

VII Cycle of the procedure of periodic reports to Spain before the Committee on the Rights of the Child

Alternative Report to
the State Report





plataforma de infancia española

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to the State Report

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List of abbreviations and acronyms

AROPE. At Risk or Poverty and/or Exclusion.

AACC. Autonomous Communities.

CRC. Convention on the Rights of the Child.

ESIA. Sexual Exploitation of Children and Youth.

IHAN. Initiative for the Humanisation of Birth and Breastfeeding Support.

IMV. Minimum Basic Income.

LEC. Civil Procedure Law.

LOIPR. List of Issues Prior to Reporting.

LOMLOE. Organic Law on Education.

LOPIVI. Law for the Comprehensive Protection of Children Against Violence

LOPJM. The Organic Law on the Legal Protection of Minors.

OECD. Organisation for Economic Co-operation and Development.

WHO. World Health Organisation.

GDP. Gross Domestic Product.

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The Plataforma de Infancia is an alliance of organisations that was created in 1997 to promote children's rights, within the framework of the Convention on the Rights of the Child (CRC). It currently has 76 participating entities.

In this report, the Plataforma de la Infancia provides detailed information regarding 44 issues that its entities and other expert organizations have identified as being priority or urgent issues.

Plataforma de Infancia proposes to focus the recommendations to the Spanish State in the XII Cycle of review by the Committee on these 44 issues.

A. GENERAL MEASURES OF APPLICATION

1. Child-focused specific public policies

Spain approved the State Strategy on the Rights of Children and Youth (EEDIA) in May 2023, following 7 years without strategic plans. Despite this, the biennial planning and monitoring report for the achievement of objectives, in addition to the financial report and allocation of public resources, are still missing.

On the other hand, Spain does not have a procedure that guarantees the implementation of the views/decisions of the UN Treaty Bodies. Thus, neither the binding nature nor the enforceability¹ of the views is recognised, nor is the competence of the Committees to issue interim measures². The vast majority of the 17 condemnatory rulings issued by the Committee against Spain have not been enforced³ and it is still very difficult to comply with the interim measures.

The II National Human Rights Plan (2023-2027) includes the approval of an instrument defining the ways in which the competent authorities follow up and respond to the views and other pronouncements of the treaty bodies. Although it yet to materialise, it is currently being developed by the government.

Recommendations:

- Prepare the biennial planning and monitoring report established by the EEDIA, ensuring that it contains performance, results and impact indicators, that it has the necessary financial resources and that the mid-term review process scheduled for 2026 is undertaken.
- Amend the Law 25/2014 on Treaties and other International Agreements, with the incorporation of a new Title: "On international human rights treaties", in which guarantees are contemplated to comply with the obligations that are derived from the international treaties of the UN system signed by Spain.
- Approve the regulation establishing the Steering Committee of the National Human Rights Plan with the function of supervising the execution of these rulings and resolutions.

1. Rulings of the Supreme Court on binding-application of the opinions of human rights treaty bodies: Ruling 1263/2018 of the Supreme Court of 17 July, in reference to the Angela González Carreño case; Ruling 1/2020 of 12 February of the high court's article 61 chamber, in reference to the Garzon case; Ruling 401/2020 of 12 February, special chamber article 61 to p.j Banesto case; Ruling 86/2023 of 13 June of the administrative litigation chamber (4th section); Ruling 1597/2023 of 29 November of the administrative litigation chamber (4th section); Circular 1/2020 of the State Attorney's Office, which denies the binding nature of opinions and precautionary measures, published in the Abogacía General del Estado de 2020, p. 292 et seq.

2. Despite STC 61/2024, there is still a need for a legal and jurisprudential reform that recognises that binding nature of the opinions and establishes a clear procedure in order to claim their execution in their own terms.

3. See the analysis by the Plataforma de Infancia on the III Protocol and the 17 condemnatory opinions to Spain <https://www.plataformadeinfancia.org/la-plataforma-de-infancia-analiza-el-iii-protocolo-de-la-convenccion-sobre-los-derechos-del-nino-los-17-dictámenes-condenatorios-a-espana/>



2. Independent Monitoring

There is currently no Ombudsman for Children at state level, and none of the Ombudsman's assistants are formally entrusted with these matters. At regional level, Ombudsmen are not available in all autonomous communities⁴.

Furthermore, these institutions have shortcomings as regards the accessibility for children who are generally unaware of the possibility of lodging complaints in terms of the violations of their rights.

In the protection system of childhood, there is concern regarding the lack of periodic review of the protection measures by the public prosecutor's office, in addition to the lack of improvements in complaints and report mechanisms in residential centres.

Recommendations:

- Reinforce the capacity of the Ombudsman's office to receive complaints from children and youth in an accessible manner.
- Promote the consolidation of the Ombudsmen for Children in the Autonomous Communities.
- Ensure regular review by the Public Prosecutor's office of protection measures for children in the protection system.
- Implement access to adapted complaints and report mechanisms in centres pertaining to the protection system.
- Allow public access to data on children's access to different independent institutions.

4. In 2012 the institution of the Ombudsman in Madrid was removed, and is yet to be replaced, despite the fact that in the 2018 Observations the CRC request it reopen.

3. Data collection

In Spain there is not a register with a holistic focus and a rights of the child approach, beyond statistical websites⁵. Although the LOPVI foresees the creation of a Central Information Register⁶, its action is undertaken exclusively in the area of violence.

Of particular concern is the lack of sufficient, updated and detailed data or statistics⁷ in order to understand the situation of disabled children, Roma children and unaccompanied migrant children.

Furthermore, in recent years, the Childhood Observatory has been inactive and has ceased to be a space for joint work and debate regarding public policies between public administrations and civil society

Recommendations:

- Strengthen the capacity to collect disaggregated data, by sex and age, regarding all aspects of the CRC at all territorial levels, in particular regarding children in situations of vulnerability.
- Reinforce the Childhood Observatory as a body for dialogue with all levels of Public Administrations and third sector childhood entities in the promotion, monitoring and evaluation of public policies on childhood and information management.

5. Such as the Childhood in Figures Portal (<http://www.infanciaendatos.es/>), which is out of date.

6. Article 56 of Organic Law 8/2021 of 4 June on the Comprehensive Protection of Children and Youth Against Violence (LOPVI).

7. In 2021, the Ombudsman, having identified discrepancies in the collection of data on unaccompanied minors, called for a thorough review of these data.



B. GENERAL PRINCIPLES

NO DISCRIMINATION

4. Roma children

Roma children live in a situation of severe inequality and structural discrimination with a child poverty rate of 89%⁸ a school failure rate of 63%⁹, high school segregation¹⁰, and the reality of shantytowns and substandard housing where 50% of those who live there are under 16 years of age¹¹.

Recommendations:

- Adopt a specific plan to combat school failure among Roma pupils that guarantees their rights to education and equal opportunities.
- Implement measures to combat the school segregation of Roma pupils.
- Extend the coverage of the IMV to ensure that all Roma families living in poverty receive this aid, thus reducing severe child poverty.

5. Ley del Deporte

The Law on Sport¹² discriminates against and violates the rights of children without legal residence and children seeking international protection, insofar as the administration does not consider them to have legal residence until refugee status is granted. Articles 9, 48.3 and 49.5 restrict the possibility of these boys and girls participating in federated sports disciplines, just like their peers, for administrative reasons that do not prioritise their wellbeing¹³.

Recommendations:

- Amend the Law on Sport to ensure that it does not discriminate against children without legal residency status, thus allowing them to participate in federated competitions.

8. Study of Fundación Secretariado Gitano developed by Fundación ISEAK https://www.gitanos.org/upload_priv/04/06/Estudio_empleo_poblacion_gitano_en_Espana_2018_fundacion_secretariado_gitano.pdf

9. The educative condition of the Roma children, 2023 https://www.gitanos.org/estudios/la_situacion_educativa_del_alumnado_gitano_en_espana.html.es

10. According to the data of the Fundación Secretariado Gitano, 1 in 3 Roma pupils study in segregated schools, and of which 64% do so in centres with extreme segregation. Education Situation for Roma Pupils. Study undertaken by Fundación Secretariado Gitano (2023).

11. Study on the situation of people in shantytowns and substandard housing in Spain: https://www.gitanos.org/estudios/estudio_sobre_el_perfil_y_la_situacion_de_las_personas_en_los_asentamientos_chabolistas_y_de_infraestructura_en_espana.html.es

12. Law 39/2022 of 30 December on Sport

13. Plataforma de Infancia (2023) <https://www.plataformadeinfancia.org/la-ley-del-deporte-excluye-a-las-ninas-y-ninos-en-situacion-irregular/>

BEST INTERESTS OF THE CHILD

6. Best interests of the child in legislation and decision-making

Although the best interests of the child are included in art. 2 of the LOPJM, it must be made operative and applied to all decisions. Despite the legislation in place (Law 26/2015), which makes it mandatory to undertake an assessment of the impact on children and youth of regulatory provisions, and Royal Decree 931/2017, which regulates the normative impact reports of the public administration, and which includes the impact on children, in practice this does not actually occur throughout the country and is not always undertaken correctly.

Recommendations:

- Supervise the correct implementation of Royal Decree 931/2017 and Law 26/2015 in order to ensure that the normative impact analysis always includes the impact on children and youth.
- Incorporate in the revision of the normative impact analysis guide, indicated in the new Law 27/2022 on the assessment of public policies, an explicit reference to the best interests of the child as a mandatory criteria.
- Develop guides and provide information regarding the best interests of the child in the public administration in order to provide guidance on its determination and give due primary consideration.

7. Guarantees for the withdrawal of guardianship

There are no state-wide criteria to systematically enforce the best interests of the child in administrative proceedings and decisions regarding guardianship. The Spanish legislative framework has shortcomings as regards the administrative processes of removal from guardianship. In fact, the Ombudsman has exposed, on several occasions, the need to reinforce its legal guarantees¹⁴.

It is of concern that children are not considered to be interested parties as regards risk and neglect proceedings; that legal assistance is not mandatory; or that there is no formal procedure in terms of assessing the best interests of the child, among others.

Recommendations:

- Introduce legal safeguards in the administrative procedure of the withdrawal of guardianship, such as that the child concerned is considered a stakeholder in the administrative procedure, that legal aid is mandatory and that there is a formal procedure for the assessment of the best interests of the child.

14. Defensor del Pueblo (2022) [Infancia y adolescencia in the 2022 annual report](https://www.defensorpueblo.es/infancia-y-adolescencia-en-la-2022-anual-report), page 6



RESPECT FOR THE VIEWS OF THE CHILD (RIGHT TO BE HEARD)

8. The right to be heard of children under 12 years of age

The essential regulation amendments to ensure the participation of under 12's have not yet been undertaken, as already recommended by the Committee on the Rights of the Child in 2018. Despite the reform of the Organic Law on the Legal Protection of Minors in 2015, the recognition of the children's right to be heard is conditionally based on their sufficient maturity, which is presumed from the age of 12.

Recommendations:

- Harmonise laws (specifically the Civil Code and the LEC) in order to ensure that children under 12 are heard, provided that it is in their best interests, prior to making decisions that affect them, eliminating the age criterion and replacing it with the presumption of children's ability to form their own judgement.

9. Child participation

The guarantee of the children's right to participation is compromised due to the lack of allocation of financial resources, lack of accessibility and difficulty in terms of effectively measuring its exercise due to insufficient data. The lack of representation of Roma children, children of migrant origin and disabled children is particularly noteworthy.

Civic engagement content is not included in the educational curriculum and channels for student participation are hardly promoted in schools. Less than one third of students perceive that they are listened to at school¹⁵.

Recommendations:

- Reinforce and consolidate stable and accessible channels of child participation, with no age limit, in the bodies of local, autonomous and state Administrations.
- The educational administrations should promote channels for student participation, incorporate child participation into the educational curriculum, inform about its existence and functions in educational centres and facilitate student involvement in them.



15. CANAE (01/03/2021). [Salud mental para estudiantes, una prioridad en tiempos de pandemia](#).



C. CIVIL RIGHTS AND FREEDOMS

10. Children's associations

In Spain there are no specific regulations governing children's associations and their right to associate¹⁶.

There is a legal loophole as regards the possibilities for people under 14 years of age to join associations in general, in addition to a limitation to those under 12 years of age in student associations¹⁷.

Likewise, administrations do not provide information nor services adapted to children.

Recommendations:

- Develop specific regulations that offers a minimum supplementary framework on the forums of association of children throughout the State, regulating the scope of children's capacity for association and the instruments for protecting and guaranteeing its exercise.
- Adapt the obligations of children as regards the exercise of their right to associate and of administrations in the exercise of their public service to the cognitive abilities of children.
- Establish specific obligations to develop this right, which enable a qualitative assessment of the function of public sector development.

16. There are only specific regulatory frameworks for the exercise of certain types of associations, such as youth associations (from 14 to 30 years of age) or student associations (within the university and pre-university sphere), which only cover specific areas and age ranges.
17. According to data from the Report on Youth in Spain (INJUVE 2021), less than 15% of school or college students participate in them.
https://www.injuve.es/sites/default/files/adjuntos/2021/03/Informe_juventud_espana_2020.pdf

11. Safe access to digital channels

Although Organic Law 8/2021¹⁸ regulates public-private collaboration in this area and urges public administrations to implement age verification protocols, it does not establish positive actions to effectively ensure that children do not have access to adult content¹⁹.

It is of concern that, at current, the Joint Commission that controls and monitors the Self-regulatory Code on Television Content and Children is inoperative. It is also of concern that there is no age verification system for users as regards content that can harm the physical, mental or moral development of minors which, in any case, would prevent access by minors to the most harmful audiovisual content, such as gratuitous violence or pornography (contemplated in Law 13/2022²⁰).

A regulation is currently being developed for the protection of boys and girls in digital environments.

Recommendations:

- Ensure that measures taken to protect children in digital environments guarantee the protection of their rights, in keeping with General Comment 25, including the establishment of:
 - Specific measures to encourage companies to comply with General Comment 25²¹, protect children's personal data, create accessible reporting processes and develop policies and mechanisms to protect children from violence, excessive screen use and online bullying.
 - An age verification system that respects the privacy regulations to enable digital providers to effectively prevent children from accessing adult content.
- Ensure the full functioning of the Joint Monitoring Committee of the Self-Regulatory Code on Television Content and Children.

18. Organic Law 8/2021 of 4 June on the comprehensive protection of children and youth against violence (LOPIVI).

19. The Report of the State Prosecutor General's Office (2021) warns about the development of excessively sexualised behaviour at an adolescent age as a consequence of the viewing of pornography on the internet and lack of education in sexual matters. It also relates this consumption with greater risk for children as regards suffering cyberbullying, whether in order to create pornographic material or even to perform sexual abuse in the technological environment. Report available at <https://www.fiscal.es/documents/20142/ddc76e26-b5e3-4793-1cbb-8cadbe0818a1>

20. Law 13/2022 of 7 July, General Audiovisual Communication.

21. General observation number 25 (2021) of the Committee on the Rights of Child regarding the rights of children in relation to the digital sphere, Doc CRC/C/GC/25 of 2 March 2021.



D. VIOLENCE AGAINST CHILDREN

12. Autonomous and state development

There are still LOPVI measures that require development at state level, such as the creation of the Central Information Registry.

At both autonomous and local level, it is still necessary to work in order to achieve the effective and homogeneous application of the law in different territories, specifically the launch of the wellbeing coordinator (wellness area) and protection delegate (sports, leisure and free time sphere).

Despite the State alluding to the obligation of education centres to have a wellbeing coordinator, their normative development in different Autonomous Communities is irregular and often insufficient: it has not been employed correctly in all education centres, their functions are not clear, it is not professionalised or does not have released hours or incentives²².

Recommendations:

- Develop and adapt regional legislation to LOPVI, paying special attention to the implementation and initial and continuous training of the figures of the wellbeing coordinator in the sphere of education, and the protection delegate in the sphere of sports and leisure.
- Ensure sufficient budget allocations for the development and implementation of all the areas and instruments regulated by LOPVI, for all administrative levels (state, autonomous and local) and to guarantee compliance with the Strategy for the eradication of violence against children, developing the operational plans foreseen.
- Guarantee the effective fulfilment of the right to intermediate free legal aid for minors who are victims of violence, in accordance with art. 14 of the LOPVI.

13. Shortfalls in the judicial sphere

The LOPVI establishes the obligation of specialize the judicial bodies: the public prosecutor's office and the technical teams that provide specialist assistance to the Courts and Tribunals. According to this law, two draft laws should have been submitted to the Spanish Parliament by June 2022, but this is yet to happen.

On the other hand, the LOPVI makes the pre-constituted evidence mandatory only for under 14's. Additionally, there are no unified criteria for its practice, as the procedure varies significantly between Autonomous Communities.

Recommendations:

- The creation of a specialised Public Prosecutor's Office and judges, with specialised professionals on violence against children, to investigate and prosecute crimes committed against children.
- Guarantee that pre-constituted evidence is given to all children and youth, including those aged between 14 and 17, in a uniform manner across the country and in keeping with general minimum guidelines.
- Promote the implementation of the Barnhaus model in order to guarantee comprehensive care and avoid re-victimisation processes.

14. Violence in the 0-3 stage

The LOPVI does not foresee specific measures for the protection of these children despite their vulnerability. The prevention that can be undertaken in nursery schools for ages 0-3 is of particular importance, taking into consideration the fact that the provisions of the LOPVI in the educational field must be implemented in nursery schools for ages 0-3.

The State does not provide information regarding the specific measures adopted in the 0-3 stage in the face of the increase in the number of children who suffer abuse, despite the information being requested by the Committee.

Recommendations:

- Guarantee schools as safe places protected from violence and that they comply with all the provisions of the LOPVI for all educational stages, especially measures for early detection, communication and reporting, and professional training.
- Periodically collect and publish statistical information regarding cases of violence in children aged 0-3 years old.

22. See: [Educo \(2023\) Coordinador/a de Bienestar y Protección: balance del primer año](#) [Propuestas para reforzar una figura clave contra la violencia hacia la infancia](#)



15. Gender-based violence

In Spain, the suspension of the visiting, stay, relationship or communication regime of the parent involved in the criminal proceedings for a crime of gender-based violence as regards the minors who depend on them is not agreed by judges on a regular basis (14.41% in 2022²³), despite the provisions of the regulations. The LOPIVI and Law 8/2021 introduced amendments, but none of these amendments establishes as imperative the non-imposition or the automatic suspension of the visiting regime, establishing an exception that allows this decision to be left in the hands of the judge. It is also of concern that this prohibition is not maintained in the case of suspended sentences²⁶.

On the other hand, there is concern that the psychological support given to children who are victims of gender-based violence could be interrupted in cases of provisional dismissal or a non-conviction²⁷, as in these cases the consent of both parents is required, including the parent who was previously accused²⁸.

Recommendations:

- Establish, imperatively and automatically, the suspension of the visitation regime in all cases of gender-based violence in which the child has lived with manifestations of violence.
- Ensure that all children have access to a specialist resource in order to receive the social and psychological support they require and to which they have the right by Law. It is therefore necessary to provide the Autonomous Communities with more specialist resources in child victims of gender-based violence.
- Establish specific measures that guarantee that the provision of psychological assistance is not interrupted or suspended as a result of the lack of consent of the accused parent, following a provisional dismissal, a non-conviction or after the latter has served their sentence.

23. Consejo General del Poder Judicial. Annual report on gender-based violence. 2022 <https://www.poderjudicial.es/cgpj/es/Temas/Violencia-domestica-y-de-genero/Actividad-del-Observatorio/Datos-estadisticos/La-violencia-sobre-la-mujer-en-la-estadistica-Judicial---Anual-2022>.

24. Article 544 of the Criminal Procedure Act establishes that, in the case of any indications of gender-based violence, the judge may order the suspension of all visiting arrangements. Article 7 of Law 1/2004 states that: "in cases where there is a certain and imminent risk to the life or physical, psychological or sexual integrity of the woman and the minors living with her, the following protection measures, among others, may be implemented: a) the suspension of the visiting and communication regime in the form and terms agreed, or the establishment of measurements that imply the supervision or control of visits and communications that guarantee the safety of both the victim and the minors".

25. Law 8/2021 of 2 June, which reforms civil and procedural legislation in order to support disabled people exercise their legal capacity. See the following news article. El País (2021) https://elpais.com/sociedad/2021-07-23/un-hombre-con-cuatro-condenas-por-maltrato-podra-visitar-a-sus-hijos.html?outputType=amp&ssm=TW_CCK&twitter_impression=true&s=09

26. This is despite the fact that, since 2018, when there is a final conviction or any criminal proceedings are underway against one of the parents for harming the children they have in common or against the other parent, the psychological care and assistance given to these children requires exclusively the consent of the non-defendant parent. Law 8/2021 has extended this service to cases in which, despite the absence of a complainant, the woman is receiving assistance from a specialised gender-based violence service.

28. The need for both parents to give consent as a necessary requirement for the necessary psychological assessment and care does not occur in other healthcare processes, for example, in surgical interventions.

E. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

16. Shortfalls in family support

While the current regulatory framework prioritises the prevention of separation and the strengthening of families, data show that the number of children in protective measures is on the rise²⁹. There is a lack of concrete support mechanisms for families to prevent separation and promote the reintegration of children with their families. Among other concerns:

- The extension of 'leave due to the birth and care of a minor' to 16 weeks is not sufficient in order to guarantee the maintenance of breastfeeding³⁰.
- The discrimination of children from single parent families have access to half of the care time given to the rest.
- The lack of remuneration for existing parental leave, allowing for absence from work for each parent to care for children, as provided for in EU Directive 2019/1158³¹.
- Shortfalls in the work undertaken by social services in order to favour family reintegration once the circumstances that led the guardianship to end to be removed.

Recommendations:

- Reinforce social services with more resources and training in order to provide support and guidance to families, prevent separation, reinforce the figure of risk as a preventative measure or to promote family reintegration.
- Extend parental leave due to birth, fostering, adoption and foster care to 24 weeks.
- Pay at least the non-transferrable part of the parental leave (at least 2 months) and make it 4 months long, in order to comply with the Reconciliation Directive 1158/2019.
- Equalise the duration of childcare leave for single-parent families with that of two-parent families.

29. The number of children and youth with protection measures in 2022 is 34,195, an increase of 3.03% compared to 2021. Boletín núm. 25 de datos estadísticos de medidas de protección a la infancia y la adolescencia del Ministerio de Derechos Sociales y Agenda 2030

30. 24 weeks is the period required in accordance with the recommendations made by the WHO, UNICEF, IHAN and the Spanish Paediatric Association.

31. In 2023, the EU Directive 2019/1158 on the reconciliation of family and professional life of parents was partially transposed by Royal Decree-Law 5/2023. The European Commission has started a procedure before the TJUE for not having informed of the full transposition of the measures



17. Desinstitutionalisation

Despite the fact that the State affirms in its report that desinstitutionalisation is one of the main lines of work, in practice, Spain does not prioritise foster care by guaranteeing sufficient and adequate human, technical and financial resources for its promotion. According to official data³² in 2022:

- 17,061 children lived in residential centres³³.
- Foster care decreased by 1.51% compared to an increase of 5.46% in residential care³⁴.
- Foster care for disabled children decreased by 16.25% and 94.7% of unaccompanied migrant children were in residential care.

The State has pledged to ensure that no children under the age of 6 live in residential care by 2025, yet more than 1000 children under the age of 6 grew up in residential care during 2021 and 2022³⁵.

The existence of macrocentres, lack of constitution of safe surroundings, the impersonal treatment often received by children, imposition of strict routines and isolation from the rest of the community are also of concern.

Recommendations:

- Guarantee the designation of sufficient human, technical and financial resources, in addition to being appropriate for the promotion of foster care, guaranteeing support for foster families of particularly vulnerable children.
- Guarantee that no boy or girl aged 0-6 years old is in a residential centre and prioritise the importance of not separating siblings.
- Adopt effective measures to guarantee the closure of macrocentres and transformation of residential centres into safe, flexible, participative spaces that are integrated into the community and with individual attention.

32. Ministerio de Derechos Sociales y Agenda 2030 (2023) [Boletín número 25 de datos estadísticos de medidas de protección a la infancia y la adolescencia](#)

33. The difference in the number of children between residential care and foster care in 2022 was only 1,116, which demonstrates that residential care is far from being a secondary and complementary protection measure.

34. Foster care has been progressively decreasing for some years: in 2019 there were 19,320, in 2020 it decreased to 18,892, in 2021 it decreased again to 18,455 and in 2022 it decreased again by 1.51%.

As regards residential care, although the numbers of children in care had been decreasing in recent years (in 2019 there were 23,209 children; in 2020 it decreased to 16,891 and in 2021 to 16,177), in 2022 it increased to 17,061.

35. Ministerio de Derechos Sociales y Agenda 2030 (2023) [Boletín número 25 de datos estadísticos de medidas de protección a la infancia y la adolescencia](#)





18. Protection of children who do not receive parental care

The concern expressed by the Committee in 2018, the testimonies of children and organisations regarding the physical and psychological violence suffered in residential centres have highlighted the shortcomings of protection systems to prevent, identify, protect and investigate situations of violence³⁶.

As regards the contention measures, although the LOPVI prohibited fixed-point mechanical restraints, the following are permitted³⁷:

- The physical restraint of spaces/movements and the physical immobilisation in ordinary centres pertaining to the protection system, in specific centres for behavioural issues and in centres for the execution of custodial measures³⁸.
- Wrist restraints in specific centres for behavioural issues and in centres for the execution of custodial measures³⁹.

It should be noted that LOPVI does not provide for a reference figure in protection centres (equivalent to the figure of the wellbeing coordinator in educational centres or protection delegate in leisure and sport) to ensure compliance with the provisions of the law and the protocols for prevention and protection against violence.

Recommendations:

- Prohibit any means of mechanic and pharmacological contention in all types of centres.
- Record the contention measures employed to protect children, categorised by age, sex, type of disability, type of centre, duration, reason for which it is implemented, requesting individual and implementing professional.
- Guarantee confidential, accessible, effective means of communication, in language that child and adolescent migrants can understand.
- Undertake in-depth research regarding all reports of violence in centres pertaining to the protection system and centres to exercise measures against liberty.
- Establish a mandatory reference figure, analogous to that of the wellbeing coordinator, in the resources of the protection system that guarantees its compliance with that which is set forth in the law and the prevention protocols as regards violence.

36. Maakum, Elin, No Name Kitchen (2021). Report on the violations of the rights of migrant children and youth in Ceuta and Fundación Raíces (2020) Institutional Violence in the Childhood Protection System.

37. The use of fixed-point mechanical restraints are understood as restraint to an articulated bed, or an object fixed to the premises or to movable objects.

38. Physical restraint of spaces/movements and physical immobilisation is still permitted in: 1) ordinary centers of the health system protection, without the law establishing qualifying assumptions or maximum permitted duration (art.21.1.ter.SLOP-JM); 2) behavioral disorder centers, in certain cases and without maximum duration allowed (art. 28.3 LOP-JM); and 3) reform centers, in certain cases and without maximum duration allowed (art. 59.2 LO of the criminal responsibility of minors).

39. Restraint of the wrists (with handcuffs or shackles) is allowed in: 1) specific centers for behavioral problems for no more than one hour (art. 21.1er5 LOP-JM and art.28.3lopm); and 2) reform centers, without a legal maximum of time (art. 59.2 LO of the criminal responsibility of minors).





19. Transition to adult life

Youth who have been under guardianship in Spain are in a situation of both economic and social vulnerability. While the average age of emancipation in Spain is 30 years old⁴⁰, young people in the protection system are forced to be emancipated at 18 years old, without sufficient support⁴¹, as the number of places in residential emancipation resources is significantly lower than the number of young people participating in the Autonomy Programmes.

As regards unaccompanied adolescent migrants, the lack of family support, together with the lack of spaces on independence programmes and difficulty in terms of accessing normalised bedrooms and rented flats, lead them to experience situations of social exclusion, which can also complicate their posterior documentation renewal.

Recommendations:

- Guarantee support during the transition to adult life with a holistic approach and sufficient budget, guaranteeing them the option to continue in educations, access to housing, labour insertion and psychological support.
- Extend the network of emancipation homes and the maximum permitted age, ensuring that young people with the most significant difficulties are not excluded.

F. CHILDREN WITH DISABILITIES

20. Inclusive education and lack of support resources for children with disabilities

Although the Organic Law on Education⁴² enshrines inclusive education as a fundamental principle, it is not yet fully guaranteed, among other issues as a result of a lack of necessary support resources and a lack of specialist staff. Royal Decree 117/2023⁴³ therefore excludes pupils with special educational needs (SEN) who do not reach the established degree of administrative disability (33%) from the study grants and subsidies that are announced.

Recommendations:

- Ensure that all pupils with SEN can access the study support and help established for them, independently of the administrative degree of disability they have been assigned.
- Improve the training curriculum undergone by professions who work with children and youth with special needs.
- Undertake awareness-raising actions regarding the opportunities offered by inclusive education for all pupils and wider society.

42. Organic Law 3/2020 of 29 December, which amends Organic Law 2/2006 of 3 May on Education.

43. Royal Decree 117/2023 of 21 February, which establishes the family income and wealth thresholds and the amounts of grants and study aids for the 2023-2024 academic year, and partially amending Royal Decree 1/21-2007 of 21 December, establishing the system of personalised grants and study aids

40. Eurostat. Estimated average age of young people leaving the parental household by sex.

41. The resources designated to emancipation programme management are insufficient and have not increased in recent years.



21. Early Years

Early years care is still not considered a subjective, universal and free right for all children from 0 to 6 years who require these types of support. In Spain, only 4 out of 10 children who require it have access to early years care⁴⁴. The lack of official data, the differences in the provision of these services by Autonomous Community, the lack of interadministrative coordination of specialist personnel and resources are the main challenges to be addressed in this area.

Recommendations:

- Recognise the subjective right of universal, free, accessible and quality early years education for all children who require it, by way of the approval of a state law.
- Establish common quality standards for early years, thus avoiding significant differences between territories, which includes maximum deadlines between the application, evaluation and provision of the service.
- Create a state-wide register of families who apply for early years care services with disaggregated data and of those who are actually able to access these services.
- Ensure the provision of support beyond 6 years of age.



44. See: [La doble brecha de la atención temprana de 0 a 6. Asociación Galega de Atención Temprana.](#)



G. BASIC HEALTH AND WELFARE

HEALTH AND HEALTHCARE SERVICES

22. Access to healthcare services

There are significant shortcomings within the public health system, predominantly in primary care, which was intended to be strengthened by way of the Strategic Plan for Primary and Community Care 2022-2023⁴⁵. However, the Plan lacks a focus on children as there are no specific proposals for paediatric specialities and paediatric nursing.

There are inequalities as regards access to healthcare for children as a result of socio-economic factors, material and territorial circumstances, which have a greater impact on the most vulnerable children. Additionally, there are delays and lack of coordination in the extension of the common portfolio of oral health services in the national health system. Specifically, although it is true that there are items in the general State budget of 23 (and announced in 24), their inclusion in the regional budgets is both uneven and slow.

Recommendations:

- Reinforce public health systems, prioritising primary healthcare services and create strategies to reduce inequality within health, offering the necessary resources.
- Reinforce the healthcare professionals specialising in paediatrics and paediatric nursing.
- Implement, with no delay and without disparities, the extension of the common portfolio of oral health services for children, with special emphasis placed on children in particularly vulnerable situations.
- Ensure that all children up to the age of 18 are diagnosed and treated in paediatric units and specific units for youth (14-18 years of age).

23. The fight against child obesity and malnutrition

The prevalence of obesity among children and youth (8-16 years of age) in Spain is 33.4 %⁴⁶, with the prevalence of obesity being twice as high in lower income households. Nationally, 28.9 %⁴⁷ of children and youth are at risk of poverty, but only approximately 11 %⁴⁸ of children and adolescents receive food grants. The financial cost, the lack of places or the lack of canteens in some schools are just some of the barriers that many families face when it comes to accessing this service⁴⁹.

On the other hand, scientific evidence demonstrates a clear link between the advertisement of unhealthy foods and obesity and malnutrition. In Spain, there are provisions to protect minors from this advertising⁵⁰, but the main regulation, the PAOS code⁵¹, is not legally binding and does not actually prohibit such advertising.

Recommendations:

- Guarantee the necessary resources for the implementation and monitoring of the Childhood Obesity Reduction Plan, focusing on the most vulnerable families.
- Promote the construction of school canteens in centres that do not have them, extending the network of school canteens to secondary schools.
- Ensure that all children and youth at risk of poverty and in a situation of vulnerability are in receipt of 100% of the canteen grant.
- Prohibit any form of advertising or commercial communications of unhealthy food and beverages aimed at children, in accordance with the nutritional profiles established by the WHO.

46. See: Estudio Pasos 2022. Gasol Foundation.

47. See: ECV INE 2023 (Dato correspondiente al año 2022).

48. According to: Informe Recetas que educan: Los 10 ingredientes de una buena política de becas y ayudas al comedor escolar. EDUCCO, 2023.

49. Ibidem.

50. Some of these regulations are Law 34/1988 General Law on Advertising, OL 1/1996 of 15 January on the Legal Protection of Minors, Law 17/2011 on Food Safety and Nutrition, or Law 4/2022 on the Protection of Consumers and Users against Situations of Social and Economic Vulnerability, includes minors as vulnerable consumers.

51. Code of Co-regulation of Food and Beverage Advertising Aimed at Minors, Obesity Prevention and Health.



24. Breastfeeding

Spain does not have an adequate official breastfeeding monitoring system. The existing data predominantly come from surveys undertaken by healthcare professionals at a regional level and on an ad hoc basis⁵².

Only 12%⁵³ of health centres are in the process of implementing the methodology of the Initiative for the Humanisation of Birth and Breastfeeding Care (IHAN). There is no strategy to guarantee the implementation in hospitals, health services and, in particular, maternity wards, of the IHAN in order to guarantee the WHO-recommended rates of exclusive breastfeeding and compliance with the Code of Breast milk Substitutes.

Recommendations:

- Develop a national data collection and monitoring system, in addition to an adequate breastfeeding follow-up system in Autonomous Communities.
- Implement a national programme in hospitals, health services and maternity wards to ensure the initiative for the humanisation of support during birth and breastfeeding.



52. Asociación Española de Pediatría (2016). Breastfeeding in figures: Rates of initiation and duration of breastfeeding in Spain and other countries, available at <https://www.aeped.es/sites/default/files/documentos/201602-lactancia-materna-cifras.pdf>
53. See: <https://www.ihan.es/centros-sanitarios/registro-de-hospitales/> and <https://www.ihan.es/centros-sanitarios/registro-de-centros-de-salud/>



MENTAL HEALTH

25. Mental Health

According to data from the 2021 youth barometer on health and wellbeing⁵⁴, 15.9% of young people state that they have experienced a mental health problem continuously or frequently, whereas 40.5% have experienced this at some time. More than one third of young people have been diagnosed with a mental health problem, however many do not have access to professional support for financial reasons. In 2022, Fundación Anar received 217,693 requests for support from across Spain⁵⁵.

The lack of investment, quality, up-to-date and disaggregated data and the under-staffing within child psychiatry and psychology are some of the challenges that impact the right to good mental health for children in Spain.

Recommendations:

- Ensure universal access to mental health services for all boys, girls and youth who require it, with interdisciplinary teams (nursing, psychiatry, psychology, social work and occupational therapy).
- Establish the speciality of childhood and adolescence within clinical psychology and create a psychiatry medical speciality.
- Collect and periodically publish statistical information on the situation of mental health in childhood and adolescence, including quality and disaggregated data.

ENVIRONMENTAL HEALTH

26. Environmental health

The Climate Change and Energy Transition Act 7/2021 lacks concrete child-focused implementation measures and does not involve children and youth in its definition or implementation.

Schools are unsafe and unhealthy⁵⁶, mainly due to high levels of noise and air pollution, which have an impact on children's health, leading to respiratory issues, exhaustion, stress and other conditions⁵⁷.

Likewise, the current mobility model, centred on private vehicles and the lack of a children's perspective in mobility policies affect the children's right to a healthy environment.

Recommendations:

- Ensure a child-friendly approach in new urban development plans, paying special attention to the creation and maintenance of green spaces and areas that take into consideration children's rights, and the improvement and guarantee of infrastructures that help reduce the impact of heat, such as water fountains, access to public swimming pools, etc.
- Ensure that schools and school environments are both safe and healthy for children, in line with General Comment 26.
- Ensure a child-focused perspective in mobility policies by way of the encouragement of the use of public transport and the promotion of free public transport for children.

⁵⁶ In Spain, public nursery, primary and secondary schools are on average more than 25 years old. These buildings were built without applying the energy efficiency criteria that exist today.

⁵⁷ See: <https://www.plataformadefinancia.org/wp-content/uploads/2022/09/informe-infancia-cambio-climatico-mayo22.pdf>

⁵⁸ Carme Miralles-Guasch y Angel Cebollada, Departament de Geografia, Universitat Autònoma de Barcelona, 'Movilidad cotidiana y sostenibilidad, una interpretación desde la geografía humana, Boletín de la A.G.E. N.º 50 - 2009, págs. 193-216; Crítica Urbana – revista de Estudios Urbanos y Territoriales, Enero 2022 | Vol.IV | Núm.22.



STANDARDS OF LIVING

27. The fight against child poverty

In 2023, Spain had a poverty rate of 28.9%⁵⁹. Children comprise the only age group in which the poverty rate has increased. The high incidence of poverty among children living in Roma families⁶⁰, large families and single parent families⁶¹ is particularly alarming. Additionally, an estimated 10.8% of children live in severe material deprivation, compared to 8.9% of adults⁶². This is the highest figure recorded historically.

Spain is one of the European countries with the lowest investment in child poverty (around 1.6% of GDP, while the European average is 2.5%⁶³). Moreover, the Spanish tax system has a very low impact on child poverty. The current configuration of personal income tax prevents tax relief from having an impact on reducing poverty among the most vulnerable children, as their parents are exempt from taxation⁶⁴.

The Minimum Living Income (IMV) has contributed to the reduction of severe poverty, but not to moderate poverty, and the child support supplement does not cover the cost of raising a child⁶⁵.

Moreover, Spain is one of the few countries that does not have aid with which to support families in raising children.

Recommendations:

- Establish universal child support by way of refundable tax deductions in order to make it available to lower income households.
- Increase the percentage of gross domestic product spent on fighting child poverty.
- Improve access to the Minimum Living Income, guarantee that it reaches the most vulnerable children and youth, equalise access to the moderate poverty line and guarantee systems of compatibility with minimum incomes.
- Improve the amount of the “Childhood Supplement”, the access system and knowledge of this particular measure.

59. See: [INEbase / Nivel y condiciones de vida \(IPC\) / Condiciones de vida / Encuesta de condiciones de vida / Últimos datos](#)
60. Poverty affects 85.9% of the Roma population, and 46.4% are considered extremely poor. Fundación Secretariado Gitano e ISEAK (2019). Comparative study regarding the situation of the Roma population in Spain in terms of employment and poverty, available at https://www.gitanos.org/centro_documento/publicaciones/fichas/129378.
61. In 2023, 45% of people living in homes comprising of one adult with dependent children were at risk of poverty or social exclusion, according to the National Institute of Statistics (2024). Living Conditions Survey, available at: [Tasa de riesgo de pobreza por tipo de hogar\(9962\) \(ine.es\)](#)
62. Living Conditions Survey (INE, 2024) Riesgo de pobreza o exclusión social (estrategia Europa 2020) y de sus componentes por edad y sexo.(10005) (ine.es)
63. See: [Inversión en familia e infancia en la Unión Europea sobre el PIB \(2021\) | Gobierno España - Alto Comisionado para la lucha contra la pobreza infantil \(comisionadobp@zainfantil.gob.es\)](#)
64. See: [Propuesta de reforma fiscal para implantar una ayuda a la crianza \(plataformadeinfancia.org\)](#)
65. For 2022, 672 euros per month is estimated per child El coste de la crianza_2022.pdf (savethechildren.es)

28. Housing

Law 12/2023 of 24 May on the right to housing establishes improved protocols in the eviction procedure for vulnerable households. Additionally, until 31 December 2024⁶⁶, evictions of families without housing alternatives and in a vulnerable situation have been suspended.

Although the State Housing Access Plan 2022-2025 includes measures to eradicate substandard housing and shantytowns, no specific measures have yet been taken.

Recommendations:

- Activate the policies and resources required in order to put an end to substandard housing and shantytowns within a maximum period of six years, in order to guarantee children's rights to decent housing that enables them to develop properly.
- Suspend all evictions of families with dependent children until there alternative accommodation is available and guarantee monitoring of the processes by teams specialising in children.
- Promote the construction and rehabilitation of social housing, increasing the public housing to converge with the European average.

66. See: [El Gobierno prorroga hasta el 31 de diciembre de 2024 la suspensión de los desahucios y lanzamientos para hogares vulnerables sin alternativa habitacional | Ministerio de Transportes, Movilidad y Agenda Urbana \(mitma.gob.es\)](#)



29. Energy poverty

The rate of people who cannot afford to maintain their home at an adequate temperature reached 19.9%⁶⁷ of homes with children and youth in 2023. This figure marks a historic record, following three years of growth.

Temporary measures were implemented following the pandemic⁶⁸, aimed at counteracting energy costs and avoiding supply cuts to vulnerable consumers. However, these are palliative and temporary measures that do not provide a real solution for homes in terms of the increase of the cost of electricity.

Various organisations and institutions have shown their concern for the current situation of different settlements, among which is Cañada Real⁶⁹. Sectors V and VI have not had electricity since October 2020, meaning that more than 1800 children have been without electricity since this date. This case has been reported by the Ombudsman and the Commission on Human Rights of the European Council in 2022⁷⁰.

Recommendations:

- Increase the income thresholds for the application for the electricity social voucher, giving special attention to families with dependent children and youth, automatically granting the voucher in the case of children in a situation of vulnerability.
- Guarantee access to an energy supply for all children, especially those in settlements.

67. Those impacted the most are single parent families, which in 2023 stands at 33.9% and has seen an increase of 7.1 points.

68. Royal Decree-Law 8/202 and Royal Decree-Law 17/2021

69. See: <https://plataformadinfancia.org/las-organizaciones-de-infancia-demandan-una-respuesta-urgente-en-la-canada-real/>

70. See: [Spain - Country monitoring - Commissioner for Human Rights \(coe.int\)](#)



H. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

EDUCATION

30. Educational equity

In 2021, Spain invested 4.6% of Gross Domestic Product (GDP)⁷¹, while the EU average for member states was 4.8%⁷². Only 4.4% of the total investment in education is assigned to study scholarships and support.

The indirect costs of mandatory education, such as textbooks, transport and school meals, pose a challenge as regards entry into education for children in vulnerable situations. According to the most recent data available, each home spent an average of 1177 per student in education during the 2019-2020 academic year⁷³.

Recommendations:

- Increase public spending on scholarships and educational support, reaching a minimum of the average investment of the member States.
- Guarantee free mandatory education, especially for children and youth living in particularly vulnerable situations.
- Simplify and streamline requests of and adjudications for support, automatizing the process wherever possible.

71. Data available at: Economic resources. Public Expenditure on Education. Ministry of education, professional training and sports

72. See: Government expenditure on education. Eurostat, 2021

73. Household Expenditure Survey on Education for the 2019/2020 academic year: https://www.ine.es/prensa/eqte_2019_20.pdf

31. Education for 0-3 year olds

In Spain, 45.6% of children have access to the first cycle of childhood education⁷⁴. However, while 62.5% of children with higher income obtain a place, this is only 26.3% for those with lower income⁷⁵. Not all children are guaranteed access, especially families in particularly vulnerable situations and in more destitute areas and those undergoing social transformation.

The main difficulties regarding access to spaces for 0-3 years olds are reduced places, the high registration costs, in addition to a lack of coordination between administrations and public resources designated to this educational stage.

Recommendations:

- Advance in the commitment to the universalisation of quality education for 0-3 year olds, prioritising ages 2-3 and guaranteeing access to children at risk of poverty and social exclusion by way of scholarships and subsidised rates.
- Improve the training of professionals and their working conditions, lower ratios and boost the quality of this cycle through evaluations and inspections.
- Launch awareness-raising actions on the benefits of participating in this education cycle.

74. Data from the MEEPD for the 2022-2023 academic year www.educacionfpydeportes.gob.es/servicios-al-ciudadano/estadisticas/no-universitaria/alumnado/matriculado.html

75. Save the Children (2019). "Donde todo empieza" - Educación infantil de 0 a 3 años para igualar oportunidades", pág. 28. available at https://www.savethechildren.es/sites/default/files/mce/donde_todo_empieza_0.pdf



32. School success

Despite the reduction in the rate of early school leavers in recent years, Spain continues at the bottom of Europe, with a rate of 13.7% in 2023⁷⁶, surpassed only by Romania, and far from the 9.5% recorded for the European Union⁷⁷.

Spain also has one of the highest repetition rates among European countries, ranking fourth in the OECD and third in the EU27⁷⁸, with significant disparities observed across autonomous communities⁷⁹. Repetition remains inequitable: a pupil from a disadvantaged background is almost four times more likely to have to repeat than a pupil from a high socio-economic background⁸⁰.

The dropout and failure figures highlight shortcomings in the educational model that need to be both analysed and corrected⁸¹.

Recommendations:

- Reinforce measures to address the high number of dropouts, particularly of children from vulnerable backgrounds.
- Break down the multiple barriers to learning to tackle underachievement. Intensify small group support tailored to the individual profile of each pupil and speech and language support in order to compensate for the gap that may be caused by the lack of or reduction in these services, in addition to the inaccessibility of distance learning.
- Consider the reduction of grade repetition as a strategic objective of the education system with school improvement plans, with specific goals to reduce grade repetition linked to the autonomy of the school to innovate, accompaniment and more resources.

33. Fight against school segregation

School segregation of the most socially vulnerable groups, predominantly Roma and migrant pupils, remains a concern. In particular, school segregation by migrant origin has increased significantly since 2018, both nationally and locally, as in several autonomous communities, most notable in Catalonia, the Basque Country and Madrid⁸².

Recommendations:

- Draw up a State Plan for educational inclusion and against segregation with a timetable, objectives, indicators and budget agreed between the central government and the Autonomous Communities in order to promote educational inclusion and eliminate segregation, including effective policies to address the consequences of the concentration of students in schools and make them attractive in order to reverse it.
- Move towards proportional or "formula" school funding so that extra resources are allocated in proportion to the needs of the students they support.
- Avoid labelling and stigmatising "priority centres", "high complexity", "preferential treatment" or "challenging behaviour" programmes.

76. Data available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Early_leavers_from_education_and_training#Early_leavers_from_education_and_training_E2.80.93_today_and_ten_years_ago

77. Eurostat (2023). Early leavers from education and trainings. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Early_leavers_from_education_and_training#Early_leavers_from_education_and_training_E2.80.93_today_and_ten_years_ago

78. Informe PISA 2022. <https://www.educacionfpydeportes.gob.es/dam/jcr:91226ac3-0a3b-4efa-b2ce-a5d791229f4d/pisa-2022-informe-completo-digital-low.pdf>

79. Led by Murcia, La Rioja and Castilla y León, worsening considerably since 2018.

80. See: https://www.esade.edu/ecpol/wp-content/uploads/2023/12/2023Dic08_PISA_final.pdf

81. The Committee on Economic, Social and Cultural Rights in its 2018 O-R's (paragraph 46 and 57) showed its concern regarding this issue and recommended Spain continue reducing early school dropout and repetition rates in secondary education, adopting a strategy and intensifying efforts to combat school segregation, including that which is derived from residential segregation that has a disproportionate impact on Roma children and youth, in addition to migrants.

82. Informe PISA 2022: <https://www.educacionfpydeportes.gob.es/dam/jcr:91226ac3-0a3b-4efa-b2ce-a5d791229f4d/pisa-2022-informe-completo-digital-low.pdf>; Save the Children: https://www.esade.edu/ecpol/wp-content/uploads/2023/12/2023Dic08_PISA_final.pdf



34. Parental educational veto

In some autonomous communities, the implementation of the so-called “parental educational veto” is under consideration, implying the need to obtain the express consent of parents for any activity with ethical, social, civic, moral or sexual values content for their children in educational centres⁸³.

This measure is currently being implemented in the Region of Murcia for the 2019-2020 academic year and its incorporation in the Balearic Islands is currently being assessed. The educational veto constitutes a limitation of the right to education for children who are unable to make decisions regarding their education. By way of this measure, families will be responsible for deciding whether or not their children attend certain educational activities during school hours.

Recommendations:

- Eliminate and make impossible the implementation of the parental educational veto on the activities that take place in educational centres, as it is contrary to the fundamental right of children and youth to receive a quality education.
- Incorporate subjects and content such as coexistence in society, emotional education or sex education, gender equality and interculturality into the curriculum.

35. Children without access to school in Melilla

During the 2020-2021 academic year, more than 180 boys and girls were unable to attend school in Melilla. The same occurred in the 2021-2022 academic year, although 160 children⁸⁵ were accepted in the extraordinary call for applications in September. Only youth over 16 years of age were not admitted and were not offered a formal alternative.

These schooling issues are due to the documentary requirements imposed by the authorities in Melilla for schooling, in order to prove the effective residence of the young people in the city, even though the border has remained closed since 2020⁸⁶. The city of Melilla is the only location where proof of regular residence is required in order to access the census, despite the fact that the National Court has established that equal treatment between children of foreign or Spanish nationality should be extended to the formalities required for registration in the census. In this context, 7 individual communications were submitted to the Committee on the Rights of the Child, requesting precautionary measures; one of them was resolved favourably.

The schooling of children over 16 years of age remains unresolved to date.

Recommendations:

- Guarantee the right to education for all minors, including non-mandatory education for over 16's who are unable to access a place in Melilla.

⁸³ This parental educational veto is a major setback, especially as regards gender equality education, affective education and the promotion of participation, which are normally developed by way of complementary activities in the educational centre, in others they are part of the compulsory and assessable curriculum.

⁸⁴ See, for example: <https://www.elperiodico.com/es/politica/20231020/govern-visto-bueno-pin-parental-baleares-93589318>

⁸⁵ Plataforma de Infancia (2021). [Celebramos la escolarización de más de 160 niños y niñas en Melilla que no podían ir al colegio debido a trabas administrativas](#)

⁸⁶ This is despite the fact that both the National High Court (Ruling of 28 December 2018) and the Supreme Court (Ruling of 25 April 2022) have established that requiring foreign minors to have documentation different to that which is required of Spanish minors in order to be registered is discriminatory and therefore annul the regulation that establishes such discrimination.

REST, LEISURE AND RECREATIONAL, CULTURAL AND ARTISTIC ACTIVITIES

36. Normative and social recognition of leisure activities, socio-educational free time and universal access

Spain does not have a legal framework that recognises leisure and socioeconomic free time activities and/or it equates them to school education. Nor is there explicit recognition of the fact that these activities favour complete childhood education, which poses a challenge to the work undertaken by the entities, hindering the work of the entities that undertake them, their interrelation with other services and access to schools.

Financial support and public spaces available to participate in leisure and socio-educational free time activities are not sufficient to guarantee access for children in situations of poverty and exclusion, and children in rural areas. Additionally, measures are necessary to guarantee these activities are accessible for disabled children.

Recommendations:

- Develop a legislative framework, in accordance with the competence framework, that guarantees the right of children and youth to participate in socio-educational leisure and free time activities.
- Promote networking and joint work between the different agents in the community (social services, social entities, public administrations, health and protection services, AFA) that favour the better detection of needs in the experience of socio-educational leisure and free time and a greater efficiency in terms of existing resources.
- Guarantee accessibility for disabled children and access to quality leisure and extra-curricular socioeducational activities, free of charge or funded by support aimed at financially vulnerable families.





I. SPECIAL PROTECTION MEASURES

ASYLUM-SEEKING, REFUGEE AND UNACCOMPANIED CHILDREN

37. Age determination procedure for unaccompanied migrant children

On more than 15 occasions the Committee has stated that the age determination procedure violates children's rights by failing to validate children's official documentation in order to prove their age⁸⁷; failing to give the benefit of the doubt during the procedure ; conducting systematic radiological tests⁸⁸, and proceeding without legal assistance, ending with a non-appealable decree determining their age⁸⁹.

The State affirms that a preliminary draft law regulating a new procedure is underway, however, there are issues that did not fully respect the views of the Committee on the Rights of the Child, the jurisprudence of the Supreme Court and the recommendations made by the Ombudsman.

- It thus sets up an urgent procedure with very short deadlines, which will prevent children who have to process their documentation in Consulates and Embassies from being able to provide it for the procedure in time.
- It does not allow that, once the documentation has been obtained, age can be reviewed before the same judge who initially determined it.
- It does not include explicit reference to what is known as a holistic procedure, what evidence is required and which skills the participating professionals require.

Recommendations:

- Regulate by law a new judicial procedure for age determination in civil jurisdiction that respects the views of the Committee on the Rights of the Child, the recommendations of the Ombudsman and the jurisprudence of the Supreme Court, guaranteeing the presumption of age minority, legal aid, an effective solution and its implementation only in the absence of documentation whenever doubts arise regarding the reported age.

87. A.L. c. Spain, communication number 16/2017, adopted on 31 May 2019, CRC/C/81/D/16/2017; M.B.S. c. Spain, communication number 26/2017, adopted on 28 September 2020, CRC/C/65/D/26/2017; M.B. c. Spain, number 28/2017, adopted on 28 September 2020, CRC/C/65/D/28/2017.
88. C.O.C. c. Spain, communication number 63/2018, adopted on 29 January 2021, CRC/C/66/D/63/2018.
89. Ruling of 23 September 2014, STS 3818/2014, appeal number 1382/2013, Ruling of 16 June 2020, STS 2198/2020, appeal number 2629/2019, grounds of law number 3, which also states that doubts regarding the reliability of the age established in official documentation not invalidated by the issuing authorities and which shows no signs of manipulation 'cannot prevail over what results from the documentation itself, provided by the minor in order to assert their status as such for the purposes of obtaining child protection.'
90. J.A.B. c. Spain, communication number 22/2017, adopted on 31 May 2019, CRC/C/81/D/22/2017; R.K. c. Spain, communication number 27/2017, adopted on 18 September 2019, CRC/C/82/D/27/2017

38. Mass arrivals and migration crisis response plans

In recent years, Spain has experienced mass arrivals of unaccompanied migrant children. As of May 2024, 5,500 unaccompanied migrant children and youth were being assisted by the Canary Islands protection system, without interterritorial solidarity mechanisms that enable responsibilities to be shared between Autonomous Communities.

Although a migration contingency management model has been developed, as the state highlights, it has not provided an effective response.

This, together with institutional saturation, has led to a number of issues that impede or delay access to rights and protection. There is concern regarding the identification failures after disembarkation; the lack of specialised legal advice; delays in the appointment of a guardian⁹¹; poor conditions in emergency centres; the existence of macrocentres, and the situation of children living on the streets or in adult centres.

Recommendations:

- Periodically collect and publish statistic information regarding unaccompanied migrant children.
- Ensure shared responsibilities between Autonomous Communities as regards the allocation of unaccompanied children and youth, establishing the guarantees with which the transfers must comply in order to ensure the rights of the children.
- Develop accurate instructions for all entities within the humanitarian aid system in the case of the presence of suspected or presumed children, and consequently ensure a prompt referral to the child protection system.
- Establish appropriate reception centres with specialised legal assistance, trained interpreters and child-friendly services.

91. Defensor del Pueblo (2021). Los niños y los adolescentes en el informe anual del Defensor del Pueblo 2021



39. The principle of non-refoulement

Despite the fact that in 2019 the Committee on the Rights of the Child condemned Spain for having returned a Malian child with no guarantees, who crossed the fence in Melilla⁹², none of the recommended reforms have been implemented. The practice of 'border rejections' and 'pushbacks' prevents the identification and consequent protection of migrant children⁹³.

Additionally, it is worth highlighting the events of August 2021, when the Spanish government proceeded to return 45 migrant children who had entered Ceuta irregularly in May 2021. The return of said children took place collectively, without prior notice, without any form of hearing and without complying with the legally established guarantees. In January 2024, the Supreme Court has confirmed that such refoulement was unlawful, concluding that each child should have been heard and a resolution should have been notified, informing of the right to appeal.

Recommendations:

- Amend the O.L. 4/2015 of 30 March in order to put an end to the automatic return of migrant children.
- Guarantee that the repatriations of unaccompanied migrant children as a lasting, acceptable solution are only undertaken when, having analysed each individual situation, it is considered to be of their best interest, their safety and wellbeing can be guaranteed in their country of origin and the process will be undertaken with all due guarantees.

40. Children requesting international protection

19.26% of those who requested asylum in Spain in 2023 were children⁹⁴, however, the asylum system does not have the focus on children that it requires.

Despite the existence of the obligation to adapt the procedure to request asylum to children, the majority do not manage to access an application different to that of their parents, they are not heard, nor are they provided with information adapted to their age and/or degree of maturity. There are no adapted spaces or personnel with the required training to undertake their assessment.

Once they access the international protection reception system, they tend to experience interruptions to their integration processes (as a result of frequent changes of schools or city), they do not receive direct psychological support and coexist in residential situations that are not adapted for families, for up to a maximum period of 24 months.

As regards unaccompanied children, the lack of identification of these profiles in the protection system and monitoring and support during the asylum process is of concern.

Recommendations:

- Provide training to key actors in the field of international protection in order to ensure the identification of these profiles and provide the necessary and adequate attention.
- Develop regulations for the Asylum Law in order to specifically establish the implications of the 'differential treatment' highlighted in Article 46.1 in the case of asylum-seeking children.
- Draw up a regulation that governs the procedure for assessing and determining the best interests of children in need of international protection and linking all the actors involved in the different bodies and institutions.
- Guarantee that all families with dependent children have access to an adequate residential situation from the moment they make known their willingness to apply for international protection.

92. Views adopted by the Committee under the Optional Protocol of the Convention on the Rights of the Child on a communications procedure as regards communication No. 4/2016, 15 May 2019, CRC/C/80/D/4/2016.

93. Defensor del Pueblo (2023) *Infancia y adolescencia en el informe anual 2022*, pág.17. At current, when an assault takes place on the border perimeters in the autonomous cities of Ceuta and Melilla, the State Security Forces and Corps attempt to ensure that the majority do not manage to cross the fence, and if they do, to return them. Within the framework of these actions, it is not possible to identify the children.

94. See the statistical data provided by CEAR: masquecifras.org



SALE, TRAFFICKING AND ABDUCTION OF CHILDREN

41. Victims of child trafficking

Severe shortfalls can be identified in the detection, identification, protection and support to victims of child trafficking, predominantly due to:

- The scarce training provided to professionals working with children.
- Lack of specific residential resources⁹⁵ adapted to their needs.
- The absence of follow-up of cases of trafficking detected in the centres, or of cases of disappearance from the centres themselves.

Additionally, the comprehensive Organic Law against trafficking and exploitation of human beings has not yet been passed.

Recommendations:

- Improve the detection, identification, assistance, care and protection of the most vulnerable children, based on a specialised cooperation and referral mechanism that is integrated into existing child protection systems.
- Approve the integral Organic Law against Trafficking, according to international standards and with a focus on children.
- Ensure specialist resources for victims of child trafficking in all autonomous communities.
- Provide specialist training for professionals working in residential centres.

ADMINISTRATION OF JUVENILE JUSTICE

42. Incommunicado detention of individuals over 16 years of age and disciplinary sanctions

In Spain, the possibility of decreeing incommunicado detention for minors aged 16 and 17 remains in force, despite the reform established of the incommunicado detention regime introduced by Organic Law 13/2015⁹⁶.

Such severe disciplinary sanctions are also applied to juvenile detainees held for committing very serious offences classified as cruel and inhumane treatment by the Committee Against Torture⁹⁷; de facto isolation in a room for up to seven days⁹⁸, Iseparation of the juvenile from the rest of the group for up to five weekends⁹⁹ and the prohibition to participate in recreational activities for up to two months¹⁰⁰.

Recommendations:

- Put an end to the use of incommunicado detention for all minors, including those aged 16 and 17 by way of an amendment to art. 509.4 of the LECRIM to ensure that in no case may minors be subjected to incommunicado detention.
- In accordance with the Committee against Torture, respect the prohibition of imposing on minors deprived of their freedom, disciplinary measures which constitute cruel, inhumane or degrading treatment, including solitary confinement (According to Rule 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

96. Article 509 of the Criminal Procedure Act, reformed by Organic Law 13/2015 of 5 October, establishes that 'in no case may minors under the age of sixteen be subject to incommunicado detention'.

97. Final observations made by the Committee Against Torture: <https://docsstore.ohchr.org/SelfServices/FilesHandler.aspx?ence=6OkG1dP%2FPPRCAqKb7yhsbvDzZoO%2BPaamELUCn%2FFCADCy5kgE6BAGvRDw0J35woxX21%2B5V8CzW940UYt5G02EMSHRqBNccB3e15O2%2B21Kqf3qutlDolL0f5a28H>

98. Art. 60.3 of the OL on the Criminal Responsibility of Minors and art. 65.2a) of RD 1774/2004

99. Art. 60.3 of the OL on the Criminal Responsibility of Minors and art. 65.2b) of RD 1774/2004

100. Art. 60.3 of the OL on the Criminal Responsibility of Minors and art. 65.2a) of RD 1774/2004



J. PROTOCOLS I and II

43. Sale of weapons

Spain continues to sell material of defence to countries involved in armed conflict, including countries that recruit and use boys and girls in hostilities: Israel, Colombia, Israel, Yemen¹⁰¹, India and the Philippines. On the other hand, Spain sells weapons to Pakistan, Turkey and Ukraine, where there have also been declared cases of recruitment according to UN data¹⁰².

Recommendations:

- Guarantee the protection of children and their families by way of the immediate suspension of the transfer of weapons to any country involved in conflict.
- Incorporate in the criteria employed to decide on licensing authorisations and exports of defence material to other countries the recipient country's commission of severe violations against children in conflict.

44. Fight against Child and Adolescent Sexual Exploitation

Spain has not had a Plan of Action against Child and Adolescent Sexual Exploitation (ESIA) since 2013. In addition, the lack of a centralised information system to collect data linked to ESIA complicates the development of public policies and effective measures.

ESIA in travel and tourism is not expressly criminalised. Additionally, "the preparation of travel arrangements" for the sexual exploitation of children in a territory other than the abuser's place of origin or residence is outside the jurisdiction of Spanish courts.

The proliferation of apps and websites¹⁰³ that can be accessed by minors and that may facilitate conduct related to the sexual exploitation of children and youth is of concern, such as those that facilitate or promote the exchange of materials including sexual content in exchange for favours, gifts or money.

Recommendations:

- Adopt a National Action Plan against Child and Adolescent Sexual Exploitation.
 - Improve the prevention and detection tasks and measures by way of:
 - Collection of data regarding child and adolescent sexual exploitation, with special attention given to the most vulnerable children.
 - Initial and continuous training and skills development at all territorial levels for those professionals working with children and youth, particularly those related to the detection and intervention of cases of ESIA.
 - To have personnel specialised in childcare and who have undergone specific training in the different units of the State Security Forces and Corps.
 - Undertake reforms to adapt the national legal system to issues related to 'child prostitution', the sale of children, sexual exploitation of children by way of travel and tourism, online sexual exploitation and paedophilia.

101. Although Spain does not sell weapons directly to Yemen, it does sell them directly to Saudi Arabia, United Arab Emirates and Morocco, all of which form part of the coalition led by Saudi Arabia, which intervenes in the conflict in Yemen. Additionally, as we have already seen, there are cases of recruitment of children by armed groups supported by said coalition.

102. See the latest report by the Secretary General regarding children and armed conflicts: <https://childrenandarmedconflict.un.org/document-type/annual-reports/>

103. For example, sugardating, onlyfans, etc



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