



# REPORT:

## VIOLENCE AGAINST UNACCOMPANIED MIGRANT CHILDREN IN SPAIN

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FUNDACIÓN RAÍCES is a Spanish non-profit organization that promotes and protects the rights of Spanish and migrant children, youth, and their families. For over twenty years, Fundación Raíces has been providing both legal defense and psychological, social, and educational support to children suffering from or at risk of social exclusion in Spain, particularly those whose rights are violated by Public Authorities and the State.

The following information is based on the testimonies of children who have been subjected to or forced to undergo the age-assessment procedure all over Spain; children living under the guardianship of the Autonomous Communities and placed in child-care Centres and residences, whose complaints of the difficult conditions and environment in these facilities have been ignored by various officials; and lastly, children, who prior to their eighteenth birthday were under the guardianship of the state, rendered homeless and left on the street without any kind of social or legal support upon reaching the age of majority.

### 1. THE AGE-ASSESSMENT PROCEDURE

According to article 35 of the [Aliens Act](#), upon identifying an **undocumented third-country national whose age is unclear**, the **Attorney General** initiates an age-assessment procedure to determine whether the person is a minor or an adult, and whether the individual should be transferred to the child protection services. The procedure is regulated by the [Framework Protocol of Unaccompanied Migrant Minors](#), which was signed in 2014 and determines how various Ministries, the State Attorney and the Police must treat unaccompanied migrant minors arriving in Spain.

The Protocol allows the State Attorney to pursue medical examinations despite the individual holding in his possession a valid and authentic passport or identification documents issued by the Authorities of his country of origin. The most common medical techniques used by Spanish Authorities to assess the age of a person consist of wrist, teeth and collar bone X-rays, and medical examination of the genitals and the genital area.

Considering this, the **Spanish Supreme Court**<sup>1</sup> has issued several judgments stating that **passports shall be presumed valid. A passport's validity cannot be questioned without a reasonable justification, and in this case age can only be determined through reliable medical tests.** In 2010, the Spanish Institute of Legal Medicine published a [Good Practice Consensus Document](#) with the conclusions of the Workshop on the Determination of Forensic Age of Unaccompanied Foreign Minors. The document shows the unreliability of the most commonly used techniques in Spain and recommends the corresponding authorities to evaluate age through a holistic and multidisciplinary approach.

According to the **European Asylum Support Office (EASO) report "Age Assessment practice in Europe"**, *"no current method of age assessment is able to determine a specific age with certainty"*, so *"the decision on which methods to use, should be based on the aim of improving the overall accuracy of the assessment by taking into consideration a range of factors and evidence."*<sup>2</sup>

The **Spanish** and the **French** Ombudsmen have taken a stance **against the systematic use of medical tests to determine the age of a person and the negative consequences of inaccurate results on the life of unaccompanied minors**, especially when national authorities prioritize their results over valid and authentic original documents in the possession of migrants, such as passports from their country of origin.

Also the **United Nations Committee on the Rights of the Child (CRC)**, in its [Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Spain](#) (2018), expresses serious concern about the age-determination procedure in Spain, particularly that under Spanish legislation the Attorney General is empowered to undertake age-determination procedures and employ intrusive age-assessment methods, resulting in the exclusion of unaccompanied migrant minors from child-protection systems as a result of pending age assessments. This exclusion also puts unaccompanied minors children at the risk of becoming victims of trafficking, sexual abuse, prostitution....

Since 2016, **27 individual communications have been submitted by unaccompanied migrant minors against Spain before the CRC. They all claimed to have had their rights enshrined in the Convention violated by Spain.** All were subjected to age assessment procedures and

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<sup>1</sup> *«the 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". it is not possible it is not possible to question without a reasonable justification why such tests are carried out when a valid passport is available. Therefore, it is appropriate to make a proportionality judgment and adequately weigh the reasons why the document is considered unreliable and that, therefore, the age determination tests must be used. In any case, whether they are people documented as undocumented, medical techniques, especially if they are invasive, can not be applied indiscriminately to determine the age".*

<sup>2</sup> *"...This could include: physical, psychological, developmental, environmental and cultural factors. Also, appropriately skilled professionals should be selected to undertake the assessment. Depending on the method, this may include social workers, pediatricians, doctors, radiologists, (child) psychologists or other suitably skilled individuals with expertise in the field of child development". Ibid. Page 24.*

suffered the consequences of a determination of the majority of age: expulsion from children care facilities, detention in Centres for migrant adults, or inability to access the asylum.

The current age-assessment procedure in Spain presents the following **main shortcomings**:

- **Medical examinations to assess the age of a foreign individual are carried out systematically, even on individuals with valid identification documents in their possession such as passports;** this, despite the completion of previous medical tests concluding the individual was a child. In the first scenario, when it is decided that the individual is over 18 years old, the identification documents or passports are never referred for prosecution, so the individual remains in “limbo”: he is prevented from accessing the children care facilities due to the State Attorney’s decision on their majority, thus lacking of any kind of appropriate shelter and protection, and at the same time the remaining public institutions consider him a minor because he holds original documents whose validity have not been legally questioned.
- **The age-assessment procedure is not child-friendly. It does not comply with the [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#):**
  - **The Child’s right to be heard is not respected.** The State Attorney prevents children from being assisted by a lawyer of their choice in the appearances, from being accompanied by a person of trust and from accessing to their age-assessment files, the medical reports, and the results of the medical tests.
  - **Examination of the genitals is extremely invasive,** it is not culturally sensitive, and it is usually carried out upon arrival after a very stressful and tragic migration process.
  - **No access to legal counsel before, during or after the procedure;**
  - **No rule of law:** the decision on the age of an individual cannot be directly appealed in court and they have no right to legal advice and assistance.
  - **Sometimes they are deprived of liberty when the age assessment procedure is ongoing,** usually due to a previous internment decision in a migrant detention Centre that initially considered the individual an adult.
  - **Translation services from Spanish to their mother tongue are frequently not provided,** especially upon arrival at the border.
  - **Neither the presumption of minority (principle of *in dubio pro minors*) nor the benefit of the doubt is respected:** the alleged minors hold the burden of proof regarding their minority.

- **The State Attorney never contacts the Embassies and Consulates of the children’s countries of origin to confirm their identity and age.**
- **The decision on the majority of age leaves children in a situation of complete defenselessness and abandonment.** When the State Attorney determines the majority of age, children are automatically expelled from child care facilities to the streets. As a result, migrant children only have access to accommodation services for adults, mainly shelters for homeless people, but those who hold valid passports proving they are minors are often rejected from those places, since these institutions cannot host minors and the decision from the State Attorney does not serve as an identification document. While the identity document is considered invalid by the State Attorney, all other public institutions consider it valid.
- **Abandoned, forced to survive on their own, and exposed to serious threats:** migrant children encounter dangers with regards to drug addiction, becoming victims of trafficking, prostitution, and sexual abuse. Migrant children can be detained, placed in detention centres for adults, and face expulsion to be sent back to their countries of origin.

## 2. THE SITUATION OF THE CHILDREN CARE FACILITIES

This information has been gathered over the past few years from children under the guardianship of the Autonomous Community of Madrid who have lived in the 1<sup>st</sup> Reception Child Protection Centre of “Hortaleza” (Centro de Primera Acogida de Menores de Hortaleza) and from anonymous employees that have worked there. The situation in the Centre of “Hortaleza” has been widely reported on by mass media at local, regional and national levels.

The Child Care Centre of Hortaleza is located in a northern neighbourhood of Madrid. Any child, either Spanish or Immigrant, found in a situation of defencelessness, without an adult person to take care of them, shall be placed under the guardianship of the Public Institutions, thus transferred to the Centre of “Hortaleza”. The stay at the Centre should be approximately 2 or 3 months, until the Department of Child Protection assesses the child’s vulnerability and personal circumstances in order to decide which other facility (usually another residence or apartment) is suitable for the child.

The failures of the child protection system affect all children under the guardianship of the Madrid regional government. However, the impact of these failures on unaccompanied migrant children is magnified and aggravated since they are subjected to specific forms of discrimination and institutional mistreatment

This following information has been submitted to the Spanish Ombudsman, who has expressed concern about the situation of the Centre of “Hortaleza” in several recommendations to the government of the Autonomous Community of Madrid.

The main failures of the child protection system are the following:

- **Lack of minimum child-protection standards and material conditions, which has become a structural problem.** Since November 2016, the Centre has been continuously **overcrowded**, hosting of 130 children for only 35 places at its worst. As a consequence, the majority of children sleep on air mattresses on the floor and they have no pillows and only a blanket to cover them; some children even sleep straight on a bare mattress base. Most children are unable to maintain their personal hygiene or clean themselves regularly due to the existence of limited shifts permitting the use of showers that conflict with children’s school schedules, plus the bad conditions of bathrooms. They are not provided with soap, toothbrushes or toothpaste. In winter, they do not receive winter clothes and they are often forced to spend time outside the shelter without a coat while wearing flip flops with socks. There is no laundry service available for all of them and many do not have pajamas. 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. They are prevented from using their mobile phones inside the children-care centres. These living conditions are degrading and inhumane for the children.
- **Protracted periods at the 1<sup>st</sup> Reception Child care facilities due to a lack of available placements in apartments and other residences.** In theory, children should not spend more than 3 months in the first reception centre but there are migrant children who have spent a period of eight or nine months there. Often, these are migrant children who are 17 years old and close to turning 18 who are never transferred to an apartment.
- **Lack of specialised and individualised educational support and attention.** The lack of sufficient public investment in human and material resources, the lack of trained professionals together, and the variety of children’s profiles and backgrounds make it impossible to provide appropriate and individualised care and support. Unaccompanied migrant children feel abandoned and discriminated, especially in comparison to Spanish youth.
- **There is no 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. There is no specific intervention or action plan, and sometimes migrant children are transferred to “el nido”, a small locked room placed downstairs, as a consequence, and they are prevented from going out to the common spaces with the other children.
- **Child migrants are not considered as “subjects of rights”.** For example, the staffs of the centre does not inform them about how to obtain identification documents at their Embassies or Consulates, how to get the residence permit they are legally entitled to have, nor about ongoing legal proceedings. Essentially, nobody informs unaccompanied migrant children about their rights.

- **The regional government does not automatically become the tutor/legal representative of children under its guardianship.** This is one of the most egregious and violations of children's rights, because it prevents them from accessing and exercising their rights in the first place. In Spain, minors cannot do anything without the authorisation of their tutor. Moreover, guardians refuse to help them to request and obtain a passport, to register them in a training course, etc., until the "tutela" ("assumption of the legal guardianship") is official.
- As a consequence, **the issuance of passports and residence permits are constantly delayed for months until the tutor officially becomes so.** Both the passport and the tutor are necessary conditions for the residence permit to be granted, so even a small delay in either of the documents could result in the child turning 18 years old without any proof of their identity and legal residence, making them vulnerable to an expulsion order to the country of origin anytime.
- **Insufficient spaces for daily routine, especially to study and rest.** There is a class room in the Centre of Hortaleza where children can take Spanish courses. Given the small size of the room in comparison to the number of children living there, the majority are not able to participate in a Spanish course and therefore spend the whole morning doing nothing. Nobody registers them for a Spanish course somewhere else. Also, for those who are studying at a school outside the Centre, no calm place to study exists; there is no "study room" or anything similar, and they cannot even use their own room because they do not have one.
- **High levels of violence.** The deplorable material conditions of the centre, the overcrowding and the insufficient place for the number of children and the insufficient staff and the lack of communication between them and the children, constantly provoke situations of irritation and tension where communication is no longer possible. Educators (shelter staff) quickly request the presence and support of the **centre's security guards**, whose job is not to educate but rather to contain and avoid violent situations. Nevertheless, many children claim to be assaulted by them with their batons and being handcuffed unjustifiably.
- **Use of controversial "educational" measures/methods.** The insufficient number of professionals (educators, social mediators) in comparison to the number of children makes it impossible to care for and handle the children living in the centre, resulting in security guards being called to intervene and diffuse situations very often. Security guards are not educational professionals and do not use child friendly techniques or compassion in dealing with the children.
- **Many children from Moroccan origin claim to have been placed in a room called "el Nido" (the Nest), which is completely isolating and separates them from the rest of the group.** They usually enter "el Nido" upon arrival but they are also put there if they did not comply with the rules of the Centre. They are forced to remain in "el Nido" for several days without any reprieve or access to the outside. The only instances in which the children are allowed out are to take a shower or use the bathroom. Educators

bring them food. In theory, placement in “el Nido” is an “educational measure” so that the child will implicitly understand how the Centre functions.

- **Psychological and degrading treatment that is often racist.** Many children recount being insulted, screamed at, threatened and treated, literally, like “dogs”; they are “invited to leave the Centre,” for example, and return to other child protection Centres where they previously resided. They are repeatedly encouraged to leave the centre if they know someone else in town or in Spain, offering to pay the bus ticket if necessary. The underlying objective of this mistreatment is clearly to encourage them to abandon the Centre and disappear.
- **Abusive treatment from professionals from the centre.** Many children have been victims of aggressions carried out by both security guards and educators. Since 2017 we have testimonies of around 30 children who claimed to be assaulted by the child care facility staff during their stay. Some of the cases have been brought to court and are now being investigated. Others were never sued because children disappeared soon after the assault. They were afraid of going back to the same centre.
- There are **no established protocols or available mechanisms that children can use to denounce an aggression perpetrated by the professionals working in the Centre.** First of all, children are afraid of losing their spot at the Centre if they denounce an aggression that occurred there. They cannot go to the hospital for medical attention because they are not allowed to leave the Centre nor are they provided with a transportation card and somebody to accompany them. Plus their identity cards are kept under custody by the manager and they are not allowed to take them without their permission. Even though they try to reach out to the Director of the Centre, they are not allowed to speak to them; when they say they want to go to the Police to file a report, they are prevented from going outside of the Centre; if a child successfully manages to make it to the Police station to denounce the aggression, Police require 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. Even those who manage to denounce at the police, that same day they must go back to the same child care centre where they have suffered the aggression because their tutor do not change his spot or the presumed aggressor.
- **Lack of safeguards in the legal proceeding and obstacles to access an effective legal remedy:** safeguards in proceedings and effective legal counsel are only possible with independent court-appointed lawyers and legal defendants, not with the guardian or tutor. 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, which becomes an obstacle at the legal proceeding. The Attorney General, who is in charge of the legal representation of minors in any proceedings, does not properly boost the judicial procedure in full respect of the best interest of the child.

- **Legal proceedings are not adapted or adjusted to account for 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 and not receiving updates after an extended period of time.
- There are **no effective mechanisms to prevent, detect, intervene and monitor situations of violence against unaccompanied migrant children**, especially in the first reception child care facilities. There is a lack of transparency in the children-care institutions and the State Attorney does not effectively fulfil the obligation as a supervisor of these public institutions and as the guarantor of the protection of the fundamental rights of children.
- **As a consequence, several unaccompanied migrant children leave the Centres because of this violence and choose to live on the streets and parks in nearby areas** without any kind of protection in order to avoid prolonged exposure to suffering and mistreatment in the Centre. Additionally, the transfer of children under the guardianship of the regional government to another territory has been widely denounced. The Heads of the Centre usually ask the child informally whether he or she knows somebody in Spain, and when the child mentions a friend or an acquaintance, **they automatically send the child there without accompaniment** and without making the child aware of the consequences leaving the shelter will have. The child is also not informed about what he must do or who he must meet upon arrival in the new location. It is indeed a very effective mechanism for the Centre to get rid of children. In many cases, if the child leaves the centre for more than a couple of days, the centre will declare that the child left voluntarily without any further investigation or follow up.
- **According to art. 172 of the Spanish Civil Code, six months after a child leaves the care Centre and his whereabouts remain unknown the Public Administration terminates guardianship and the legal representation of the child.** The Administration can only put an end to the guardianship or the legal representation of a child if it is assumed by another entity or individual.
- **Obstacles to access justice:** for those who undergo the age assessment procedure and are ultimately assessed to be adults, they are expelled from the Child Centre immediately after receiving the decision from the State Attorney. The children-care staff does not give them the administrative resolution of expulsion, preventing them from accessing to court to discuss it. The Centre of Hortaleza claims not to have the



document ready by the time the child has to leave, asking them to come back in a few days. The regional government even claims that children can be notified through the State Official Newsletter. This is extremely important because it violates their right to an effective legal 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.

According to unaccompanied migrant children coming from the Andalucía region who arrive at the reception Centre in Madrid, they often complain about insufficient material conditions and the mistreatment suffered by the staff in the prior reception shelter. It appears to be a structural problem that affects the biggest Spanish cities, especially in the southern cities and towns of Andalucía, as well as the autonomous cities of Ceuta y Melilla, which receive a bigger number of immigrants than other regions.

Following the previously mentioned Concluding Observations on Spain, the **United Nations Committee on the Rights of the Child** also expressed its serious concern about the **high levels of violence in the centres, the inadequate nature of the treatment, the lack of protection provided by professionals in reception centres for children**, including allegations of prostitution of girls, insufficient access to regular education and leisure activities, and the **lack of a complaint mechanisms available to children.**

### 3. ABANDONMENT AT THE AGE OF 18

**The Children Care Services anticipate the moment in which children will become adults and subsequently must leave the children-care facilities.** According to the law, upon leaving the Centre, migrant children should have their passport and a valid residence permit if they have been under the guardianship of the State; they should also be studying or preparing to work in a specific field. However, reality is starkly different

- Migrant children are not transferred to apartments for young people in the transitional age of 18-21 to promote their autonomy. These programs are part of the Autonomy Program of the regional government of Madrid consisting on providing support to young people in terms of accommodation, food, basic needs and studying. Rather, they are **sent to homeless shelters.**
- In many cases, particularly those who have been under guardianship of the State for only a few months, they are neither provided with their passport nor granted a

residence permit. They are not even informed about their right to obtain a residence permit. Once a migrant child turns eighteen and has left the Centre, the child loses the right to apply for and obtain a residence permit. If they do apply, it is likely that Spain will refuse the request.

- The State does not provide 16 year-old unaccompanied migrant children with an **automatic residence and work permit** but a residence permit, and they can only modify the residence and obtain a permit if a company offers them a job contract for a full time yearlong position. This discrimination towards unaccompanied migrant children in comparison to both accompanied minors of the same nationality who came to Spain through family reunification and Spanish children of the same age, both of whom obtain a work permit automatically, which is contained in the law, has drastic consequences.