



RECEPTION OF CHILDREN ON THE MOVE IN SPAIN

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INTRODUCTORY NOTE

Given the peculiarities of the Spanish territorial organization system and the interrelation between different Administrations in the field of Spanish immigration policy and practice, we find it convenient to present this small introduction to provide some useful context.

In order to address the plight of the regional leaders at the time, the 1978 Constitution introduced the so-called State of the Autonomous Communities (“Estado de las Autonomías”), a decentralized, quasi-federal system that divided the Administration of the Spanish State into two main organizations, the Central State, equivalent to a Federal State, and the Autonomous Communities, akin to Federated States, with Provinces and City Councils playing minor roles.

The main difference between a federal system and the Autonomous Communities system is that, while in the former the competences of the Federal State and the Federated States are fixed, under the Spanish system each Autonomous Community can assume from the start any of the competences outlined in article 148 of the Constitution and, after five years following their respective creation, they can assume any competence that is not reserved to the Central State as per article 149 of the Constitution.

Focusing on the matter at hand:

- Social Services and Healthcare are among the competences that can be immediately assumed by the Autonomous Communities according to subsections 20 and 21 of article 148 section 1 of the Constitution, respectively.

All seventeen Autonomous Communities and the Autonomous Cities of Ceuta and Melilla assumed these two competences in their respective Statutes of Autonomy.

- Immigration and public security (which includes policing) are among the competences exclusive to the Central State, following subsections 2 and 29 of article 149 section 1 of the Constitution, respectively.

This division of competences between the Central State and the Autonomous Communities has caused in the past some conflicts between them with regards to immigrant children, especially unaccompanied minors. In order to avoid any overlap, protocols have been put in place to coordinate the efforts by police, immigration, healthcare and social services officials – namely, the 2014 Framework Protocol, which we shall address in detail later in this report.

Nevertheless, we understand that this system might be confusing to anyone not accustomed to it. If that is the case, please bear in mind in relation to this report that:

- Police officers are under the authority of the Central State – save for the Mossos d’Esquadra and Eirtzantza corps, which are under the authority of the Autonomous Communities of Catalonia and the Basque Country, respectively.

- Immigration officials always belong to the Central State.
- Healthcare personnel, such as doctors or nurses, are employees of the Autonomous Communities.
- Social Services will always be provided by Departments dependent of the Autonomous Communities, by Public Entities – i.e. agencies or public companies – dependent of those Departments, or by Private Entities – i.e. NGOs designated by the aforementioned Departments for a certain function, such as managing foster centers.

1. Application of international law in Spanish domestic law

1.1. Status of international treaties in domestic law

International treaties regarding the rights of children – to which Spain is party – entail the fundamental interpretation criteria of Spanish legislation related to children and, as such, have been referred to by the Supreme Court on several occasions¹ to reject the application of national rules that conflict them.

1.2. Ratified international treaties

Spain has ratified the following treaties relevant to the protection of children:

- The Hague Convention, of 5 October 1961, concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;
- European Social Charter, of 18 October 1961;
- European Convention on the Exercise of Children's Rights, Strasbourg, on 25 January 1996;
- Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, on 20 November 1989 (with reserves unlikely affecting the rights of migrant children).

In addition, Spain has ratified the following treaties and agreements concerning refugees and immigrants:

- Convention on the Status of Refugees dated 28 July 1951;
- Framework agreement between the Kingdom of Spain and the International Organization for Migrations dated 17 December 2009;
- Framework agreement between the Kingdom of Spain and the OHCHR dated 9 December 2002.

1.3. Interpretation of the principle of “best interest of the child” in domestic law?

¹ e.g SSTS (*Sentencias del Tribunal Supremo* – Supreme Court Judgements) 11/2015, dated 16 January; 452/2014, dated 24 September; 507/2015, dated 22 September; and 368/2015 dated 18 June.

The Spanish Supreme Court (e.g. in STS 835/2013, dated 6 February 2014) considers that "*the best interest of the child*" is an undefined and complex legal concept which's definition varies according to the case in question. These are a few definitions of this concept, recognized by Spanish doctrine:

- "*the free and full development of the child's personality and the supremacy of all that is in its benefit, beyond the personal preferences of his parents, guardians, public administrators, in view of its physical, ethical, and cultural development*";
- "*the child's health, psychic well-being, and affectivity, along with other material aspects*"; and
- "*the protection of the fundamental rights [of the child]*".

The Spanish Organic Law 1/1996 for the Legal Protection of Minors, Article 2 Section 2, (hereafter "Child Protection Law") considers that the criteria to determine the best interest of the child, in each specific case, are:

- the protection of his/her right to life and development and the satisfaction of his/her basic material, physical, educational, emotional and affective needs;
- the consideration of his/her feelings, desires, and opinions. His/her age and maturity will be taken into account in order to grant the child the power to decide on his own interest;
- the right to an adequate family environment, free of violence, preferably within his/her birth family.

1.4. Separated and unaccompanied children

The definition of "*unaccompanied child*" in Spanish law coincides with that of the Committee on the Rights of the Child.

Article 189 of the Royal Decree 557/2011 of 20 April 2011, approving the Regulation of Organic Law 4/2000 on the Rights and Freedoms of foreigners in Spain and their Social Integration, provides a definition for "*unaccompanied child*" according to which an *unaccompanied child* is a "*foreigner under the age of eighteen who arrives in Spanish territory without being accompanied by an adult responsible for him/her, either legally or according to custom, with a risk of vulnerability of the child, as long as such responsible adult has not effectively taken care of the child, as well as any foreign minor who once in Spain is in that situation.*"

Spanish law does not provide a definition of "*separated child*".

2. Reception of children in Spain

2.1. Initial evaluation

As stated in the Introductory Note, while laws regulating immigration and foreign nationals are an exclusive competence of the Central Government (Spanish Constitution, Article 149 Section 1.2º), social assistance, including assistance to children in need, is among the competences that can be assumed by the Autonomous Communities (Spanish Constitution, Article 148 Section 1.20º).²

The specific management of migrant children is thus the responsibility of each of the 17 Spanish Autonomous Communities, yet practices are not uniform throughout the Spanish territory and it is not an easy task to verify whether they are foreseen and complied in all cases. There are specific cases on the matter: Andalusia, the largest Autonomous Community in Spain, by territory and population, conducts interviews with unaccompanied children; however, nothing in this sense has been foreseen with regards to accompanied children. An exception to this rule is provided for potential victims of human trafficking, for whom interviews are foreseen in a safe environment, under the Resolution of October 2014 adopting the framework protocol relating to unaccompanied foreign minors (hereafter “Framework Protocol”),³ a resolution of the Subsecretary of the Presidency Ministry (*Subsecretaría del Ministerio de la Presidencia*), which is an executive regulation, and the Royal Decree 557/2011, Article 141 Section 2.

The interviews are carried out by specialized staff of Child Care Centers. Communicating with the child in a language that can reasonably be understood by the child is a general principle foreseen in the Child Protection Law, Article 9 Section 1 and applied to migrant children, among others, in Sections 4 and 5 of the Framework Protocol and in Articles 190 Section 5 and 192 Section 2 of the Royal Decree 557/2011. These regulations provide that communications with the child shall be carried out in a language that can reasonably be understood. The principle of safeguarding the child's interest and dignity shall be present during the whole proceedings. According to a study conducted in April 2017 by Iriana Santos González,⁴ minors within the system stated that the interviews were carried out according to the legislation. However, the study concluded that the system had to be reinforced by taking into account other factors such as cultural circumstances.

There are no specific provisions on the formality of the setting or the environment in which the interviews take place.

Migrant children benefit from priority and accelerated processes according to the Royal Decree 557/2011, Article 190 Section 1 paragraph 3, which acts as a general clause with mere indicative

² Among the applicable norms of the Spanish Autonomous Communities we have been able to consult for the purposes of this report the following: Andalusian Community Decree 362/2003, Community of Madrid Decree 88/1998, Valencian Community Decree 93/2001 and Community of Canarias Decree 40/2000.

³ Resolución de 13 de octubre de 2014, de la Subsecretaría, por la que se publica el Acuerdo para la aprobación del Protocolo Marco sobre determinadas actuaciones en relación con los Menores Extranjeros No Acompañados

⁴ Bravo, Amaia and Santos-González, Iriana. "Asylum-seeking children in Spain: Needs and intervention models," *Psychosocial Intervention*, Volume 26, Issue 1. 2017 April.

effects. Accelerated processes are subject to internal regulations and protocols of the public branches involved (e.g. the National Attorney Office, each region's Health Service) which are not available to the general public.

The legislation⁵ expressly provides that child-sensitive measures established for children only apply to minors under the age of 18. Thus, youths (18-25-year-old individuals) cannot benefit from child-sensitive measures established for children.

2.2. Establishment of identity /Age assessment

Age assessment is carried out on unaccompanied children only if they lack reliable and authentic documentation (such as a passport or official documentation from their country of origin) or any other reliable means to prove their age, or the documentation provided gives rise to reasonable doubt. According to the Supreme Court, a birth certificate issued by the authorities of the country of origin is a reliable proof of the identity and age of an immigrant child.⁶

There are no specific provisions on whether a guardian is appointed prior to or after the age assessment is conducted, but child protection services will provide the child with the necessary care and attention, in accordance with child protection regulations, which foresee the possibility of guardianship by these services.

The Framework Protocol only foresees the performance of the age assessment by means of medical and forensic tests, and refers to the Conclusions of the Working Session on Forensic Age Assessment of Foreign Unaccompanied Minors⁷. These conclusions state that the assessment must include: (i) an interview, (ii) a physical examination, (iii) a radiological exam of the carpus, (iv) a panoramic radiograph of the jaws, and (v) in the event that there were still doubts on the age, a radiography or computerized tomography of the proximal epiphysis of the collarbone.

Framework Protocol Chapter V contains a general provision (without specific mention of the child's gender) regarding the respect for the individual's dignity in the medical assessments conducted to determine the child's age. The supervision of the age assessment by the Office of the Public Prosecutor serves to guarantee compliance with this requirement.

According to the Framework Protocol, age assessments shall be carried out by specialized medical personnel of hospitals listed in the regional protocols or by forensic doctors who may also conduct complementary examinations as experts upon the request of the Public Prosecutor. In Chapter V Section 5 Subsection 2, it states that a child must be informed by the doctor who will perform the age assessments on the characteristics and risks of the tests that will be carried

⁵ Framework Protocol, Article 2 Section 1; Article 189 of Royal Decree 557/2011; Law 4/2000 on Foreign Nationals, Article 35 Section 3.

⁶ See STS 319/2015, dated 23 May, and the aforementioned SSTS 11/2015, dated 16 January, and 507/2015, dated 22 September.

⁷ Conclusiones de la Jornada de Trabajo sobre Determinación Forense de la Edad de los MENA; in Revista Española de Medicina Legal, Volumen 37 Número 1

out and by the police on the purpose and legal consequences of the same, after which the child must give his/her written consent.

Further, the Framework Protocol⁸ states that in the event of refusal by the child or the guardian to undergo an age assessment, the Prosecutor shall hear the child's statement regarding his/her age, and shall deliver its expert opinion on the age of the child based upon the statements and the information available.

If the assessment results are uncertain⁹, the decision on the child's age will weigh in favor of lowest age, in the best interest of the child. In the absence of further information, the child's age shall be presumed to be the lowest age of the age range indicated by the medical services.

The Administration has a period of 9 months to regularize the situation of unaccompanied children and either grant them a residence permit or return them with their families.¹⁰ However, in practice, there are many difficulties preventing such regularization to take place within the prescribed period.

Article 211 of the Royal Decree 557/2011 provides that when a child does not have an identification document, it is necessary to obtain a registration certificate. For these purposes, the child must prove he/she cannot be documented by the corresponding diplomatic mission or consular office, by means of a notarized copy of his/her unattended request.

Once the negative answer has been delivered by the diplomatic mission or the diplomatic mission fails to respond, the granting of the registration certificate may be requested, as a necessary precondition to apply for a residence permit.

2.3. Migrant children victims of trafficking

The Spanish legislation on foreigners¹¹ exempts foreign victims of human trafficking lacking residence permits from administrative liability arising from their illegal stay and grants them the right to obtain a residence permit in Spain under two circumstances: collaboration in the prosecution of the crime or the existence of humanitarian reasons.

Unaccompanied migrant children are informed by the police or by the child care personnel in charge of their protection of the rights of victims of human trafficking as well as of the current legislation on child protection. Such information must be provided in a language that can reasonably be understood by the child and such communication must be acknowledged in writing.

As examples of the information duties assumed by the Spanish Authorities, the bilateral agreement with Senegal foresees a 10-day term to provide the relevant information to the child from the date of the child's entry to Spain. In the same lines, the bilateral agreement with

⁸ Framework Protocol, Chapter V Section 5 Subsection 2 Letter C

⁹ Framework Protocol Chapter V Section 6

¹⁰ Framework Protocol Chapter VI Section 3 Subsection 3

¹¹ Section 59 Bis-4 of the Organic Law 4/2000 and Sections 143 and 144 of the Royal Decree 557/2011

Morocco provides for a 1-month term to inform the child.

The Framework Protocol makes no specific reference on how to report and seek protection but provides that in case of doubt regarding the relationship between a migrant child and an accompanying adult (i.e. due to lack of reliable documentation or any other evidence), a personal interview must be conducted regarding the adult's situation, his/her decision to migrate, the relationship with the minor, his/her final destination in Spain and those whom he/she is visiting in Spain.¹²

In Section 2, it is further stated that if any further doubts arise from the interview conducted, the accompanying adult will be asked to take a DNA test to verify his/her relationship with the child. If the adult approves, both him/her and the minor will be submitted to DNA testing and the Public Prosecutor and the Autonomous Department or organism in charge of minors will be informed.

If the adult refuses, the Public Prosecutor's Office will summon the child protection services for urgent assistance and the assumption of the child's guardianship if, from the circumstances of the case, it appears the child is deprived of the necessary material or moral assistance.

Spanish legislation¹³ provides that, once the victim's status of the child has been declared, and the child is declared to be exempt from administrative responsibility, the competent authority may provide, among other things, facilities for the child's social integration. Assistance is also provided by child protection centers, as the child's status as a victim of trafficking is considered a situation of helplessness.

2.4. Application for international protection

If the country of origin is considered "a safe-country" by the Spanish government¹⁴, children who claim international protection independent from their country of origin may request "subsidiary protection" from danger of death penalty, torture or inhuman or degrading treatment, or serious threats to life or integrity due to indiscriminate violence resulting from conflict, sheltered by the same rights as those granted by international protection.

There are no specific regulations regarding the types of child persecution, but the legislation provides that specific circumstances will be considered.¹⁵

Although no specific reference is made regarding social groups for refugee status, Article 7 Section 1 of the Law 12/2009 on Right of Asylum and Subsidiary Protection Law (hereafter "Asylum Law"), provides that, depending on the circumstances of the country of origin, the

¹² Framework Protocol Chapter IV Section 1.

¹³ Article 59 of Law 4/2000 on Foreign Nationals; Articles 135 to 139 of Royal Decree 557/2011.

¹⁴ According to section 1d) of article 20 of the Asylum Law, a country can be considered a safe-country if (i) an individual's life, integrity and freedom are not threatened by reason of religion, race, nationality or belonging to a specific social or political group; (ii) the principle of non-refoulement is respected; (iii) expulsions are forbidden if there is a risk of suffering torture or inhumane treatment; and (iv) asylum status can be requested. The article also refers to the definition of a safe-country in EU asylum law, which nowadays is contained in Annex I of the Directive 2013/32/UE, whose terms are similar to those of article 20.

¹⁵ Asylum Law, article 7.1.e)

persecution of a social group due to age, may be considered.

At the time of granting protection to a victim when the agent of persecution is not the state the child is originating from, Spain takes into consideration the capacity/willingness of the given state to protect the victim. Article 14 Section 3 of the Asylum Law considers the ability of the child's state of origin to provide protection and whether the state the child is originating from has an effective legal system for investigation, prosecution and enforcement of criminal actions.

Neither Spanish legislation nor the European Convention on Human Rights make express reference to the deprivation of economic, social and cultural rights as factors which determine refugee status. However, Article 7 of the Asylum Law considers an open list of reasons of persecution. Taking into consideration the Supreme Court's case law¹⁶, it is doubtful, however, that these rights will be considered as relevant as civil and political rights are for the purpose of obtaining international protection.

2.5. Migrant children's access to justice

Article 22.1 of Organic Law 2/2009 of December 11, 2009 reforming organic law 4/2000, provides that "*foreigners who are in Spain are entitled to free legal assistance, in the proceedings to which they are party, whatever the jurisdiction may be, in the same conditions as Spanish citizens*".

The following requirements must be met:

- a) insufficient resources to litigate must be proven (if the foreigner cannot prove he lacks resources);
- b) the claim in the judicial proceedings must be sustainable;
- c) the foreigner must litigate in defense of own rights or interests; and
- d) as the case may be, the intervention of a lawyer and an attorney is mandatory.

In addition, minor's rights are also protected by the Children's Ombudsman and a special unit inside the Public Prosecutor's office.

The Child Protection Services must inform the migrant child, in an understandable language, of the basic content of the right to international protection and of the procedures for requesting protection, as well as of the Spanish legislation on the protection of children.

The functions of legal counsel and guardianship are performed by distinct persons are appointed by separate procedures. The legal counsel will usually be appointed via free legal aid and the guardianship by means of the system explained in section 3 of this report.

According to the Framework Protocol, Chapter II Section 4 and Chapter VII, Section 1, immediately after a child's localization, he/she is assigned to a public entity for the protection of

¹⁶ Supreme Court, Public Law Chamber, Judgments dated 27 May 2005, 16 March 2006 and 15 September 2006.

minors within the administrations of the Autonomous Communities, which informs him/her, along with any other authority about his/her rights.

Foreigners have the right to a legal counsel who is specialized in foreign matters. The Constitutional Court¹⁷ has established that requiring legal residence, as a prerequisite to request the right to free legal aid, is unconstitutional for contravening Article 119 of the Constitution.

This legal counsel usually falls on the legal aid departments of the Bar Associations. According to article 2 of Law 1/1996, dated 10 January, on Legal Aid, migrant children who cannot afford a lawyer and victims of human trafficking (regardless of their economic capacity) can be beneficiaries of legal aid. There are some agreements in place between the Government and Bar Associations to speed up the assignment of legal aid lawyers to unaccompanied migrant children.

In addition, it is usual for the competent Autonomous Communities Departments to provide additional help in order to carry out the necessary formalities obtain the necessary documentation. For example, the Social Services Institute of Cantabria has appointed the management of these matters to professionals of Child Protection Services. Experts in children protection rights and right of foreign nationals, with the collaboration of the case coordinators and the educators of the centers provide the necessary documents to process the child's passport and the corresponding residence and/or work permits.¹⁸

The aforementioned article 2 of the Law on Legal Aid establishes as well that "*foreigners who are in Spain have the right to legal assistance in administrative proceedings that may lead to the refusal of their entrance, return, or expel from the Spanish territory and in all procedures related to international protection*".

In addition, Article 35.6 of the Foreign Nationals Law recognizes the procedural capacity of children over the age of 16 in repatriation proceedings, who may intervene in the proceedings personally or through a legal counsel.

Article 22.2 of Organic Law 2/2009 establishes that "*foreigners who are in Spain are entitled to the assistance of an interpreter if they do not understand or speak the official language used*".

Chapter II Section 4 of the Framework Protocol states that the police or the Autonomous Department or organism in charge of unaccompanied children must inform children who may be victims of human trafficking of their legal rights in Spain as well as of the current regulations on the protection of minors in a reliable way and in a language that the child can reasonably understand. The written record shall be included in said action. A child must be informed in a comprehensible language of the purpose and type of tests, namely age assessment tests, he/she it will be subject to and the legal consequences derived, as well as the legal remedies that he/she it is entitled to bring in his/her favor and how to request free legal aid.

The Framework Protocol Chapter IV foresees special measures in case of any unaccompanied

¹⁷ Constitutional Court Judgement 95/2003, dated 22 May.

¹⁸ Agreement between the Government Delegation in Cantabria and the Cantabria Bar Association (July 2007): <http://www.intermigra.info/archivos/revista/ConvMenoC.pdf>
Report on the Protection of Unaccompanied Minors in Cantabria, by the Government of Cantabria (2007): <http://www.serviciosocialescantabria.org/uploads/documentos%20e%20informes/MenoresNoAcompaadosCantabria.pdf>

child victim of human trafficking in which the victim will be assisted by the authorities and informed of his/her rights.

3. Child protection system

3.1. Guardianship system

Given that they share many faculties and duties, Spanish regulations on children deprived of parental care who are unaccompanied (*i.e.* foreign) or not often do not make a clear distinction between tutorship, guardianship and custody; but instead distribute the functions among the different actors involved (e.g. tutorship functions may be delegated to the custodian, or functions of the guardian may be assigned to a third party)

In the event that reception centers are directly charged with the care of the child (*acogimiento residencial*) the Director of the Center would be in charge of guardianship functions. However, these functions do not include legal representation of the unaccompanied child, which will be attributed to the Social Services Department of the competent Autonomous Community as its legal tutor as per Civil Code Article 239.

Article 35 of Organic Law 4/2000 stipulates that as soon as any authority locates or receives an unaccompanied child, it must inform the corresponding Provincial Brigade of Foreigners and Borders of the National Police Force, as well as the corresponding Government Delegation and the Public Prosecutor's Office. The unaccompanied child will be under the care of the competent child protection services of the corresponding Autonomous Community, and will be registered in the Registry of unaccompanied children.

According to Article 148.1.20° of the Spanish Constitution, all the Autonomous Communities have, in their Autonomy Statutes, the exclusive competence entrusted to the guardianship of children.

There are different types of protection services ("reception centers") depending on the Autonomous Community where the migrant children are located and depending on whether the children have specific issues (behavior issues, drug dependence, etc.).

These are organizations specifically dedicated to the protection of children provided with sufficient infrastructure and experience.

The Autonomous Community's Department is the holder of both the tutorship and the custody of the child, and can delegate the latter to families or NGOs through agreements or to the Director of any reception center under its jurisdiction; the Public Prosecutor only supervises the activities of the Administration and the guardian. Section 2 of Chapter VIII of the Framework Protocol states that in each province (Spanish territorial division) and with a minimum periodicity of every six months, the Public Prosecutor's Office will convene a working meeting aimed at monitoring the actions related to the application of the Framework Protocol and to

ensure adequate inter-institutional coordination. At the said meeting, the competent Spanish National Police corps, the representatives of the affected regional institutions and the person designated by the competent corresponding Government Delegate or Sub-Delegate within the Autonomous Community's territory will be summoned.

Framework Protocol, Chapter VII, stipulates that the Public Entities in charge of unaccompanied children will be established by territorial protocols, so those entities are not specified. Chapter VIII of the mentioned protocol, encloses follow-up and coordination measures.

The Juvenile Sections of the Public Prosecutors' Offices, the competent Public Entities and private actors (NGOs, foundations, etc.), must carry out a special monitoring in cases in which they exercise the guardianship functions by means of an agreement, through non-governmental organizations, foundations or other entities dedicated to the protection of children. The Public Prosecutor's Office is obliged to exercise this control as the guarantor of the best interests of the child.

As stated in the Introductory Note above, Public Entities depend on the Autonomous Communities, while the Public Prosecutor depends on the Central State. Risks of conflict of interest are therefore very limited.

On a monthly basis, the Autonomous Communities' Departments for the Protection of Children must submit to the Public Prosecutor, as well as to the corresponding Government Delegation or Sub-delegation, a list of the unaccompanied children under its protection, including all relevant details regarding age, date of entry of the child to the Protection Center, date of application and, where appropriate, granting residence authorization.

Spanish regulations only provide that the opinion of the child must be taken into account regarding the guardianship, custody and accommodation and legal representation of the child.

Although there is a generic provision in the Child Protection Law, Article 10 Section 2c, according to which the children will have the possibility to issue complaints to the national or regional Ombudsman, there is no general national provision establishing mechanisms for this purpose. The regional legislation of the Canarias Autonomous Community¹⁹ and Madrid Autonomous Community²⁰ for example, foresees the duty of implementing these mechanisms for children placed in reception centers. However, it seems the implementation of the mechanisms is left to the centers themselves, with recorded instances of the centers not doing so.²¹

3.2. Appointment of guardians for migrant children

The Autonomous Communities have jurisdiction over the family custody of children. The

¹⁹ Canarias Autonomous Community Decree 40/2000, Art. 57

²⁰ Madrid Autonomous Community Decree 88/1998

²¹ HWR "Unwelcome Responsibilities: Spain's Failure to Protect the Rights of Unaccompanied Migrant Children in the Canary Islands," 26 July 2007

person with the custodial care is entrusted with the guardianship as well.

In the event that the parents or tutors agree to the guardianship designated by the Autonomous Community, or if the parents are not known, the Autonomous Community will be able to implement the measure without court approval. If the parents or tutors disagreed with the Community's guardianship, a court will have to decide on it. In any case, the parental authority of the parents or the tutorship of the tutors would be suspended and the guardianship would be transferred to the service provider.

There are different types of protection services ("*reception centers*") depending on the Autonomous Community where the migrant children are located and depending on whether the children have specific issues (behavior issues, drug dependence, etc.).

The concept of "*separated child*" is not foreseen in Spanish legislation; therefore, there is no specific provision on whether the person accompanying a separated child could be appointed as his/her guardian. However, if the accompanying adult does overcome the tests regarding human trafficking under the Framework Protocol (see point 2.3), there should be no impediment for him/her (beyond legal requirements) to apply as a foster family. The foster family (in this case, the accompanying adult) would be in charge of the custody of the minor, while the Autonomous Community, the holder of the tutorship, would have supervision and control duties. The accreditation procedure generally consists of an application with documentation followed by a declaration of suitability by the Social Services Department to be renewed over the years.

As stated before, a court decision is only necessary in the event that parents or tutors are alive and disagree with the guardianship, and this decision shall establish the scope and limitations of the guardianship. According to the Child Protection Law, Article 20 Section 3, the responsibility over the child is shared between the Autonomous Community and the foster parents, with the fostering contract foreseen in such article establishing the limits and share of responsibility.

According to Civil Code article 173, foster families must (i) take care of the child, (ii) keep the child in their company, (iii) feed the child, (iv) raise the child, (v) provide the child with a comprehensive education, and (vi) in the event of a child with a disability, provide him/her with specialized support.

3.3. Other categories of persons/organs that may carry out guardianship functions

There is no separate guardianship system in place for migrant children. Legislation regarding the protection of unaccompanied migrant children expressly refers to the general system of guardianship and administrative custody established by the Civil Code and developed by regional legislation.

Because the Framework Protocol foresees all situations, including the cases where a minor may have parents in his/her country, its provisions state that the Autonomous Community's Department could take care of legal guardianship, custody, provisional protection or guardianship. The Department acquires the legal representation of the child by issuing an administrative decision after communicating the minor's data to the Police and the Public Prosecutor's Office and investigating the minor's circumstances, namely if he/she is under distress, the whereabouts of his/her family, the possibility of regrouping the child with them in

his/her country of origin and if the child falls under any form of international protection. In any situation, the minor would be accompanied by a member of the Department to any legal or administrative procedure.

As mentioned in Chapter II Section 5 of the Framework Protocol, after regulating the procedures stipulated in Article 48 of Asylum Law the right of asylum and subsidiary protection for an unaccompanied child who wishes to benefit from international protection, the child will be informed, in a reliable manner and in a language that can reasonably be understood, by the Social Services Department under whose legal guardianship, custody, provisional protection or guardianship he/she is of the basic content of the right to international protection and the procedure provided for his/her request. This action will be recorded in a written form, according to Article 190.5 of the Regulation on Foreigners. These procedures include determining the child's age and his/her availability to the competent public entity for the protection of minors and assigning him/her a legal representative, usually a social worker or assistant designated by the corresponding Autonomous Community Department, who serves as an advisor and represents the child in the Courts, all in accordance with the provisions of the Framework Protocol.

For the request for international protection to be effectively formalized, the unaccompanied child must go to the administrative offices provided for that purpose with the person who, by designation of the public entity for the protection of minors, is responsible for his/her protection. This person will assist the child in the corresponding formalization and processing, acting on his/her behalf when necessary always with a view to guarantee the best interests of the minor.

Given that in these cases, the tutorship corresponds to the Autonomous Community's Department, it would hold the legal representation of the child. In Spain, legal assistance must be guaranteed regardless of the interests of the Autonomous Community in charge of the guardianship of the child, thus the child's right to be assisted and advised by an independent counsel is also guaranteed.

3.4. Responsibilities and duties of guardians for migrant children

The regulations establish that the guardian must provide assistance until the child reaches legal age. Legal representation of the child is carried out by the Autonomous Community's Social Services Department as its tutor.

For a better understanding of the case and protection of the child's interests, the guardian must provide the appointed attorney, designated through legal aid by the competent bar association, with a copy of the child's record, prior to the hearing.

These responsibilities are compliant with Art. 104 of the UN Guidelines for the Alternative Care of Children (2010).

3.5. Profile of guardians

The tutorship is conferred to the competent Autonomous Community as a whole, since it is the holder of legal personality. Within this administration, the organisms in charge are usually the Social Affairs Departments (“*Consejería de Asuntos Sociales*”).

The guardians are public or non-public employees working in reception centers, such as directors of child care institutions (ex. foster centers). They are accredited through a selection processes conducted by the administration which has jurisdiction over the center. The public entity, usually the Autonomous Communities’ Social Services Departments, select the directors of reception centers by means of public competitions (“*oposiciones*”), selection procedures of competitive nature where the adequate formation and experience for the post are given precedence. It is not clear from the available sources whether the competitions are restricted to public officials or are open to any qualified individual. Reception centers are ruled by internal charters and foster families and NGOs obtain guardianship through agreements and contracts. Therefore, it is possible to prevent conflicts of interest through proper regulations in charters/agreements. Furthermore, the public prosecutor and the Autonomous Communities supervise the work of the centers/families/NGOs.

Pre-qualification training is not provided in Spanish legislation. However, in fact, there are trainings, especially for the personnel of the organizations with agreement and of the reception centers under the authority of the Autonomous Communities’ Social Services Departments.

There are no specific provisions regarding continuing training for those who hold the guardianship, however, this does not exclude the possibility of carrying out this training in institutions with special agreements and reception centers.

According to the Framework Protocol, the Autonomous Community is the legal tutor and guardian, having three months to delegate the latter via the designation of a guardian. The scope of the guardian and the Autonomous Community’s legal responsibility will depend on the contract with the foster family.

The Autonomous Community must assume the guardianship of an unaccompanied child within three months of confirming his situation of helplessness. Once the child is under guardianship, no specific term is provided to transfer the guardianship to one of the specialized institutions. There are no mechanisms foreseen in national legislation to ensure timely appointment of guardians; however, regulations on this regard may be foreseen in regional legislations as well as in the agreements with child protection entities or in the internal regulations of reception centers.

3.6. Child Bride

The first final disposition of the Voluntary Jurisdiction Law of 2015²² provides that only emancipated individuals over 16 years of age are allowed to get married.

Thus, the conditions necessary for underage marriages to take place are (i) minimum age (16 years) and (ii) emancipation.

²² Law 15/2015, dated 2 July, regulating the voluntary jurisdiction.

The presence of migrant married-girls in Spain is still rare, so there are no specific provisions regarding the treatment of girls who arrive accompanied by an adult spouse. However, there are precedents in the Supreme Court²³ when asylum have been granted to women who are victims of forced marriages, including child marriages.

Child marriage is not recognized in Spanish jurisdiction and will not be valid so if the guardianship of the child derives from marriage, the guardianship will not be recognized. Automatic emancipation of the child bride is unlikely, since the Civil Code foresees the emancipation of minors between 16 and 18 years of age only by concession of the holders of parental authority or by court decision. It is much more probable that the child bride would be treated like another unaccompanied child, needing later judicial proceedings and court decision to obtain emancipation.

4. Family reunification

4.1. Family tracing

Articles 19 bis 2 and 5 of the Law 1/1996 stipulates that "*in the case of unaccompanied migrant children, the search for their family and the restoration of family coexistence shall be sought, provided that said action is in the best interests of the child and does not place the child or his or her family in a situation that would endanger their safety*".

Article 192.1 of the Royal Decree 557/2011 establishes that the competent Delegate or Sub-delegate of Government will agree to initiate proceedings of repatriation of the migrant child if the best interest of the child is deemed to be satisfied with his/her reunification with his/her family or his/her return to the children protection services of his/her country of origin.

Regarding the information to be obtained, Article 35.5 of Organic Law 4/2000, states that "*the State Administration [the Central State] shall request a report on the family circumstances of the child to the diplomatic representation of the country of origin, before making a decision concerning the initiation of the repatriation proceedings*" and Article 191.4 of the Royal Decree 557/2011 provides that "*the Delegation or Sub-delegation of the Government shall request information from the entity holding the legal guardianship, custody, provisional protection or keeping any information on the situation of the child. Such information shall also be required from the Autonomous Administration [the Autonomous Community] of the territory in which the child is domiciled, as well as from the place where the institution that has legal guardianship, custody, provisional protection or custody is located at*".

4.2. Reunification in Spain or resettlement

When reunification is not possible in the country of origin the possibility of reunification in Spain or the resettlement of the family in a third country is considered. However, Article 53 of the 2011 Foreign Nationals Regulation provides that family reunification (other than for EU nationals) is only accepted in favor of the spouse, children, individuals legally represented by the

²³ SSTs (Public Law Chamber) dated 15 June 2011 and 11 May 2009.

applicant and first-degree ascendants of the applicant.

4.3. Reunification with other relatives

The Spanish law contains *numerus clausus* requirements for family reunification situations; therefore, it uses a narrow definition of family, protected by the Spanish Constitution, identifying it with the matrimonial family, without making reference to the concept of "family ties". In this sense, it prevents the regrouping of different types of families, such as siblings or de facto unions.

4.4. Grounds for refusal

Only children under the age of 18 who have not created an independent family unit – which consists of any individual or group of related individuals who form an economically independent unit, i.e., a single emancipated minor (16-18 years old) living on his/her own would form an independent family unit –, those who are guarded or adopted, and those legally incapacitated by the Courts – i.e. deprived by the Courts of their legal capacity, are eligible for reunification.

In compliance with Articles 54 to 56 of the Royal Decree 557/2011, a person residing in Spain who intends to bring his/her children to Spain must have a renewed residence permit, that is, his/her second work and residence permit, and demonstrate he/she has sufficient housing and sufficient financial means to meet the child's needs, including health care. To regroup one family member, the applicant must have a minimum monthly income equivalent to 150% of the IPREM – € 806.76 for the 2017 fiscal year (not available for the 2018 fiscal year since the national budget has not been approved yet).

5. Placement of migrant children

5.1. Temporary shelter/1st reception centers

Children asylum seekers are provided shelter while their claim is pending. In the first place, any request of asylum presented in Spain grants the solicitor with provisional residence (Article 11 of the Spanish Regulation of the Asylum Law.²⁴

According to Article 46 of Law 12/2009, children asylum seekers can be provided with shelter in the Refugees Reception Centers²⁵ (*Centros de Acogida de Refugiados*) and they have priority status

²⁴ Royal Decree 203/1995, dated 10 February, approving the Regulation for the Asylum Law. The text – like all the legal texts herein cited – is publicly available in the page of the Official State Bulletin (BOE) <https://www.boe.es/buscar/act.php?id=BOE-A-1995-5542>

²⁵ In general, in order to be derived to a Refugee Reception Center, certain requirements must be met (lack of financial means, being in possession of the documents accrediting the petition or grant of international protection,

due to the fact that they are considered particularly vulnerable. However, Article 48 of the aforementioned law, establishes that unaccompanied children who seek asylum will be sent to the child protection services in Spain²⁶ (as they lack the attention of their parents or guardians).

For unaccompanied children²⁷ located in Spain²⁸, a first measure is their placement in centers for the immediate reception of children (*Centros de Acogida Inmediata de Menores*) as well as emergency foster care (this last mechanism is particularly suited for children under seven years of age). Children usually stay in them for a few weeks until a decision regarding their status is made.

During the above-mentioned emergency mechanisms and once verified their underage status²⁹, these children, can be relocated in their country of origin (provided that they are not asylum seekers) or, if this is not possible, then the competent Autonomous Community is granted guardianship (see answers under 7.2 for more details). In the latter case, these children are generally moved to residential centers (*Centros Residenciales*) or they are placed in a foster family, until they come of age (see answer 5.2, for more information about the types of placement offered to these children).

On a side note, if children arrive in Spain with their parents and their parents are placed in a foreigners internment center (*Centro de Internación de Extranjeros*)³⁰, then, depending on the conditions and availability of the foreign internment center, these children can be placed with them in a separate accommodation. If there is no availability, the next option would be to keep the family united but in an accommodation shared with other interns. As per the law, in no case can unaccompanied children be placed in foreign internment centers^{31,32}. However, in practice, sometimes this principle is breached and unaccompanied minors are interned in CIEs.³³

etc.).

²⁶ The Spanish Laws regarding children are applicable to unaccompanied children located in Spain; therefore, the general Spanish reception system envisaged for children in general is also applicable to unaccompanied children. The Spanish law once an unaccompanied child is located, declares his distress and obliges the relevant child protection entity of the autonomous community where he has been located, to assume his guardianship.

²⁷ During the first semester of 2016, Spain had only received 27 international protection petitions from children. However, the number of unaccompanied children who have arrived in Spain is quite higher. The last official data indicates that for the year 2014, 3,660 unaccompanied children where registered in the Spanish Unaccompanied Separated Minors Registry (for the whole year 2014, only 17 asylum petitions where requested by children). Ministerio del Interior. Asilo en cifras 2014. Disponible en línea en: http://www.interior.gob.es/documents/642317/1201562/Asilo_en_cifras_2014_126150899.pdf/6e403416-82aa-482f-bcda-9a38e5a3a65c

²⁸ Usually, children themselves come forward to the police, identifying themselves as underage in order to initiate the relevant proceedings.

²⁹ This process may vary and therefore sometimes, prior to the entry in an immediate reception center, the “underage test” is carried out if the child was unable to prove his underage status. Once verified by means of this test the underage status, the child is taken into an immediate reception center until the decision regarding his situation is decided.

³⁰ These centers are non-penitentiary public facilities where irregular immigrants are interned in order to be expelled from the Spanish territory.

³¹ Sometimes in these types of centers individuals who might have a right to seek asylum are also interned in them and can request it from within.

³² Royal Decree 162/2014, dated 14 March, approving the Regulation of the Foreigners Internment Centers – article 7.3 (*rule to keep the parents and the child united in CIEs*); Article 62.4 of the Law on Foreigners (*prohibition to place unaccompanied children in CIEs*)

³³ “The Congress requests the Government to cease the internment of unaccompanied minors in CIEs”

Shelters have adequate standards of living guaranteeing children's subsistence, safeguarding their physical and mental health. During their stay in these immediate reception centers, basic necessities are guaranteed such as shelter, food and water, hygiene, health care, emotional support and physical protection. In residential centers (for longer stays), Article 21 of the Child Protection Law establishes that these centers shall ensure coverage of daily life necessities. In addition to those necessity services, further ones are also provided (schooling, equipment, employment guidance, leisure activities, etc.).

Article 21.6 of the Child Protection Law establishes that the competent public authority will adopt necessary measures in order to ensure coexistence of children in these centers. However, several NGOs have criticized the living conditions in the centers for the immediate reception of children in most cases for overcrowding or segregation according to nationality³⁴.

Disabled children are provided with easy accessibility. In accordance with the Royal Legislative Decree 1/2013, of November 29, which approves the Consolidated Text of the General Law on the rights of persons with disabilities and their social inclusion, all the public buildings must be adapted or must be accessible to the disabled, and so the "centros temporales de acogida" must comply with this requirement. Further, Article 25.5 of the Child Protection Law establishes that residential centers shall incorporate measures in order to facilitate easy accessibility for disabled children. In addition, some of these centers have reserved spaces for disabled children. Also, there are special centers for disabled children (*Centros para menores con discapacidad*). These residential centers are the same that provide final placement to unaccompanied children. The Centros de Internación de Extranjeros or CIEs are not destined to unaccompanied migrant children (only to children accompanied by parents who have been placed there, as stated in 5.1.1).

Temporary shelters are open shelters. Children can leave these centers on their own will but usually a system of "permissions to leave" is established as a measure of control. In fact, Article 21 of the Child Protection Law encourages weekend getaways with family members or alternative families.

Some of these centers are managed by NGOs. Independent organizations, such as Amnesty International or AIDA, have had access to foreign internment centers and have reported on the conditions. However, the Spanish prosecution service (*Ministerio Fiscal*) is in charge of the supervision of children placed under the Spanish State guardianship, according to Article 174 of the Spanish Civil Code. In addition, Article 21 of the Child Protection Law establishes that the prosecution service will carry out inspections in residential centers.

<https://www.europapress.es/epsocial/migracion/noticia-congreso-insta-gobierno-cese-internamiento-menores-no-acompanados-cie-20180222181631.html>

³⁴ Amnesty International, "Si vuelvo me mato II. Informe de seguimiento sobre la situación de menores en centros de protección terapéuticos en España." September 15, 2010.

5.2. Placement of migrant children

To prevent homelessness, children are generally placed in residential centers and other types of facilities where their rights are explained and they are taken care of. However, these children can abandon these centers on their own initiative, which can result in many cases in homelessness. Families who have been granted refugee status or subsidiary protection are provided with housing until they become financially dependent. An integration program is held by the NGO, ACCEM along with several Autonomous Communities, by means of which refugees may have access to social housing.

Predominantly, children are placed in residential centers³⁵. Other options are group homes (*bogares funcionales*), foster families³⁶ and also adoption. When the child is first encountered, a report will be elaborated in order to decide which type of facility best suits the child according to his/her necessities and profile.

In order to place a child in one type of facility or another, a study report is carried out and according to the detected needs and the profile of the child a suitable placement is assigned. However, Article 9 of the Child Protection Law establishes the right of children to be heard and listened to when the decision being made has an impact in his/her personal, familiar or social sphere.

Measures are taken to guarantee that siblings are placed together. Residential centers will prioritize placing siblings together as established in Article 21 of the Spanish Organic Law on the Legal Protection of Children. Yet, it is a guiding principle and thus can be limited by material constraints, as the text of the law stipulates that placement of siblings together is “encouraged” (*procurar*).

Usually, children between 16 and 18 years of age will receive guidance through different programs in order to help them develop their self-sufficiency and independence. Sometimes children around that age group are given the option to share apartments with other children under the same circumstances and under the supervision of social educators (*bogares para la preparación para la independencia*). Once these children reach legal age, if they do not have a place to go, they can access ex-tutulary apartments. If they do so, the residential authorization will be extended by one year. Otherwise, the residential authorization will expire and they will be considered as illegal immigrants in Spain. Frequently, Autonomous Communities grant financial support to these children. Programs of job placement and legal advice are also offered to them.³⁷

Informal care without any kind of supervision by public authorities is not contemplated in the Spanish legislation, although informal care of children by elderly relatives is frequent. Current Spanish legislation³⁸ has simplified the procedures for family care, making the intervention of judicial authorities unnecessary in certain cases (“*acogimiento administrativo*”) when the

³⁵ These centers can be of public ownership, of private ownership or of public ownership but managed by a private entity. These facilities can sometimes be exclusively for unaccompanied children and other times, they are for all children, whether or not they are unaccompanied children.

³⁶ This measure is becoming more and more frequent.

³⁷ Royal Decree 557/2011 on Foreign Nationals, Articles 196 to 198

³⁸ Organic Law 1/1996, of January 15, on the Legal Protection of Minors, Article 21 Section f)

parents/guardians of the child agree on the placement; nevertheless, it must always be authorized by a competent public authority after an examination of the suitability of the family care.

Although pure informal care is not allowed under Spanish legislation, family care systems are greatly developed by the legislation (notably Ley Orgánica 1/1996), which contemplates both the right of the host family to receive help from the Government and the monitoring by the public authorities of the overall care provided. Spanish legislation on this matter seems to comply in general terms with the UNGA Guidelines and European recommendations.

5.3. Detention/Retention

This section addresses the detention of children only in the context of criminal proceedings. Administrative detention and retention have already been addressed.

Detention of a child (migrant or otherwise) is a measure of last resort and it must not last longer than the strictly required in order to carry out necessary investigations. In any case, under the maximum term of 24 hours the child shall be released or brought before the prosecution service. In the latter case, the prosecution service has a maximum of 48 additional hours to resolve the situation of the child who has been detained.³⁹

Moreover, authorities who participate in the detention of a child shall practice it in the manner least harmful for the child and shall immediately inform him/her, in a clear and comprehensible language, of the case against him/her, the reasons for his/her detention and his/her rights.

Children will be detained for having committed a criminal offence under the Spanish Criminal Code. Those offences generally imply violence, intimidation or threat and endangerment of individuals.

Children are placed in detention centers separated from adults according to Article 17.3 of the Spanish Organic Law on Criminal Liability of Minor⁴⁰. It is foreseen in the 2014 Operating Regulation of the *Centros de Internamiento de Extranjeros*⁴¹, Article 7 Section 3, that interns forming a family unit must be placed together, accompanied by their underage children and, if possible, in separate units that guarantee an adequate degree of intimacy. However, this precept does not constitute an absolute guarantee, especially given the multiple infractions and irregularities committed by the CIEs, as documented by many NGOs⁴².

In terms of detention, a child who has been detained will be placed, according to Article 17 of the Spanish Organic Law on Criminal Liability of Minors, under “appropriate facilities” and separated from adults. However, the term “appropriate facilities” is not defined by the Spanish

³⁹ Organic Law 5/2000, dated 12 January, on the Criminal Liability of Minors, article 17

⁴⁰ 12 January 2000, n° of the law: 5/2000

⁴¹ Royal Decree 162/2014, 15 March 2014

⁴² Lambertucci, Constanza. “Unos 40 internos del CIE de Aluche denuncian vivir en un ‘infierno,’” 6 October 2017
20 minutos. “La ONG Women’s Link denuncia un trato inhumano a las internas del CIE de Algeciras,” 5 June 2017
Desalambre. “El CIE de Madrid ignora algunas de las peticiones de asilo de extranjeros encerrados,” 14 June 2016

Organic Law on Criminal Liability of Minors. As per the aforementioned Article, in these “appropriate facilities” they shall receive social, psychological, physical and health care, in accordance with their age, gender and individual characteristics. During detention, a child shall be guaranteed food and water, clothing, and the appropriate intimacy, security and sanitary conditions.

On a separate note and in terms of retention, a child can be sentenced by court order to be placed in a retention center for children (*Centro de Internamiento*). These centers are only for children and can be closed, semi-open or open, therapeutic centers, ambulatory treatment, day centers and also children can be sentenced to weekend detention, probation, cohabitation with an education group, etc. These retention centers are staffed with specialized personnel and the facilities respond to the needs of the child’s age as well as the child’s personality and his personal and social circumstances. For example, education programs are applied according to the child’s age.

Immediately after the detention of a child has taken place, the parents or legal guardians of the child as well as the General Prosecutors’ Office shall be informed in compliance with Article 17 Section 1 of the Organic Law on Criminal Liability of Minors. If the child has its normal residence in another country, the corresponding consular authorities will be informed.

In relation of children in conflict with the law, there are not any legally foreseen safeguarding measures to prevent the separation of accompanied children from their siblings, relatives or guardians.

Article 17 of the Organic Law on Criminal Liability of Minors establishes that a child who has been detained will have the right to communicate with his/her lawyer before and after his/her statement has been taken. A child has the right to legal assistance and communication with the attorney at all times, even outside of the *Centros de internación de extranjeros*’ working hours, if urgency requires it.

In case the deprivation of liberty lasts longer than the strictly necessary or directly overpasses the legal 24 hours and the judicial authority has not ordered the administrative retention of the immigrant, as per the Constitutional Court (Writ of amparo 3304/2003), the child can challenge the *habeas corpus* procedure according to the Spanish Organic Law which regulates the *habeas corpus* procedure and Article 17 of the Organic Law on Criminal Liability of Minors.

Specific child-safeguarding measures depend on each Autonomous Community and are usually regulated by means of Decrees Orders of the Social Affairs Departments. For example, Andalucía’s Decree 355/2003, which regulates the region’s centers for minors, foresees a series of safeguards and guarantees such as: the impossibility of the minor renouncing his/her fundamental rights, complaint channels or periodic controls of the center by the Department.

Provision of easy accessibility to immigrant disabled children is provided for in Royal Legislative Decree 1/2013, which foresees a wide array of conditions and positive measures to ease disabled people’s accessibility.

6. Access to fundamental rights

6.1. Education

Article 27 of the Spanish Constitution establishes that “everyone has the right to education” and article 10.3 of the Child Protection Law establishes that “foreign children located in Spain, have the right to education, health care and basic social services in the same conditions as Spanish children” and that both the Central State and the Autonomous Communities shall ensure those groups considered to be particularly vulnerable, such as, unaccompanied children or children with special needs, with the right to education.

Article 9 of Organic Law on Rights and Freedom of Foreigners establishes that foreign children under sixteen have both the right and the obligation to education; this means access to a basic, free and compulsory education (primary and secondary education, this is from 6 to 12 years old for primary education, and from 12 to 16 years old for secondary education). The same Article establishes that foreign children under eighteen have the right to a post-compulsory education (this is from 16 to 18 years old).

Article 9 of the Law on Foreigners, establishes that the right to education (compulsory and post-compulsory) granted to foreign children includes access to the public system of scholarships and subsidies in the same conditions as Spanish children as long as they are residents in Spain⁴³. Spanish courts have a longstanding doctrine of *arraigo* (“roots”) that, applied to the pending studies of the immigrant, can be translated into an extension of the stay (e.g. Judgment of the Superior Court of Justice of Andalucía no. 982/2015, dated 13 April). Thanks to this doctrine, the immigrant undergoing long-term studies has a right to obtain a visa as well.

In administrative retention centers and criminal detention facilities for minors, children are usually provided with education within the facility (some centers are closed centers). In some immediate reception centers, education activities may take place within the premises (however usually children stay there only for a few weeks). When children are assigned in residential centers on a lasting basis, they are then schooled.

In practice, children are placed in residential centers where they are brought into school. According to Autonomous Communities’ Plans, the main purpose of these centers is the integration of those children into society⁴⁴.

⁴³ Law on Foreigners after its amendment via Law 2/2009

⁴⁴ “Intervención en Acogimiento Residencial,” Manual de intervención en situaciones de desprotección infantil en la comunidad foral de navarra.

6.2. Health care

Article 43 of the Spanish Constitution provides children with access to health care. Article 10.3 of the Child Protection Law establishes that “*foreign children located in Spain, have the right to education, health care and basic social services in the same conditions as Spanish children.*” The same article states that the Central State and the Autonomous Communities shall ensure those groups considered to be particularly vulnerable, such as, unaccompanied children or children with special needs, with the right to health care. Further, the Immigration Regulations of 1996 (of execution of the Organic Law 7/1985) gives the right to health care for any minor who is on the Spanish territory in the same conditions as Spanish nationals.

7. Expulsion

7.1. Exclusion clauses

The Asylum Law links the grounds for exclusion to the applicable international instruments in the case of crimes against peace, humanity and war crimes; and to the Spanish Criminal Code in the case of severe felonies capable of justifying exclusion. Therefore, any consideration on the child’s mental state or possibility to exclude his/her personal responsibility will be done in relation to the applicable international instruments and the Spanish Criminal Code, respectively.

Because proportionality is not regarded in the Asylum Law as a governing principle of exclusion, the consequences of exclusion are not proportional to the seriousness of the act committed by a migrant child. On the contrary, the list of felonies that trigger exclusion according to the Law is taxative. The felonies listed, which must be punished with a severe sentence as per the Spanish Criminal Code (revisable permanent imprisonment and imprisonment for more than five years, mainly), are the following:

- Crimes against life,
- Crimes against freedom,
- Crimes against sexual freedom/integrity,
- Crimes against the integrity of people/wealth (*integridad de las personas o del patrimonio*) committed with the use of force,
- Crimes of violence or intimidation against people,
- Organized crime.

Although the Asylum Law does not explicitly state the non-applicability of exclusion clauses to children under the age of criminal responsibility, it refers to the Criminal Code as the source to identify the felonies that constitute a motive for exclusion. The Spanish Criminal Code establishes the age of criminal responsibility under Spanish law at 14 years old and states its own non-applicability to felonies committed by children under this age.

7.2. Internal relocation/expulsion to country of origin

The Framework Protocol Chapter I Section 3 prioritizes family reunification in the country of origin or the country where the family resides or, if this relocation plan is not ideal, advocates for the child's relocation in protection centers in the country of origin as long as all the adequate conditions for guardianship are met.

If these adequate conditions do not occur, the relocation will not take place and the child will stay in Spain under the guardianship of the competent Department of the Autonomous Community where the child is located, until he/she comes of age. Regarding this last option, Article 35 of the Organic Law 4/2000 establishes that once the impossibility of relocation to the country of origin is proven, the child will be granted with a residence authorization in Spain. Therefore, the best interest of the child is taken into consideration when deciding his/her relocation.

As per Article 192 of the Royal Decree 557/2011, before the decision to initiate the relocation process of the child takes place, the Central State will request the diplomatic representation of the country of origin to provide a report on the family circumstances of the child. The decision to initiate the child relocation will only be decided if, according to the report, the best interest of the child can be satisfied in the country of origin/country where the family resides. Once the decision to initiate the child's relocation process is made, the Central State will make its final decision, on whether or not to relocate the child in his/her country of origin, only after a report from the protection services of children and prosecution service is made available and the child (if he/she has proper judgment) has been heard.

Article 35 of the Organic Law on Rights and Freedom of Foreigners of 4/2000 establishes that the Spanish Government will promote collaboration agreements with the countries of origin of those children in transit. The same article states that Autonomous Communities will establish agreements with the countries of origin directed towards the attention and social integration of the children in their background of origin. Such agreements shall ensure the protection of the child and shall contemplate mechanisms towards an adequate monitoring.

7.3. Resettlement to a third country

In addition to the best interest of the child being a basic principle of Spanish legislation concerning minors, the Refugee Resettlement Program published every year by the Spanish Government bases its selection criteria on protection needs and priorities identified by UNHCR. Since UNHCR upholds the best interest of the child in its Guidelines for determining refugee status (~~reissued December 2014~~), we can safely assume this principle underpins the identification of the aforementioned needs and priorities.

The First Additional Provision of the Asylum Law accepts refugees under resettlement schemes and establishes that they will have the same statute as refugees recognized under the abovementioned law. Spain's Council of Ministers passes each year the National Annual Program for the Resettlement of Refugees. This program establishes the maximum quota and

the conditions refugees should meet in order to be accepted in our country.

8. Data Collection

8.1. Data regarding migrant children on the move collected by the public authorities

Unaccompanied minors located in Spain must be registered under the Unaccompanied Separated Minors Registry (*Registro de Menores Extranjeros No Acompañados*) with the sole purpose of identification. The Directorate General of the Police and the Civil Guard (*Dirección General de la Policía y Guardia Civil*) is the public authority in charge of this Registry.

The following data is collected for the purpose of this Registry:

- Name and surname of the child, name and surname of the parents, place of birth, nationality and last residence in the country of origin.
- Identity documentation (type and number) of the child.
- Fingerprints, physiognomy data and other biometric data.
- Data related to the certain age of the child.
- Reception center or place of residence.
- Public authority, NGO, foundation or Autonomous Community organism, dedicated to the protection of the child under its guardianship.
- Relocation of the child between autonomous communities in Spain.
- Date of request of the residence authorization.
- Date of grant/refusal of the residence authorization.
- Other relevant data.

Also, Article 22 quáter of the Child Protection Law establishes that in order to comply with this law, the Central State and the Autonomous Communities can proceed, without the consent of the data subject, to the collection and processing of personal data that is necessary in order to evaluate the child's condition (similar to the above mentioned data) and this data can be, at any time, transferred to the prosecution service without the data subject's consent.

8.2. Data protection

All public authorities (whether it is the Directorate General of the Police and the Civil Guard, the Public Residential Centers or other organisms) are obliged to comply with the Spanish Organic Law on Personal Data Protection. Article 10 of this law establishes the obligation of professional secrecy and failure to comply with such obligation constitutes serious infringement. Also, Article 9 of the Spanish Organic Law on Personal Data Protection establishes that the data controller and given the case, the data processor, shall adopt the necessary technical and organizational measures in order to assure the security of the personal data. In particular, the data collected in accordance with Article 22 quáter of the Child Protection Law, requires high-level security measures to be taken.

9. International relations⁴⁵

9.1. Foreign aid that addresses root causes of migration of minors (in particular of unaccompanied child) in countries of origin and transit countries.

Although diaspora associations are numerous in Spain, according to research⁴⁶, at least half of them are heavily implicated in development initiatives and cooperation programs with their respective countries of origin, these activities are very specialized according to the needs of each country of origin, so we do not have sufficiently detailed information to answer the question. However, some affirmative examples are well-known, like the initiatives carried on by the Saharawi People's diaspora organizations.

According to the website of the Ministry of Justice, public registration of all kinds is one of the most demanded subjects for international cooperation projects. Although this subject includes a wide variety of registries (real estate, personal property, administrative, civil...), in 2015 a cooperation project with Latin American countries included a course on electronic registries at the service of Justice Administration, which includes civil registries.

Spain signed a bilateral agreement with Romania on 15 December 2005, which stated that Romanian unaccompanied children must return to Romania if located in Spain. The same agreement was signed between Spain and Morocco on 6 March 2007. However, the best interest of the child prevails and the child will only be returned if there are sufficient guarantees.

Development/cooperation programs target improvement of legislative and administrative capacity affecting minor asylum seekers and victims of trafficking. For example, recently during the *XXVI Meeting on Immigration Matters and Asylum*, the Spanish General Council of Lawyers demanded the creation of a humanitarian visa for those who ask for international protection. Throughout the state network of supporting entities claims have been raised in order to improve legislation and administration matters regarding these topics.

9.2. Cooperation with civil society

There are development/cooperation programs that target awareness raising activities and training in origin and transit countries to improve identification and protection of potential victims of trafficking such as:

- Cruz Roja Española (Spanish Red Cross), a private organization financed through subsidies, provides a service of restoring family links.

⁴⁵* These questions are based on recommendations issued in the "Communication from the European Parliament and the Council – Action Plan on Unaccompanied Minors" (2010-2014)

⁴⁶ LACOMBA, Joan, "Migrants, Associations and Home Country Development: Implications for Discussions on Transnationalism", 2015

- Also, the Spanish Government Council has approved the Madrid Strategy against Human Trafficking (*Estrategia Madrileña contra la Trata de Personas*) a program for the prevention, detection and fight against human trafficking, being one of its main purposes the establishment of a reception center for children who have suffered human trafficking.

There are also private initiatives in that respect. For example, Save the Children has organized several conventions on this matter. For example, on 28 June 2014, they held a privately organized conference “*Sin cicatrices. Congreso por el final de la violencia contra la infancia*” (“Without scars. Convention for the end of violence against children”) focused on Spanish activists and organizations, although some of the participants had international experience and were of foreign origin.

In Spain, there are plenty of supporting organizations that promote information programs to children and families about alternative possibilities of studying, training and working in country of origin and legal paths to study abroad. AECID (*Asociación Española para la Cooperación Internacional y el Desarrollo*) has maintained education programs in third world countries for at least 20 years, although the budget for these programs have been drastically cut in recent years, up to 90%.⁴⁷ For example:

- Cruz Roja Española (*Spanish Red Cross*) has several projects concerning unaccompanied minors which help them improve their Spanish, strengthen their studies at school, gives them employment orientation skills and also offers leisure activities. Cruz Roja Española had the Program for Children under Difficulties (*Programa de Infancia en Dificultades*) focused on the protection of these children as well as the development of their capacities. Also, Cruz Roja Española and Nokia developed the project “CroNo” in order to integrate immigrant children at risk of social exclusion by granting them scholarships.
- The Autonomous Community of Madrid has granted scholarships to students and young people who have belonged in the past to the Protection System of Children of Madrid.

Further, some of the reception centers in which the children are placed or the ex-tutulary apartments (once they come of age), are managed by NGOs like PAIDEIA⁴⁸ and Fundación Adsis⁴⁹. These NGOs also help with the education and the employability of these children.

9.3. Visa policies

Although the entry in Spain for humanitarian reasons is foreseen in section 4 of article 25 of the Law on Foreigners and in section 2 of article 4 of Regulation 557/2011, Spain has not developed

⁴⁷ “La cooperación española en educación cae un 90% en siete años at El Mundo and España recorta un 90% la ayuda a la educación en países pobres” at El País, 31 January 2017.

⁴⁸ PAIDEIA is an association for the integration and protection of minors in Spain

⁴⁹ Fundación Adsis is a non-profit that fights to construct a more just, solidary, and inclusive society.

a system of humanitarian visa. In 2016, the General Council of Spanish Lawyers asked for the establishment of humanitarian visas in Spain for those who demand international protection and access to the Spanish territory.⁵⁰

Recently, due to the humanitarian crisis in Venezuela, the Spanish Government announced its intention to issue humanitarian visas to the citizens of this country.⁵¹ However, we have not been able to confirm whether this has been put in practice or not.

On the other hand, humanitarian parole is regulated in article 31.3 of the Law on Foreigners and in article 126 of Regulation 557/2011. According to section 3 of the latter, if the applicant can evidence that his/her return to the country of origin can entail a security risk for him/her or his/her family, he can obtain a temporal residence and work permit. The applicant must provide, in addition to said evidence, passport and criminal record certificate of the country or countries where he/she has resided in the last 5 years⁵². The abovementioned article of the Law on Foreigners foresees as well that visas will not be required if humanitarian parole is granted.

Nevertheless, it must be noted that the Courts have been very restrictive when granting humanitarian parole. An illustrative example is the National Court's Decision dated 9 July 2018, whereby the Court granted humanitarian parole to a Venezuelan citizen in light of the situation in the country. During the last years, the Court had been rejecting similar petitions from Venezuelan citizens. However, after ACNUR's new guidelines on Venezuela dated March 2018, the Court changed its ratio on Venezuela in a series of landmark decisions in June, granting humanitarian parole to Venezuelan citizens even if they did not meet the criteria to obtain asylum or subsidiary protection under the law. The National Court has kept this position in more recent decisions, such as the one dated 4 October 2018.

10. Additional Remarks

N/A

⁵⁰<http://www.abogacia.es/2016/06/20/dia-mundial-de-los-refugiados-la-abogacia-exige-la-creacion-de-visados-humanitarios-para-quienes-pidan-proteccion-internacional/>

⁵¹ <https://www.europapress.es/nacional/noticia-gobierno-aumentara-visados-humanitarios-venezolanos-avisa-no-dejara-hablar-caracas-20180918123108.html>

⁵²<http://extranjeros.mitramiss.gob.es/es/InformacionInteres/InformacionProcedimientos/Ciudadanosnocomunitarios/hoja039/index.html>