

# CHILDREN CAST ADrift



THE EXCLUSION  
AND EXPLOITATION  
OF UNACCOMPANIED  
MINORS (UAMs)

NATIONAL REPORT:  
**SPAIN**

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AINHOA NADIA DOUHAIBI  
SARA OLCINA VILAPLANA  
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[1]

## Methodological notes

*What is social work? Is it a brake on the brutality of central judicial sanctions, through local interventions, through the softness of educational techniques? Or is it the uncontrolled development of the apparatus of the state that, with the apology of prevention, would extend its control over citizens?*

Jacques Donzelot, *The Policing of Families*  
(1979: p. 101-102)

This work has been carried out by a team of three investigators in collaboration with a professional attorney. It is the exploration of a partial ethnography through interviews with a sample of professionals who work or are active in organisations or important NGOs. The participants are considered key informants in the field of unaccompanied minors and the protection system, as well as in other institutional instances or informal spaces related with UAMs. The team has carried out 20 in-depth semi-structured interviews and 3 focus groups, it has transcribed them, and it has analysed the content extracted, paying special attention to:

- Aspects relating to the protection system and institutional organisation.
- Aspects relating to the concept of social inclusion/exclusion.
- Aspects relating to violence and exploitation in the life journey of UAMs
- Aspects relating to the mobility of UAMs.

This investigation also considers the analysis of secondary data, the review of the legal framework relating to UAMs and child protection, the review of Congress of Deputies questions relating to the situation of UAMs in Spanish, and the context and a review of academic literature on the issues mentioned above.

## [1.1] Methodological justification

To achieve its objectives, this research was carried out following a qualitative ethnographic methodology based on case studies, geographically limited mainly to the Basque Country, Andalusia, Madrid, and Catalonia, as these autonomous communities have the highest numbers of migrant children in the state.

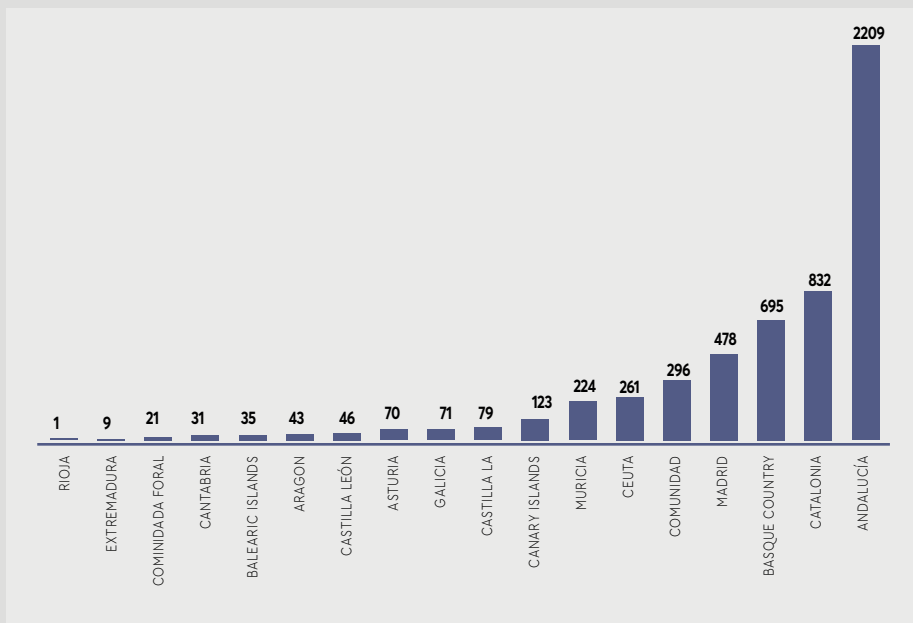


Figure 1. UAMs per autonomous community

Source: Question to Congress of Deputies on UAMs in Spain. Authors' collection.

The case study method uses informal interviews and focus groups, highlighted by descriptions and detailed analyses, in order to understand the unique realities of child protection camps, for which the administrative authorities of the autonomous communities mentioned above are responsible.

Although it is true that the use of quantitative techniques can be very enriching for the study, in this case qualitative methodology is prioritised, mainly due to the duration and budget of the research and because it was of priority interest to obtain a panoramic view of the protection system that is offered to migrant children and adolescents in the Spanish state. In this sense, we want to point out that the level of depth that the qualitative technique provides cannot be obtained, for example, through a survey study. One must also add to this the lack of technical, economic and time resources to carry out a quantitative analysis of the material obtained.

Regarding the structure of the interview, it corresponds to what Merton (1946) describes as a focused interview, a technique with a semi-directed approach based on the non-direction of the respondents' answers. The main purpose for the application of this methodology was the creation of a fluid dynamic with the interviewees, in which they were able to spontaneously generate the different subjects under study during the conversation, without being led by the answers or the opinions expressed by the interviewees. Thus, the four criteria that semi-structured interviews must be based on were met: Non-direction, specificity, breadth and depth, and personal context.

"Merton, Fiske and Kendall have described a particular form of qualitative interview as a focused interview. This is a qualitative interview style aimed at obtaining the cognitive and emotional sources of the respondents' reactions to an event. Treat respondents as subjects whose response to the event is the material under study. More than as informants of the event itself." (Weiss en Vieytes 2004: 208)

Based on this interview format, the design of the script provided by the central MedMinors research team in Athens was slightly modified in its translation to Spanish for its use in the Spanish-speaking territory. In the field some technical language was used, depending on the subject and the personality of the interviewee.

This script (Appendix I) should be understood as the framework that included the main points to be addressed throughout the sessions, and not as a closed questionnaire with a pre-established question order, as



what was of interest at all times was to maintain the spontaneous nature of discourse with the interviewee, while also collecting aspects not considered in the script, but which could be very useful for the development of the project, or even in the approach of future lines of research, not considered in the objectives.

### 1.1.1 Investigation phases

The chronological organisation of the tasks is illustrated in the following timeline:

Chronology	Tasks
March 2018	Contacting key informants
April 2018	Contacting key informants Literature review
May	Contacting key informants Literature review Interviews Legal framework
June	Interviews and transcription Analysis
July	Interviews and transcription Analysis
August	Analysis Final report with main outcomes

Table 1: Timeline.

### 1.1.2 Character sample: participants and scenarios

Contact with the key informants was made through email and over the telephone when it was necessary to provide further information. Initially we proceeded to make a list of possible key informants, which covered different types of people of interest, for a more comprehensive and enriching contextualisation of the targeted issues.

Over the course of the investigation, 34 interviews (including the focus groups) were conducted with different key informants in the field of child protection in general. However, it was not possible to obtain on-site interviewees with all of them, so some were conducted via Skype and over the telephone; other interviews were carried out in questionnaire form. Of the 34 interviewees that compose the bulk of the sample, 12 are professionals trained in social education, 4 are legal professionals, 6 are involved in alternative socio-educational action, and 5 are from the sector of social organisations and organisations that work with migrant children and adolescents.

Although the sample may not be considered representative, it does yield significant results in line with the objectives of this study. Likewise, we cannot ignore the fact that this study, as mentioned in the introduction of the methodological section, is part of a simultaneous European investigation. Therefore, it is a contribution to the other study, which, at the same time, nurtures this project. The existence of these projects in parallel can also serve to contrast the relevance, coherence and/or concordance between the studies.

[ 2 ]

# Introduction and general overview

## [2.1] **Unaccompanied minors (UAMs): a juridical construction**

Before proceeding with the document, we would like to acknowledge that “unaccompanied minors” is a legal term that helps yield a specific administrative status in the field of law. It is a term that grants these children the possibility of being subjects with full rights, on paper, as opposed to their identity as an intruder at the border/irregular migrant. Furthermore, interviewee Mercedes Jimenez already stated in her dissertation and in a collective compilation on unaccompanied minors in 2014, as did other authors such as Amina Bargach (2005), that this term also deprives minors of their cultural identity. This is one of the reasons why the other ways of naming “migrant minors without an adult reference in the receiving country” have been proposed.

“We argue that the extensive use of the legal term ‘unaccompanied minor’ applied to the complex panorama of minors who migrate, reveals an epistemological and methodological nationalism that urgently needs to be corrected. The term ‘unaccompanied minor’ reveals a partial view of the global nature of the migratory process. Namely, it focuses on the part that only corresponds to accessing the child protection system and refers to the legal regulation of this situation. It is minors’ access to the protection system that has given them visibility. It has been these unexpected new ‘clients’ that have caused a kind of ‘stir’ in European protection systems, to the point that there has been a proliferation of investigations that question who they are and what they are looking for. However, this visibility can be alienating and mutilating (Bargach, 2005) by becoming ‘hypervisibility’ (Trujillo, 2010) and a reason for criminality.” (Jimenez 2014: 80)

We believe it is important to underline and position ourselves in accordance with this political statement, as it will be crucial for understanding what follows in this document.

Lastly, the legal treatment and rights linked to the “unaccompanied minor” category depend on the history and policies of each state. Migrant children are categorised in a multitude of ways and receive different treatment depending on the territory they reach, the asylum regulation that these countries have, and their history in migration flow management and child protection. Namely, if a Moroccan boy arrives in Italy or Spain, a specific categorisation and legislation will be applied and if he arrives in Sweden or Greece a different itinerary will be in place for him.

Specifically, in Spain the treatment migrant children receive is related to child protection in general and applying for asylum is not an essential requirement in order to access the protection system. In any case, in each country the legal regulation for unaccompanied minors is endowed with a practice that translates into one type of treatment or another, always as a compromise between protection and control.

## [2.2] Overview of the legislation on UAMs

### 2.2.1 International legal approach

The term “unaccompanied foreign minors”, hereinafter “UAMs”, refers to those children under the age of 18, travelling alone from their home countries, and arriving in foreign (host) countries without the support, company, and care of a responsible adult.

The international legal framework for children has evolved during the previous and current century, and the legislative approach towards UAMs cannot be understood without analysing children’s rights, as defined by the United Nations in the early 1920s.

In 1924 the United Nations approved the Geneva Declaration of the Rights of the Child, providing – for the first time – children with the rights to grow physically and spiritually, by means of their right to receive the necessary assistance and support.

The International Bill of Human Rights, adopted and proclaimed by the UN General Assembly on 10 December 1948, entitles motherhood and childhood to special care and assistance, providing the same social protection to all children, whether born in or out of wedlock.

In 1959, the Declaration of the Rights of the Child was adopted by the General Assembly.

1979 was the International Year of the Child, as declared by the UN.

Bearing in mind that the need to extend particular care to children was stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959, that it was recognised in the Universal Declaration of Human Rights mentioned above, and in the International Covenant on Civil and Political Rights, in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10), and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children, the General Assembly of the UN unanimously approved the first legally binding document by means of the Convention on the Rights of the Child (hereinafter the CRC) in 1989 and it has been in application since 1990.

The Convention on the Rights of the Child was followed by various protocols and conventions approved by the International Labour Organization (ILO) and the UN: ILO convention 182 on the prohibition and elimination of child labour in 1999, the 2000 conventions on child participation in wars, on the sale and prostitution of children, and the convention on child pornography.

The 2002 and 2007 UN General Assemblies on childhood protection concluded with the commitment of the international community to an international treaty for the protection of children aimed at creating an “appropriate world for children”; it was formalised through the 2007 International Declaration on Children signed by more than 140 local governments. The 2007 Convention provides for, among other things, (i) children’s right to life, survival, and development, (ii) respect of children’s opinions, (iii) no discrimination without any exception and that all UN member states shall ensure the application of the rights stated in the Convention in their respective jurisdictions, regardless of the race, colour, sex, language, religion or political ideas, with no discrimination based on

nationality, social or economic status, physical abilities, place of birth, and any other condition of the children, including their parents and legal representatives.

The 2007 Declaration is still the key element to any human rights instrument.

The rights outlined in the CRC – applicable since 1990 and the basic document for all children’s rights worldwide – are indivisible and are intimately linked to states’ obligations and responsibilities. The CRC text is divided into three main parts: (i) Minors’ rights; (ii) Committee for children’s rights; and (iii) provisions on how to apply the CRC.<sup>1</sup>

All states have ratified the CRC and therefore it is a binding text, even

.....

1. The CRC refers to four key principles:

a. Non-discrimination (art. 2): The key right in all European Member States’ regulations is the equal rights of children regardless of their nationality, sex, race or any other criteria. There should not be any discrimination in applying children’s rights to all children.

Therefore, there should not be any discrimination towards minors when unaccompanied refugees or irregular migrants present in host countries, and it is the duty of every state to adopt any necessary measure to identify them and promote their family reunification.

Children who have entered a country irregularly should be afforded the same treatment as child nationals of that country.

b. Child’s best interest (art. 3): All decisions and actions regarding children are to be based on their best interest, including family reunification when not in the child’s best interest due to the risk of the child’s human rights being violated in his/her home country. Non-refoulement (deportation) applies also to children in their best interest and therefore, any deportation is forbidden. The 1951 Convention on Refugees in combination with the Convention against Torture provide for children’s right not to suffer torture and any other inhuman or degrading treatment. Children cannot be illegally or arbitrarily arrested.

To evaluate a child’s best interest, the thorough identification and knowledge of his/her particular circumstances, vulnerabilities and special needs is necessary. It is also necessary to designate a tutor as soon as feasible to represent children.

c. Right to life, survival and growth (art. 6): States are to ensure children are not exposed to any risk affecting their lives. For unaccompanied minors, the main risks are falling victim to human trafficking, as well as sexual exploitation and violence. Article 27 of the CRC provides for children’s right to an adequate life for their own growth and for states to provide such tools.

d. Right to participation (art. 12): This includes children’s right to be informed and heard and to express their opinions freely. States are obligated to make sure that children’s participation is effective, and when they are unaccompanied for minors’ opinions to have an impact on the decision concerning his/her best interest. Right of translation, free association, and free speech are key to fulfil this key right of children.

Art. 12 of the CRC provides for the following: “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the op-

though it is only partially applicable in several countries and does not provide for any sanctions when not fulfilled.

### 2.2.2 EU legal approach

Protecting the rights of migrant and refugee children is said to be a key priority of the Council of Europe, and an area particularly targeted for action in its Strategy for the Rights of the Child (2016-2021) (hereinafter the Strategy) and the Secretary General's proposal for priority actions (4 March 2016).

As stated in the Strategy, "children on the move or otherwise affected by migration remain one of the most vulnerable groups in Europe today." Focusing on the precarious situation of unaccompanied children, it highlights that "migrant children at large, even when accompanied by parents, often suffer persistent violations of their human rights." The purpose of the Strategy is to illustrate a series of important gaps and problems, which result in children falling through the gaps of child protection frameworks and/or children's rights being violated, all of which need to be addressed.

The Council of Europe's Action Plan on protecting refugee and migrant children (2017-2019) (hereinafter the Action Plan) was adopted by the 47 member states of the organisation at the 127th Session of the Committee of Ministers in Nicosia, Cyprus, on 19 May 2017.

Co-ordinated by the Special Representative of the Secretary General on Migration and Refugees, Ambassador Tomáš Boček, the Action Plan addresses the primary concerns identified in the Thematic Report on migrant and refugee children.

The Action Plan focuses on three key pillars to ensure the better protection of children:

1. Ensuring access to rights and child-friendly procedures.
2. Providing effective protection.
3. Enhancing the integration of children into host societies.

The role of the Children's Rights Division is to carry out and support a number of the activities foreseen in the Action Plan, such as the devel-

.....  
portunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."



opment of new guidelines on age assessment and guardianship, a handbook on promoting child-friendly information, and training on child-friendly procedures.

All European policies on UAMs are based on and must fulfil the 1951 Geneva Convention, the 1967 Protocol on Refugees Status, and other Schengen treaties providing for the free movement of people across Schengen countries.<sup>2</sup>

The definition of UAMs in the EU is provided in Council Resolution 97/C 221/03, which states that “third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom” are considered unaccompanied minors.

Minors from third countries who, after entering the territory of the member states, are left unaccompanied are also considered “unaccompanied minors.”

### 2.2.3 Spanish regulations on UAMs

Different legal frameworks overlap regarding the protection of unaccompanied children according to Spanish regulation.

- .....
2. Basic EU norms with references to unaccompanied minors are the following:
    - (i) Treaty on European Union and the Treaty on the Functioning of the European Union <http://bit.ly/2IS7Eul>
    - (ii) Charter of Fundamental Rights of the European Union. 2012/C 326/02 <http://bit.ly/2vmEs6E>
    - (iii) European Convention on Human Rights. <http://bit.ly/2NH2ohl>;
    - (iv) EU regulations:
      - Regulation (EC) No 562/2006 establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code);
      - Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;
      - Regulation (EC) No 862/2007 on Community statistics on migration and international protection and repealing Council Regulation;
      - Regulation (EEC) No 311/76 on the production of statistics on foreign workers (Relevant text for the purposes of the EEA);
      - Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national;
      - Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

## General Regulation on Minors

Based on Article 39.4 of the Spanish Constitution, as developed by the Spanish Act protecting minors (Spanish Act for Child Protection), as amended by Act 26/2015 of 28 July, modifying the protection system for children and teenagers, as well as all the regulations of the different Spanish provinces listed below, the Spanish Act for Child Protection is based on the following principles:

1. Minors' best interest (hereinafter BMI). Art. 2 defines it from three perspectives:
  - As a substantive right, in the sense that when a measure is adopted concerning a minor, it must have been evaluated in accordance with their best interest, and if there are other interests in play, that they be considered before the decision on the measure is arrived at.
  - Its interpretative nature, so that if a legal provision can be interpreted in more than one way, we must opt for the interpretation that best responds to the interests of the minor.
  - And as a rule of procedure. The precept expressly states that "limitations on the capacity to act of minors shall be interpreted restrictively and, in any case, always in the best interest of the minor."
2. Disability. Art. 3 refers to the Convention on the Rights of Persons with Disabilities of 13 December 2006.
3. The right to be heard. Article 9 develops in more detail the fundamental right of the child to be heard. The term "judgment" is replaced by "maturity", since it is a term more closely related to legal and forensic language. It is expressly established that there can be no discrimination in the exercise of this right due to disability, either in the family or in any administrative, judicial or mediation procedure in which the child is directly involved.
4. Complaints and assistance. Art. 10 provides for minors' access to adequate mechanisms adapted to their needs for them to raise their complaints before the Ombudsman or any autonomous counterpart institution. In addition, the effective judicial protection of minors is reinforced by introducing the possibility of requesting legal assistance and the appointment of a judicial defender, who may act on their behalf before the public prosecutor in defence of the rights of minors.

5. Admission to centres. There is a new chapter dedicated to the entry of minors to specific protection centres for minors with behavioural problems. It allows – as a last resort – the use of security measures and restriction of freedoms or fundamental rights. This requires a regulation in which the limits of intervention are to be determined on a case-by-case basis as regards security measures, such as containment, isolation or personal and material records, administration of medications, the visitation regime, exit permits or communications, among other issues. The interment is executed at the request of public entities that hold guardianship or custody of a minor or the public prosecutor, who must request judicial authorisation. This application for admission will be motivated by and based on psychosocial reports previously issued by personnel specialised in child protection. These centres – which will be used only when intervention is not possible through other protective measures – must provide minors with behavioural problems with an adequate framework for education, when ordinary family and educational options do not exist or have failed.
6. New needs. The amendments introduced in this law, complementary to those already mentioned, mainly refer to the adaptation of the principles of administrative action to the new needs presented by childhood and adolescence in Spain, such as the situation of foreign minors, those who are victims of violence, and the regulation of certain rights and duties, adapting them to the international commitments assumed. The institutions of the protection system for children and adolescents are also reviewed in depth.
7. Duties of the minor. A new chapter, chapter III, is introduced in title I under the heading “Duties of the minor.” It contains four new articles in which the duties of minors are regulated in general, and in the family, school and social spheres, in particular.
8. Foreign minors. Art. 10 establishes a regulatory framework for them, recognising their rights to education, healthcare and social services, with respect to those who are in Spain and regardless of their administrative situation. They also have the right to obtain residence documentation if they are protected by public entities, once they have been proven unable to return to their family or country of origin.
9. Violence against minors. A guiding principle of administrative action is

to protect them against any form of violence from their family environment, due to their gender, human smuggling and trafficking, or female genital mutilation, among other things. The necessary support is guaranteed so that minors under parental authority, guardianship or foster care as victims of domestic or gender violence may remain under the protection of the guiding principle. It also introduces the presumption that a person is a minor if it cannot be safely established that they are an adult, until it is finally determined.

10. Priority of actions. Stable measures must be preferred over temporary measures; family measures over the residential measures, and consensual actions over imposed actions. Public entities are obligated to review, in specific terms, the protection measures adopted and to carry out a personal follow-up of each child or adolescent.
11. Crimes. Regarding crimes against freedom and sexual indemnity, human trafficking, and exploitation of minors, it establishes the duty of those who have knowledge of an event that could constitute a crime of this type to bring it to the attention of the public prosecutor. No one who has been convicted of such crimes may have access to or exercise a profession or activity that involves regular contact with minors. The Central Registry of Sex Offenders is created within the justice system, containing the identity of those convicted of these crimes, with their genetic profile included.
12. Risk. A more complete state regulation on risk and abandonment situations is established, indeterminate legal concepts are defined for the first time in a state-level regulation that basically incorporates jurisprudence and autonomic legislation that had collected over the years as substantive content.
13. Helplessness/Abandonment. Article 18 completes the definition of the situation of abandonment regulated in Article 172 of the Civil Code, establishing, for the first time in a national legal regulation the circumstances that determine it.
  - a. The competence of public entities for the protection of Spanish minors in a situation where they lack protection in a foreign country, and the procedure to be followed in the case of transfer of a protected minor from one autonomous community to another are regulated for the first time.
  - b. The maximum duration for the custody of a minor at the request

- of the parents is fixed at two years, unless an extension is in the interest of the minor, under exceptional circumstances.
- c. The principle of the priority of the family of origin is applied, both through the regulation of the risk situation, and when designing a family reintegration programme. Family reunification of unaccompanied foreign minors is also foreseen.
14. Family foster care. Its constitution is simplified, equating it to residential care, even though there is no prior agreement with the parents or guardians, without prejudice to the jurisdictional control of the same. The provisions of Article 173 of the Civil Code on the formalisation of the placement and content of the document that must accompany it are transferred to Article 20. The adequacy of the host must be assessed according to the outlined criteria. A distinction is made between foster care in the extended family of the minor and in a family of others. The status of the friendly family member is regulated by a set of rights and duties and the rights of the foster children.
  15. Residential foster care. It is subsidiary to staying with a family as far as residential care is concerned, particularly for children under six. The basic characteristics of residential care services are specified (their necessary adjustment to quality criteria and the preferred nature of family solutions). The public entity must always provide administrative authorisation. The public prosecutor's office must exercise vigilance over residential care decisions that are adopted.
  16. State information system. Article 22 foresees and will deal with the protection of minors to be carried out by the autonomous communities and the state administration. This affects the statistics and the specific follow-up of the protection measures adopted for each minor, as well as the individuals available for fostering or adoption. A Unified Child Abuse Register shall also be created. The Unified Child Abuse Register will also be developed.

### Best interest

The best interest of minors requires the following rights be guaranteed according to Spanish law:

- a. A minor's right to express their opinions on any matter concerning themselves.

Neither the Minor's Attorney's Office (MAO) nor the members of Spanish institutions have provided written evidence of the UAMs' opinions on any relevant matter.

This became evident, for example, in an interview with a minor who was sent back to a place where they did not want to stay. The return of the minor recovered in Córdoba back to Melilla is undoubtedly the clearest example of how the systems do not work: "Following their return to Melilla, it took only a week for the minor to decide to get back on the street and start using drugs again. The minor has no trust in the protection system, since after doing everything properly they were sent back to Melilla, which is a place they do not want to be."

- b. Good professionals to evaluate the BMI. There is evidence of bad performance from certain professionals directly involved with UAMs, especially in the minors' centres of Madrid (Centro de primera acogida de Hortaleza<sup>3</sup>) and Melilla<sup>4</sup> (Centro de primera acogida de la Purísima), as well as a lack of evaluation of UAM opinions regarding their best interest, as was the case recently when a group of female minors moved from Palencia to Melilla without being given the possibility to be heard.<sup>5</sup>
- c. Reasonable duration of the decision-making process, especially on matters whose delayed conclusion may adversely impact the growth of the minors: For example, minors not getting access to official edu-

3. Three Madrid minors protection center personnel to Court for attacking kids. <http://bit.ly/2GvGp6g>.

4. A minor in the minors' protection centre in Melilla was stabbed by a social educator at such a protection centre. End of July 2018. <http://bit.ly/2vmH8kl>.

5. A group of female minors was sent back to Melilla from Palencia without their consent. <http://bit.ly/2G1I78Z>.

- cation or not receiving medical treatment while being addicted.<sup>6</sup>
- d. A multidisciplinary team of qualified professionals intervening when feasible.
  - e. Legal assistance and the possibility for the minor to designate a judicial defendant when there is a conflict of interest between the MAO or the public administration holding guardianship of the minor.

The lack of information provided to minors regarding their rights means that legal assistance is only provided in minor detention centres, and that minors do not know that they have the right to designate a judicial defendant other than the MAO or the public institution holding their guardianship.<sup>7</sup>

- f. Any decision that minors need to make must be duly explained, justified and motivated, indicating the specific minor's circumstances. Should the decision be different to the minor's opinion on the specific matter, a clear explanation is to be provided and the decision must always be aligned with the BMI.

There is a lack of MAO reviews of decisions treating UAMs as adults and non-consideration of ID documents provided by the UAMs from their home countries.

- g. A mechanism to review any decision. See above.
- h. An impact assessment on minors' rights must be performed. Only NGOs are providing impact assessments of minors' rights to the public. There is no evidence that the written reports of the public administration or MAOs are available.

6. Around 160 minors were not allowed to go to school because of their Moroccan nationality, despite being raised in the Spanish city of Melilla. <http://bit.ly/30nwxnd>.

7. The bad practices of Spanish administrations in determining the age of unaccompanied migrant minors violate their fundamental rights, exclude them from access to the protection system on equal terms to the rest of minors in a situation of helplessness and condemn them to live in the street, with what this supposes for its integrity and physical, psychological and emotional development. <http://bit.ly/30mzleU>.

## Representation of children

The Spanish legal system protects minors on two levels:

1. The civil aspect, as provided for by the Spanish Constitution (Art. 39) and the two Spanish National Acts enacted to protect children and adolescents, which makes no distinction between nationals and foreigners. This approach is based on the best interest of the minor according to the 1948 Declaration on Human Rights and the UN Convention on the Rights of the Child, as of 20 November 1989.

According to this civil approach, Article 124 of the Spanish Constitution provides for the duty of the MAO's to promote justice for minors, as well as to legally represent them due to their limited capacity (age-wise), especially in the absence of their families from Spanish territory, when foreigners.

The above principle of representation is also provided for by the law governing MAO duties. This means that it is the MAOs' legal duty to: (i) Ensure that public institutions involved in minors' issues comply with the Spanish Constitution in providing for the social, economic and legal protection of children and their families, regardless of how they are related; (ii) fully respect minors' rights and take all the necessary legal actions to defend them; and (iii) directly intervene in those legal proceedings in which minors are involved.

The Spanish legal system also assigns the public administration with the administrative duty of taking care of minors when their families cannot exercise their natural guardianship. Therefore, there is an administrative representation of unaccompanied minors held by the public administration, focused especially on hosting UAMs in protection centres and providing them with an education, public health facilities, and access to work when they come of age. To summarise, the material execution of unaccompanied minors' rights is a duty of public institutions in Spain.

2. The immigration law aspect, which makes a distinction between national and foreign minors. It provides the same double protection the civil perspective does: Public institutions execute minors' rights, while supervision and legal representation is held by the MAO.

Article 35 of the Spanish Immigration Law (4/2000 Act) provides bilateral treaties between Spain and third (non-EU) countries, in order



to avoid immigration and also the protection and voluntary return of UAMs, as well as urgent minor age determination – as instructed by the MAO and performed by the competent Spanish health personnel.

Once the UAM's age has been confirmed, it is the MAO's duty to request the intervention of Spanish public institutions so that the minor is cared for.

The following UAM rights are to be guaranteed by the MAO in all actions concerning minors, in accordance with Spanish law:

- a. The UAM's interests are to be assessed before any choice is made.
- b. The BMI guides the interpretation of any legal provision.
- c. Any limitation on the UAM due to their age is to be interpreted in the BMI.
- d. The UAM's right to be heard is to be respected and their opinion is to be taken into account in any decision to be made affecting them.
- e. The UAM's access to adequate assistance and ways to express complaints, namely the UAM's right to legal assistance and the naming of a judicial defendant other than the MAO, is to be upheld.
- f. The intervention of the Minors' Judge when the minor's behaviour is in violation of Spanish laws, and their entry into a closed detention centre if the Minors' Judge agrees.

According to the recent final observations on minors' rights in Spain, published by the Committee on the Rights of the Child in 2018 (CRCH), and concerning foreign unaccompanied minors (observation number 44), an inefficiency has been identified with regards to the Spanish legal representation system of UAMs, due to the system being inefficient and not fully compliant with the BMI.

When the MAO orders the minor's age assessment and it is performed by the competent Spanish health personnel, it is not performed in the BMI, meaning that either the MAO's decision that a minor is considered an adult cannot be reviewed or that the requirements of this age assessment are not respected (e.g. minors' ID documents are not taken into account, by considering that the minor holds no ID documents).

This inefficiency implies both (i) the impossibility for the UAM to obtain Spanish residence documents, and (ii) the non-application of minors' legal protection according to Spanish norms.

The result of this inefficiency is that the legal and administrative representation of the minor is non-existent and unapplied.

### **Participation of children in decision making**

Apart from minors' right to be heard, as provided for by Spanish law and in accordance with the Spanish Supreme Court ruling since 2009,<sup>8</sup> practice shows that minors are being neither asked nor heard when decisions about them are being made, as was made evident recently with the Spanish government decision on UAMs of September 2018:

“The creation of a distribution system for the different territories to distribute the migrant minors who have arrived in Spain unaccompanied by an adult will have to wait. The government has given a week to the autonomous communities to present their proposals for voluntarily receiving these children and adolescents from other autonomous communities, as confirmed by Ministry of Health sources to eldiario.es. The communities requested an extension and the executive branch decided to extend the initial term of 15 days that expired this Thursday, according to these same sources.

Since September 5 the communities have had to decide on whether they will participate in the distribution, to which the central government intends to allocate 40 million euros, and to present their proposals with the number of places offered to receive foreign children and adolescents from the territories that have experienced the most arrivals so far this year. Now they will have one more week to do so.

For the moment it is unknown which autonomous communities have moved to commit themselves to their reception. In recent weeks the redistribution of unaccompanied foreign minors (UAMs) has been one of the main concerns of communities such as Andalusia, the region that has most children and adolescents integrated into its protection system, a total of 4,798 according to the latest data provided by the Ministry of the Interior to eldiario.es.

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8. <http://bit.ly/2ICZGGn>

The guardianship of unaccompanied migrant minors depends on the autonomous communities and they are generally welcomed by the territories where they arrive. Thus, Andalusia is followed by Catalonia (1109 children and adolescents), Melilla (1046), Basque Country (943) and Valencia (489). These are the same communities that have been in favour of establishing a more equitable distribution. 'It cannot be that six communities are welcoming the UAMs and the rest are just observing this phenomenon, which concerns children who must be protected', said Mónica Oltra, vice-president of the Valencian government, during the Sectoral Conference on Immigration last August.

At the other extreme, at the very bottom, are La Rioja, with only one foreign minor in their protection systems, Extremadura, which hosts 7 children and adolescents, and Navarre, with 28 children. 'It is difficult to convince the communities hosting a small number, because they have a different perspective from those that are points of entry or transit,' emphasises Jennifer Zuppiroli, migration expert of the Save The Children NGO.

'They usually claim that there are no resources, but since there is now funding from the central government, there are no excuses for them to exempt themselves from this responsibility; now we will see which communities are really committed to protecting children,' she adds. "We are not speaking of solidarity, but of shared responsibility, because Spain has undertaken many obligations in terms of the protection of minors, and it should be the responsibility of the whole country," clarified the head of Save The Children.

On September 5, the government committed to the communities that in the following three weeks it would bring to the Council of Ministers the approval of a Royal Decree for the 'improvement and solidarity in care' to unaccompanied minors, which will examine the 'emergency' distribution of 40 million euros, and which will be valid for six months. The government will distribute part of these funds to the communities and autonomous cities where most minors are hosted and to those that have decided to participate in this redis-

tribution. Once their proposals and set the number of children per community are assessed, these 40 million euros will be distributed, as explained by former Minister of Health, Carmen Montón.<sup>9</sup>”

No reference to the opinion of minors is even considered when deciding on such a basic right as the Spanish province in which they will live.

With regard to this, on 7 September 2018 the Spanish government presented new measures in defence of the rights of minors:

“The Minister of Education and Vocational Training and spokesperson of the government, María Isabel Celaá, and the Minister of Health, Consumer Affairs and Social Welfare, Carmen Montón, held a press conference in which they explained the agreements reached by the Council of Ministers.

The government is promoting initiatives to eradicate violence against children, guarantee care for unaccompanied foreign minors, and fight against child poverty.

The Council of Ministers has analysed a report of the Draft Law on Comprehensive Protection on violence against children, which is ‘a preferential protection area’ for the government, as explained by the Minister of Health, Consumer Affairs and Social Welfare, Carmen Montón.

The Minister stressed that the aim of the future law is ‘to respect the dignity, freedom and equality of children, and guarantee the free development of their personality in an environment free of violence’. The norm will have an integral character and will pay special attention to the areas of prevention, socialisation, and education of minors, as well as the awareness of families and society.

Carmen Montón explained that the text ‘will include sexual abuse and new forms of violence, such as harassment and violence exercised through social networks’.

.....  
9. <http://bit.ly/2VpXUOO>.

The norm will also develop specific measures for groups of minors in a special situation of vulnerability, such as girls, victims of trafficking, minors with some type of disability, unaccompanied foreign minors, and those who fall into the category of sexual diversity: lesbian, gay, transsexual and bisexual minors, said the Minister.

The document will explore a unified registry on child victims that will provide all the information on violence towards children and adolescents in one place. In addition, it will update matters related to the special disqualification from volunteering, participating in professions and activities that involve dealing with minors, with special reference to the cases of deprivation of parental authority, guardianship, conservatorship, fostering, and adoption, ensuring the priority of the interest of the minor.

‘The objective is to be able to act in a more effective and forceful way in administrations, organisations, and as citizens overall. Each and every one of us has a role to play in ensuring that all children enjoy a full and happy childhood’, said the Minister.

Carmen Montón has stated that work will be done on training and specialisation measures for judges, prosecutors, and other professionals involved. In addition, the rights of minors in criminal and civil proceedings, especially their right to be heard, will be guaranteed. It will also include prevention from the family, educational, socio-health, sports, leisure and digital violence.

The government, as pointed out by Montón, wants effective protection with detection and assistance measures, as well as ‘the reintegration of violated rights and the recovery of victims’. ‘The goal is to make violence against children visible, allowing for better detection of the situations and better performance in the response’, he added.

The Minister has said that the procedure to develop this regulation was initiated through a public consultation on the website of the Ministry of Health, Consumer Affairs and Social Welfare, which will end on September 17.

Carmen Montón has stressed that there is a process of participation and dialogue for the development of the future norm, in which the contributions of social and scientific organisations and entities related to childhood are being collected.

In addition, several ministries are involved, as are the Office of Minors, local and regional administrations, and minors themselves. This process of dialogue will continue next Wednesday, the 12th, at the Plenary Session of the Children's Observatory.

### Unaccompanied minors

The Head of Health, Consumer Affairs and Social Welfare has highlighted that another of the priorities the government is working on, is the protection of unaccompanied minors. In this regard, he recalled that his department presented on Wednesday September 5 to the autonomous communities a proposal to improve solidarity care for these children and adolescents.

This measure will have a budget of 40 million euros, added to the more than 6 million already approved for the autonomous cities of Ceuta and Melilla.”<sup>10</sup>

.....  
10. <http://bit.ly/2NHpnc4>.

## [2.3] Reception System

### 2.3.1 Data on migration flows

The data as of 31 December 2017 show the presence of 6,410 minors registered in the autonomous protection systems of the Spanish state. All the information gathered in this section responds to the information obtained in parliamentary questions to congress by Senator María Isabel Mora Grande of the united parliamentary group Podemos-En Comú Podem-En Marea.

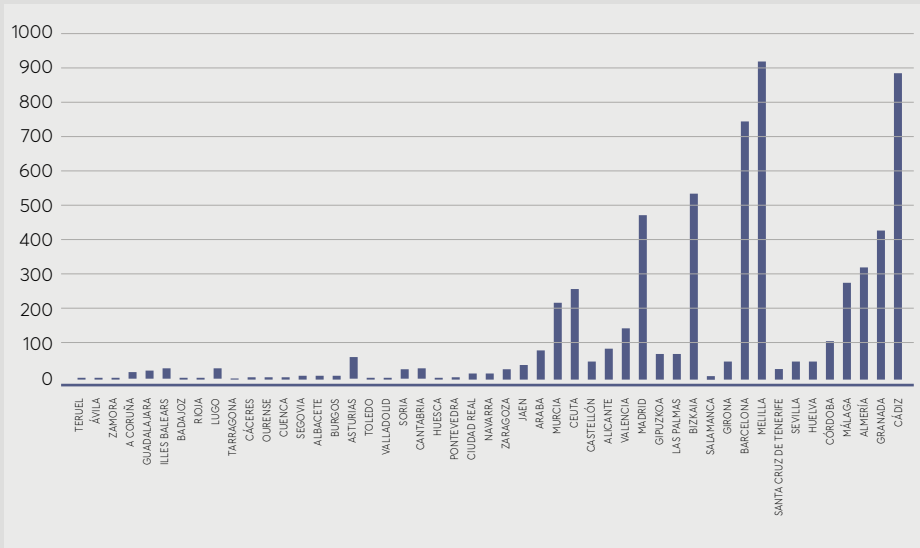


Figure 2. UAMs per region, 2017

Source: Parliamentary question to Congress. Authors' collection.

According to this information, the autonomous communities with the highest rate of arrival and reception in the peninsula are: Andalusia, Catalonia, the Basque Country and Madrid.

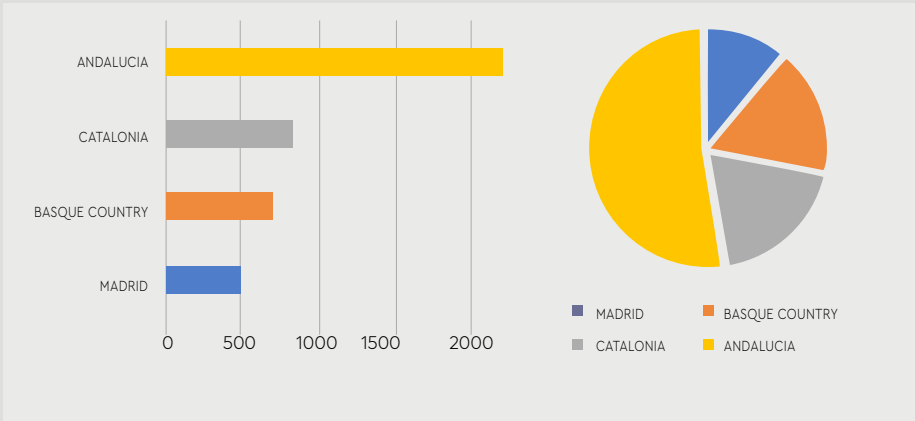


Figure 3. Autonomous Communities with highest UAM presence  
Source: Parliamentary questions to Congress. Authors' collection.

In these autonomous communities the presence of minors is also different according to the territories. In the following graphs we can see which destinations are the most “popular” with migrant children and adolescents.

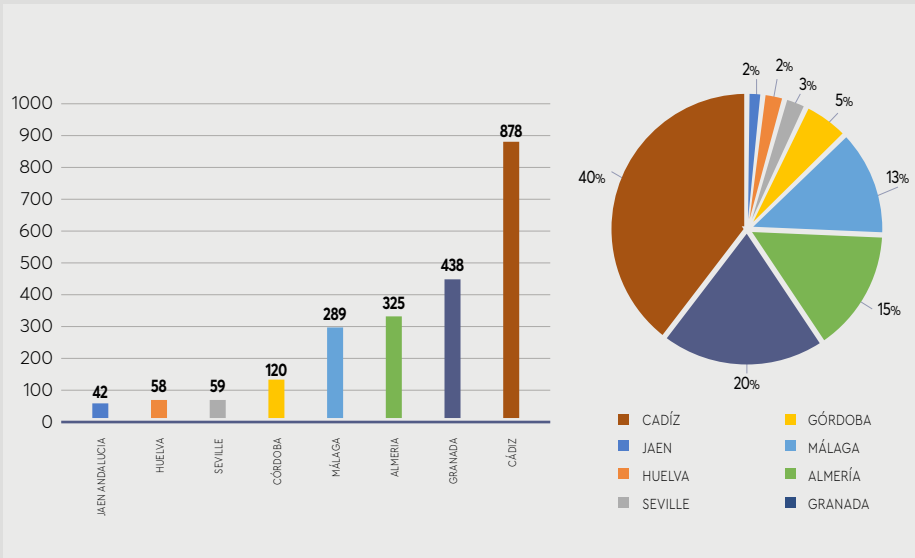


Figure 4. UAMs in Andalucía



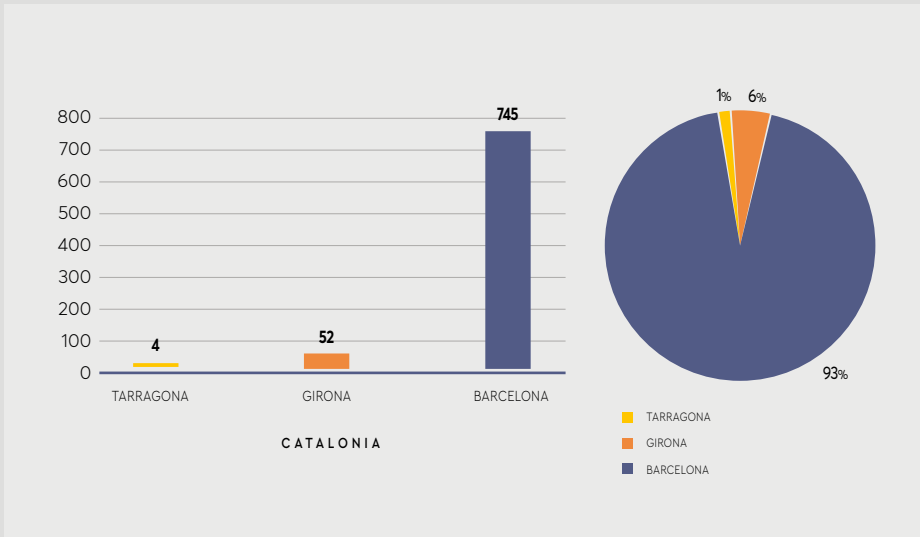


Figure 5. UAMs in Catalonia

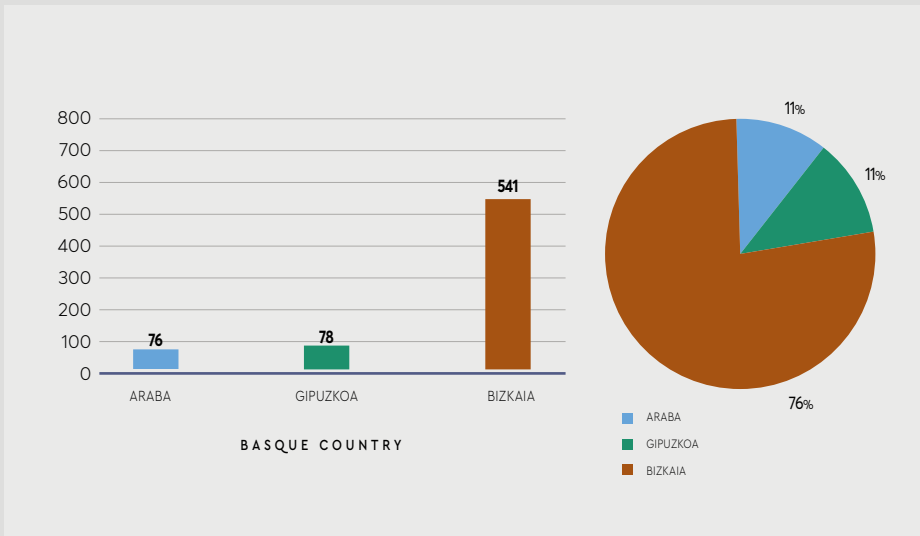


Figure 6. UAMs in the Basque Country

Likewise, the quantitative data obtained show the presence of 81 countries of origin among the minors received throughout the Spanish territory. The following graph shows the nationalities with the greatest presence:

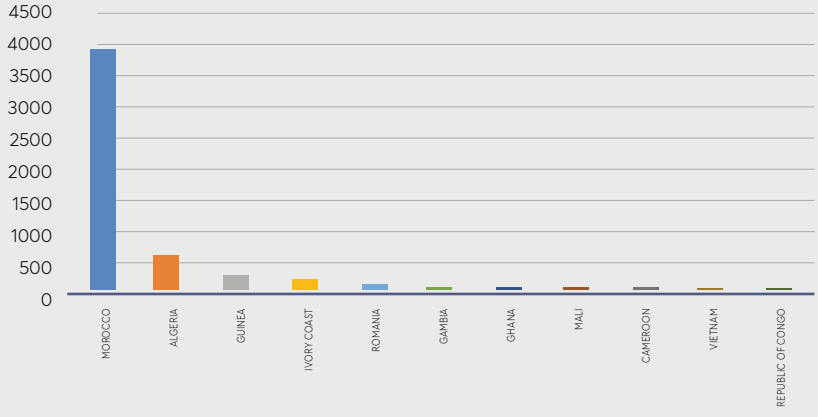
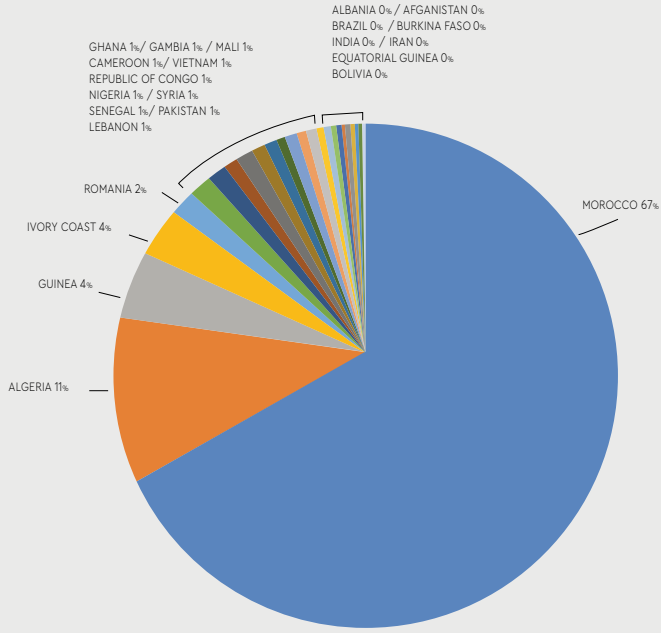


Figure 7. UAMs per country of origin

### 2.3.2 Overview of the institutional structure of Spanish protection system

There are four basic modes of reception that occur in the seventeen autonomous communities of the Spanish state (Ruiz 2014: 34). They may vary in name, but ultimately the same system structure is present in all territories through different forms of hosting.

**First reception shelters (Centros de primera acogida).** These are the first destination of the majority of children and adolescents who enter the protection system via emergency reception, which is the status of UAMs. They are usually large buildings, managed either by the administration or public resource management entities. They tend to have a high turnover of children and adolescents, as well as shift workers who usually don't stay in their positions for long.

Here, minors wait for their status to be assessed and for the people in charge to decide which their first stable destination will be.

- The physical needs of the child are covered with greater or lesser accuracy.
- Their movements are completely limited; they have no contact with any person they may have known previously.
- Disciplinary rules are imposed without much explanation and the adults they deal with – who are also used to meeting new children every day – usually limit the creation of affective bonds, as they know that the child will disappear from their lives in a short period of time.

In theory, the stay in these centres should be very short, but there are many who may stay for months or even years. In addition, passing through should be an exception in the child's life; however, these spaces often become recurrent for the kids that were repeatedly failed by selected solutions or due to the particularity of “children on the move.”

**Large or small residential centres.** These are second phase shelters. Children arrive here from the first shelters, if returning is not found to be an option. The structure of “Centros residenciales” is that of centres, flats, or residential villas. The degree to which these resources are adapt-

ed to the needs of children and adolescents varies greatly. Independently of their size, the residential resources in these spaces have several characteristics that hinder the correct emotional development of children or adolescents in general.

- Stable relationships with reference adults are not easy. Educators are hired workers who are present in the centres depending on their work contract. This means that children end up having a very large number of adults in charge of their care who, in addition, sometimes do not know each other or do not get along. This may be due to the service providers that might dismiss them from one day to the next or who create precarious working conditions for them, encouraging them to change jobs.
- Interference that affects personal data and the privacy of the child. It is possible that all the adults who work in the residence know intimate data about the children's lives or of the lives of their relatives, or that they may transmit information about their personal relationships, friendships, courtships, etc. The conversations the children have with the adults end up being summarised in writing in work "journals" and child reports.
- Less frequently, but to some extent, we find situations of physical and/or psychological violence, both by educators and children themselves. News of attacks against children by educators or security staff are rarely reported by the media, and attacks between children can be systematic if they are not kept in check.
- The relationships between peers may be complicated for many reasons.
  - Placing several children who have suffered different traumatic situations in same space.
  - Depending on territoriality and due to the mobility of these children, there is movement of young or small children that come and go, or even "disappear" from the lives of others, with no explanation.

In short, all these factors hinder healthy emotional development. We often find a series of common characteristics in those children who have spent a lot of time in places like this: A difficulty in making plans in the medium and long term – they have not learned to control their lives and the number of abrupt changes in such a short time seems inconsistent

with setting long-term goals; a difficulty in forging stable emotional bonds; a difficulty in managing intimacy or placing value on sincerity; and, finally, a general feeling of frustration and low self-esteem that can give rise to problems of all kinds.

**Behaviour modification centres.** For some years now, protection systems have started incorporating a series of residential centres designed to specifically house “disruptive children” who are under administrative protection. The creation of these spaces responds to the fact that the tutelary entities have been meeting a growing number of children and adolescents who could not be controlled in the “normal” centres, and who, according to dominant narrative, “caused all kinds of conflicts.”

Sometimes the dynamics of the protection system itself may become very harmful to them; if a large number of the protected children have experienced situations of great violence or abandonment, this logically generates a variety of problematic behaviours in them (inability to understand limits or schedules, aggressiveness, self-destructive behaviours, etc.). The solution that was found was to group these boys and girls in more or less isolated centres in large urban centres, where, through various methods, an attempt was made to “contain them” until they came of age, and/or to modify those behaviours that could not be sustained within the general structure and operation of the protection system.

**Host families.** The natural alternative to residential centres would be foster care; in fact, the law states that residential centres should be the last option. In any case, in Spain this protection model is nonexistent regarding UAMs.

Family foster care is not promoted. It is the responsibility of the autonomous community and there is no instrument for homogenisation or unification of criteria in this area as dictated by the international standards described above. This causes important differences in the treatment of minors from one territory to another, and that is a very important motivating factor for the interterritorial mobility that characterises these children. This complex dispersion generates situations of serious inequality.

### 2.3.3 Review of UAMs in Spanish territory

The first record of homelessness among migrant children is from 1993. At the time they were kids from the north, from the area of Tangier, and they were spontaneously welcomed by Andalusian families. During those 18 months the protection system did not intervene. Even if the children went to the police, nothing was done. There was no concept of an unaccompanied minor; it was not spoken of.

The situation regarding unaccompanied foreign minors in the territory started being discussed in 1995-96, due to the report of an organisation called Andalucía Acoge that had already been working with UAMs for years with no legal recognition. Their presence in the Spanish territory was significant since the late 1980s and their attitude was not one of control.

“Many things were done like that. The documented kids went on vacation with their families to Morocco. It was a totally different reality.”

In any case, following Spain’s accession to the Schengen agreement in 1991, Andalusia started to become known as the southern frontier of Europe (Ribas-Mateos, 2005; Suárez, 2004 in Jimenez 2014: 84). An example of this was that in 1996 the Organic Law on the Rights and Freedoms of Foreigners in Spain of 1/7/1985 was regulated. It lasted until 1 February 2000.

It had been some years since the first pateras (boats) started reaching the coasts of Cádiz. This reality intensified after the establishment of the compulsory visa for Morocco in the year 1991. Also, in the waters of the Strait a service began to take shape, which was in charge of monitoring the newly opened European borders, the External Border Surveillance Service in Andalusia (SIVE), managed by the Civil Guard.

Another milestone event of how things were going to be from then on took place in 1998, as a result of several articles in the press in Catalonia pointing out that around 200 children had been found on the street. But it was a struggle that was to last for years and it was going to take complaints, repercussion in the media, an impact on public opinion, and the existence of laws on the protection of children that equated the rights of all minors in Spanish territory, in order to force the protection

system of Catalonia to start placing these children in the 24-hour protection circuit. In other Spanish regions, the situation was the same.

“From that moment on the ‘unaccompanied minor’ became a concept and entered regulation. In the regulation of 1997 the term UAM is introduced. At first there was no administration behind it. I believe that the Spanish state saw ‘the business of UAMs’ and Morocco realised that this worried Europe, and from then on the second stage started, in which children were a ‘money factory’ for everyone.”

Regardless, instead of including them in the existing protection systems, a segregated parallel circuit was instituted only for foreign children. This is how the first of the many discriminations suffered by these children was created. In Catalonia for example, there were only two integral first emergency reception shelters or first reception shelters for unaccompanied foreign children that operated twenty-four hours a day: One was divided into two resources; Alcor night shelter and El Bosc day centre; the other was a smaller centre managed by the Red Cross called CESEMI and it was a hostel at night like the Alcor hostel. They opened in 2000 (Alcor) and 2001 (Bosc and CESEMI). Until then, the UAMs were treated in day centres managed by different associations or NGOs, such as Casal dels Infants and Salvador Gavina, and at night they went back to sleeping on the street (Arrazola 2014).

The segregation of foreign minors in specific centres was mentioned as early as in 2005, in the annual report of the Ombudsman for the Parliament of Catalonia.<sup>11</sup> This segregation of shelters for UAMs and shelters for local children still continues to this day in all autonomous communities of Spain; especially in those with higher presence of UAMs.

11. “The DGAIA would have to develop its entire network of resources for the protection of minors in a globalised and standardised manner and avoid – except for brief and specific aspects related to the initial reception – the repeated creation of new services exclusively for immigrant minors. Likewise, in a short period of time, the day and night centres would have to be transformed and turned into 24-hour centers, whether they be residential or residential care centers. In the reform of the protection laws, it would be necessary to eliminate the possibility of creating these very specific resources, which appeared with the modification of Law 37/1991 in 2002.”

### 2.3.4 Who are these boys?

As we have seen, 80% of migrant minors come from the Maghreb; 67% of all migrant minors are from Morocco and 11% are from Algeria. Even though we have not had access to statistics by gender, according to Save The Children's recent report 10% of UAMs would be girls.

To westerners, the fact of almost 70% of the minors are from Morocco is enough to present them as a homogeneous group, but the truth is that Moroccan migrant minors residing in Europe form a heterogeneous group. They come from several regions of Morocco, both rural and urban. Just as migration in Morocco is currently structural and affects all regions, this is also true in the case of minors who migrate autonomously.

The involvement of the families is also disparate. There are many different family situations, perhaps as many as there are minors. With regard to Moroccan children in the Spanish state, in 2003 a first approach to family situations in Morocco was carried out. Jimenez explains this in the chapter titled "Como si fuera invisible" of her book *Dejadnos Crecer*. She points out that there is a certain consensus in this classification that is still valid and is frequently used to this day.

Four characteristic family situations of such migrant minors are highlighted, with full knowledge of the fact that they are not "static" family models and that this classification is only a first approach to the complexity of families in Morocco:

1. The first family situation is that in which the family lives in a normalised social context, the children are schooled, their life takes place in a stable environment, and the family enjoys an economic situation that covers basic needs, such as food, clothing and housing. This situation is rare.
2. The second family situation is that in which children live in an emotionally stable family environment, there is a nuclear and/or extended family that provides emotional balance, although in a context of precarious or very precarious social exclusion that may not cover basic needs. The minors have problems in their schooling and have been able to gain some initial work experience, most of the time however their experience has been very discouraging. These minors spend much of their time on the street, but they do not make this a way of life; the street is a space for socialising for them.



3. A third situation is that in which minors live in an unstable family environment and the family is in a context of precarious or very precarious exclusion. The sum of both circumstances is characteristic of this third classification. There are situations of family breakdown and intra-family violence. Children experience abuse.
4. A fourth situation is that in which minors live on the street and do not have a close relationship with their family. They are minors who move in circles where they may experience violence, very precarious situations, and suffer all kinds of abuse. This is also a rare situation.

It is not enough merely to analyse the family situations of minors. To understand the migration of this youth, we must analyse the situations in which children and their families live. Thanks to the field work carried out in the early 2000s, two main situations of origin of Moroccan children can be identified: On the one hand, there are the urban and peri-urban situations; and, on the other, there are rural situations. As an example, Jiménez highlights two specific areas that reflect these situations:

1. The Tangier-Tetouan-Fes region is one of the main areas of origin of minors in Spain nowadays. The young people who migrate from this region come mainly from cities and the outskirts of the major urban centres, although not exclusively, since there is also migration of minors from the rural areas of this region. In a very simplified way, we could say that in these urban contexts, families do not cover the expenses of migration or “programme” the journey with the child. Broadly speaking, we could say that there are no intermediaries paid to help them cross the border, children migrate autonomously, and they rely mainly on their peer networks. It is true that here have been a few families that have paid for the migration of their children through more mediated mechanisms, such as the purchase of visas. There is a very clear differentiation in terms of gender, since girls use other, less exposed methods than men to cross the border, such as hidden in the cars of a relative or using another person’s documentation.
2. The second area is formed by the Tadla-Azilal, Chaouia-Ouadigha and Marrakech-Tensift El Hauz regions. We are particularly interested in the cities and towns around Kelaa des Sraghna, Beni Mellal and Boujad. As of 2003, arrival in the city of Patera on the coast of Anda-

lusia of children coming from these regions was covered by the media. These are rural areas where the role of the family in supporting the migration of minors may be crucial. Migration may be part of a broader family plan, where there is a prior exploration of the possible opportunities it will offer and some planning between the family and the child. But, as is often the case, this clear typology is complicated by various processes that affect migratory flows. The creation of a transnational migratory field takes place at the local level with the opening or deepening of migration circuits that define national and international routes. In some cases, minors from the rural interior arrive at border areas (Tangier, Casablanca, Nador) to try and migrate. In general, they come from families that cannot afford to pay for the migration of the child.

[ 3 ]

**Analysis**

## [3.1] Main outcomes

### 3.1.1 “The real border is at the entrance to the protection system”

In Spain the competencies in terms of child protection are transferred to the different autonomous communities and cities, which are considered “public entities for the protection of minors” within their respective territories.

In accordance with international, European, and Spanish state legislation, as well as regional legislation, a UAM is entitled to the same protection as any minor with Spanish nationality. Therefore, the tutelary entity must ensure the well-being of these children, which are in a situation of greater vulnerability as they have no family in the territory in which they are located.

However, we find a series of irregularities that directly impact the life journey of these young people, subjecting them to constant instability and forcing them to search for survival tools and self-respect outside the system designed to protect them.

In the interviews conducted for this report, the following issues stand out as repeated problems across all territories, regardless of the different protection administrations.

#### Age assessment

Since 2014, the Spanish state has been acting according to the Framework Protocol for UAMs during the age-assessment process. This framework protocol was created in response to complaints from different territories due to the actions of the different autonomous communities, which were using a documented protection system for young people based on radiological age tests. However, associations with a long history of caring for migrant children and deep knowledge of the protection system and child protection law, denounced the protocol as a norm that institutionalised legal defencelessness.

The protection system for unaccompanied migrant minors stipulates an age test to corroborate that the migrant is a minor (under 18). This

proof of age is necessary in order to grant the declaration of abandonment and subsequent guardianship by the tutelary entity of each administration that has this power. Thus, although Art. 190.2 of the Regulation of Organic Law 4/2000 (RLOEX) states that an age determination process should only be initiated in the case of undocumented minors, the Protocol establishes a definition of non-documentation in which passports, birth certificates, consular identity cards, letters, etc. issued by the authorities of countries such as Morocco, Guinea, Ivory Coast, Cameroon, Mali, Ghana, Malawi, etc. are not considered valid proof of national identity.

Because of the application of this Protocol, these children are denied minor status and all the needs and rights that this entails. These children, which the MAO treats as adults while they have the documentation of minors, remain on the street, legally being neither adults nor minors, with no education, healthcare, housing, care, or protection. However, since they are not recognised as adults by the rest of the administrations, they are unable to access the world of work, take refuge in an adult shelter, or have access to healthcare.

Abandoning these children in this legal limbo means exposing them to extreme social exclusion and enormous risks to their physical and mental integrity, while placing them in danger of falling into all kinds of exploitation networks, as is indicated by international human rights bodies for the protection of unaccompanied minors' rights.

In particular, the Raíces Foundation, which has highlighted the systematic violation of rights that the age determination procedure has imposed for years,<sup>12</sup> has denounced the Protocol through an appeal of cessation, but the Supreme Court has denied the appeal lodged by Fundación Raíces, confirming the 'Framework Protocol on Certain Actions in Relation to UAMs' – which was published in the Official State Gazette (BOE) on 16 October 2014 – as an internal instruction and therefore cannot be appealed.

The judgment, dated 31 January 2018, dismissed the cessation appeal filed by the foundation, without considering the reasons for which the Protocol was challenged:

.....

12. <http://bit.ly/2XErpK7>.

1. The definition of an undocumented child: The protocol includes minors with documentation from their countries of origin, as well as passports and birth certificates issued by their respective embassies and consulates in this category.
2. The lack of guarantees in the age determination procedure: The protocol violates the right to be heard and the right to legal assistance.
3. The unimpugnable nature of the public prosecutor's office decrees: The decrees that determine the age of most of these children cannot be appealed.
4. The regulation of medical tests for determining age: The protocol supports the systematic performance of age tests.

As Fundación Raíces has claimed all these years and as has also been reiterated in various interviews conducted for this report, according to the procedure endorsed by the Protocol, the prosecutor's office systematically subjects all unaccompanied foreign minors to intrusive age assessments: full nudity and examination of genitals and the Greulich and Pyle Atlas 1930 radiograph method, Atlas Thiemann-Nitz 1977 method of dental orthopantomography to determine the maturation of the third molars, and the Demijian method of computed tomography (CT) of the medial end of the clavicular epiphysis (Schmeling stages). The problem here is both the systematic intrusiveness of these methods, and that results have been heavily questioned due to lack of accuracy according to the scientific community. The conclusions drawn by the Forensic Working Group for Age Assessment of UAMs, and ratified by the directors of the Spanish state institute of legal medicine, established that "the determination of the age the unaccompanied minors through the estimation of bone maturity and dental mineralisation is a method subject to large margins of error."<sup>13</sup>

The prosecutor's office also denies the validity of the documentation from countries of origin through this Protocol, in violation of the jurisprudence of the Supreme Court and against the criteria of the Ombudsman and other institutions, such as the Office of the United Nations High Commissioner for Human Rights.

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13. <http://bit.ly/31i223w>.

The appeal filed by the Raíces Foundation concerned the fact that the Protocol exceeds the scope of the mandate of a Framework Protocol, which must be limited to aspects of inter-administrative coordination, and that it attempts to regulate substantive issues that should be regulated by standards of superior rank, especially when immigration legislation is clear regarding some aspects, a fact that has not been appreciated by the Supreme Court.

In the interview for this report, Paloma, which participated in the publication of the recent report of Save the Children, indicates that the following points stand out in relation to the Protocol:

- a. There is no obligation for the prosecutor to interview the alleged child, leaving the decision to submit evidence for determination based solely on the information of the authorities that intercept them.
- b. The door is left open for public protection entities to carry out complementary tests after the decree of the public prosecutor. There is a clear conflict of interest between the guardian entity and the minor, since the guardianship is entrusted by legal imperative, so the fact that this door is left open can be a risk for the defence of the child's interests.
- c. Against international legislation, the Supreme Court and the Committee on the Rights of the Child have been subjecting minors to age-assessment processes, even when the minors brought with them documentation proving their age. This was de facto practice, but now the Protocol and the legislation allow the possibility for a documented minor to be considered undocumented ex officio by the prosecutor, and only for the purposes of the law, in certain assessed cases. This distrust in the documentation provided by the minor is a serious danger to their rights, since, in addition to being a completely illegal provision and considering what was presented in the previous paragraphs, this practice can leave minors in "legal limbo": Different organisations that work with minors find that there are children who are of adult age for the administration and therefore cannot enter a protection system, but are children for the rest of the world, as it says in their documentation. Being in this legal "vacuum" is detrimental to their rights, as they can neither exercise them themselves as adults, nor through a legal guardian as minors. There are also irreparable conse-

- quences that may occur if the child is detained, interned in an immigration detention centre or in a temporary immigrant centre, or repatriated by virtue of their status as an irregular immigrant.
- d. Regarding informed consent: Although the need to obtain it is taken into account, it is not considered necessary to adapt how informed consent will be obtained to the special needs of the minor, reliably informing them of the content, objectives, and possible consequences of the test results in language that it is reasonable to believe they understand; it is only important to formally record the consent in the minutes. Another major concern is the provision in which the Protocol establishes that in the event of the child's refusal to take the tests, "it may determine that the child is of legal age", while a foreign minor's refusal can in no way justify a decision that they are of age.
  - e. The direct unappealable nature of the decrees of the public prosecutor's office for determining age: The decree can only be challenged through the contentious-administrative proceeding if, for example, the expulsion procedure has been initiated, or by judicial means of first instance if, for example, the protection of the administration has ceased. This supposes a very serious violation of the right to effective protection.

### **Legal helplessness: "Declaración de desamparo"**

Custody and guardianship depend on the official legal statement of "helplessness" (*desamparo*). Again, competence of minors' protection lies with the autonomous community or city which is responsible for the appointment of a legal guardian to its public entity of child protection. The process of guardianship starts with the declaration of helplessness by the autonomous community, which is the declaration of homelessness/helplessness of the minor and represents the first step for undertaking the guardianship of the child and to guarantee their access to the minors' protection system and services. This procedure has different durations depending on the autonomous community in which it is requested, but a maximum time-limit of three months must be respected for the assumption of the guardianship by the public entity for the protection of minors, as outlined in the Minors' Protocol.

In the Spanish Civil Code, article 172 clearly explains how to act in a situation of helplessness.



1. When the public entity entrusted with the protection of minors in the respective territory should become aware that a minor is in a situation of neglect, it shall have by operation of law the guardianship of such minor, and must adopt the necessary protection measures for his custody, making the public prosecutor aware of this, and giving notice to the parents, guardians or carers in due legal form, within 48 hours ... The assumption of the guardianship attributed to the public entity carries with it the suspension of parental authority or ordinary guardianship.”
2. “The transfer of custody shall be set forth in writing, expressly noting that the parents or guardians have been informed of the responsibilities they continue to hold in respect of the child, and the manner in which such custody will be exercised by the administration. Any subsequent variation in the form of exercise shall be duly grounded and communicated to the former and to the public prosecutor. Likewise, the public entity shall assume custody when so resolved by the judge in cases where it is legally applicable.”
3. Custody assumed at the request of parents or guardians or as a result of guardianship assumed by operation of law shall be performed by means of family foster care or residential care. Family foster care shall be exercised by the person or persons determined by the public entity. Residential care shall be exercised by the director of the centre where the minor is taken in.
4. The interest of the minor shall always be sought, and the administration shall try to achieve his reintegration into his own family, if not contrary to such interest, and to have siblings entrusted to the custody of the same institution or person.
5. If serious problems should arise in the cohabitation between the minor and the person or persons who have been entrusted with his custody, the minor or an interested party may request his removal therefrom.
6. Resolutions which acknowledge the existence of neglect and declare the assumption of guardianship by operation of law may be appealed before the civil jurisdiction, within the period and subject to the conditions set forth in Civil Procedural Law, without the need to file a prior administrative claim.

In the case of unaccompanied foreign minors, the administration may delay for weeks before officially declaring helplessness, even if the person is in Spanish territory. In Catalonia the administration continues to use an unwritten law called “guardianship in abeyance.”

This implies assuming the custody of the child in a pragmatic, but not legally recognised way. It does not imply legally assuming guardianship. In practice this means that the minor’s guardianship responsibilities are not assumed, while at the same time the minor may not enjoy the legal and administrative guarantees established for ex-warded children once they reach the age of adulthood.

Another issue related to the declaration of helplessness is that the tutelary administrations often use the family situation of the child in the country of origin to decide whether to declare their helplessness or not. It establishes for the first time in a norm of a state nature the conditions that determine helplessness based on circumstances outside the legal territory of Spain and foresees the possibility of applying for helpless status.

This is covered in Article 18 of the Child Protection Act where the criteria for defining the situation of abandonment is regulated. It is important that article 172 of the Civil Code emphasises that it does not refer to children requesting asylum or expected to do so.

After the declaration of helplessness the public administration grants guardianship and the minors are to be provided with the basics: Clothing, food, and accommodation. Guardianship is usually left to entities such as NGOs or religious institutions, which are publicly financed through tender appointments. They must cover the responsibility of protecting and promoting the child’s best interests, guaranteeing the minor’s access to education, legal assistance or interpretation and translation services when necessary, enabling the child’s social insertion and providing him or her with adequate care. Concerning the specific issues of asylum applications, the Protocol states that the guardians will take care of providing the minor with all necessary information and guaranteeing him or her access to the procedure.

## Guardianship

The recognition of the guardianship of UAMs is also a constant problem with the administrations. It is mandatory to protect the children retroactively before they spend the first nine months in protection. However, UAMs are almost never protected from the moment they declare homelessness. They are usually protected once they have been in the protection system for more than nine months and without retroactive effect. In reference to guardianship, the Catalan Ombudsman had been advising the DGAIA (the administration in charge of protection in Catalonia) since 2005, that guardianship should be carried out immediately. In its annual reports for 2005, 2006, and even in 2009, it mentioned the consequences of not protecting the children.<sup>14</sup>

“On the other hand, there are important delays when assuming the guardianship of these minors by the competent regional administration. There is a Framework Protocol for UAMs that allows the public entity to wait three months from the declaration of abandonment until they assume guardianship, preventing access to the residence permit for prolonged periods of time. There are cases in which when this period runs into the time when the boys reach adulthood, they are left without a residence permit.”

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14. Informe anual del Sindic de Greuges al Parlament de Catalunya 2005, <http://bit.ly/2URbn2C>; 2006, <http://bit.ly/2XFMrYO>; and 2009, <http://bit.ly/2VZN4fu>.

### 3.1.2 "The system is expelling these children"

"In institutions there is still a 'way of doing things', in order to get rid of them: It started with those centres with bad practices, then the age assessment, then the false passports, and now the system is saturated and they pay for a ticket for you to go away."

#### Daily life

The conditions in the centres for migrant minors are not always optimal. The people interviewed warn us that a different amount of attention is paid if the child is a native or a migrant. In the case of the latter, the necessary resources to cover the basic material needs are not allocated.

"The first pack is only on arrival, so you can take a shower; the second is after I do not know how many days and so on, until you can go buy clothes with the child as a tutor, so that they have a total of four complete changes of clothes. This does not happen, because often there are no underpants for children to change or the packs are not delivered because things are missing; and when you can go shopping, often there is no budget for clothes until the following month, and the child has to do with what little it has."

The explanation for this situation, provided by the institution in charge, is the lack of budget and the high number of minors. However, some of our informants report that the economic argument is not valid since the institution is usually guided by its own economic interest, granting subsidies to those entities or companies that have lower expenditures. This lower expenditure translates into more precarious care for minors. In terms of training activities and free time, there is usually very little on offer for the group and the requirements to access what is available are usually very difficult to meet, given the circumstances of minor migrants in Spain. On the one hand, professional training usually requires documentation, which, as we have seen, is very difficult to obtain. On the other hand, there is no specific training to attend that incorporates adequate tools and which trains professionals.

The interests, motivations, and personal aptitudes of the minors are not taken into account when drawing up a training process. Availability, in addition to being scarce, tends to have very little variety and stereo-

types the group in highly racialised and precarious economic and professional niches, with very scarce labour supply.

“They mostly complain about the training because, in many cases, they cannot access any course due to lack of documentation or, they can only attend as listeners. Regarding work, which is what they want and is the main objective of their migration process, they face the same barrier.”

Something that hinders the day-to-day of minors is racism and discrimination. All our informants agree that UAMs are labelled as such and have many associated prejudices.

“It does not matter if you break this prejudice, you are still a UAM and, in some way, you have to demonstrate every day of your life that you are different from the other UAMs, with the negative or pejorative clichés that are naturally associated. They do not have the same opportunities as the native children of the territory, since, in my opinion, these children have no right to be wrong; apparently, and from my experience, although mistakes are part of the learning process, these children have to be models of perfect behaviour, grateful for the opportunity given to them, and have to give continued thanks. Therefore, their margin of error is minimal.”

The rigid operating structures of the reception centres that prioritise order and functionality of the institutional interests over an individualised pedagogical approach may lead to the emergence of a variety of conflicts. Interviewees speak directly about this being the reason why children “disappear” from shelters.

“In the Region of Murcia, the average length of stay of UAMs in protection centres belonging to the autonomous community was less than 1 month in 80% of the cases during 2017. This means that approximately 300 children and adolescents who have gone through the network of care centres for unaccompanied foreign minors will ‘disappear’ from their facilities without knowing their destination, more than 200 between October and November of

last year. This means that when there aren't adequate conditions that guarantee security for the children in the integral sense, they follow their path and seek to achieve their dream of a better life."

"One of the boys was going to turn 18 and he was not going anywhere. Partly because very bad reports had been made about him. A time extension was requested for him to continue to stay in the shelter. It should be noted that, as I said before, because of the shelters' precariousness, this boy started to spend more time on the street and to have a defeatist attitude. What some educators see as a 'lost cause'. One of those days an educator decided to take his things, because she said they were stolen items and refused to give them back to him. A few days later, without informing him, and because places were needed for newcomers, the director, who rarely showed up at the shelter, threw him onto the street, ipso facto. I'm not sure what happened to him because I have not known him for a long time, but if he did not manage, this boy will probably be in a street situation."

(Social educator)

A mediator/educator of the juvenile justice system indicates that institutional regulations are one of the underlying causes why these children may end up escaping from the centres. Institutions have difficulties in offering flexibility that prevents these children from later flirting with the conflicts associated with "street life".

"There are problems with the regulations of the centres, adaptation and integration, because it is a social device very far from here, from our employers, our legality ... paying attention to having food, housing and papers, but this is not the idea of a boy who left home years before, in his own country, and who has maybe already lived on the street, in the port, or in criminal environments. They arrive here when they have already completed a UAM period in their country. They are children who have left their homes and families years ago or who have worked in the footwear factory in Fes since they were seven years old, for endless days, working with toxic products. They arrive here, and they are minors who cannot work

and it is something that they cannot understand. They do not understand the protection system that treats them as minors.”

### **Residency: “Getting papers”**

The list of malpractice actions regarding unaccompanied minors is compounded by the lack of regularisation or late regularisation of minors. According to the interviewees, one of the most expressed needs of the children concerns the shortcomings and problems of the guardianship systems for UAMs, mostly with regard to the excessively long duration of the procedures for issuing an identification document when children are undocumented.

“The greatest concern and need of the children who have arrived in the Spanish state is to obtain the documentation that allows them to stay and work in Europe. This is also the biggest barrier they face and the aspect with the greatest incongruities and violations of rights, at the institutional and political level, which we have found ourselves facing.”

“The difficulty of getting a work permit (after having suffered for the residence permit) is something that the boys (and I) cannot understand. In terms of healthcare, education, and leisure, it depends on the work that has been done by the centre and the Delegation [a government administration].

“The duration of stay in the shelter programme is too short to guarantee the rights of the child: Get documentation from your country, declare minority persecution, initiate other administrative processes if the minor’s age is not accepted, find another recourse to avoid a homeless situation (there are waiting lists of more than six months in Barcelona).”

“Regularise the administrative situation (passport, registration and residence permit and then who authorises to work); receive academic-professional training (get degrees); go to a shelter for minors and at 18 go to another shelter for adults without going through a street situation.”

“The administration does not provide the documentation that regularises their situation in the country in all cases, and this implies the loss of rights once they reach the age of 18.”

The Protocol provides that, notwithstanding the provisions of the Foreign Act Regulation (REX), three months after a UAM is in the protection centre, sufficient time has passed for the director to apply for the residence permit, while the REX establishes that, “after the maximum period of nine months from the availability of the UAM, regardless of the status of processing, the government delegation or sub-delegation will grant the residence authorisation.” The problem is that, in practice, the ambiguity of these provisions has resulted in the application by the administration of the most restrictive interpretation, with the Ombudsman denouncing multiple cases in which the passage of these nine months to request the permit was exceeded. The consequences of these unnecessary waits are enormously negative for the social and economic integration of the UAMs: The differences between the UAMs who have a residence permit in their hands when they reach adulthood and those who have not yet obtained it are abysmal, the latter being unable to, for example, access the same permit renewal conditions as the former, many of them remaining on the street (Save the Children Report 2018: 89).

Often public institutions justify delays in the procedure due to the delay of the children’s families or consulates of their countries of origin in issuing their passports, when they could be replaced by the registration card.

“Regarding the residence permit, the main difficulty is that the administration does not usually agree to process the permit until the technical team – that works for the administration – has completed the personal, family, and social study. This study lasts several months, and some children enter the centre a few months before reaching adulthood. In these cases, the technical team prioritises the study and if time runs out we begin the procedures, even if the study is not finished.”



“Another aspect to mention is the case of minors who do not have the possibility of applying for a passport in Spain because there is no embassy/consulate, or they can do it but the process takes long. This entails an additional difficulty that leads to their present symptoms of anxiety.”

“I don’t think there is a general explanation for children that have not done well, every child is a story and sometimes the factors of vulnerability are so powerful that the child cannot do it. That generates a total lack of trust in themselves, in others, it provokes a fall of expectations, and in the end the destructive drifts prevail over others. I do not know how to deal with many of them and some are lost along the way, unfortunately. In some of the cases, kids have ended up expelled and in other cases kids have ended up in prison ... or deteriorated on the street ... The residence permit does a lot, having or not having permission makes all the difference.”

The inclusion of migrant minors in the Immigration Law poses greater obstacles in protection and inclusion, since it complicates requirements much more and places them in a position of greater vulnerability. In addition, it gives too much power to the social agents who have to ensure their inclusion, without any external supervision guaranteeing the child’s best interest. We have encountered many particular cases in which the rights of the minor were in the hands of the workers of the centres and organisations or NGOs.

“We have found cases in which the technical team told us that the boy did not deserve it” (referring to residency).

“Keep in mind that the minors who are in protection, who are in the network, we can say that now, nowadays, the issue of residence permits for foreign minors is handled fairly well, but that sometimes there are situations that are complicated, because they are too old to be in the protection system because they do not reach the nine months of tutelage that are required by the law. The difficulty that I have found is in working with the educators because

I believe that there is a distrust. I do not understand what it is due to very well, but many times I ask the children for the reports and they tell me that they have to ask the educator or the director and they do not want to give them to me, and I do not understand why, because I only want the guys get their permits.”

“In my centre, as it was new and nobody knew anything, when the first documents of regularisation arrived they did not cover work permits and not even the technical team knew about it. The guys thought that they could work if they had them. The lack of information and the lies and threats of ‘if you do this later in the cess’, is like having nothing more to gain and not a single right. The director of the centre has no idea, I think she is a child educator.”

Another difficulty is that once the residence permit is granted, it is only for one year and without authorisation to work. This frustrates the expectations of the children, since the main reason for migration is to join the labour force in order to achieve a better future. What is often very difficult is getting the documentation renewed.

“With regard to regularisation, it is a fairly long process and goes through different stages, and everything would be easier with accompaniment at least until 21 years for all children.”

“The young people with whom I have worked in general, are interested in their document situation for a second reason as well – because they will be able to work. As their staying permit ends, the ‘needs’ of adulthood appear. My experience is (especially in first reception) that we received them as ‘young adults’ and they turn into adolescents. In the second resource, I found myself with children who were very disappointed to have been deceived and had to reconnect with the ‘motive’ of their migration plan. This is due to the ineffectiveness of the administration, in most cases due to politics and a lack of resources, and in other cases due to the lack of professionalism of some people in the system.”

## On the move: New routes

The administrative obstacles and the inefficiency of the system in terms of documentation and assistance, according to the interviewees, has provoked different mobility patterns amongst UAMs. On the one hand, there is a domestic mobility in search of their peers or resources that guarantee their rights, and on the other hand an expansion of migration routes has made northern European countries a new destination for them.

“The turning point (speaking of change in the dynamics of mobility) was the Catalonia-Maghreb Program of 2008-2010. This provoked an increase in children moving to the north. The deportations in Madrid and Catalonia coincide. The most recent was that of Zacarías and Ahman in 2000, who ended up in Tolosa.”

“There is Redouan Taboush, who now lives in Stockholm, who was the first child with Elena Arce in a flat in 1999. He is Anouar’s cousin who works with Lourdes in *Cocina a Conciencia*. I follow the routes of the children from Tangier and when the repatriations begun these children went to Belgium because the Tangier diaspora is there, just as the Larache diaspora is in London. We were in the French-speaking part of Brussels in 2010 and there Zacarias told us that he had moved to Copenhagen as a minor.”

“We are seeing kids who after 15-20 years in Europe return to Morocco without anything. This is what Noureddine was telling us, ‘I have the paranoia of what will happen to me if I return, after having been thrown out... I have nothing. It is the ultimate expression of failure.’ There is physical and psychological deterioration.”

“There is a mobility that is provoked by this institutional abuse. The kids have understood that mobility is their only power.”

“I think they don’t care. The police know that there are 5,000 Moroccan children hanging around Europe and that there is mobility. But institutions only care about what happens in their respective territory because territorial vision limits protection. It is necessary to incorporate the dimension of mobility, invent a protection system that is coherent with this mobility.”

“My experience could identify two large groups of children; on the one hand, those who already had a support network in other parts of Spain or Europe and whose presence in the centres of Andalusia was ‘in passing’, and those whose support network was in the same territory or who lacked one, so their stay in the centre depended more on the speed of documentation in the province. Only in one case (out of more than 500 on which I have worked) did the minor ask to return to his home in Morocco.”

“Many children say that their trip has not ended in Catalonia, they wish to go to Germany, France. This is taken into account if they clearly decided on it and we respect their decision. If we meet a boy that has doubts on whether to stay or go, we still offer the available resources we have and to which he has access in this territory: An initial residence permit, support in starting initial training, support in accessing the residential resources of the protection system.”

“When the conditions that guarantee the security of minors in the integral sense aren’t adequate, they keep on moving and seek to achieve their dream of a better life elsewhere.”

“He told me that in Stockholm he lived in a constantly drugged state. In the end he came back because here it is easier to get a residence permit with a contract after having three years of permanence in the territory (*arraigo*). Even if Spain is at first a transit area, because of the situation in the rest of Europe many come back. It is much more difficult to get papers in the countries of northern Europe.”

The Spanish administration does not offer official data on the whereabouts of minors who leave the protection system, so the data that can be accessed is given by the people who work in or are in contact with them directly through the protection centres or in non-institutional associations. Moreover, the protection system doesn’t take into account this particular mobility. In this sense it doesn’t seek to reconnect them with family or extended family either in the Spanish territory or in Europe.

“In the Region of Murcia, the average length of stay of migrant minors in protection centres belonging to the autonomous community was less than 1 month in 80% of the cases reviewed during 2017. This means that approximately 300 children and adolescents who have gone through the network of care centres for unaccompanied foreign minors will disappear from their facilities without their destination been known. More than 200 between October and November of last year.”

“The Basque Country has ceased to be a destination. Gipuzkoa in particular, because it is a border territory and a transit area. In 2017, 623 minors passed through the protection system and only 73 were still here as of 31 December 2017. It is clear that the kids here are on their way. From the emergency reception centres they often tell us that there are kids who come spend a night or two, they freshen up a bit, regain their strength, and leave.”

“It is not taken into account whether they are on the move or not; if they are, then ok; and if they’re not then they’re not. Even when the child is resistant to the institution and runs away, a kind of relief resonates within the team. It’s as if no one expects anything from them.”

Finally, we conclude that in those cases in which obtaining the residence permit is guaranteed and housing needs are met, some of the UAMs establish more permanent places of residence.

“In most of the cases we have in the office, their intention was not to stay, however many got a residence permit and then they thought... ‘well, I will stay a couple of years’, but at first their intention wasn’t to stay, and they have stayed because it all turned out alright.”

### **What do the children need? On access to social and civil rights**

Institutionalisation is highlighted in the discourse on the needs of UAMs. Years ago, the boys talked about wanting to work so they could send money home. The passage of time and the knowledge they acquire through communication with their peers on social networks resulted in

many children having a more or less accurate idea of the process that awaits them in Spanish territory. Therefore, the demands have also been adapted to the places or moments of the migratory process in which they find themselves. Although initially the demand is a “shelter”, once the boys are at their destination, their interviews highlight the difficulties related to access to the protection system, the delay in regularisation, and the existing discrimination against UAMs in relation to children born in Spanish territory, which result in their major needs being related to basic civil and social rights:

“But, above all, papers, training and work. And to know: What will happen to me when I turn 18?”

“The main requests are to regularise the documentation, Spanish classes so they can learn the language as soon as possible, and professional work training so that they are able to enter the labour market, which is the approach of the majority, in order to help their families and seek a better future here.”

Regarding education: There are no education and employment policies for unaccompanied children at the state level. They do not have access to quality training: The majority of children under 16 are not enrolled in school, and those who are, fail to complete their studies satisfactorily due to difficulties in assessing them (and the problems of social inclusion inherent in our educational system). After the new reform of basic vocational training, it is very difficult for children that fit this profile to access it, leaving them with only the possibility of accessing non-regulated training dependent on the autonomous community/municipality of the territory in which they live in.

Regarding healthcare, children under 18 and under guardianship have access to the regular health system. In Spain, according to the most recent regulation of the Health Law, this access is subject to residency. This means that UAMs that are now able to renew their residency will not have access to the regular healthcare system after losing the permit. It also means that in order to get papers again, you must present health insurance, which means some of them end up getting denied permits if they are not able to pay for private health insurance; this is obviously rare,

unless they have accessed some kind of underground economy or specific relation/family network where someone may lend them this money.

Several interviewees mention that work and difficulties in accessing the labour market are always some of the main worries of UAMs. This inaccessibility may be analysed in many ways, but among the many reasons we find immigration law and their first non-profit permit are the central reasons. Work is not only necessary from 16-18 years of age and while they are in the system; it is a constant struggle of the migrant population in general; especially in Spain, a country still struggling with high rates of unemployment.

Free and comprehensible legal advice is also something UAMs ask for from the moment they enter Spanish territory. While their itineraries are determined by the complexities of the various legal frameworks as explained in the first part of this report, the children find themselves dealing with complex bureaucratic and technical terms in their documents. Having someone to properly translate and explain what the papers and laws say and how they are subject to these laws is also a primary need.

“You need to obtain residence authorisation as soon as possible and receive and understand the necessary information about your regularisation process.”

### **3.1.3 “From unwanted children to unwanted immigrants”: Coming of age**

Serious concerns have been reported regarding children who have been under the guardianship of the autonomous communities and are evicted from protection centres once they turn 18, even if they have not been documented or have not yet received a residence permit. In these cases, children are left on the streets, homeless and undocumented.

“The profile of the children that can be referred to the senior plan is the ‘good boy’ profile; the child who has never caused problems, who does not ‘use’ anything, who has an educational plan in progress, a good language level, etc.”

“Coming of age without documentation (classes, any kind of work, or housing) is very common.”

The social educators interviewed agree that the accompaniment and protection of minors should also take place after they turn 18. The way protective institutions' actions change when the minors turn into adults is expressed to us in terms of "drastic cuts", "throwing them onto the street", etc.; expressions that reflect abandonment and a complete lack of interest in the inclusion of this group.

During the investigation, we observed that most of the agents contacted attribute this failure of the protection system to the system itself:

"Street children live in an official apartheid situation that relies on orders that impede access to public spaces and racism rooted in society."

"There are problems in accessing the public system as long as the minor is a migrant minor."

"The minors who are protected by the city have access to these basic rights, although access to some is very restricted, such as participation in socio-educational activities and training. Having a 'positive record' in the centre is not a guarantee of arriving at adulthood with the corresponding residence permit."

"Most of the children who are in the protection system are forced by the system itself into social exclusion once they turn 18. The current system of protection is seen as an 'expense' that must be met in order to comply with the legal framework (when it is complied with), instead of being considered an investment in full citizens who contribute to society as a whole. This situation is very visible in foreign minors, but most of the locals who do not have a family are in the same situation."

"Nobody knows us (in the town where the centre is located). The medical centre didn't know that a centre had opened. All the tests for age, tuberculosis ... were improvised."

"After coming of age, the system screens according to whether you have learned the language. Of course, if you were not born here it is normal for you not to speak the language. It is undercover racism."



The stigmatisation and criminalisation of these young people means that those who have managed to regularise their situation as minors often face difficulties in renewing their residence permit when they are of legal age. The intense police pressure causes many of these boys to end up dealing with unresolved police issues that make it very difficult to maintain legal residence, due to it being impossible to renew it if one has an adult criminal record.

“In all age groups, renewals are falling due to criminal or police issues or administrative obstacles.”

“From my point of view, the major obstacle is that we do not have enough resources to accompany these children in their inclusion. They must have a lot of personal strength to make this trip, since the available resources are scarce, and they must have a ‘good profile’ (no behavioural problems, no drug use issues, no problems with the law) to access the few resources available.”

In addition, the requirements for renewal are often unknown to young people and they do not receive any kind of legal advice.

“Since a few years ago, renewal criteria require you have health-care. When a child turns 18 healthcare ends and you must do the paperwork again. The boys do not know how to fill it out and if they have no accompaniment they do not have assistance and the papers are denied.”

Support for these young people is hampered by the lack of clarity in the information from the institutions about how to regularise their situation or to access some housing resource, or anything similar.

“Everyone tells you something different, from the Town Hall to the Support Area, to the *jove extutelat* [a person no longer in care because he or she has come of age] or the entities and lawyers who work in this area.”

Workers interested in resolving their different situations are usually obliged to go to the existing networks in the third sector or to look for host families or friends.

### 3.1.4 Situations identified in relation to exploitation

Most of the situations described regarding exploitation in the interviews are related to the institutions. It is probably because the interviewees don't work at the street level that we have not been able to gather information on street-related violence.

“Yes, I have experienced situations of discrimination and exploitation towards the minors in the form of physical and psychological mistreatment by the professionals: Abuse of power/authority, making them feel inferior because they are in a centre, making them feel guilty and that they deserve degrading treatment for what they have done – in the case of young people complying with judicial measures. I have seen ‘contentions’ with kicks, shoves, pushing the boys down the stairs.”

“The obstacles placed by the system in the Aliens Act, the difficulties that there are for a foreign minor (their permit only covers residence and not work and then we ask them to take responsibility and be autonomous at the age of 18, but they are unable to work). The obstacles that mark the system at the level of resources, for example at the age of 18 you end up on the street because the system is saturated or because you deserved it, which is even more serious. Even vulnerability factors, such as that we are not taking care of the most emotional and psychosocial aspects of the child, and that has a lot to do with the child's well-being and whether it can move forward or not.”

The minors who arrive in the Spanish state expect to have the option to work as part of means of their migratory plan. Difficulties in obtaining a residency and work permits, and in accessing training that will allow them to work, are added to the fact that their material needs are not always covered. This sometimes leads them to engage with the underground economy and informal networks where they may be exploited.

“Regarding work, which is also what they want, and the main objective of the migration plan, they face the same barrier, unless they work in the underground economy, which, unfortunately, many of them do. And then, even if they have work, since they do not have

a contract, they cannot renew their residence permit in the centres – at least mine is non-profit – and then they have to change the permit, either alone or with the help of an private businessman. This would be ideal; but it happens very rarely.”

“For me there is a phenomenon of reification, anyone who is in a legal register can be reified. In this case it is much more, because we are talking about clients who have a super short term, the answer to which is to pay attention to the case and be mechanical and not address the specific cause.”

In some testimonies, the interviewees refer to the confinement in the centres of first reception for months, a strategy that is justified by the “assessment of the child.”

“With the so-called ‘mass’ arrival of children, they started to launch another strategy. The strategy is to lock them on the third floor of the centre for one or two months and they have even reached periods of five months. In the beginning, the justification was four days to carry out the Mantoux test, there are educators who take your food to the cell, let’s call it that, because there is all the prison paraphernalia, the interior is a prison.”

“Then the first reception lasts for months and in that time you have the educator who comes to bring you the food telling you that there is no place for you, that you will not get papers, and there is a feeling of fear. Until the child says, give me the backpack, I’m leaving, and the door is open.”

### 3.1.5 Minors in detention

There are seven Immigrant Detention Centres (IDC) in Spanish territory. All are situated along the coast (Murcia, Barcelona, Valencia, Tarifa and Algeciras) or the Canary Islands, except for the one in Madrid.

There have been several reports in recent years that point to minors been held in IDCs mainly due to conflicts in the age-assessment processes. This is a particularly worrisome issue, since minors cannot be subjected to measures of deprivation of liberty according to Spanish law.

The data on minor detention is only available through the ombuds-

man office that publishes an annual report on conditions of freedom deprivation instances, or through NGOs that visit IDCs and gather information. None of them can be considered thorough and 100% reliable numbers, as IDCs in Spain are known to be difficult to access, even for internationally recognised organisations. They are very opaque, and the available information is usually biased.

In 2015, 19 people were declared to be minors according to the Jesuit Migrant Service (SJM) Report on IDCs.<sup>15</sup> In 2016, based on data from the Ministry of the Interior, the deprivation of liberty of 51 children in the different IDCs of the state<sup>16</sup> were accounted for. In the most recent report, in 2017, according to the SJM, 48 minors were officially identified<sup>17</sup> in IDCs again.<sup>18</sup> This data is a worrying reflection of the poor performance of the protection mechanisms in these centres.

Many of the boys that end up in IDCs on the peninsula come from the CETI (temporary holding centre for immigrants) in Melilla or Ceuta. At times, age can be used strategically by minors who don't want to be stuck in Melilla and Ceuta, and as a way onto the peninsula. Administration, civil servants, and educators have been seen recommending this strategy to minors<sup>19</sup> in these Spanish enclaves in the African territory. This way, many that proclaim being of age in Melilla and Ceuta are really minors that disclose their true age once in the peninsular IDCs. The Raíces Foundation has included this in their report *Solo por estar solos*<sup>20</sup> and has contacted the media, local administration and the government with this information.

Some cases of minors in IDCs have been brought up during the interviews:

“About Abdmalek

On Sunday, November 8, he was interned in the IDC of Sangonera la Verde in Murcia. Abdmalek, an Algerian citizen, according to what he said initially, and subsequently according to the birth cer-

15. <http://bit.ly/2DAimCl>.

16. <http://bit.ly/2W2lzBO>.

17. This data only applies to problems in the age assessment process. As it is known, not all minors achieve proper age recognition due to problems in the age assessment process.

18. <http://bit.ly/2PqE28J>.

19. <http://bit.ly/2VZOPt6>.

20. <http://bit.ly/2XErpk7>.

tificate sent to us by fax, is a minor. On several occasions throughout a month we requested that the age-determination tests be carried out, since he was detained after a long trip on a boat on the coast of Cartagena (Andalucia), he was considered to be of adult age by the border authorities, despite the fact that his features showed the opposite. But no assessment was performed. On Friday, December 11, we were informed that the IDC would close for repair works the following week and that most of the remaining inmates would be deported. We ask about Abdelmalek's fate and they informed us that he would be deported. Despite our reports and our complaints, they did not carry out the age-assessment tests and we were told he would be deported. That same afternoon, we called the Ombudsman. We explained the situation. A couple of hours later they returned the call from the Ombudsman's office to tell us that they had spoken with the centre and that he would be expelled.

On the 14th we presented a letter addressed to the IDC control court and another to the Juvenile Prosecutor's Office, requesting that the birth certificate be taken into consideration and that the child not be expelled.

On the 16th the IDE control court answered, informing us that Abdmalek had not been expelled but transferred to the IDE Zapadores, in Valencia.

We contacted another organisation in Valencia and we asked them to visit Abdelmalek. Again, we wrote to the Control Court of the IDC of Valencia to request that the birth certificate that the minor carried with him be taken into consideration or that they carry out the age-assessment tests. On day 23, the 3rd Instruction Court of Valencia answered that they were going to request information from the Centre about the minor and to perform, if necessary, the osteometric tests.

The tests were carried out; the tests said that he was 18 years old, but they never handed him the document where this was established. After 60 days of detention (the maximum according to Spanish legislation) he was released."

### 3.1.6 Inclusion strategies

#### Institutional strategies

Regarding the inclusion of UAMs, as we have seen throughout this report most key informants think the system is not inclusive. In fact, the highest barriers are usually the institutions of the administration themselves. Institutional strategies are not designed to include minors and the agents who work within them, and those who do want to contribute to their inclusion do not have enough tools or even feel that institutions may sanction critical approaches.

“The red line of the institution. Fear of losing my job because I talk too much, complain too much.”

Many of the interviewees are critical towards the protection system. Many agree that the system does not protect.

“I don't think so, the institutional practices do not respond to social needs, I believe that good practices of the institutions are made by the professionals who, out of conviction, find other ways to work in them.”

“A beastly framework of private companies getting subsidies has been created here and we have to dismantle all aspects of this business. Until this business is dismantled, we are spinning on a ferris wheel, because in the end you talk to politicians and they say this is a resource problem. I say it is not a resource problem, the problem is that the institution is abusive.”

“In the case of the city of Barcelona we have seen how the current city council is implementing occupational plans for boys that have been under state protection. This is a clear example of how it is possible to try to implement inclusive public policies if there is a political will; for example, at the municipal level. On the other hand, social organisations or NGOs with public grants that work with UAMs find themselves having to invent inclusion strategies, always with limitations regarding resources.”

### Alternative strategies

As for alternative tools for effective inclusion, we find that they exist depending on the professional in charge. According to the collected information, this will depend on the initiative and creativity of the professional team that seek spaces and alternative inclusion strategies not contemplated by the protection circuit. However, the case of professionals in this field who decide to go beyond the institutional mandate are a minority.

In any case, this is usually linked to individual factors of the professional in question, as well as with the internal regime of the institution for which they work on such cases. It depends a lot on the vision that each professional has about childhood, adolescence, about UAMs, about the function of education, etc.”

Furthermore, in the centres the dynamics tend to be worse, since strategies are rarely sought to include and accompany. On the contrary:

“The only guideline that we are told we have to follow is to report the children every time they do something (it may only be for breaking a chair) in order to speed up their entry into a behaviour control centre. Personally, I do not agree with this practice and I do not follow it, due to professional ethics, and it is repeated many times. I have requested this guideline in writing and, for the time being, they have not sent it to me, so I will continue without reporting the children, until I or any of my colleagues suffer aggression.”

One of the strategies would be living with host families. The problem is that institutional rigidity doesn't enable trial and error experiences for the youth. Once they have moved in with the family, if they need to return or leave the host family for some reason, they are not guaranteed return to their previous residence. This draws back such possible experiences.

“We contacted a host family that has been carrying out a process with a well-known entity for two years and they could not reach an agreement because they lived within an hour of Barcelona. This family was eager to welcome, to provide their home. The problem is that if the boy leaves the centre, it loses its place. So, we have to

be very imaginative and ensure that each person can carry out this process while guaranteeing their ability to return. It is a difficulty that is there; because you cannot understand that a person who does not live in the centre is 'occupying a public space'."

"Beyond the law and the investigations, my experience with these minors is as follows: Normally, the 'success stories' are due to the minor having a support network that has used all the resources at their disposal for it to be so. This support network usually consists of civil society organisations that support you throughout the process and accompany you in a comprehensive manner (legally, socially, and economically). But sometimes it is an educator at the centre who has connected with the child and has been the one who has pulled the strings so that the child gained this network."

"We have to make this something more humanising and less professional, and we have to get out there a little and further promote it in the fabric of society and community, because, in the end, we have made more and more individualistic individuals who do not think about the person next to them, when all this could be solved many times over with help from our neighbour and common sense."

"We have to simplify and provide alternatives to this corrupt system, while raising our voice of course, without abandoning the proposals for legislative amendments, okay?"

"I have totally lost confidence in the institutions. I think we must work from below, create alliances and networks among the people who work with them and cheat this system, deceive the system, and get the child to go ahead and report all of what happens. We must speak up and make it visible so that society is more aware of what is happening."

"There are many reports, nowadays; there are many sources of information, you can no longer say that you do not know things. We must generate more space for the stories of these children to become known, since people do not look for them. It is true that



when they learn them, they are shocked. I believe that the work has to start from below.”

Migrant minors disrupt the border logic of controlling irregular migration designed for adults; especially after the standardisation in the last 20 years of the minor as “a subject to protect.” This unpredictable and transgressive mobility generates a wide variety of “discomforts” for the migratory system in charge of monitoring those who move in a manner contrary to the law (Jimenez, 2014: 71).

The Spanish protection system is segregated. There is a circuit only for unaccompanied minors and another for local children, ignoring the obligation that public administrations have of ensuring the best interests of the child, as established in Article 3 of the Convention on the Rights of the Child, that equates their rights to those of any other minor in the territory. It is also important to remember that Article 2.1 of the Convention on the Rights of the Child explicitly prohibits discrimination based on race, gender, nationality and origin, among other things. In addition, the Spanish legal system – and, thereby, the Catalan legal system – clearly establishes that minors are primarily minors, a principle that must prevail over the status of foreigner.

One of the conclusions drawn is that all the irregularities are in fact due to a partial and instrumentalised interpretation of the law by the administrations, along with the complicity and lack of interest of the organisations and NGOs in charge of the centres. This is also done while professional teams working in them turn a blind eye.

In this sense, the lack of guarantee mechanisms and the existing impunity in the face of legislative non-compliance in the area of child protection, such as not regularising children or regularising them late, not expressing disagreement when minors are expelled and left in total distress, etc., involves very serious events that could easily be described as institutional abuse.

According to Lourdes Reyzubal, a well-known advocate and UAM lawyer, “every day in Spain the presumption of the minority of UAMs is violated and they are discriminated against in relation to the rest of the children who are in distress in our country. And with respect to the rest of the African citizens, be they are adults or accompanied children, the authenticity of their documents, even if they are issued by civil registries and consular offices on Spanish soil, are routinely challenged.”

Regularisation is essential to enable a dignified life. Administrative irregularity subjects one to a daily routine full of obstacles and fears. The lack of regularisation has many levels of consequences for children. It highlights how this aspect affects peoples' daily life. When there is awareness that living in "administrative irregularity" hinders access to education activities or programmes, that it makes it impossible to access work and also considerably increases the possibilities of expulsion from the country at any time upon reaching adulthood, the motivation to overcome everyday difficulties is inevitably damaged.

Despite it not being a crime, not having a residence permit means that what a person builds in this place can be taken away at any time. Not giving relevance to this aspect is perverse and highlights the punitive nature of our protection systems, which inevitably lead these children to exclusion. When a child leaves the protection system without documentation of their age, they are explicitly exposed to situations of risk and street survival.

The fact that there are children who leave the protection system without regularisation indicates a total failure of the protection system. Not having any expectation or a plan when you come of age means that things are not being done well, especially when you consider this has been happening for many years. The continued complaints of the children and the repeated reports of associations for UAM rights don't seem to be enough to force a change, and the administration and the centres still do not document the children.

In cases where the minors are documented, the residence permits granted to these minors are non-profit; This means that they do not grant the right to work, even when they are of working age. In this sense, the public entity may request an exception to the work authorisation. This is a serious violation of the right of minors, as they cannot access work permits on equal terms with Spanish minors.

All the obstacles and breaches in any area and on any level of the protection system end up having a direct impact on this aspect. Delays in declaring helplessness and guardianship, malpractice and violence in reception centres, non-compliance in processing, non-supervision of work and attitudes of educators and tutors, stigmatisation of migrant youths as a group, have an impact on the legal situation of minors, and,

by extension, adults, after they have come of age (Save the Children Report 2018).

Usually, the lack of legal knowledge on the part of professional teams has encouraged actions or omissions of actions without any kind of consequence by the administration. On the other hand, it is important to mention that there has also been persecution and pressure on the part of the institutions, management entities of the centres, or directors of the centre towards professionals who have wanted to take a position and express their disagreement with the policies and actions that are carried out.

The fact that few things have changed over so many years and that in some cases they may have even become worse in some aspects – despite the fact that administrations are aware from court rulings and judgments, reports of human rights entities, ombudsmen, etc. and are reminded that the actions they carry out are key factors in the lack of protection of childhood and therefore can be classified as a crime – implies premeditation and treachery in their actions.

While this continues to be the case, the protection system for unaccompanied foreign minors will continue to be one of violence, since the deliberate deprivation of a child is a violent act in itself.

“It is institutional racism. You have 10-year-old children in Paris that institutions do not work with. You have institutional racism throughout Europe. Starting from Spain and ending in any country. The further north you go, the more it is accepted.”

It is important to think about a radical transformation if stopping the reproduction of a model of permanent exclusion and condemning children to exploitation is really on the agenda. It is also important to empower educators who work in the centres to participate and feel empowered to raise their voices when situations of injustice and exploitation of children occur in their workplaces. It is of primary importance to find spaces for personal and professional care so that professionals do not burn out or feel that they are alone in facing a premeditated unprotective child protection system.

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## Appendix

### MedMinors' Project

Cuestionario definitivo

Información general sobre informante:

- 1 Información sobre los antecedentes de la/el profesional: cuántos años ha estado trabajando con niños, cuántos años con niños migrantes, resumen de su educación / estudios / experiencia en este campo.
- 2 Ocupación actual: cuáles son sus funciones y responsabilidades profesionales, con qué niños está trabajando (edad, nacionalidad, sexo, espacio y lugar: campamento, refugio, provisión de servicios, hospitales, etc.).

\*EN EL CASO DE FUNDACIONES U OTRAS ENTIDADES QUE GESTIONEN RECURSOS PARA LOS NIÑOS Y QUE IMPLIQUEN INESTABILIDAD LABORAL:

¿Qué opina sobre la seguridad a largo plazo de los profesionales en su empleo, o la falta de ella, afecta a su trabajo?

- 3 ¿Ha recibido capacitación previa sobre cómo trabajar con niños? ¿Y específicamente para trabajar con niños migrantes? Si es así, ¿de qué tipo? (seminar-

ios académicos, de capacitación, oficiales / obligatorios del trabajo, por propia iniciativa, etc.)? ¿La organización le ha permitido / ayudado a recibir educación y capacitación en su línea de trabajo?

- 4 ¿Recibe algún tipo de supervisión durante su ocupación? (Esto incluye apoyo psicológico para profesionales, así como, supervisión profesional sobre la calidad de su trabajo). En caso afirmativo, ¿de qué tipo y por quién? (Especialización del supervisor, ¿es su iniciativa personal o iniciativa de su organización?)

Preguntas específicas sobre la infancia y adolescencia y los objetivos de investigación:

- 5 ¿Cuáles son las peticiones particulares de los niños que buscan o reciben sus servicios?
- 6 ¿Qué dificultades encuentra al tratar de cumplir con estas peticiones?
- 7 ¿Cómo manejas / resuelves estas dificultades / desafíos?
- 8 ¿Cuál es la opinión de los niños - reacción/respuesta a estas dificultades? ¿Están al tanto de ellas? ¿Se lo comunicas? ¿Cómo reaccionan?

Preguntas en relación a la inclusión social

- 9 ¿Cómo percibes las diferentes estrategias que hay de “acogida” de los MNA al territorio? ¿Qué crees que es necesario /importante para lograr que estas acciones funcionen
- 10 ¿Podría mencionar algunas de las quejas que tienen los niños con respecto a las barreras que encuentran?
- 10a ¿Tiene en cuenta si quieren o no quieren quedarse? ¿si están de paso?
- 10b Obstáculos que pueden encontrar frente a la inclusión/acceso y ejercicio de derechos contemplados. (regularización, sanidad, educación, ocio, etc?)
- 11 ¿Cree que los niños con los que trabaja o conoce están de alguna manera excluidos, o están en peligro de ser excluidos? Si es así, ¿de qué manera?
- 12 En su opinión, ¿cuál es la causa de esto?
- 13 ¿Conoce algún caso de niños que sean víctimas de discriminación y/o explotación? Y si es así, ¿qué tipo de discriminación/explotación? ¿De qué forma ocurre?

\* HACER LA SIGUIENTE PREGUNTA 13a SOLO EN CASO DE QUE LA/EL ENTREVISTADX MENCIONE EXPLOTACIÓN.

- 13a ¿Crees que los niños son empujados a la explotación? ¿Si es así, cómo?
- 14 ¿Cómo se enteró de estos casos de discriminación y/o explotación?
- 14a En caso de que la información no provenga directamente del niño, sino

- que haya sido concluida por usted o mencionada por una tercera persona, ¿por qué motivo cree que sucedió?
- 14b ¿Qué herramientas o métodos cree que le habrían permitido al niño acercarse a usted de manera inmediata y directa y pedirle ayuda? ¿Existen?
- 15 ¿Piensas que los casos de discriminación y/o la explotación del niño podría haberse evitado?
- 16 ¿Hubo algo que se podría haber hecho por tu parte o por aquellas personas que tenían conocimiento de esta situación?
- 16a ¿hiciste/hicieron algo? ¿Qué hiciste/hicieron? 16b) ¿Qué obstáculos enfren-taste/enfrentaron al hacerlo?
- 17 ¿Podría compartir uno o algunos casos indicativos que en su opinión tuvieron un buen resultado para el niño? ¿Por qué considera que tuvieron un buen resultado?
- 17a ¿Se debió a una buena práctica institucional? ¿Existen buenas prácticas in-stitucionales?
- 17b ¿Se debió a una iniciativa personal? 17c) ¿Conoce alguna otra buena prác-tica que cubra la falta de protección estatal?
- 18 ¿Podría compartir uno o varios casos ejemplificadores en los que la con-clusión del caso era realmente dañina para el niño? ¿Cuáles fueron las consecuencias para el niño a largo plazo, si se conocen?
- 19 Según tu experiencia, ¿por qué crees que sucede esto? ¿Cuáles son las deficiencias institucionales? ¿Cómo podrían abordarse?
- 20 En su opinión, ¿por qué existen estas deficiencias?
- 21 ¿Cooperas con las autoridades y otras Organizaciones (Nacionales e Inter-nacionales)? Si es así, ¿cómo es esta cooperación?

\* PREGUNTAR SI NO HA HABLADO DE COOPERACIÓN EN OTRAS PREGUNTAS

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# CHILDREN CAST ADRIFT

The Exclusion and Exploitation of Unaccompanied Minors (UAMs)  
National Report: Spain

A publication of the  
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The mapping of the child protection framework in Spain – or lack thereof – highlights how malpractices lead minors to social exclusion and even exploitation. The lack of clear guidelines, pathways, the stark incoherence between the legislative framework and the practices followed in day-today reality, the lack of an efficient guardianship system to guide the child through the extremely complex reception and asylum procedure in Greece, the extremely poor identification and reception conditions, together with the lack of individualised treatment and mapping of durable solutions, including minors' own needs and desires, has led to a fragmented ad hoc child protection system, filled with shortcomings, greatly dependent on individual persons; persons – sometimes randomly chosen – who will greatly affect a child's life.

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COLLABORATION OF

