been guarded for only a few months, they are neither provided with their passport nor granted a residence permit, thus losing their right to apply for and obtain a residence permit.
- **Absence of social support:** regional governments have programs to promote the autonomy of youth between 18 and 21 who have been guarded while they were minors, supporting them on their basic needs. Nevertheless, vacancies are not sufficient and after turning 18 these youth are sent to homeless shelters.

⁹ Ibid. 5.