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**POLICIES
ON RECEPTION,
RETURN
AND INTEGRATION
ARRANGEMENTS FOR
UNACCOMPANIED
FOREIGN MINORS**

SPAIN

June 2009



The European Migration Network (EMN) is an initiative of the European Commission. The EMN has been established via Council Decision 2008/381/EC and is financially supported by the European Union.

Its objective is to meet the information needs of Community institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with such information.

To that end, the EMN has a network of National Contact Points (NCPs).

In Spain, the NCP is composed of experts from four ministries (Ministry of Labour and Immigration, Ministry of Interior, Ministry for Foreign Affairs and Cooperation and Ministry of Justice) and is coordinated by the Permanent Observatory for Immigration, a collegial body attached to the Ministry of Labour and Immigration. The NCP also collaborates with independent experts for the elaboration of EMN studies and reports.

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Policies on Reception, Return and Integration Arrangements for Unaccompanied Foreign Minors

Spain

This National Report considers, through a theoretical-practical analysis of the interventions carried out with unaccompanied foreign minors in Spain, the entry, protection, integration and return procedures aimed at these minors, and explores the problems and difficulties faced by the competent authorities. This National Report also aims to clarify the procedures which should be applied to these minors once they are in Spain.

Report produced by the European Migration Network,
written by the Spanish EMN National Contact Point.

June 2009

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Executive Summary

1. Migration motivations of unaccompanied foreign minors in Spain

By virtue of Directive 2001/55/EC of 20 July, unaccompanied foreign minors are defined as third country nationals or stateless persons below the age of eighteen, who arrive on the territory of a Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State.

The majority of unaccompanied minors who enter Spain through illegal channels come from the African continent, specifically from the regions of the Maghreb and the Sahel.

The majority of these minors reach Spain after having endured dangerous crossings, mainly because of economic necessity; they express that they *come with the purpose of getting “documents” to be able to live and work in Spain and send money to their families*. The decision to emigrate may be motivated by personal or family reasons but the ‘European myth’ has also been confirmed as influencing the decision to migrate. Furthermore, the background to these migrations cannot be forgotten: the precarious socioeconomic situation in the minors’ countries of origin.

Once they enter Spain, their expectations about migration clash with reality, and a high percentage of these minors say they *did not know what they were going to find in Spain and that if they had known, they would not have come, but once here they do not wish to return to their country of origin and wish to stay to try it out*.

2. Entry procedures for unaccompanied foreign minors in Spain, including border controls

In the southern border of Spain there is a continuous migratory flow, managed by migrants smuggling gangs. To ensure the control of this border, in recent years the Spanish Government has maintained a policy which seeks cooperation with the countries of origin, transit and destination of this illegal immigration. This model for managing the control of the southern border has increased the effectiveness of actions to combat the illegal immigration of adults. However, it has been verified that, as a result of this effectiveness the mafia gangs have increased their unaccompanied foreign minors smuggling due to the current difficulties in carrying out their return.

By virtue of international commitments ratified by Spain concerning the Rights of the Sea, operations relating to border control are humanitarian and dissuasive in nature, at all times guaranteeing the safety of the occupants of *cayucos and pateras* (boats used by African immigrants). When Spanish Authorities detect one of these vessels, an emergency unit for attending to the occupants is prepared on land. By virtue of agreements signed with the Public Bodies, the Spanish Red Cross participates in these units and carries out the first health assistance on the beach.

The first unaccompanied foreign minors appeared in Spain over twenty years ago, and their number has increased year after year, to the point of saturating the primary reception centres of the Child Protection Services of the Autonomous Communities and Cities, especially in the centres located within the territories of the southern border as is the case of Andalusia, the Canary Islands, Ceuta and Melilla, and those located in large cities, such as Madrid and Barcelona. It is estimated that these centres attend to about seventy percent of the receptions of unaccompanied foreign minors who take place in Spain. For this reason, the *Special Programme for the transfer and care of unaccompanied foreign minors from the Canary Islands Region* was created. Both the Autonomous Cities of Ceuta and Melilla and the Autonomous Community of the Canary Islands receive financial support from the Spanish Government.

In Spain, the illegal entry of these minors is governed by a combination of legislation on alien affairs and the protection of minors in situations of risk or abandonment. Because of this, the legislation on alien affairs sets forth that once the age of the minor is confirmed, the unaccompanied foreigner must be referred to the Child Protection Services of the Autonomous Communities, the competent bodies for declaring their abandonment, assuming their guardianship and exercising any necessary protective measures. As can be appreciated, this legislation provides for additional guarantees and more favourable arrangements for unaccompanied foreign minors than detention, which in any case are compatible with the Directive on Return.

One of the guarantees offered to unaccompanied minors is the intervention of the Prosecution Office, which holds the legal mandate of overseeing the fulfilment of the guarantees of the procedures carried out with these minors and for exercising their rights. Therefore, it must be informed of all decisions taken in relation to unaccompanied foreign minors. Specifically, the Special Prosecutors for Alien Affairs are assigned the tasks of coordination, supervision and transfer of the procedures to be followed as to the proceedings on the determination of age and the return of unaccompanied foreign minors.

The policy carried out by the Spanish Government as regards unaccompanied foreign minors within its territory is based upon three basic lines of action: prevention of these migrations through the adoption of measures centred on the socioeconomic development of the unaccompanied minors' regions of origin, as well as the fight against migrants smuggling networks; assistance and protection of unaccompanied foreign minors within Spanish territory; assisted return of minors to their families or the institution responsible for their guardianship in the country of origin and their re-insertion into society. In order to achieve all this, the Spanish Government seeks the cooperation of the minors' countries of origin.

Although in Spain the illegal entry of these minors is not managed through the right of asylum, the legislation on alien affairs allows them to apply for it. According to the Asylum and Refuge Office, 13 applications for asylum were presented by unaccompanied minors in 2008 and 12 in 2007.

3. Procedures for the reception and integration of unaccompanied foreign minors in Spain

Intervention with these minors in Spain is set forth in the Protocol on Unaccompanied Foreign Minors approved on 14 November 2005 by the working group of the Observatory on Infancy, which assigns the tasks of the public Bodies and Entities intervening in this matter, drafted in accordance with Article 92 of the Aliens Regulations¹, the article which develops the procedures to be followed with unaccompanied foreign minors in Spain.

The Protocol divides this intervention into four phases: locating the minor, protecting and investigating their circumstances, integration into the reception society and return to the country of origin.

¹ Regulations approved by Royal Decree 2393/2004 of 30 December, which develops Organic Law 4/2000 of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, amended by Organic Laws 8/2000 of 22 December, 11/2003 of 29 September and 14/2003 of 20 November.

3.1. Procedure for the reception of unaccompanied foreign minors

When an apparent unaccompanied foreign minor is located in Spain, the child's age is confirmed through the Registry of unaccompanied foreign minors of the General Directorate of the Police and Guardia Civil and/or through medical tests to determine the child's age under the direction of the Prosecution Office.

During the phase of protection and investigation into the circumstances of the unaccompanied foreign minor, the Child Protection Services initiate proceedings for granting protection and agree to a measure for immediate assistance, usually a guardianship measure. Additionally, actions are carried out to identify the minors, determine their parentage and situation in origin; revealing the scarce collaboration received from the Consulates of these minors' countries of origin in Spain. Lastly, during this phase the situation of abandonment is verified; these services must therefore declare this situation and assume without delay the guardianship of the unaccompanied foreign minor in accordance with the legislation in force on the protection of minors.

3.2. Procedure for the social integration of unaccompanied foreign minors

During this intervention phase the protection offered by the Child Protection Services continues, and the intervention with the minors under their guardianship is oriented toward their familial and social integration. For this reason, while processing the minor's return when it is in the child's best interest, there must also be intervention as regards his/her social integration.

The foreigner status which characterizes these minors means that analysis of the procedure for their social integration in Spain is considered from two different perspectives: from the viewpoint of intervention as regards their situation of abandonment and from the viewpoint of intervention in the procedures of regularising their documents and administrative situations.

Intervention in the situation of abandonment

A network of reception units within the Child Protection Services of the different Autonomous Communities and Cities exists to attend to the needs of abandoned minors; in the case of unaccompanied foreign minors, these centres usually provide assistance exclusively to them, are managed by non-profit organisations and NGOs, and have multicultural and multidisciplinary educational teams.

In Spain, all foreign minors are guaranteed the right to education and all foreign minors in situations of risk or under the guardianship or custody of an entity of the Child Protection Services, even when they do not have legal residence status, are entitled to healthcare and other public services.

Intervention in the procedures of regularising their documents and administrative situation

In Spain, the residence of unaccompanied foreign minors under the guardianship of the Public Bodies is considered legal to all intents and purposes. Upon the request of the entity which holds their guardianship, these minors may exercise this right once 9 months have lapsed since the child was referred to the competent Child Protection Services and it has been confirmed that they cannot return to their family or to their country of origin. The Spanish Government, through the Delegations and Sub-Delegations of the Government, must therefore grant a residence permit, retroactively in effect as of the date when the minor was referred to the Child Protection Services. This residence permit is not an impediment to a subsequent return of the child when it can be carried out in accordance with the provisions of the legislation in force.

The Child Protection Services must provide documentation and successfully complete the procedures for the administrative regularisation of the minors under their guardianship so that they may be socially integrated, this being the ultimate objective of the intervention. Everyday experience with these minors, however, shows that some leave the reception centres at the age of eighteen without identity documents and without a Spanish residence or work permit, thus hindering their social and laboral integration in Spain, since they remain in an illegal administrative situation.

However, it has been confirmed that heterogeneous criteria are applied in the intervention in the procedures of regularising documents and administrative situations carried out with these minors in Spain.

Finally, it is estimated that the costs alone of attending to their needs upon reception quadruples the funds received annually from the European Funds of the “Solidarity and Management of Migration” (“Solidaridad y Gestión de Flujos Migratorios”) Programme for managing policies on border control, integration and return of resident foreigners in Spain and for the administration of the asylum policy.

4. Procedures for the return and reintegration of unaccompanied foreign minors in Spain

In accordance with the principle of the minor's reunification with his/her family, the Spanish Government is the competent body for deciding on the return of unaccompanied foreign minors to their country of origin with their family or, in the absence of these options, to the public institutions responsible for the child's guardianship in their country of citizenship. Only if the child's safety were at risk or in danger would stay in Spain be considered. In accordance with the principle of the child's best interest, return of a minor to his/her country of origin will only be agreed to if the conditions are present for an effective reunification with his/her family or for the minor's adequate guardianship through the Child Protection Services in the country of origin. Upon confirmation that the child's safety is at risk or in danger, or that the minor or his/her family may be persecuted, the return will not be carried out. The Prosecution Office shall be informed of all actions carried out in this procedure.

The return of unaccompanied foreign minors is based upon the principle that all minors should be integrated within their family and/or social surroundings when doing so does not contradict their best interests. This return must not be confused with the figures of return upon refusal of entry at a border, removal or other kind of forced return; such measures are applicable only to foreign adults.

These returns are carried out by civil servants of the General Directorate of the Police and the Guardia Civil or the National Police Force, which hand over the minor to the border authorities of the country to which he/she is returned. In practice, the cost of these returns is borne by the Spanish Government.

As shall be analysed in this Report, in Spain the return of unaccompanied foreign minors has been paralysed for various reasons .

Bilateral agreements between Spain and the countries of origin of unaccompanied foreign minors

Spain has signed several bilateral agreements with the countries of origin of unaccompanied foreign minors, specifically with Morocco and Senegal, to tackle the issue of their migration. Parallel to the development of the Spanish Government's policy on this issue, these agreements have evolved in recent years.

At present, a new generation of agreements exists: those signed in 2006 with Senegal and in 2007 with Morocco. These govern the bases for the relations between Spain

and the countries of origin as regards unaccompanied minors and set forth the policy followed by the Spanish Government in this area. Specific actions considered in these agreements include:

- The adoption of prevention measures centred on the socioeconomic development of the regions of origin of unaccompanied minors, as well as on combating migrants smuggling gangs.
- The adoption of measures for the assistance and protection of unaccompanied foreign minors within Spanish territory.
- Encouraging the assisted return of minors to their families or the institution responsible for their guardianship in the country of origin, as well as their re-insertion into society.

The success of the policy carried out with unaccompanied foreign minors requires the coordinated effort of both the reception countries and the migrants' countries of origin. To achieve this, cooperation is necessary between the Member States of the European Union and between the Member States and the minors' countries of origin to prevent their migration and fight against the mafia gangs that manage and control the migrants smuggling from African countries, which in recent years has increased its profits due to the traffic and exploitation of unaccompanied minors. Moreover, it would be advantageous if an international organisation specialised in issues of childhood or immigration, as is the case of UNICEF or the International Organization for Migration, could become involved in the procedures for the voluntary return of these minors.

1. Introduction: Objectives and Methodology

The history of humanity is one of migratory processes which, generation after generation, have been driven by the adult members of families, relegating the role of minors to the background, since they always emigrated accompanied by the adults responsible for them.

However, since the end of the seventies, Europe has been experiencing a new migratory phenomenon driven by minors who, abandoning their families and social environment, begin a dangerous migratory adventure without being accompanied by a responsible adult, despite the fact that in many cases they have not yet reached the age of sixteen.

This migratory phenomenon, gradually consolidated in Europe over the last fifteen years, is different to the migratory processes of adults in numerous ways, and therefore deserves an independent analysis. For this reason, the European Migration Network² (EMN) included in its 2008 Work Programme the carrying out of a comparative study across the European Union on the policies of reception, return and arrangements for the integration of unaccompanied foreign minors.

In order to carry out this comparative study, each Member State should, through its National Contact Point (NCP), draft a National Report which includes the policy on reception, return and arrangements for the integration of unaccompanied foreign minors within their territory. Subsequently, a Synthesis Report is drawn up, reflecting the key conclusions of each National Report, highlighting the most important aspects and placing these within a Community perspective.

In the case of Spain, the NCP is made up of experts from four ministries (the Ministry of Labour and Immigration, Ministry of the Interior, Ministry of Foreign Affairs and Cooperation and the Ministry of Justice), coordinated by the Permanent Observatory for Immigration³. The NCP also collaborates with independent experts in carrying out studies

² The European Migration Network is an initiative of the European Commission, created by Decision 2008/381/EC of 14 May. Its purpose is to provide updated, objective, reliable and comparable information on migration and asylum to the institutions of the Communities and to the authorities and institutions of the Member States, with the objective of supporting the drafting of policies on these matters in the European Union.

³ The Permanent Observatory for Immigration is the collegiate body which has been allocated the functions, among others, of gathering data and carrying out analyses, studies and diffusion of information related to migratory movements in Spain. It is part of the Ministry of Labour and Immigration through the State Secretariat for Immigration and Emigration.

and reports for the EMN. The NCP hired an external expert⁴ to prepare the research and drafting of the report. Representatives of the NCP have been responsible for its technical supervision and management, with particular commitment from the General Directorate for the Integration of Immigrants (Ministry of Labour and Immigration).

This National Report aims to offer a global vision of the issue of unaccompanied foreign minors in Spain, including its problems and difficulties.

1.1. Objectives

The main purpose of this National Report is to analyse the procedures of entry, protection, integration and return of unaccompanied foreign minors in Spain, offering the most balanced vision possible as to the reality of minors at risk of social exclusion through a theoretical-practical analysis of the interventions carried out with them, studying in depth the problems and difficulties which the competent Authorities face when intervening with this collective. Moreover, this National Report seeks to clarify the procedures which should be applied to these minors once they are in Spain.

1.2. Methodology

1.2.1. Gathering the necessary information for drafting the Report

The following actions have been carried out to obtain the necessary information for drafting this Report:

- Analysis of some of the research projects on unaccompanied foreign minors written in Spain in recent years.
- A questionnaire has been sent to the Autonomous Communities and Cities for the purpose of gathering information about the different mechanisms that exist for the

⁴ Óscar Calzada González holds a university degree in Law, is the high-level Technician of the General Directorate for Social Services of the Government of Cantabria, Expert on the Rights of and the Protection of Minors and on the Rights of Foreigners, and since 2007 is responsible for the administrative documentation and regularisation of unaccompanied foreign minors under the guardianship of the Government of Cantabria. Likewise, he is author of the following studies on the issue:

“The protection of unaccompanied foreign minors in Cantabria”. General Directorate of Social Policies of the Government of Cantabria, 2007.

“The administrative regularisation of unaccompanied foreign minors in Cantabria. 2007 Report”. General Directorate of Social Services of the Government of Cantabria, 2008.

reception of minors, the number of minors received, the protection measures extended to them, the procedures for regularising the documentation and administrative situation of minors under their guardianship, the return procedures carried out with them, the inter-administrative coordination within the territory and the cost and/or financing of the expenses derived from the reception and protection extended to these minors, including expenses for the procedures involved in the emancipation of those of legal age.

- Interviews with diverse groups of professionals that work on a daily basis in the context of unaccompanied foreign minors, to gather their experience. The participating interviewees include educators and directors of all types of reception resources; teachers of occupational training courses with these minors; street outreach workers; public servants from the Child Protection Services, the Aliens and Borders Units of the National Police and from the Immigration Offices of the Delegations and Sub-delegations of the Spanish Government; the Child Prosecution Office...
- Interviews with the unaccompanied foreign minors under guardianship themselves and with those who have reached legal age in order to explore in depth the personal and family situation in their country of origin, their motivations for emigrating, and as to who made the decision to embark on this adventure. The level of satisfaction of their expectations has also been explored in depth, asking them if, as a last resort, they would repeat this migratory adventure.
- Information has been requested to the Ministry of Labour and Immigration about the *Special Programme for the transfer and care of unaccompanied foreign minors from the Canary Islands Region* and about the investment made by the State as regards unaccompanied foreign minors.
- Internet-based research has gathered some of the documentation that exists on unaccompanied foreign minors, differentiating between three types of documents: reports and instructions from the different Public Bodies and Authorities with competencies in the matter (Autonomous Communities and Cities⁵, Ministries of the Spanish Government with competencies in unaccompanied foreign minors, the Prosecution Office, several from the Regional and Children's Ombudsman Offices⁶ that exist in Spain); reports from different non-profit associations; news items appearing in various media sources.

⁵ Links to each of the internet addresses of the different Child Protection Services of the Autonomous Communities and Cities are available through <http://www.serviciossocialescantabria.org>.

⁶ Spanish Ombudsman (<http://www.defensordelpueblo.es>), Ombudsman of the Basque Country (<http://www.ararteko.net>), Ombudsman of Catalonia (<http://www.sindic.cat>), Ombudsman of the Child of Madrid (www.defensordelmenor.org) and Ombudsman of the Child of Andalusia (<http://www.defensor-and.es>).

- Finally, some of the legal resolutions set forth in Spain in the last two years as to unaccompanied foreign minors have been studied.

1.2.2. Structure of the Report

This National Report is structured in six sections and an annex to facilitate the study of this complex reality, in which the following issues are analysed:

Section 1. Introduction: objectives and methodology

This section sets forth the objectives of the study and the methodology used to achieve them.

Section 2. Migration motivations of unaccompanied foreign minors in Spain

This second section includes the concept of the unaccompanied foreign minor and analysis of the evolution of this migratory phenomenon in Spain.

It also includes the minors' motivations for initiating the dangerous migratory adventure and the study of their socioeconomic and family situation in their countries of origin in order to understand why many of their families view the illegal emigration of their youngest members as one of their last opportunities to improve their familial situation. Finally, the general profile of these minors is presented.

Section 3. Entry procedures of unaccompanied foreign minors in Spain, including border controls

This section analyses the control carried out at the southern border of Spain, it being the illegal entry point of unaccompanied foreign minors. It presents the international cooperation projects that exist on illegal immigration as well as the bilateral agreements signed by the Government of Spain with various African governments.

In addition, it examines the legislation on alien affairs and child protection as set forth by the competent Public Bodies for intervening in the reality of these minors and which govern the treatment which the unaccompanied foreign minors in Spain should receive.

Lastly, it offers a succinct study of the legislation on asylum and cases of unaccompanied foreign minors who apply for it.

Section 4. Procedures for the reception and integration of unaccompanied foreign minors in Spain

This section analyses the procedure for the reception of these minors in Spain, considering the Protocol for the Care of unaccompanied foreign minors approved by the Observatory on Infancy, highlighting the difficulties that exist for determining with certainty the age of undocumented minors and the difficulties of the Child Protection Services entities with regards to analyzing the personal, family and social circumstances of the minor in his/her country of origin.

The procedure for the social integration of these minors is also considered, analysing the protection measures applicable to them (reception and its different modalities, declaration of abandonment and assumption of guardianship, access to education and professional and occupational training and, finally, access to healthcare), as well as the procedure of administrative regularisation (documentation, registration on the Population Register, work and residence permits in Spain, as well as the acquisition of Spanish nationality).

Section 5. Procedures for the return and reintegration of unaccompanied foreign minors in Spain

This section analyses the procedures to be followed in the procedures for the return of unaccompanied foreign minors in accordance with the legislation on alien affairs and the legislation which governs administrative procedures in Spain. It also presents the problems and difficulties that exist in Spain as regards this issue.

Finally, bilateral Agreements signed by Spain in relation to unaccompanied foreign minors are analysed, highlighting the importance of acquiring cooperation between the countries of origin and of destination in order to avoid future migrations of unaccompanied foreign minors, to work on the assisted return of these minors, and to facilitate their reintegration in their country of origin.

Section 6. Conclusions

This section includes the main best practices identified.

Annex I. Statistical Data

This annex includes statistics on unaccompanied foreign minors.

Annex II. Bibliography

Bibliographical sources and legislation are detailed here, as well as the legal resolutions on unaccompanied foreign minors which have been studied.

2. Migration motivations of unaccompanied foreign minors in Spain

2.1. Definition of the unaccompanied foreign minor

In Spain, unaccompanied foreign minors are defined as *third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the a Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered Spain*⁷.

2.2. Motivations which cause these minors to emigrate towards Europe

One must know the socioeconomic and family situation the minors have in their countries of origin in order to understand the motivations which cause them to begin, alone, the migratory adventure towards Europe. To this end, these situations are analysed below, grouped by the geographical areas that the majority come from, in other words, the African regions of the Maghreb and the Sahel.

2.2.1. Minors coming from the Maghreb, especially Morocco

The presence of unaccompanied foreign minors in our cities dates from the early 90s, when the first Moroccan unaccompanied minors were discovered. Initially, the majority of these children were *street children* in Morocco, but this background has evolved and currently most of them tend to live with their families prior to emigrating.

When asked about the motivations which cause these children to abandon their country, they say that they *come to Spain to find a better future which is impossible in Morocco*

⁷ Article 2-f of Council Directive 2001/55/EC of 20 July. This definition of the unaccompanied foreign minor is also included in Article 1 of the European Council Resolution 97/C 221/03 of 26 June; in Article 19 of Council Directive 2003/9/EC of 27 January; in Article 2-f of Council Directive 2004/81/EC of 29 April; in Article 2-i of Council Directive 2004/83/EC of 29 April; in Article 17 Council Directive 2005/85/EC of 1 December.

because there are not enough opportunities there, studies do not guarantee a good job and employment for young people⁸ is scarce and highly precarious. They wish to work and earn money to live in Spain and help their families economically.

When exploring in depth who makes the decision to emigrate, various situations occur: minors who decide personally, without consulting with their family; minors who pressure their families to pay for the trip; minors who emigrate to obey the decision made by their family which wishes to improve their economic situation; minors who took advantage of the opportunity without prior reflection.

Clearly, many Moroccan citizens think that their minors will have a better life in Europe and that once they arrive they will be able to work and send money home. This belief results from the so-called 'European myth' fostered through the media, which presents a distorted vision of the reality of Europe, and by the migrant smuggling gangs, who use it to increase their earnings.

Moroccan minors who emigrate to Spain unaccompanied by a responsible adult come from various socioeconomic and family backgrounds, given that there are minors who had a stable family environment which provided for their material, emotional and educational needs without their needing to work; others who grew up in a stable environment but with economic needs, therefore having to work sporadically to cover their basic needs, simultaneously neglecting their studies; minors from broken families in serious economic need, who had to abandon their studies definitively in order to search for a permanent source of income; and finally, cases of minors who do not have the protection of their family and end up in the streets.

The methods used by these minors to enter Spain illegally have evolved in recent years; they are characterised, in their majority, by the risk they pose to their lives and physical safety:

- The most commonly used method consists of travelling by hiding in some of the vehicles (trucks, buses) which cross the Strait of Gibraltar on ferries which link Morocco and Spain. This method, which in some cases has no economic cost to the minor, is costly in physical terms, since the health of the minors deteriorates rapidly due to the difficult living conditions at the port, and many end up inhaling a large amount of solvent⁹.

⁸ The legal working age in Morocco is 15 years.

⁹ The inhalation of solvents is a practice related to unaccompanied minors coming from Morocco, but not all minors consume these, and the majority do not use drugs. Those who inhale it say they *started to do it in Morocco to withstand hunger and the harsh weather conditions of the crossing, or started to consume it in Spain as a way to escape from their problems, their reality, and not feel fear*. This consumption is

- Other minors enter Spain by car or plane accompanied by a family member or trusted family friend, from whom they separate once their objective is reached.
- Since 2003 these minors have begun to use the structures set up by the mafia gangs for controlling the illegal migratory flow between Morocco and Spain, making the crossing in small fishing boats called “*pateras*” upon payment of a monetary amount which is currently around one thousand euros per minor.

When the unaccompanied Moroccan minors arrive in Spain, they usually go to the State Security Forces in order to be admitted to a Child Protection Centre, although it is known that an undetermined number of minors are not detected, and do not receive any protection whatsoever.

2.2.2. Minors coming from the Sahel region of sub-Saharan Africa

Spain, and more specifically, the Autonomous Community of the Canary Islands, has witnessed in recent years the migratory phenomenon of thousands of unaccompanied minors coming from Senegal, Mali, Guinea Bissau, Guinea, Ghana, Cameroon, Gambia, and Mauritania, among other countries of the Sahel.

These minors arrive in Spain through crossings organised by people migrant smuggling gangs, on board traditional fishing boats called *cayucos*¹⁰. These vessels initially tended to depart from Mauritania, but with the increased effectiveness in the detection of vessels at high sea, the point of departure has moved further south: Senegal and later Gambia, making the crossings increasingly longer and more dangerous.

In 2006 this migratory phenomenon caused a thousand unaccompanied minors to come ashore on the coasts of the Canary Islands *from sub-Saharan Africa with the objective of obtaining documents, employment and sending money to their families because, among other reasons, there is no work in their countries for young people*¹¹.

related to the frustration of realizing that they are not going to achieve their migratory objectives and the devastating effects of this, since it provokes serious health and behavioral problems in the minors who consume them. “Immigrant minors and drug consumption: a qualitative study” (“Menores inmigrantes y consumo de drogas: un estudio cualitativo”). Carmen Arbex and Ángel Jiménez. April 2004.

¹⁰ The vessels which cross the Atlantic have greater capacity and are called *cayucos*, in comparison with *pateras* which are of smaller dimensions and are used to cross the Mediterranean.

¹¹ The majority of the sub-Saharan minors interviewed *justified their decision to migrate by their precarious situation in their countries of origin, motivated by constant natural disasters and endemic diseases, lack of employment, corruption and armed conflicts of this geographical region.*

Frequently the decision to migrate is made by the family itself for the purpose of seeking new sources of income. It is also not uncommon for the minors to pressure their families to pay for their crossing on the *cayuco*. In all cases, it has been found that the distorted image they have of Europe as a result of the 'European myth' is a major influence on their decision.

As well as the Maghrebi unaccompanied minors, sub-Saharan minors in Spain come from different socioeconomic and family backgrounds, the vast majority from broken homes in serious economic need.

In order to enter Spain illegally, these minors undertake a long and dangerous crossing aboard *cayucos* launched by migrant smuggling gangs upon prior payment of about two thousand euros per person, though cases have been documented of minors travelling for free in exchange for assuming the responsibility of some of the hardest tasks of the crossing. The crossing, a distance of about two thousand kilometres and lasting a week, is costly in both monetary and human terms since hundreds of persons die each year trying to reach the Spanish coast. A minority of these enter Spain illegally by travelling as a stowaway on a boat or by plane accompanied by an adult superior, from whom they separate upon achieving their objective.

2.3. General characteristics of unaccompanied foreign minors in Spain

Gender.—The majority are males since, despite the fact that emigration affects both genders, there are hardly any cases of female unaccompanied foreign minors in Spain¹².

Age.—Their average age is fifteen and a half. The majority are between sixteen and seventeen years of age but in recent years there has been an increase in the number of minors between thirteen and fourteen, and over time even younger minors are found, some under the age of ten.

Nationality.—The majority claim to be nationals of African countries from the regions of the Maghreb and the Sahel.

Family of origin.—Around 70% of these minors are from large families with scarce economic resources; the remaining 30% include minors from comfortably off families and minors who were *street children* in their country of origin.

¹² MORANTE DEL PERAL, Luz y TRILLO VEGA, María: Las niñas y adolescentes que emigran solas a España ¿un nuevo fenómeno social? Revista Mugak nº 41,2007. This work presents various alleged cases of child exploitation, which a percentage of the unaccompanied foreign minors who enter Spain illegally are subject to. These minors are not traced by the Spanish Authorities, and are therefore not receiving any protection whatsoever.

Academic and occupational training in the country of origin.—These minors usually abandon their studies prematurely to seek work which will allow them to make up for the family's shortage of economic resources. Despite these prior experiences, they lack adequate training for a stable incorporation in the Spanish labour market.

Migration motivations and expectations.—The minors' main motivation for migrating is economic. Once in Spain, their expectations of the migration cannot be fulfilled since they lack personal identification documentation, a work permit, and in many cases have not reached the minimum legal age for employment, and do not possess the necessary training. Additionally, there are the difficulties of the current labour market with its elevated unemployment rates. A high percentage of these minors claim that they *did not know what they were going to find in Spain and that if they had known, they would not have come, but once here they do not wish to return to their country of origin and wish to stay to try it out.*

Lack of resources and not knowing the language of the reception country.—These minors have none of the material or family resources necessary to face their situation in Spain, therefore increasing the risk of falling into organised crime gangs. Moreover, with rare exceptions, these minors do not know the language or its nuances, further hindering their communication.

Lack of documentation.—The majority of these minors enter Spain without any identity documentation, for *fear of being returned once their family has been located*, according to their claims. While it is true that being undocumented delays the return procedures, it also delays the administrative regularisation procedures in Spain, thus hindering their integration into the reception society.

Personal development.—Although for cultural reasons these minors show higher degrees of maturity than their age would suggest, it is common for them to express fear and anxiety about the future, given the emotional, familiar and social uprooting suffered during their migratory journey.

Scarce rooting at the reception centres.—These minors are typically highly mobile throughout the country, in search of a reception centre which satisfies their migratory expectations, meaning that the time they stay at the centres is greatly reduced¹³. In recent years, there has been a progressive increase in the length of time the minors stay at the centres, as Child Protection Services have been adapted to their specific needs.

¹³ The experience of the professionals who work in the primary reception centres shows that half of the unaccompanied foreign minors received remain in the centre for less than one week.

2.4. Numbers of unaccompanied foreign minors in Spain

For a variety of reasons, it is difficult to ascertain the number of unaccompanied foreign minors who have entered Spain illegally. For example, the diversity of existing sources of information, the lack of data from some of the Child Protection Services, the presence of unaccompanied foreign minors who are not traced and their great mobility throughout the country, which on many occasions means that the same minor being received several times by different Child Protection Services.

Having ruled out the possibility of offering precise figures of this migratory phenomenon, an estimated calculation of minors received in Spain at the end of last year has been made, taking into account the data provided and the experience of the professionals who intervene in the reality of these minors on a daily basis. Given all of this, it is estimated that on December 31, 2008 there were around 6,000 unaccompanied foreign minors being cared for in Spain.

Nevertheless, Annex I presents more detailed, estimated statistical data.

3. Entry procedures for unaccompanied foreign minors in Spain, including border control

3.1. Border control

Given its strategic position and over eight thousand kilometres of coastline, many of which are just a few kilometres from the African continent, Spain has one of the most complicated external maritime borders to monitor. Added to this difficulty is the existence of mafia gangs which control a continuous traffic of vessels along the southern border, annually transporting thousands of African citizens trying to reach the coast illegally.

For this reason, and so that the control of Europe's southern border achieves positive results, in recent years the Spanish Government has upheld a policy which seeks the cooperation between the countries of origin, transit and destination for the purposes of preventing and controlling this illegal migration.

As a result of this policy, there are currently several international cooperation projects for the control of illegal migration along Spain's southern border, in particular the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and other initiatives for cooperation

with third country states for the prevention of illegal migration and the shared control of external borders. Moreover, in recent years the Spanish Government has signed various bilateral agreements with the governments of the African countries from which this illegal migration originates, specifically with the Governments of Algeria, Cape Verde, Gambia and Ghana¹⁴, Guinea, Guinea-Bissau, Mali, Morocco, Mauritania, Niger and Nigeria which, among other matters, guarantee the readmission of adult citizens of these countries who are in Spain illegally.

Given the reinforcement of the border posts, of the return procedures and the drive which the Spanish Government has given to operational cooperation with the Member States of the European Union and with countries of western Africa, a more efficient fight against illegal immigration has been achieved, whereby the number of citizens who reached Spanish coasts illegally in 2008 decreased in comparison with 2007 by 26.5% on the coasts of the Canary Islands and by 24% on the coasts of the Peninsula and the Balearic Islands¹⁵.

Given the difficulties which currently exist for the return of unaccompanied minors to their countries of origin, it has been confirmed that mafia gangs have intensified their operations with this group to counteract their decrease in income caused by the effectiveness of the fight against illegal migration.

Furthermore, by virtue of the international commitment ratified by Spain concerning the Rights of the Sea¹⁶, the border control operations carried out in Spain are humanitarian and dissuasive in nature. This way the safety of the occupants of the *cayucos* and *pateras* is guaranteed, since the crossing is extremely dangerous and every year hundreds of African citizens die in their attempt to reach the Spanish coast, although the exact number may never be known. One of biggest tragedies took place at the end of February 2009 when a *patera guardería*¹⁷ sunk just twenty meters off the coast of Lanzarote island, and twenty-five of thirty-one occupants lost their lives. Among the victims of the shipwreck were five adults and twenty minors aged between eight and seventeen, four of whom were girls.

When Spanish Authorities detect one of these vessels at sea, an emergency response unit is prepared in order to assist the occupants – who in many cases arrive exhausted,

¹⁴ The Agreement has been confirmed, but is not yet signed.

¹⁵ Note of the Press Office of the Ministry of the Interior, 12 January 2009.

¹⁶ Among others, it is worth pointing out the International Convention on Maritime Search and Rescue of 1979 and the United Nations Convention on the Law of the Sea of 1982.

¹⁷ A *patera guardería* is a vessel which carries occupants who, in their majority, are minors. On March 10, 2009 a *cayuco* with 65 persons, 43 of whom appeared to be minors, arrived to El Hierro island.

with symptoms of dehydration, hypothermia and deep burns caused by the mix of salt water and fuel. The Spanish Red Cross is always present in these emergency response units and, by virtue of agreements signed with the Public Bodies, carries out first health assistance on the beach, distributing food, hot beverages, warm clothing and articles for personal hygiene.

3.2. Legislative and institutional framework governing and overseeing the illegal entry of unaccompanied foreign minors to Spain

In Spain, the illegal entry of these minors is governed by a combination of legislation on alien affairs and on the protection of minors in situations of risk or abandonment which sets forth the actions to be carried out by the different Bodies working with these minors.

3.2.1. Legislation governing the entry and stay of these minors in Spain

3.2.1.1. Aliens legislation

Article 35 of Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration (henceforth Organic Law on Foreigners) sets forth that *once a suspected unaccompanied foreign minor is located in Spain and the child's age is confirmed, this minor must be referred to the Child Protection Services.*

This legislation on alien affairs, which incorporates the Directive on the common procedures and rules for the return of third country nationals who are in a territory illegally, approved by the European Parliament on June 18 2008 (henceforth Directive on Return), contemplates additional guarantees and more favourable arrangements for unaccompanied foreign minors than detention, all of which are compatible with this Directive¹⁸.

Therefore, when agents of the Security Forces locate an unaccompanied foreign minor in Spain, the child must receive any immediate assistance they require in accordance with the provisions of legislation on the protection of minors, initiating proceedings which shall be analysed in the following sections.

¹⁸ The Directive on Return governs, among other matters, the return and removal of unaccompanied minors (Article 10), as well as their detention (Article 17), without prejudice to the rights of the Member States to adopt or maintain more favourable provisions for persons to which they apply, on the condition that these provisions are compatible with the Directive (Article 4.3).

3.2.1.2. Legislation on the protection of minors in situations of risk or abandonment

In accordance with the Spanish Constitution of 1978, *public powers shall assure the social, economic and legal protection of the family and children shall be entitled to the protection set forth by the international agreements guaranteeing their rights*¹⁹

Among the international agreements on minors ratified by Spain are the UN Convention on the Rights of the Child, adopted on November 20, 1989, which governs such things as the principles of non-discrimination, the child's best interests, the right to family unity, and the social protection of minors who are separated from their family²⁰ This Convention has had considerable influence on Spanish legislation on the protection of minors which, and thanks to numerous modifications in recent years has increased the number of rights and guarantees for all minors without any discrimination.

Given the distribution of competencies between the State and the Autonomous Communities, governed by Articles 148 and 149 of the Constitution, there are two types of legislation in Spain concerning the protection of minors: the national legislation and that of the autonomous communities²¹.

Within national legislation on the protection of minors, the Civil Code, specifically Article 172 is fundamental, setting forth that *when a public entity which in its respective territory is entrusted with the protection of minors, discovers an abandoned minor, it assumes by operation of law the guardianship of that child and must adopt the necessary protection measures for the child's custody, informing the Prosecution Office (...). A situation of abandonment is that which results from the action or inaction, or the impossible or inadequate exercise of the rights to protection set forth by law as to the custody of minors when these are deprived of the necessary material or moral assistance.*

Furthermore, Organic Law 1/1996 of January 15 on the Legal Protection of Children, partially amending the Civil Code and the Law on Civil Procedures (henceforth Organic Law for the Legal Protection of Children) gathers the principles governing the action of public authorities as regards the protection of minors, among which are²²:

¹⁹ Article 39 of the Spanish Constitution.

²⁰ Articles 2, 3, 9 and 20, respectively, of the UN Convention on the Rights of the Child.

²¹ The Spanish Constitution *Constitución Española*, of 6 December 1978, in its Article 148.1.20, attributes the Autonomous Communities with competencies in Social Services, which have been assumed exclusively by these through the Statutes of the Autonomies.

²² Article 11.2 of the Organic Law for the Legal Protection of Children.

- The supremacy of the child's best interest.
- Keeping the child in the family environment of origin, unless it contravenes his/her best interest.
- The child's integration with his/her family and the society.
- The prevention of situations which may harm the child's personal development.
- Raising the awareness of the population about situations of children's defencelessness.

By virtue of this Organic Law, *the public powers must protect children through actions of prevention and repair of the risk situations they face, for which the powers shall establish adequate services to this end, shall protect them, and in cases of abandonment, shall assume their guardianship by operation of law*²³.

Along with this national legislation, in Spain legislation exists for the protection of minors under Autonomous guardianship²⁴, resulting from the legislative development of the children's' constitutional right to protection, a competency which has been assumed by the Autonomous Communities through their respective Statutes. This Autonomous legislation seeks to adapt the principles and provisions of the Organic Law for the Legal Protection of Children to their respective territories.

3.2.2. Public Authorities and Competent Bodies

3.2.2.1. Public Authorities with competencies as regards child protection

In Spain, the responsibility for guaranteeing the necessary conditions for the integral development of minors firstly corresponds to their legal representatives (parents or guardians) or to their guardians. In the case of abandonment, the Autonomous Community or City where the minor resides, through the Child Protection Services, is the competent authority to declare this, to assume guardianship, and to exercise any measures necessary for the child's protection.

²³ Article 12 of the Organic Law for the Legal Protection of Children.

²⁴ The Autonomous laws in force for the protection of minors are listed in the Annex II to this Report.

3.2.2.2. Public Authorities with competencies as regards alien affairs

Article 149.2 of the Spanish Constitution governs the exclusive competency of the State, as regards nationality, immigration, emigration, alien affairs and the right of asylum, whereby the Spanish Government is the competent body to grant residence and work permits to foreigners in Spain and to carry out their return, among other matters. The Spanish Government acts through the existing Government Delegations and Sub-delegations²⁵ throughout the Autonomous Communities and Cities.

3.2.2.3. Special mention of the Prosecution Office

The Prosecution Office is a body of the Judiciary System which acts autonomously in performing its functions and which exercises its duties through its own bodies, working in a coordinated and unitary manner throughout Spain. Organised hierarchically, it must always act impartially and in accordance with the Law²⁶.

The Prosecution Office has as its mission the promotion of acts of justice in defence of the law, the rights of the citizens and public interest as directed by the Law, by operation of law or by request of the interested parties, as well as to oversee the independence of the courts and to satisfy, through these, the interests of society. Additionally, it is responsible for overseeing the efficient functioning of the mechanisms for the protection of minors²⁷, specifically qualified as guardian of children's rights.

For all of these reasons, the Prosecution Office oversees the fulfilment of the guarantees of the procedures which affect unaccompanied foreign minors in Spain, and the rights to which they are entitled, as shall be verified throughout this Report.

3.3. Statistics on unaccompanied minors who have entered Spain illegally

Though the statistics available do not offer complete figures on unaccompanied foreign minors who have entered Spain illegally in recent years for the reasons mentioned in the

²⁵ The Government Delegation is the entity which represents the Spanish Government in each Autonomous City or Community; the Government Sub-delegation is the entity which represents the Spanish Government in each of the provinces of the respective Autonomous Communities with multiple provinces. It is directly subordinate to the corresponding Government Delegation.

²⁶ Law 50/1981 of 30 December governing the Organic Statute of the Prosecution Office.

²⁷ Article 174 of the Civil Code.

previous section, they do compile data on the illegal entry of sub-Saharan unaccompanied minors who enter illegally through the Canary Islands.

According to the State Secretariat for Immigration and Emigration of the Ministry of Labour and Immigration, 928 sub-Saharan minors entered the Canary Islands illegally in 2006, 752 in 2007, and 813 in 2008.

According to the State Secretariat the illegal entry to Spain of unaccompanied foreign minors in 2008 decreased by 80% on a national level in comparison with 2007, while the increase in Andalusia was 50%²⁸.

3.4. Asylum seeker unaccompanied foreign minors

Although in Spain the illegal entry of unaccompanied foreign minors is not managed through the right of asylum, Article 92.6 of the Aliens Regulations allows for these minors to apply for it through procedures in accordance with criteria contained in the applicable international agreements and recommendations²⁹.

Where an unaccompanied foreign minor applies on his/her own for asylum in Spain, he/she is referred to the Child Protection Services to receive the necessary assistance and to assume guardianship. Once under the guardianship of the Child Protection Services, this body represents the child during the processing of the application for asylum. Being considered an unaccompanied foreign minor is based on the date of the filing of the application without prejudice to the fact that a child may reach legal age over the course of the procedures since in general these individuals are close to the age of 18.

These minors, like any foreigner, may apply for asylum in Spain if they have well-founded reasons for fearing persecution by reason of race, religion, nationality, membership of a specific social group or political opinion, and due to these fears cannot, or may not wish to, apply for the protection to which they may be entitled in their country of nationality or usual residence³⁰.

²⁸ Europa Press (February 9, 2009).

²⁹ Article 15.4 of Royal Decree 203/1995 of 10 February, which approves the Regulations for the application of the Law governing the right of asylum and the refugee status.

³⁰ Law 5/1984, which governs the right of asylum and the status of refugee, defines *asylum, recognized by Article 13.4 of the Constitution, as the protection extended by Spain to any foreigner who complies with the condition of Refugee as set forth by the Geneva Convention of 1951 and the Protocol of New York of 1967.*

Acknowledgement of the right of asylum implies that any foreigner will neither be denied entry at a border post nor be removed according to the terms set forth in Article 33 of the Geneva Convention on the Status of Refugee and implies the adoption of the following measures while the circumstances which motivated the application for asylum continue to exist:

- Residence permit.
- Issue of any necessary travel and identification documents.
- Permission to carry out occupational, professional or commercial activities.
- Any others as included in International Agreements to which Spain is party.
- Social and economic assistance as determined by the Regulations.

According to the Asylum and Refuge Office, 13 applications for asylum were presented by unaccompanied minors in 2008 and 12 in 2007. Of these 25 applications, 8 were filed at border posts, and all have been admitted for processing and are pending a definitive resolution.

Of the 12 applications presented in 2007, some were by minors who had been recruited as child soldiers in armed conflicts in their countries of origin. Four of the minors who applied for asylum were nationals of Nigeria, two from the Ivory Coast, two from the Democratic Republic of the Congo, two from Somalia, one from Morocco and another from Cameroon.

4. Procedures for the reception and integration of unaccompanied foreign minors in Spain

To understand the procedures for reception and integration carried out with unaccompanied foreign minors in Spain, it is necessary to analyse the Protocol on unaccompanied foreign Minors approved on 14 November 2005 by the Working Group on the Observatory on Infancy.

This Protocol assigns the functions of the Public Authorities and Entities which intervene as regards this issue, drafted in accordance with Article 92 of the Aliens Regulations, an article which sets out the procedures to be followed with unaccompanied foreign minors in Spain.

Finally, the Protocol divides into four phases the intervention that must be carried out with these minors: locating the minor, offer of protection and investigating the personal circumstances, integration into the society of reception and return to the country of origin. The first three phases are analysed in this section of the Report, and the fourth one in the next section.

4.1. Reception arrangements for unaccompanied foreign minors

4.1.1. Detection phase

In accordance with Article 92.1 of the Aliens Regulations, *when the State Security Forces or Local and Autonomous Police detect an assumed unaccompanied foreign minor, they must inform the Prosecution Office, so that this can be recorded.*

If the child is documented, the Prosecution Office orders consultation and registration on the Registry of Unaccompanied foreign Minors of the General Directorate of the Police and the Guardia Civil³¹ (“Registro de Menores Extranjeros No Acompañados de la Dirección General de la Policía y de la Guardia Civil”, henceforth MENAS Registry) through a ten-fingerprint form identification. This registration automatically generates a Foreigner Identification Number.

If the child is undocumented, the Prosecution Office orders the consultation of the MENAS Registry and, when information is unavailable concerning the assumed minor, authorises medical tests³² to be carried out in order to determine the child’s age.

³¹ The MENAS Registry is governed by Article 111 of the Aliens Regulations, which sets forth that the information to be gathered in relation to the minor, for the purposes of his/her identification, is the following: name and surname, name of parents, place of birth, nationality, last place of residence in the country from which he/she comes; a ten-fingerprint identification; photograph; reception centre of residence; public entity under which he/she is granted protection; results of the medical tests for the determination of his/her age through a report issued by the forensic expert’s office; any other pertinent information for the aforementioned purposes of identification, including those which may aid in the schooling of the minor.

³² One of the tests done is an osteometric study comparing the X-rays of the minor’s left hand and wrist with tables dating from 1935. These tables were created to detect growth-related pathologies and not for determining age, therefore their configuration does not consider racial, ethnic, nutritional, environmental, psychological or cultural differences which directly influence a child’s development and growth. For this reason, these osteometric tests have a margin of error of approximately 18 months, thus their effectiveness is questionable, especially if the child in question is between the age of 16 and 18 years. Due to this, the Prosecution Office sets forth through its Instruction 2/2001 that for tests which result in a more or less wide age range, as is the case with the osteometric test, the age must be established at the lower limit of the range.

While tests are carried out to determine the child's age³³, the State Security Forces or Local and Autonomous Police contact the competent public Child Protection Services to inform them of the fact, pre-assign a place in the reception centre and provide immediate assistance when necessary³⁴.

When the health centre obtains the results of the bone tests, these must be communicated to the Child Prosecution Office and the corresponding Delegation or Sub-delegation of the Government so that these may in turn inform the Child Protection Services and the General Directorate of the Police and the Guardia Civil for their inclusion in the MENAS Registry.

While the child's age is not confirmed to be under legal age, Article 92.3 of the Aliens Regulations sets for that *the assumed unaccompanied minor may only be placed in a reception centre of the Child Protection Services when he/she requires immediate assistance*.

4.1.2. Protection and investigation phase

In accordance with Article 92.2 of the Aliens Regulations, *upon confirmation of the child's age, the Child Prosecution Office shall agree on the minor's placement at a reception centre within Child Protection Services, which shall open a file for the child's protection and decide on a measure for immediate assistance, generally consisting of a protective measure*.

During this phase, the child's identity, parentage and situation of origin are investigated. For this reason, the Child Protection Service³⁵, independently or in collaboration with the State Security Forces or Local or Autonomous Police, refers the minor to the Consular Office of his/her assumed country of origin in order to identify them and locate their family, or to certify that identification or family reunification in the country of origin is impossible³⁶. When no diplomatic representation exists in Spain, the procedures for

³³ Instruction 2/2001 of the Prosecution Service sets forth that taking a minor to a health centre and his/her permanent residence there is considered a deprivation of liberty equivalent to that set out in Article 20.2 of Organic Law 1/1992 on the Public Security of Citizens. For this reason, the Health Authorities must carry out the osteometric tests as quickly as possible.

³⁴ It is common for the unaccompanied foreign minors to require health care when they are located, since they usually are in a considerably precarious physical and psychological condition.

³⁵ One of the practical problems that can arise during this phase is the difficulty in analysing the personal, family and social circumstances of the minor in his/her country of origin, since the majority of the Child Protection Services do not have the means necessary to carry out this type of investigation.

³⁶ For this reason, the Spanish Government works with the countries of origin of these minors so that their Consulates can collaborate in the tasks related to identifying them and locating their families.

determining the Child Protection Services of the country of origin are channelled through the Ministry of Foreign Affairs and Co-operation.

This investigation usually certifies these minors' situation of abandonment; therefore, the Child Protection Services must declare this situation and assume guardianship³⁷. In this sense, the Spanish Ombudsman sets forth that *the fact that a minor is alone, in a foreign country, and without any adult superior already implies that the child is unassisted and in a situation of risk. In this situation, there is a subjective assumption: that the people who should be caring for the child are not doing so and have neglected the child's right to moral or material assistance by allowing, encouraging or not preventing the child's abandonment of the home. Similarly, there is an objective assumption that this abandonment or need for moral or material assistance exists irrespective of whether or not the minor wishes to receive assistance or be placed in a centre. In this situation, the only possibility set forth by Spanish legislation for these cases is that the public entity assumes guardianship*³⁸.

4.2. Social integration of unaccompanied foreign minors in Spain

In accordance with the principles for action set forth in the legislation in force³⁹, *Child Protection Services must direct their intervention with the minor under their guardianship towards achieving the child's integration with his/her family and the society.* For this reason, while working towards the return of the unaccompanied foreign minor when it is in the child's best interest, they must also intervene to integrate the child in the society of reception.

The fact that these minors are foreigners means that their social integration in Spain can be analysed from two different viewpoints: from the viewpoint of an intervention in their situation of abandonment and from the viewpoint of an intervention in the procedure of regularising the documentation and administrative situation of the minor in Spain.

³⁷ Article 172 of the Civil Code.

³⁸ Bulletin of the Spanish Ombudsman, number 36, March 2008.

The Ombudsman is the High Commissioner of the Spanish Parliament, appointed to defend fundamental rights, and may therefore supervise the activity of the Public Authorities. Organic Law 3/1981 of 6 April which governs this institution was enacted in fulfilment of this constitutional mandate.

³⁹ Article 11.2 of Organic Law 1/96 of 15 January on the Legal Protection of Children.

4.2.1. Intervention in situations of abandonment

4.2.1.1. Network of residential reception units

In Spain there is a network of residences for receiving unaccompanied foreign minors and attending to their basic needs. These fall under the remit of the Autonomous Communities and Cities since these have assumed the competencies for declaring the situation of abandonment and agreeing the necessary measures for protecting the minors within their respective territories by virtue of the Spanish Constitution and the different Statutes of the Autonomies.

The Child Protection Services select one of several different types of reception units depending on the number of unaccompanied foreign minors it has under its care:

- When the number of minors is low, the residence is usually a single, medium-sized centre. In addition, programmes are available for when the minor reaches legal age.
- When the number of unaccompanied foreign minors is high, the residence is usually made up of several centres that differ depending on the objectives of the intervention carried out with the children. Usually three different types of reception unit are available: primary reception centres, centres for medium-length residence and centres for long-term stays. In addition, programmes are available for minors that reach legal age, normally consisting of residences with different levels of the presence of educators.
- When the number of unaccompanied foreign minors in residence increases, the model of a single centre gradually transforms into a model of several reception centres with different intervention phases.

These models of residential reception typically have centres exclusively for unaccompanied foreign minors, the majority of which are managed by NGOs through agreements signed with the Child Protection Services. These centres have multicultural and multidisciplinary human resource teams made up of professionals of both genders.

4.2.1.2. Actions in the areas of health and education

The fact that these minors do not initially have a residence permit is not in any way an obstacle to access to healthcare or to educational or training activities and programmes which may, in the opinion of the Child Protection Services, be to their benefit⁴⁰.

As to education for unaccompanied foreign minors, two different itineraries of education and training are available, depending on the minor's age:

- Those under the age of 16 participate in compulsory schooling. For a variety of reasons, such as their late incorporation during the academic year, lack of knowledge of the language of reception or deficient schooling of their country of origin, they can have difficulties in adapting.
- Those over 16 enrol on training courses such as gardening, carpentry, welding, masonry, mechanics, hotel and restaurant services and computing, which aid their incorporation into the labour market since they carry out internships at businesses. In Spain, these minors are entitled to enrol on the vocational training courses organised by the Public Employment Services⁴¹.

As regards healthcare, it must be highlighted that in Spain foreigners under legal age are guaranteed universal health coverage, irrespective of their administrative situation. Therefore, these minors receive any healthcare they may require at all times.

4.2.2. Intervention for regularising the minors' documentation and administrative situation

This section of the Report briefly analyses the legal framework governing the procedure for regularising the documentation and administrative situation of these minors in Spain, and the practice followed in order to ascertain the current situation. To this end, the procedures for processing a minor's passport or registration document, registration on the

⁴⁰ Article 10.3 of the Organic Law for the Legal Protection of Children and Article 92.5 of the Aliens Regulations, respectively.

⁴¹ By virtue of Article 10 of Order TAS/3698/2006 of 22 November governing the registration of workers from third countries in the Public Employment Services and Placement Agencies, the foreign minors of working age may register as job seekers, when they are under the guardianship of the competent Child Protection Services entity, hold a temporary residence permit as unaccompanied foreign minors or are accredited by the Child Protection Services entity, for activities which according to that entity encourage their social integration, in accordance with the provisions of Articles 68.K and 92.5 of the Aliens Regulations.

Population Register, the permit for residence and/or work, or Spanish nationality, where they are entitled to this, are analysed below. Finally, the existing management models for processing these are examined.

4.2.2.1. Processing a minor's passport or registration document

So that unaccompanied foreign minors may be returned to their country of origin or the processing their administrative regularisation in Spain can be initiated, it is necessary for them to be documented with a passport or registration document. Given the high number of Bodies intervening in this process, thus hindering the coordination between them, the procedure of documenting an unaccompanied foreign minor is a complex one.

The intervening bodies in this documentation procedure are the following:

- The Consulates of the countries of origin, which must identify the minor and grant him/her documentation in the shortest time possible. In practice, there have been cases of minors of sub-Saharan origin who wait two years for their Consulate in Spain to process their passport.
- The minors themselves must request from their own families the documentation required to process their passport. Despite the fact that their main motivation for going to the reception centres is *to get the necessary "documents" to be able to live and work in Spain*, they are reticent in collaborating in their documentation procedure, *for fear of a possible return*, as many of them say.
- The minors' families must gather the documentation required for processing their passport. Many of these families do not understand how important it is for their children to be documented with a passport from their country, delaying the process of gathering these documents, and cases have been detected where documents sent to Spain have been tampered with.
- The Child Protection Services, in their capacity as guardians, are obligated to provide the minor with documentation, but they do not generally have the specialised services necessary to achieve this.
- The Government Delegations and Sub-Delegations that, in some cases, do not document the unaccompanied foreign minors with a registration document⁴².

⁴² By virtue of Article 34.2 of the Organic Law on Foreigners, *in the case of a foreigner who presents themselves at the offices of the Ministry of the Interior, claiming that he/she cannot be documented by*

- For these and other reasons, the percentage of unaccompanied foreign minors in Spain who are documented is around twenty-five percent, although there is no global data which would allow for an exhaustive analysis.

4.2.2.2. Registration on the Population Register

Registration on the⁴³. because it facilitates their access to the community's resources, including the Public Employment Service, this registration is fundamental for the normalization of the minor's situation in the municipality of reception.

There is no information available as to the number of unaccompanied foreign minors who are registered in the Spanish municipalities, but since many of the minors have neither a passport nor a registration document, as required by legislation in force, it is known that they have difficulties in obtaining this registration.

4.2.2.3. Processing the residence permit

4.2.2.3.1. Initial residence permit obtained as a minor

In Spain, *the residence of unaccompanied foreign minors under the guardianship of Child Protection Services⁴⁴, is considered to be legal to all intents and purposes.* By virtue of Article 92.5 of the Aliens Regulations, these minors may exercise this right at the request of the entity which holds their guardianship once 9 months have lapsed since the child was referred to the competent Child Protection Services and once the impossibility of return to their family or to the country of origin have been certified. In this manner, the Spanish Government, through its Delegations and Sub-Delegations, may grant a residence permit with retroactive effect as of the date when the minor was referred to the Child Protection Services. This residence permit, which does not include a work permit, expires

the authorities of any country and wishes to be documented in Spain, once the pertinent information has been verified and provided that there are confirmed exceptional humanitarian reasons, reasons of public interest or for the fulfilment of the commitments entered into by Spain, that foreign national may obtain, under the terms set forth by regulations, documentation for the purposes of identification which certifies his/her registration with the said offices. In any case, the documentation requested shall not be granted when the applicant is the subject of any of the circumstances set forth in Article 26, or is the subject of a removal order. In the case of unaccompanied foreign minors, the entities responsible for their guardianship apply for this registration document.

⁴³ Article 15 of Law 7/1985 of 2 April governing the terms and conditions of local government.

⁴⁴ Article 35.4 of the Organic Law on Foreigners.

on the last day prior to the child's reaching legal age, and does not impede a subsequent return when it can be carried out in accordance with the requirements set forth in Article 92 of the Aliens Regulations.

When unaccompanied foreign minors reach legal age, they cease to be under the protection of the legislation on foreigners specific to them. The legislation on aliens governs the mechanisms by which an unaccompanied foreign minor, upon reaching legal age, may renew or modify the residence permit obtained as a minor or access a residence permit due to exceptional circumstances.

4.2.2.3.2. Renewal of the residence permit obtained as a minor

In Spain, a temporary residence permit is granted to foreigners who certify the availability of sufficient means of subsistence and accommodation, including for their family where applicable, during the period of time residence is applied for without needing to carry out any income-generating activities whatsoever⁴⁵. For this reason, since expenses related with their subsistence and accommodation are covered during the time that they will be participating in these, unaccompanied foreign minors who participate in emancipation programmes once they reach legal age may apply for the renewal of their residence permit.

4.2.2.3.3. Modification of the residence permit obtained as a minor

As has been mentioned previously, the residence permit of unaccompanied foreign minors expires on the last day prior to their reaching legal age. Legislation on alien affairs allows for these minors to modify their residence permit obtained as a minor, either by applying for a residence and work permit⁴⁶, for which the employer must formalize and present a job offer to the corresponding Delegations or Sub-Delegations of the Government, or by applying for a permanent residence permit themselves⁴⁷.

⁴⁵ Article 31.2 of the Organic Law on Foreigners.

⁴⁶ Article 96 of the Aliens Regulations.

⁴⁷ Article 72 of the Aliens Regulations sets forth that *aliens who can prove they have resided legally and in a continuous fashion in Spanish territory for five years are entitled to obtain a permanent residence permit, as is the case of foreign minors who on reaching legal age have been under the guardianship of a Spanish public entity for the five consecutive years immediately prior to this time.*

4.2.2.3.4. *Application for a temporary residence permit due to exceptional circumstances*

When unaccompanied foreign minors reach legal age without having obtained the respective residence permit, Article 92.5 of the Aliens Regulations sets forth a special circumstance for those whose participation in training activities programmed by the Child Protection Services to favour their social integration has been adequate. In these cases, the Child Protection Services may recommend that a temporary residence permit is granted due to exceptional circumstances, to which the provisions of Article 40.j⁴⁸ of the Organic Law on Foreigners shall be applicable.

Furthermore, legislation on foreigners considers the possibility of applying for temporary residence by reason of exceptional circumstances based on their social roots⁴⁹. This residence permit is granted to foreigners who can confirm continued residence in Spain of at least three years, as long as they do not have a criminal record in Spain or in their country of origin, can certify their social and family roots in our country and hold an employment contract of at least one year of duration, signed by both the worker and the employer.

4.2.2.4. Processing the work permit

In Spain, minors who have reached sixteen years of age may seek employment⁵⁰, as long as they have the permission and authorisation of their parents or guardians⁵¹, unless they live independently of these.

However, in order for a foreigner to be able to work in Spain, the national employment situation must be considered. To facilitate the occupational integration of unaccompanied foreign minors, Article 40 of the Organic Law on Foreigners sets forth that *the national employment situation will not be taken into consideration when the employment contract or job offer is aimed at foreign minors of legal working age with a residence permit and under the guardianship of the Child Protection Services, for those activities which, by the judgment of said entity, may favour their social integration once it has been confirmed that return to the family or to the country of origin is impossible.*

⁴⁸ Article 40 of the Organic Law on Foreigners sets forth the specific circumstances under which the national employment situation need not be considered.

⁴⁹ Articles 31.3 of the Organic Law on Foreigners and 45 of the Aliens Regulations.

⁵⁰ Article 6 of the Statute of Worker's Rights.

⁵¹ Article 7 of the Statute of Worker's Rights.

For all of the aforementioned reasons, when an employer wishes to hire an unaccompanied foreign minor, he/she must wait for the minor to be authorized by his/her guardian and be exempt from the obligation of obtaining a work permit. In order to achieve this, the Child Protection Services must submit the corresponding application to the Spanish Government through the Government Delegations and Sub-Delegations⁵².

4.2.2.5. Access to Spanish nationality on grounds of residence

Finally, unaccompanied foreign minors are entitled to apply for Spanish nationality once they have complied with a very brief period of legal residence since by virtue of Article 22.1c) of the Civil Code, *Spanish nationality shall be granted to a foreign minor who has legally resided in Spain for one year and has legally received the guardianship, protection or reception of a Spanish citizen or institution for two consecutive years, even if they continue to be in this situation at the time of the application.* The application must be filed at the Civil Registry of the place of residence by the entity holding the guardianship of a minor under 14 and, when the minor is between the age of 14 and 18, by the minor him/herself, assisted by said entity.

4.2.2.6. Management models of the procedure for regularising the documentation and administrative situation

The Child Protection Services use different management models during the procedure for regularising the documentation and administrative situation of these minors. A high percentage manage these responsibilities through the educators of the centres themselves, another percentage through external, specialist services, and the rest through specialist professionals within the guardianship entity.

The best results are obtained through the Child Protection Services in which the management is exercised through their own specialist professionals, since in addition to favouring coordination with the Delegations and Sub-Delegations of the Government⁵³,

⁵² Article 41 of the Organic Law on Foreigners governs when obtaining a work permit is not necessary. Article 68 of the Aliens Regulations sets forth that foreign minors of working age under the guardianship of a competent Child Protection Service are exempt from the obligation to obtain a work permit for the exercise of an income-generating, laboral or professional activity when the said entity deems that, while the current situation continues, it would favour the child's social integration.

⁵³ This collaboration is necessary for the successful integration of these minors in the society of reception since, among other matters, it avoids delay in the processes of documentation and of deciding on the corresponding applications for residence and work permits.

they provide the unaccompanied foreign minors with legal advice suited to the complexity of these processes.

4.3. Problems and difficulties detected in the use of procedures for the reception, protection and integration of unaccompanied foreign minors

This section of the Report offers a succinct study of the problems and difficulties detected in the application in Spain of procedures for the reception, protection and integration of unaccompanied foreign minors. To this end, we have drawn on the experiences of different professionals who work with these minors on a daily basis, and have analysed the Reports of several of the Regional and Children's Ombudsman Offices⁵⁴ that exist in Spain, as well as some of the legal resolutions set forth on this matter.

In short, the following have been detected:

- Difficulties in the immediate obtaining of the test results which determine the age of the assumed unaccompanied foreign minors located in Spain.
- Problems in investigating the circumstances of unaccompanied foreign minors.
- Trouble in designing the reception units for unaccompanied foreign minors.
- The heterogeneous nature of the criteria applied to the procedure for regularising the documentation and administrative situation carried out with these minors in Spain.
- The unaccompanied foreign minors' difficulties in successfully completing the procedure for regularising their documentation and administrative situation.
- Lack of coordination between the Bodies which intervene with unaccompanied foreign minors.

⁵⁴ Annual reports and monographic studies of the Spanish Ombudsman and the different Ombudsmen of the Town and of the Child in the Autonomies (Ombudsman of the Child of Andalusia, Ombudsman of Catalonia, Ombudsman of the Child of Madrid and the Ombudsman of the Basque Country), along with legal resolutions listed in Annex II of this Report, have been studied.

4.4. Special Programme for the transfer and care of unaccompanied foreign minors from the Canary Islands Region

Due to the large number of *cayucos* which reached their coasts, bringing almost one thousand unaccompanied foreign minors to the Canary Islands in 2006, the reception units of the Child Protection Services of this Autonomous Community suffered great demographic pressure from unaccompanied foreign minors of sub-Saharan origin.

For this reason, the High Council for Immigration Policy, at the request of the Autonomous Community of the Canary Islands, approved in September 2006 a *Special Programme for the transfer and care of unaccompanied foreign minors from the Canary Islands Region to the Spanish mainland*, born of the principle of solidarity between Spanish regions. This was approved for the purpose of reducing the high number of unaccompanied foreign minors the Canary Islands was experiencing during the last trimester of 2006 due to overflow at the reception centres of the Child Protection Services of this Autonomous Community.

The objectives of this Programme were as follows:

- Attend to the circumstances faced by the Canary Islands as regards the protection of unaccompanied foreign minors through collaboration with other Autonomous Communities and Cities.
- Coordinate the transfer of unaccompanied foreign minors who had arrived in the Canary Islands to the different Autonomous Communities, which would assume the guardianship and protection of the received minors in their respective territories.
- Collaborate with the destination Autonomous Communities in the protection of unaccompanied foreign minors through the financing of expenses resulting from their care.
- Facilitate institutional collaboration as regards the protection of unaccompanied foreign minors.
- Set forth a protocol for action which facilitates collaboration across different stakeholders intervening in the programme.

5. Procedures for the return and reintegration of unaccompanied foreign minors in Spain

5.1. Legislative regulations of the return procedures of unaccompanied foreign minors in Spain

The requirements applicable to the return of unaccompanied foreign minors in Spain are set forth in Article 35 of the Organic Law on Foreigners and are developed in Article 92.4 of the Aliens Regulations. Similarly, the procedure to be carried out as to these returns is set out in Chapter VI of Law 30/1992 of 26 November on the Legal Framework of the Public Bodies and of Common Administrative Procedures (henceforth Law 30/92).

In Spain, in accordance with Article 92.4 of the Aliens Regulations, *the Spanish Government, by virtue of the principle of family reunification of the minor, and after receipt of a report from the Child Protection Services, shall decide whether to return the unaccompanied foreign minor to his/her country of origin, or to the country where his/her family is located or, in the absence of these options, whether he/she may be granted permanent residence in Spain. In accordance with the principle of the child's best interest, the return of a minor to the country of origin will only be agreed to if the conditions are present for an effective reunification with the minor's family or for the minor's adequate guardianship through the Child Protection Services in the child's country of origin. (...) The return shall not be carried out if it is confirmed that the child's safety is at risk or in danger or the minor or his/her family may be persecuted (...).*

The return of unaccompanied foreign minors is based upon the principle that all minors, whether of Spanish or foreign nationality, should be integrated within their family and/or social surroundings, as long as it does not contradict their best interests⁵⁵.

These returns are not to be confused with the figures of return upon refusal of entry at a border⁵⁶, or other types of removal⁵⁷, measures which are applicable only to foreign

⁵⁵ Article 11.2 of the Organic Law for the Legal Protection of Children.

⁵⁶ Article 60 of the Organic Law on Foreigners sets forth *that foreigners who are denied entry to the country at border posts shall be returned to the point of origin in the shortest time possible. If the return is to be delayed longer than seventy-two hours, the governmental authority which agrees to it must request that the examining magistrate determines the place at which said foreigner must be detained until the time of the return.*

⁵⁷ Article 58.2 of the Organic Law on Foreigners sets forth that *it shall not be necessary to initiate the processing of a file for the removal of foreigners who, having already been removed, contravene the prohibition of entry to Spain, or of foreigners who intend to enter the country illegally.* Article 57 of the

adults, given that in Spain the residence of foreign minors under the guardianship of Child Protection Services is considered legal to all intents and purposes⁵⁸.

In accordance with the aforementioned legislation, procedures for the return followed with as regards unaccompanied foreign minors in Spain are divided into four phases: initiation, instruction, finalization and execution of the return.

5.1.1. Initiation phase of the return procedure

Procedures for the return of foreign unaccompanied minors in Spain are initiated by the Delegations and Sub-Delegations of the Government, by operation of law or at the request of the Child Protection Services, who are obligated to enclose with their proposal of return all the information available about the minor as well as the procedures which have been carried out to locate and study the minor's family.

The Delegations and Sub-Delegations of the Government must inform the Prosecution Office of all the actions carried out as regards these procedures, since its mission is to oversee compliance with the guarantees of these return procedures. In this sense, the State Prosecution Office sets forth in its Instruction 6/2004 of November 26, on the legal mechanisms as to unaccompanied foreign minors that *the return of unaccompanied foreign minors is not an absolute objective which must be achieved at any cost, as other interests may also be at play, such as the life, physical and mental safety and the respect of the Fundamental Rights of the minor which may make the best interest of the child tip the balance in favour of his/her stay in our country.*

To fulfil its legal obligations, the Prosecution Office carries out the follow-up and control of return procedures, on one hand verifying that the necessary conditions are present for the effective reunification of the minor with his/her family in the country of origin or for the adequate guardianship on behalf of the Child Protection Services in the country of origin, and also that the decision adopted is the most appropriate as to the best interests of the child. The Prosecution Office may, when it considers it necessary, appeal against the agreement for return, since it is legally entitled to do so⁵⁹.

Organic Law on Foreigners sets forth *when the person infringing the Law is a foreigner and whose conduct is typified as very serious or serious as foreseen in sections 2), b), c), d) and f) of Article 53 of this Organic Law, expulsion from Spanish territory may be applied in lieu of a sanction with a fine, after processing the corresponding administrative enquiry.*

⁵⁸ Article 35.4 of the Organic Law on Foreigners

⁵⁹ Article 3.7 of the Organic Statutes of the Prosecution Service and Article 8.2 of the Law on Civil Proceedings.

Once the aforementioned actions have been carried out, a period of background information gathering is initiated for the purpose of ascertaining the specific circumstances of the case and whether or not to initiate the return procedure. To this end, by virtue of Article 92.4 of the Aliens Regulations, the Delegations and Sub-Delegations of the Government must address the General Commissariat for Alien Affairs and Borders of the National Police Force so that it may carry out the necessary steps with Embassies and Consulates towards locating the family or, when this is impossible, of Child Protection Services in the country of origin. When no diplomatic representation exists in Spain, the procedures are channelled through the Ministry of Foreign Affairs and Co-operation.

Once the Delegations and Sub-Delegations of the Government have completed the aforementioned steps and have received the information requested, they may agree to initiate the procedure. To this end, they must request that the Child Protection Services issue the statutory report set forth in Article 92.4 of the Aliens Regulations, i.e. the report in favour or against the return. Finally, these must notify the minor of the reasons for proceeding with his/her return and of the consequences inherent to the return.

5.1.2. Preparatory phase of the return procedure. Hearing proceedings

Prior to the hearing procedures, unaccompanied foreign minors may present, within the period set forth in Article 82.4 of Law 30/92, any pleadings and submit any documentation or other elements for the hearing considered necessary, to be considered by the examining body when drafting the corresponding proposal for resolution:

- When no pleading is presented, the return procedure continues.
- When pleadings are submitted, these must be decided upon prior to continuing with the procedures.

The hearing proceedings are the phase of the procedure during which the minor exerts his/her right to be heard and the magistrate examining the return case, a representative from the Child Protection Services, a translator, and the minor themselves must be present. Everything that occurs during this procedure is reflected in an official record signed by all of those present.

Once the hearing proceeding is finalized, and upon the presentation of the requested information, the examining magistrate presents a proposal for resolution, of which the minor and the Prosecution Office are informed.

Once the minor is informed of the proposal for resolution, he/she has a period stipulated by law to appeal and present any relevant documentation or justification in the defence of his/her interests:

- When no pleading is presented, the examining magistrate submits the complete file for return to the Prosecution Office.
- When the minor presents pleadings, it may be that these are not considered, and the examining magistrate submits the complete file for return to the Prosecution Office. When the pleadings are allowed, the examining magistrate decides on the case, and the decision is communicated to the minor, the Child Protection Services, the Prosecution Office, the National Police Force and the Consulate of the child's country of origin.

When the Prosecution Office receives the complete copy of the file for return, it has a specified time period, as set forth in Article 83 of Law 30/1992, in which to present allegations:

- When the Prosecution Office does not present any allegations, the minor's return is decided upon.
- When the Prosecution Office presents allegations and these are considered by the examining magistrate, the decision is made to discontinue the case, and this decision is communicated to the minor, the Child Protection Services, the Prosecution Office, the National Police Force and the Consulate of the child's country of origin.

5.1.3. Finalization of the procedures

Once the abovementioned phases have been completed, the corresponding Government Delegations or Sub-Delegations may decide that the minor should return, indicating the applicable administrative or legal channels for appeal against the decision.

The minor must be notified of the return decision within the time period set forth by law, counted from the day of the resolution, so that the minor may appeal against the decision for return if he/she wishes to. Furthermore, the Child Protection Services, the Prosecution Office, the National Police Force and the Consulate of the child's country of origin must be informed.

It is important to point out that the Constitutional Court has pronounced two judgments, both on 12 December 2008, which clarify some of the controversial issues raised in

recent years as regards the rights of these minors during the return procedures. Several conclusions which may be drawn from these sentences are:

- The unaccompanied foreign minor is entitled to be heard in all administrative or legal procedures, whether directly or through a representative or appropriate body.
- The unaccompanied foreign minor is entitled to request, through judicial channels, the review of the administrative return decision.
- The unaccompanied foreign minor with sufficient maturity and judgment is able to exercise his/her own defence of his/her legitimate rights and interests or, when the foregoing are considered insufficient, through a guardian appointed by the court.
- Specific associations are recognised as legitimate to exercise the defence of the rights of unaccompanied foreign minors.

5.1.4. Execution phase

Once the foregoing processes have been finalized and the return decision becomes definitive, it is executed by civil servants of the National Police Force, which hand over the minor to the authorities at the border of the country to which he/she is returned. The execution of the return is communicated to the Child Protection Services and the Prosecution Office.

The return is not carried out if it is confirmed that the child's safety is at risk or in danger, or if the minor or his/her family may be persecuted.

Finally, Article 92.5 of the Aliens Regulations sets forth that *the costs of the return of a minor to the country of origin is borne by his/her family or the Child Protection Services of his/her country. Otherwise, the return is communicated to the diplomatic or consular representative of the minor's country to this end.* Subsidiarily, it is the Spanish Government that bears the costs of the return. In practice, the cost of these returns is borne by the Spanish Government.

5.2. Practice followed for the return of unaccompanied foreign minors in Spain. Problems and difficulties detected

This section of the Report offers a succinct study of the problems and difficulties detected in the practices followed in Spain in the return procedures of unaccompanied foreign minors. To this end, we have drawn on the experience of different professionals which work with these minors on a daily basis, and have analysed the Reports of several of the Regional and Children's Ombudsman Offices⁶⁰ that exist in Spain, those of different non-profit organisations and NGOs, as well as some of the legal resolutions set forth as to this matter.

In short, the following has been discovered:

- Problems with regards to analyzing the personal, family and social circumstances of the minor in his/her country of origin.
- There is no uniform practice in the return procedures carried out in Spain with minors⁶¹.
- Difficulties the foreign minors have in accessing legal advice independent of the entity which assumes their guardianship, despite the conflict of interests which may exist between these as regards these return procedures⁶².
- Difficulties of the Government Delegations and Sub-Delegations in carrying out the return of unaccompanied foreign minors, to the point that in practice returns have been paralyzed since 2008.

⁶⁰ Annual reports and monographic studies of the Spanish Ombudsman and the different Regional and Children's Ombudsmen in the Autonomies (Children's Ombudsman of Andalusia, Ombudsman of Catalonia, Children's Ombudsman of Madrid and the Ombudsman of the Basque Country), along with reports issued by NGOs and the legal resolutions listed in Annex II of this Report, have been studied.

⁶¹ Although each Government Delegation and Sub-Delegation holds the competencies for deciding on the return files of these minors, the system is set out in Article 92 of the Aliens Regulations and a continuous effort is being made to standardise the procedures in all of the Autonomous Communities and Cities. For these reasons, the State Secretariat for Immigration and Emigration of the Ministry of Labour and Immigration has been working on clarifying the return procedures of unaccompanied foreign minors.

⁶² Currently, a court-appointed lawyer for the return procedures of unaccompanied foreign minors is available to those under the guardianship of two Autonomous Communities and one Province as a result of Agreements signed between the Delegations and Sub-Delegations of the Government and the Bar Association in these territories. However, there are minors who access this legal counsel independently, through different initiatives offered by lawyers.

5.3. Towards a new perspective in the treatment of unaccompanied foreign minors in Spain

This part of the Report analyses the evolution of bilateral agreements which Spain has signed with the minors' countries of origin for the purpose of verifying the development of the policy followed by the Spanish Government as to unaccompanied foreign minors within its territory.

Bilateral agreements signed by Spain with third countries as regards this issue are as follows:

- The memorandum of understanding between the Kingdom of Morocco and the Kingdom of Spain "on the assisted return of unaccompanied minors", signed in Madrid on 23 December 2003.
- The agreement between the Republic of Senegal and the Kingdom of Spain "on cooperation in the realm of the prevention of the emigration of Senegalese unaccompanied minors, their protection, return and reintegration", *ad referendum* (pending ratification) in Dakar on 5 December 2006⁶³.
- The agreement between the Kingdom of Spain and the Kingdom of Morocco "on cooperation in the realm of preventing the illegal emigration of unaccompanied minors, their protection and their assisted return", in Rabat on 6 March 2007. Pending ratification.

The first agreement signed with Morocco in 2003, currently in force, approaches the problem of unaccompanied minors through cooperation as regards the return on a basis of the respect of the minor's best interest, considering the situation of each individual case. Both countries agree that the situation of the unaccompanied minors must be assessed in accordance with the rights, obligations and guarantees set forth in International Agreements to which they are party, and particularly in respect of the Convention on the Rights of the Child.

The last two agreements represent a second generation of bilateral agreements on this issue. Both approach international cooperation in depth, from all of the problem's perspectives: the prevention of migrations, the protection of minors in Spain, as well as the return and reintegration in their countries of origin. These last two agreements include the following specific actions:

- The adoption of preventive measures centred on awareness-raising with minors and their families, the socioeconomic development of the regions of origin of these unaccompanied minors, and the fight against migrants smuggling gangs.

⁶³ The Protocol for Action of this Agreement was signed on February 23, 2009.

- The adoption of measures for the assistance and protection of unaccompanied foreign minors within Spanish territory.
- The promotion of the assisted return of minors to their families or the institutions which assume their guardianship in the country of origin, as well as their social reintegration in accordance with Spanish legislation, the regulations and principles of international law and the provisions of the Convention on the Rights of the Child. The reinforcement of the development cooperation actions aimed at putting into practice strategies which support children in situations of risk or vulnerability and professional training programmes in the countries of origin carried out through the Spanish Government and non-governmental organisations contribute towards the prevention of illegal emigration and aid social reintegration upon return.

5.4. Spanish cooperation in support of vulnerable minors in Morocco and Senegal

This part of the Report presents Spanish cooperation as regards unaccompanied foreign minors. Specifically, it sets forth the global strategy of Spanish cooperation in support of vulnerable minors in Morocco, financed by the Spanish International Co-operation and Development Agency of the Spanish Government and by various Autonomous Communities, Local Authorities and Spanish NGOs. The basic lines of action of this cooperation are as follows:

- Support to the establishment of Child Protection entities, especially in the regions from which minors migrate.
- Strengthening of the network of the Moroccan *Entraide National* (Ministry of Social Development) centres.
- A programme to combat early school leaving, the improvement of the quality of education and the promotion of informal education.
- Actions as regards professional training and mentoring for employment.
- A mediation and reintegration programme with guarantees for minors returned from Spain.
- Promotion of sociocultural and leisure activities for young people with transnational awareness-raising campaigns on the risks inherent to premature migration.
- Transnational training programme for the training of educators in matters related to the protection of childhood, with special attention to unaccompanied minors.

The Spanish International Co-operation and Development Agency of the Spanish Government is currently working towards establishing Spanish cooperation in the support of vulnerable minors in Senegal.

5.5. Costs of the intervention carried out with unaccompanied foreign minors in Spain

Data is unavailable as to the total costs related to the intervention carried out by Spain with unaccompanied foreign minors, but these are thought to include, among others, costs of prevention, reception, protection, social integration, return and reintegration in the countries of origin.

For the purpose of drafting this Report, several partial costs related with intervention have been compiled, some as estimates, and specifically the following:

- Costs of the assistance offered to these minors in Spain by the Autonomous Communities and Cities. Though concrete data is unavailable, estimates may be calculated by multiplying the average annual cost of a placement in a reception centre by the estimated number of places estimated for these minors. According to these calculations⁶⁴, it is estimated that the cost of the assistance received by these minors in Spain rises to 175 million euros annually.
- Economic support offered by the Spanish Government through the Ministry of Labour and Immigration to the Autonomous Cities of Ceuta and Melilla and Autonomous Community of the Canary Islands for assisting unaccompanied foreign minors. Specifically, they have received over 26 million euros in the last three years.
- Costs of Spanish cooperation in support of vulnerable minors in Morocco. In particular, it has financed projects costing 35 million euros over the last three years.

6. Conclusions and Best Practices

6.1. In Spain, the illegal entry of minors is governed by a combination of legislation on alien affairs and the protection of minors in situations of risk or abandonment. Because of this, the legislation on alien affairs sets forth that once the age of the minor is confirmed,

⁶⁴ €80 x 365days x 6000 places = €175,200,000.00. The Special Programme for the transfer and care of unaccompanied foreign minors from the Canary Islands Region has been used as a reference, which sets the costs resulting from the care per minor per day at €80.

the unaccompanied foreigner minor must be referred to the Child Protection Services of the Autonomous Communities, the competent Administrations for declaring their abandonment, in order to assume their guardianship and exercise any necessary protective measures. This legislation provides for more favourable arrangements for unaccompanied foreign minors than detention, which in any case, are compatible with the Directive on Return.

6.2. Unaccompanied foreign minors have access to child protection services on equal terms as nationals, without any discrimination whatsoever. Child Protection Services have evolved in recent years so as to adapt to the special needs of these minors, and at present make up a unit of residential reception centres exclusively for unaccompanied foreign minors managed by NGOs through agreements signed between these and the Child Protection Services. These centres have multicultural and multidisciplinary teams of educators.

6.3. It is worth highlighting the figure of the Prosecution Office in Spain, a body of the Judiciary which has as its mission the promotion of acts of justice in defence of the law, the rights of citizens and the general public interest as set forth by the Law, whether by operation of law or by request of the interested parties. It also oversees the independence of the Courts and satisfies, through these, the interests of the society. Furthermore, it is responsible for overseeing the efficient functioning of the child protection units, being specifically qualified as the guardian of children's rights. For all of these reasons, the Prosecution Office oversees the fulfilment of the guarantees of the procedures which affect unaccompanied foreign minors in Spain and the rights to which they are entitled through the legislation in force.

6.4. In recent years the Spanish Government has maintained a policy which seeks to strengthen international cooperation between the countries of origin, transit and destination for the purposes of preventing and controlling illegal migration from the African continent.

To this end, there are several international cooperation projects for the control of illegal migration along Spain's southern border, among which are the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).

6.5. As specifically regards unaccompanied foreign minors, in recent years the Spanish Government has maintained a policy for international cooperation with the countries of origin of these minors. This has evolved over time and now approaches the problem in depth, i.e., from a multilateral perspective as to the prevention of migrations, protection while in Spain, and the assisted return and reinsertion of unaccompanied foreign minors in their countries of origin.

As regards the prevention of migrations by unaccompanied foreign minors, the Spanish Government cooperates with their countries of origin to adopt measures centred on the socioeconomic development of the regions from which they migrate as well as to fight against migrants smuggling gangs. To this end, actions are being carried out to raise awareness among the minors, their families and society at large as to the risks inherent to the emigration of unaccompanied minors; a policy is being set up in support of projects in the countries of origin to develop strategies aimed at children in situations of vulnerability, as happens with Morocco and will soon be the case with Senegal, or training and employment strategies aimed at young people; and lastly, the actions needed to fight against gangs and organisations dedicated to the traffic and exploitation of unaccompanied minors are being implemented.

As regards the protection of unaccompanied foreign minors in Spanish territory, Child Protection Services offer support to unaccompanied foreign minors within their territory, guaranteeing the same protection as nationals are entitled to; similarly, the competent authorities of the country of origin are informed of all the relevant information in relation to these minors for the identification of the minor and his/her family and to request the issue of the documentation certifying the minor's nationality.

Finally, as regards the assisted return and reinsertion of unaccompanied foreign minors in their countries of origin, the Spanish Government, through its Delegations and Sub-Delegations, must decide whether to return the minor to the country of origin, taking into account Spanish legislation, the regulations and principles of international law and the provisions of the Convention on the Rights of the Child, always bearing in mind the preservation of the minor's best interest to guarantee, in the case of return to the country of origin, the conditions for effective reunification with the minor's family or for the minor's adequate guardianship by a competent institution in the country of origin. It also cooperates in setting up a reception unit equipped with qualified human and material resources, both public and private, from NGOs working in the protection and return of minors.

6.6. Due to all these reasons and because of the increasing scale of the migration of African unaccompanied minors to a more prosperous Europe, which one must not forget is the visible side of a complicated day-to-day situation which a large number of minors face, it becomes increasingly necessary to approach the problem from a European perspective. This perspective must be based on preventing their migration through the development of the regions from which they migrate and the fight against the migrants smuggling gangs; on giving special care for the needs of the minors who find themselves in Europe; on the assisted return of these minors to their families or the institution responsible for their guardianship in their countries of origin; and the social reintegration of returned minors, to this end drawing on the cooperation of the countries of origin.

Annex I. Statistics

The quantitative information below is estimated and was prepared on 31 March 2009 from various reports provided by the Autonomous Communities and Cities. It is necessary to point out that not all of these provide information, and even the information which is available on occasion is not completely precise, due to the mobility of the minors between Autonomous Communities and therefore the possibility of their being accounted for twice, given the constant, daily variations.

TABLE 1. *Number of unaccompanied foreign minors by Autonomous Community*

| Autonomous Community | Number of minors |
|-----------------------|------------------|
| TOTAL ¹ | 5,158 |
| Andalusia | 835 |
| Aragon | 104 |
| Asturias | 94 |
| Balearic Islands | 30 |
| Canary Islands | 1,340 |
| Cantabria | 64 |
| Castile-Leon | 87 |
| Castile-La Mancha | 119 |
| Catalonia | 674 |
| Ceuta | 105 |
| Community of Valencia | 702 |
| Extremadura | 144 |
| Galicia | 99 |
| La Rioja | n.a. |
| Madrid | n.a. |
| Melilla | 180 |
| Murcia | 272 |
| Navarra | 18 |
| Basque Country | 291 |

¹ This information is incomplete, as it does not include minors received in La Rioja and Madrid.

The information from the majority of the Autonomous Communities was updated between December 2008 and March 2009.

Source: Ministry of Labour and Immigration

TABLE 2. *Numbers of unaccompanied foreign minors in Spain, 2004-2008*

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|-----------------------|-------|-------|-------|-------|-------|
| New receptions | 9,117 | 5,718 | 5,087 | 5,408 | 5,344 |
| Minors at December 31 | 2,004 | 3,160 | 3,064 | 4,497 | 4,916 |

Source: Ministry of Labour and Immigration

TABLE 3. *Nationality¹ of unaccompanied foreign minors in Spain*

| | 2008 |
|---------------|---------------|
| TOTAL | 100.0% |
| Algeria | 2.7% |
| Gambia | 1.9% |
| Guinea | 2.1% |
| Guinea-Bissau | 1.3% |
| Mali | 9.7% |
| Mauritania | 3.6% |
| Morocco | 69.9% |
| Senegal | 8.8% |

¹ The nationality is either the real one or the one claimed by the minor.

Source: Ministry of Labour and Immigration

TABLE 4. *Agreements for return and returns carried out of unaccompanied foreign minors in Spain, 2004-2008*

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|-----------------------------------|------|------|-------|-------|------|
| Minors with Agreements for Return | 582 | 412 | 1,657 | 1,380 | 379 |
| Returns carried out | 111 | 65 | 87 | 23 | 6 |

Source: Ministry of Labour and Immigration

Annex II. Bibliography, Legislation, Reports, Instructions, Bilateral Agreements and Legal Resolutions

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