

COMPLEMENTARY REPORT TO THE V AND VI REPORT ON IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN SPAIN

77 Pre-Sessional Working Group
5-9 June 2017

UNICEF Spanish National Committee
English version - March 2017

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INTRODUCTION

UNICEF Spanish Committee (UCE in Spanish) is the entity that represents and promotes UNICEF's interests in Spanish civil society by means of a recognition agreement with the United Nations Children's Fund. For many years, this National Committee has been engaged in awareness-raising, education, training and policy-influencing activities in Spain regarding the situation of children's rights in developing countries and inside Spain as well.

This National Committee participated in the previous process of reporting to the Committee on the Rights of the Child, in 2010, with its own Complementary Report, and took an active part in the presession work together with Plataforma de Infancia (the Spanish nationwide coalition of child rights organizations).

The current review of the implementation of the Convention on the Rights of the Child (CRC) in Spain by the Committee on the Rights of the Child again represents a very special opportunity to recognize progress, draw lessons and bring attention to certain aspects of the situation of children in Spain.

UNICEF Spanish Committee has viewed the efforts by the Spanish Government in the preparation of the V and VI Report on the Implementation of the Convention on the Rights of the Child and the relevant annexes positively. These documents contain valuable information about the situation of children in Spain and the legislation, policies and actions developed in recent years.

The analysis period covered in this report was characterized by the impact that the major financial and social crisis starting in 2008 has had –and continues to have– on child welfare and rights, as well as by the response from the state's administrations (i.e. central, regional and local administrations), in the form of a general reduction of resources in public policies.

In general, despite substantial progress in child protection legislation from 2015, which is likely to have an impact in the coming years, this period could be seen as one with a lack of improvements and with setbacks in the implementation of rights, especially economic and social rights.

During the financial crisis, besides the dramatic increase in unemployment, both the preparation of the budgets and the

development of the public authorities policies were constrained –as the State report itself acknowledges– by the need to meet the budgetary stability objectives set by EU economic policy in its Stability Programmes, as well as by budget consolidation measures in all the areas of public spending, enshrined in a change in the Spanish Constitution. This had a negative impact on many aspects of the life of children living in our country, especially for the most vulnerable.

Aspects to be highlighted would be the downturn of household and children socioeconomic indicators, the increase in poverty and inequality, the overall reduction of budgets and resources for public services (education, health care) and specifically those earmarked for children, the reduced protective capacity of social policies aimed at households with children, the minimisation of official development assistance and the poor response to phenomena which have become more acute over these last few years, such as that of refugee children.

The combination of the loss of weight of child-related policies within public action in general, in spite of the visibility of phenomena such as child poverty, and structural problems such as low investment in child-related policies led UNICEF Spanish Committee and the Plataforma de Infancia to call strongly for a National Pact for the Child to ensure resources and political consensus regarding child rights and welfare.

Moreover, over these years the UCE was fostering at local and regional level both awareness about the situation of children and political consensus through the "Ciudades Amigas de la Infancia" (Child-Friendly Towns) programme, together with reports on the situation of children in Spain and its regions and agreements between political representatives in the Autonomous Regions. All this was based on the conviction that it is essential for

Spain to concentrate its efforts on the situation of the most vulnerable children both inside and outside our borders, and that more equal opportunities for today's children means less inequality and more progress for tomorrow's world.

Against this backdrop of seeking sound agreements, the implementation of the 2030 Agenda for Sustainable Development by Spain is an element that can and must be key in the next few years to improve the application of children's rights and to design consistent and coordinated policies aimed at the most vulnerable children.

Contentwise, this is not intended to be an exhaustive report, but as a report that focuses mainly on the as-

pects and issues which the UCE has been working on over the past years, as well as those aspects where we deem to give added value to the Plataforma de Infancia report, which the UCE also participated in from time to time.

During the process of preparing this complementary report on the implementation of the CRC in Spain, UNICEF Spanish Committee took on the role of encouraging the preparation and presentation of reports by entities and independent organizations, bodies, and entities with expert knowledge about relevant issues concerning children, such as the Spanish Ombudsman's office, Universidad CEU-Cardenal Herrera¹ and Fundación Raíces. ■



1. Lecturers Susana Sanz Caballero, Beatriz Hermida Bellot, Elena Juaristi Besalduch and Mar Molina Navarro from Universidad CEU-Cardenal Herrera, and Elena Goñi Huarte from the Universidad Europea university.

KEY ASPECTS OF THE REPORT

For UNICEF Spanish Committee, certain aspects in the report as a whole are especially important and should therefore be highlighted:

- The reduction of public resources due to the economic crisis, added to the crisis itself, had a major impact on child poverty levels, the education system, international development cooperation and inequalities both among children themselves and between them and other age groups. To remedy this loss of investment in children and to effectively combat children poverty, there is a need for:
 - A National Pact to ensure resources targeting children (especially in the areas of social protection and education).
 - Broader policies on equality and social protection in tune with the country's income and welfare levels. Among them, a substantial increase in both the amount and the coverage of benefits linked to children, aiming at universal provision.
- The 2030 Agenda for Sustainable Development is an opportunity for all countries and also for their children. To progress in it, Spain must expand its capacity to gather data on children at different territorial levels, especially that about children in particularly vulnerable situations. It must also define relevant coordination mechanisms, and design a Sustainable Development Strategy that makes it possible to develop the goals and indicators to implement the Agenda, taking children particularly into account in this.
- Children of foreign origin are more exposed to poverty and situations involving rights violations. Foreign children who are unaccompanied, asylum-seekers or child trafficking victims are still exposed to procedures and regulations that do not guarantee their rights. It is necessary to eliminate automatic returns at the borders, ensure that all procedures and rules are consistent with their status as minors and with national and international legislation, and establish procedures and resources specific to children, especially in cases of asylum-seekers or human trafficking.
- Children in Spain continue to be especially vulnerable to violence, both within the family sphere and at school, in the sports environment, etc. Lack of social awareness, poor coordination between administrations in cases of illtreatment or abuse, lack of data, and failure to tackle this issue from a wide perspective all call for a comprehensive Law covering violence against children.
- The voice of the children is still very little heard or taken into account within the decision-making processes concerning them. Legislative advances in this respect within the judicial and protective spheres require greater support for them to be implemented, while the development of processes for children to participate in both the education system and the decision-making sphere at the various territorial levels is necessary. ■

1. GENERAL MEASURES OF IMPLEMENTATION

A. LEGISLATION

SITUATION ANALYSIS

In the six years since the last report by the Spanish State to the Committee on the Rights of the Child, and in response to the Recommendations by the Committee in its 2010 Final Comments to Spain, several legislative reforms were performed, aimed at improving our regulatory framework to protect children and to “achieve a better level of compliance with the rights of the child as recognized by the CRC”.

Without diminishing in any way the importance of every one of these legislative reforms, the one that perhaps merits special attention is the reform affecting the system to protect children and adolescents, since after several years of preparation and amendments, and with the participation of a broad range of civil society, a significant consensus was reached between the political parties on the wording which was finally issued on July 2015, reflected in two regulatory texts: the *Ley Orgánica** 8/2015 (22 July), and Law 26/2015 (28 July), both modifying the system to protect children and adolescents. Despite some weaknesses and deficiencies, these laws represent significant progress towards aligning Spanish legislation with the principles and provisions of the CRC, since they update several substantive and procedural laws in pursuit of improved protection of children’s rights.

Below is a list of some of the main positive aspects of the reform:

- The new treatment given to the principle of the best interests of the child, by recognizing it as a right and by setting criteria to contribute to defining it in each case, in line with General Comment 14 of the Committee on the Rights of the Child.
- The reinforcement and definition of the child’s right to

be heard and listened to, and to be taken into account in decision-making concerning them, without discrimination whatsoever, in response to General Comment 12.

- Regarding action to protect minors and alternative care, it puts stable measures before temporary measures, family solutions before institutional solutions (especially in the case of minors), consensual alternatives before imposed alternatives, and national measures before international measures.
- The Spanish legislation includes for the first time the compulsory requirement of a preliminary report analysing the impact on children of the regulatory changes, based on a proposal put forward by UNICEF Spanish Committee.
- It declares that the poverty of the parents, guardians or carers will not at any time be taken as the only circumstance determining a situation of neglect.
- Several elements are introduced that contribute to improving coordination between stakeholders, and to clarifying the administrations’ competences and responsibilities:
 - An information system shared by the Autonomous Regions and the State’s general administration, allowing uniform understanding of the child protection situation in Spain.
 - A government regulation on situations of risk and neglect and a shared concept for the declaration of suitability in adoptions.
 - The clarification of state-wide and regional competences, in the framework of the Law on Inter-country Adoption.
- Moreover, protection of children who are victims of gender violence has been improved: minors who are children of domestic and gender-based violence victims are now recognized as gender-based violence victims.

* A *Ley Orgánica* is a type of Act in the Spanish legal framework used to develop fundamental principles enshrined in the Spanish Constitution. There is no equivalent wording in English.

- The status of protection centres for minors with behavioural problems has now been regulated.
- Those convicted of crimes against sexual freedom or involving exploitation of minors are banned from entering professions entailing contact with minors, and a new registry of sex offenders whose offences involved minors has been incorporated.

Noteworthy weaknesses of the reform are:

- The final provision, provision number 20 of the Law, which notes that the application of the law must not lead to any increase in public expenditure, or in provisions, remunerations or any other staff costs. This provision is inconsistent with some of the ambitious changes contained in the Law, particularly changes related to promoting rights, risk prevention and prevention of abuse, to the shift in approach of the minors' protection system from residential solutions to foster care placements, and to the more active role granted to the prosecutor in many proceedings.
- No significant progress has been made regarding the protection of unaccompanied minors, in general, and the processes to determine an individual's age, in particular. And it includes the ending of public care six months after leaving a child protection centre.²
- A controversial specific section was inserted about "obligations of the minors" (article 9a).

In relation to other legislative changes, it is noteworthy that the significant general agreement reached about modifying the regulation of the child and adolescent protection system did not happen in the case of the education system reform. The *Ley Orgánica 8/2013* (9 December), on the improvement of educational quality, was passed with only the votes of the party in government, which, in view of Spain's current political scenario, will very likely lead to yet another modification of the education system -there have been six different regulations on the overall organization of the education system over the past 35 years. This demonstrates both an inability to build political

consensus and the obvious need to strike a strategic deal in the form of a State covenant on education (within the framework of a State covenant on children, if possible), to help bring stability to our education system and put an end to the uncertainty created by constant legislative changes, and to promote quality education for all based on the principle of equal opportunity anywhere in the national territory.

This report analyzes, in sections specific to each subject, other legislative reforms carried out during this period, such as: approved amendments to raise the minimum age for marriage and sexual consent; reforms of aspects relating to abuse and illtreatment, exploitation or corruption of minors; child pornography and sexual exploitation; and children who are victims of violence, children with disabilities and, of course, "children in the context of migrations (refugee and migrant children)".

Therefore, even though it is true that over these years the Government has developed a fairly important legislative action to improve the legal framework regulating the situation of children and ensure the full realization of the rights contained in the CRC, it is still necessary to keep on reviewing current legislation with a view to adopting relevant legislative measures that will make possible the modification, harmonization and incorporation of those aspects which, far from contributing to the fulfilment of those rights, are a hindrance to their adequate implementation.

This is why, after studying the measures adopted and valuing the progress made, regarding each of the issues analyzed in this report UNICEF Spain will be making targeted and specific recommendations that it deems will contribute to increase the enjoyment of the rights in the CRC. However, it seems advisable to underline in this section that the failure to allocate specific and sufficient resources (principally financial resources) is one of the main obstacles for this major legislative reform efforts to efficiently and effectively implement the approved legislative measures.

Finally, UNICEF Spanish Committee congratulates the government on its swift ratification the Third Optional Protocol to the CRC on a Communications Procedure. ■

2. As developed in the MIGRANT AND REFUGEE CHILDREN section.

RECOMMENDATIONS

- Allocate specific and sufficient resources (particularly financial resources) to efficiently and effectively implement the approved legislative measures regarding the protection and promotion of the rights of the child.
- Review the *Ley Orgánica 8/2013* (9 December) on the improvement of educational quality, to advance basic legislation for the education system based on wider political and social consensus.
- Keep working on improving legislative harmonization, ensure the incorporation into the Autonomous Regions' regulations of the reforms of the protection law and improve equality concerning the exercise of the rights of the child throughout Spanish territory.
- Keep reviewing the application of the current regulations in order to modify those aspects which prevent adequate realization of the rights of the child.
- Guarantee, through training and assessment, the preparation by the administrations of early, relevant, good-quality reports on its impact on children.

B. INDEPENDENT HUMAN RIGHTS INSTITUTIONS

Completing the information provided by the Government in its report, the UCE is interested in highlighting the elimination of the few Ombudsman for Children institutions that were in some of our country's Autonomous Regions (such as the Autonomous Region of Madrid) in what seems to be a decision linked to the major financial restrictions they found themselves subject to as a result of the crisis suffered by the nation.

In spite of this, it is interesting to point out that both the national Ombudsman institution and its counterparts in the Autonomous Regions (most continue to maintain this institution), besides receiving complaints about the possible infringement of the rights of the children by the public administrations, allocate part of their resources to financing research and studies on specific aspects relating to infringement of their rights. ■

RECOMMENDATION

Protect and strengthen human rights institutions, promoting the creation of offices of public advocates for children (Ombudsman for Children) or, where appropriate, guiding Ombudsmen in their different territorial areas towards a particular focus, with specific staff, on the rights of children.

C. DATA COLLECTION

SITUATION ANALYSIS

In Spain there is currently a system of basic indicators about children welfare, regularly updated by the Ministry of Health, Social Services and Equality in collaboration with UNICEF Spanish Committee, which is accessible from the *Infancia en Datos* website.³ However, there is still no government programme for the systematic and global collection of the data for all the State's territories. Many of the existing data on childhood do not meet common disaggregation criteria applicable to all the boys and girls all over the country, or are not of sufficient statistical quality. This therefore limits our ability to know in detail the situation of children in Spain, to compare data from the different Autonomous Regions (which hold authority over many policies on children) or with the national average, and to design and assess specific policies.

Moreover, there are differences regarding data availability, disaggregation levels, frequency, consistency and accessibility, depending on the particular children's groups, on the Autonomous Regions, or on the specific dimensions of child welfare.⁴ Collecting data and defining indicators is not a purely technical matter, but must reflect instead the political commitment to ensuring an equity approach, and understand the needs and experiences of all children.

The implementation of the 2030 Agenda emphasizes the need for data collection and disaggregation for both proper understanding of the situation of children and the designing of efficient and effective policies. The Alliance stipulates the obligation of national, regional, and local governments to define a monitoring and assessment framework containing good-quality indicators with high disaggregation levels to measure the progress made in its implementation until 2030.

CHANGES MADE

We acknowledge the efforts made in data collection and the launch of the *Infancia en Datos* website⁵ and its progress with regard to the latest recommendation by the Committee of the Rights of the Child,⁶ together with the contribution to

the implementation of the II Plan Estratégico Nacional para la Infancia y la Adolescencia (II National Strategic Plan for Children and Adolescents, PENIA II).⁷ The System of Child Welfare Indicators⁸ has also been key to the agreement on minimum common indicators for all administrations and experts. The PISA and HBSC international reports represent an important addition to understand certain specific aspects of the life and rights of children (health, education, welfare), despite their 4-year frequency. Additionally the "Infancia en Cifras" newsletters, on children protection measures, and the surveys on habits and use of ICTs by children⁹ have contributed to a homogenization of data collection.

OBSTACLES ENCOUNTERED

As for the Government's report, data on children who are victims of gender-based violence has still not been made available in compliance with the new Law on the protection of children and adolescents, and the Spanish national statistics institute (INE) continues showing public data for the 0-16 age range.

At the current time, little progress has been made by the central, regional and local administrations to define the monitoring indicators for the 2030 Agenda and to adjust the current system of indicators, a process that should be seen as an opportunity to integrate the perspective of children within the national data collection system and to improve both the quality and the disaggregation of nationwide and, essentially, regional indicators.

With regard to administrative data related to children, they are little used, barely disseminated, and difficult to access, in general, for example in the fields of children's health, housing evictions, disaggregation of public expenditure by autonomous region, disabilities, etc.

There is a basic agreement on childhood indicators for measuring the situation of children in the country, but they are not unbundled enough by autonomous regions nor are there data available about certain groups of vulnerable children, such as children with disabilities. ■

3. MSSSI and UNICEF Spanish Committee 2014: <http://www.infanciaendatos.es/>

4. UNICEF Spanish Committee and the Observatory on Children in Asturias, 2010: *Propuesta de un Sistema de Indicadores sobre Bienestar Infantil en España 2010 [A proposal for a system of indicators of child welfare in Spain 2010]*: https://old.unicef.es/sites/www.unicef.es/files/Indicadores_Bienestar_INF.pdf

5. MSSSI and UNICEF Spanish Committee 2014: <http://www.infanciaendatos.es/>

6. Committee on the Rights of the Child, 2010: *Final Comments to Spain*: <https://old.unicef.es/sites/www.unicef.es/files/Observaciones.pdf>

7. Ministry of Health, Social Services and Equality: *II Plan Estratégico Nacional de Infancia y Adolescencia 2013-2016*. http://www.observatoriodelainfancia.msssi.gob.es/documentos/PENIA_2013-2016.pdf

8. UNICEF Spanish Committee and the Observatory on Children in Asturias, 2010: *Propuesta de un Sistema de Indicadores sobre Bienestar Infantil en España 2010*: https://old.unicef.es/sites/www.unicef.es/files/Indicadores_Bienestar_INF.pdf

9. Ministry of Home Affairs 2014, A survey on habits of Internet use and security by minors and youth in Spain: <http://www.interior.gob.es/documents/10180/2563633/Encuesta+sobre+h%C3%A1bitos+de+uso+y+seguridad+de+internet+de+menores+y+j%C3%B3venes+en+Espa%C3%B1a/b88a590a-514d-49a2-9162-f58b7e2cb354>

RECOMMENDATIONS

- Emphasize the Recommendation to Spain by the Committee on the Rights of the Child in 2010 about the need to increase the depth of the disaggregation levels. Measuring the scope of the indicators must be performed at several levels, i.e. state, autonomous region and local level, using a sample that is of sufficient quality to permit a suitable level of disaggregation by sex, age group, territory, ethnics, origin and migratory status, among other things. By disaggregating the information, the first step is taken towards promoting a social protection model with a direct, positive impact on the most vulnerable children in situations of poverty or social exclusion.
- Reiterate the need to have access to data related to the least visible groups of children (children with disabilities, unaccompanied foreign children, children in the protection system, children of women who are victims of violence), in order to design effective policies and programmes that include a perspective of equity.
- The central administration, in particular the Observatory on Children, must act proactively in managing and promoting the current system of indicators used to measure the situation of children in Spain, integrating both regional and local administrations. In this sense Spain must establish indicators for the 2030 Agenda at both the state and regional levels, from the child rights perspective, improving childhood data collection and adjusting to the current indicators frame.

QUERY TO THE GOVERNMENT:

What action is being undertaken by the Government and, particularly, the INE to adjust the national and regional framework of indicators to the new 2030 Agenda and improve collection, quality, and disaggregation of childhood indicators?

D. ALLOCATION OF PUBLIC RESOURCES FOR THE IMPLEMENTATION OF THE RIGHTS OF THE CHILD

SITUATION ANALYSIS

Overall, Spain is a country with a low level of investment in children, compared to other countries in its geographical and economic environment.

Throughout the history of general welfare policies, children and their families have been very little taken into consideration during policy making and resource allocation –particularly

concerning social protection–. There are no efficient financial protection mechanisms specific to children and households with children, or at least none that are comparable (either in volume or in coverage) to unemployment protection or protection mechanisms affecting the elderly (the pension system).

The evidence of high child poverty rates and their growth during the crisis (while relative poverty of people over 65

quickly decreased) demonstrates this weakness, which was there prior to the economic crisis itself but became more obvious during it.

In the absence of consolidated official data on investment in children, here are some examples, by sector: according to Eurostat¹⁰ 2013 spending on social protection assistance for families and children was 1.3% of GDP, compared to an average of 2.3% in the EU. According to this source, public spending on education, including university education, was 4.19% of GDP in 2013, compared to an average of 5.34% in the EU (21% less).

CHANGES MADE

Resources allocated by public administrations to policies linked to children were dramatically cut back during the analysed period, showing just a slight recovery since 2014.

The UNICEF Spanish Committee's 2012 report on the impact of the crisis on children¹¹ and other studies had already underlined how economic resources and services earmarked for children were particularly vulnerable to cuts, in comparison to other types of social expenditure (such as pensions) or financial expenses, which have been protected or prioritized.

In addition to the Eurostat data (which do not allow for much detail), in 2014 UNICEF Spanish Committee carried out an estimation of the evolution of public budgets between 2007 and 2013,¹² showing that, after breaking a positive trend lasting until 2009 of increasing public resources for children, austerity measures and the spending cut reduced annual investment in children by EUR 7.766 billion¹³ (17.2%) from 2010, reducing the investment from a total EUR 47.317 billion to 39.551 billion.

According to this assessment, the biggest cut in resources would have been in nonuniversity education, with a decrease of EUR 5.462 billion in the annual budget. As for health, the reduction was estimated as being EUR 1.327 billion.

Official sources, such as the national accounting statistics, also reflect this worrying setback. According to the functional classification of public administration spending (COFOG [Classification of the Functions of Government], Ministry of Finance)¹⁴, between 2009 and 2014 annual public spending on infant, primary and secondary education was reduced by EUR 4.859 billion (13%), recovering slightly in 2015. Social protection spending earmarked for families and children by the public administrations overall went from EUR 8.832 billion to 6.431 (a reduction by 2.401 billion, or 27%) and also recovered slightly during

Public spending on social protection of families and children (2007-2015). Millions of euros



10. Tables by benefits - family/children function [spr_exp_ffa] Last update: 26-05-2016.

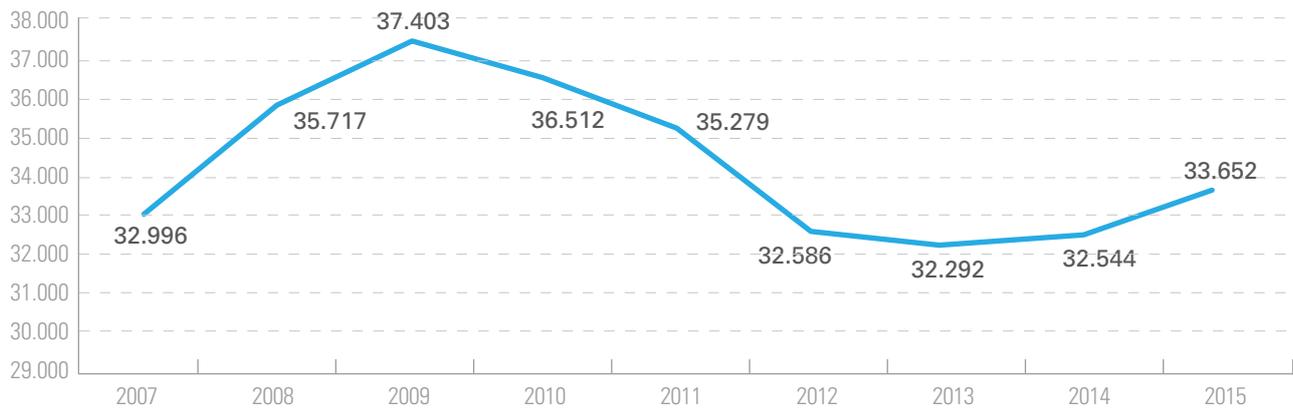
11. UNICEF Spain (2012). La infancia en España 2012-2013. El impacto de la crisis en los niños [Children in Spain, 2012-2013. The impact of the crisis on children]. Madrid: UNICEF Spain. https://www.unicef.es/sites/www.unicef.es/files/Infancia_2012_2013_final.pdf

12. Centro de Estudios Económicos Tomillo (CEET), 2015. La infancia en los presupuestos. Estimación de la inversión en políticas relacionadas con la infancia en España y su evolución entre 2007 y 2013, [Children in the budgets. Assessment on investment in childhood policies in Spain and evolution thereof between 2007 and 2013] *Cuadernos para el Debate* nr 4, UNICEF Spanish Committee, Huygens publishing house. https://www.unicef.es/sites/www.unicef.es/files/la_infancia_en_los_presupuestos_cpd4_new.pdf

13. Stated in 2007 euros.

14. Analysis conducted by the UCE using data from the General Intervention Board of the State Administration (IGAE). This method for assessing public expenditure differs from the one applied by Eurostat, among other reasons because COFOG only considers public administration spending and includes the cost of public services. <http://www.igae.pap.minhap.gob.es/sitios/igae/es-ES/ContabilidadNacional/infadmPublicas/Paginas/iacogof.aspx>

Public spending on non university-education (2007-2015). Millions of euros



2015, settling at 21% less than in 2009. In both instances there are also significant differences as regards cuts in expending among the various Autonomous Regions, which assume a large proportion of education and social expenditure.¹⁵ The accumulated reduction in investment in children for 2015, compared to that for 2009, would be more than EUR 33.100 billion in just education and social protection.

According to this source, between 2009 and 2015 both expense items were not only significantly reduced but also lost importance within the whole of the public administrations spending: social protection went from 1.8% to 1.5%, whereas education went from 7.6% to 7.1%. In other words, they decreased more than spending as a whole; therefore it can be stated that not only were those resources not preserved, as the Committee had requested in 2010,¹⁶ but they experienced specific reductions in times of great difficulties for children and their families.

Finally, it is worrying that in many instances reductions in spending and investment concerning children occurred in areas that are particularly sensitive for the most vulnerable children and which compensate for inequalities (e.g. school grants, support teachers and support programmes), while the expenditure on services and social benefits suffered particularly from the cuts in public spending when it was most necessary than ever. In 2014 the Ombudsman estimated, for example, that spending on grants for textbooks for low-income students was reduced from EUR 303 million in 2009 to EUR 166 million in 2013. These cuts have a clear impact on increased exclusion and greater inequality between children.

OBSTACLES ENCOUNTERED

Today the first obstacle to adequate allocation of public resources for children is the priority given by the Spanish Government to austerity measures and to the mandate to stem public spending established by the EU and other national and international financial mechanisms.

The second obstacle is that it is extremely difficult to identify budget items focusing on childhood, as well as to unbundle the part specifically earmarked for children, and have clear criteria to ponder expenditure on childhood in general items, such as spending on health care.

Even the above mentioned estimate by UNICEF met with constraints arising from the difficulty in comparing data from the General State Administration, Autonomous Regions and local entities, due to the extremely diverse names, programmes and functional and organic allocations of the said budget items. Nevertheless, the estimate put forward by UNICEF Spanish Committee has been acknowledged as a valuable contribution by the State Party report (page 8).

Except for sources such as Eurostat and COFOG, with highly aggregated data, hardly any of the public administrations reveals public data showing separately the amount and the proportion of the budget or spending on children. Only a few local administrations, such as some municipalities participating in the Ciudades Amigas de la Infancia programme, perform this exercise. No significant progress has been made with regard to

15. For example, in the education sector: [http://www.fe.ccoo.es/comunes/recursos/25/2253674-Informe_Crisis_economica_y_financiacion_educativa_evolucion_de_la_inversion_\(2009-2013\).pdf](http://www.fe.ccoo.es/comunes/recursos/25/2253674-Informe_Crisis_economica_y_financiacion_educativa_evolucion_de_la_inversion_(2009-2013).pdf) (page 83 ff).

16. CRC/C/ESP/CO/3-4, párr. 16 b))

the recommendation issued in this respect by the Committee in 2010.¹⁷

A third obstacle is the failure to assess the impact of budgetary reductions on the rights of children. The reform in 2015 of the child protection law established the mechanism of preliminary reports on impact (CRIA), but so far there have not been any assessments by public administrations on the impact that this reduction in investment in children policies has had on children's rights and welfare, either in the short or in the long term.

The last obstacle encountered is more complex and has to do with the lack of importance given to children on the political agenda, as mentioned at the beginning of this section. In Spain the relative weight of resources dedicated to children has always been low and, as a consequence of the crisis, it has been significantly reduced after several prior years with improvements. Political and social insensitivity to the effect that such disinvestments have both on the exercise of children's rights and on the social and economical future of the nation, becomes an obstacle for a firm commitment to investing in childhood. ■

RECOMMENDATIONS

- Increase public resources targeting children in key areas (education, health, social protection), getting gradually closer to averages in neighbouring countries (EU) as a percentage of GDP and public spending, taking into account the European Commission's Recommendation on investing in children¹⁸ and the goals of the 2030 Agenda for Sustainable Development.
- Promote a political deal on the protection of resources dedicated to children, within a National Pact for Children, which defines the budgetary items for the most vulnerable children, while ensuring that these measures and the resources involved are shielded in periods of economic crisis and recession.
- Apply the new legislation (which stipulates the preparation of an assessment report on the impact of this legislation on children and adolescents) consistently and appropriately to the budgets of all the public administrations.
- Reiterate the 2010 recommendation to Spain to "identify the amount and proportion of the budget for children at national, regional and local level in order to evaluate the impact and effect of that spending on children", by implementing a monitoring system that helps to identify the resources destined for children through the expenses tools and budgets of the different administrations, in compliance with General Comment 19 about public budgets for the implementation of children's rights.
- Foster the participation of children in the budgetary decisions concerning them, by specifically promoting their participation in the preparation and tracking of local entities' budgets.

17. CRC/C/ESP/CO/3-4, párr. 16 a)

18. RECOMMENDATION OF THE EUROPEAN COMMISSION, 20 February 2013. Investing in children: breaking the cycle of disadvantage (2013/112/UE).

E. INTERNATIONAL COOPERATION

SITUATION ANALYSIS

Spanish Official Development Aid (AOD) suffered a dramatic reduction in resources of 70% between 2009 (0.46% of Gross National Income) and 2015 (0.13%). This drop was well above the average for European countries, and greater than Portugal, Greece and Ireland, which had also faced severe crises. In 2015, the budget for Spanish Aid (CE in Spanish) reached 0.13% of Gross National Income, while the investment average in European countries was 0.40%. This means that the CE was at record lows, and AOD levels went back to the levels seen in the 1980s.

Children represent almost half of the population in developing countries and their welfare is extremely sensitive to the budgetary vicissitudes of aid policies. Despite the absence of a specific indicator about children and the fact that the Creditor Reporting System (CRS)¹⁹ sectors are partial, this decrease in AOD obviously affects the fulfilment of the rights of the most vulnerable children in the countries targeted by this cooperation. For 2010, AOD earmarked for education (early childhood, primary and secondary schooling), child health and child soldiers was EUR 134.18 million, whereas for 2014 AOD for these three sectors was EUR 11.36 million, a decrease of more than 90%.

However, against this backdrop of weakening Spanish Aid, the approval in December 2014 of the Spanish Aid's Strategy for Children²⁰ (officially presented in October 2015) must be highlighted. This programmatic tool was promoted by the group of child organizations²¹ led by UNICEF Spanish Committee. Moreover, it is worth underlining that the design of a cross-cutting strategy for children within Spanish Aid was one of the recommendations that we presented in our complementary report to the III and IV Report on implementation of the CRC by Spain, in February 2010. This tool lays down a framework for action aimed at ensuring that children and their rights are regarded as a horizontal and crosscut-

ting priority in the national, regional and local aid policies. This commitment would improve the quality of our cooperation with regard to children, which will no longer be a part of a wide population group anymore, but the protagonist of specific rights that must be taken into account.

Currently, the measures needed to implement and monitor the Spanish Aid's Strategy for Children have yet to be adopted by the relevant entities in the area of aid policies. To achieve the planned goals and generate a positive impact on the lives of millions of children, the Strategy needs to be reflected in nationwide, decentralized aid programmes, tools and policies. The definition of the CE's new 2017-2020 Master Plan is a crucial opportunity to ensure that children are a horizontal and crosscutting priority.

Moreover, the Agenda for Sustainable Development has begun a new phase in aid policies. It will be a priceless opportunity for Spanish Aid to put in practice the lessons learned, better define priorities and face global challenges with new and better tools and stakeholders; ultimately, to strengthen its aid policy and understanding of development. For instance, target 1a of SDG 1 establishes that the States must guarantee the mobilisation of enough resources, from diverse sources, for development aid in order to provide adequate and foreseeable means for partner countries and, in particular, for less advanced countries, to apply programmes directed at ending poverty in all its manifestations.

Implementing the Strategy for Children will have major implications for all children, in particular the most vulnerable children living in countries benefiting from our official aid. Aid policies must make advocacy of children's rights visible (within the framework of the CRC) in all their actions, aware that meeting children's priorities is essential to develop their full potential and that of their countries', and indispensable in fighting poverty and building more democratic, egalitarian societies. ■

19. OECD's Development Assistance Committee (DAC), with the aim of classifying and recording which sectors the contribution is for, defined the so-called DAC Sectors and CRS Sectors. They seek to identify the specific areas in the social or economic structure which are intended to be boosted thanks to the action in the partner country. DAC sectors typically have three-digit codes, and define general sectors or areas of intervention. For example, education (DAC code 110), government and civil society (DAC code 150), etc. CRS Sectors have five-digit codes that define one particular sector. For example, primary education (CRS code 11220), family planning (CRS code 13030), or basic nutrition (CRS code 12240), etc.

20. In <http://www.cooperacionespanola.es/es/estrategia-de-infancia>.

21. This Strategy is the outcome of a joint effort by the Ministry of Foreign Affairs and Cooperation's General Secretary for International Development Cooperation (SGCID) and several organizations specialized in childhood matters. In this dialogue and collaborative work for over three years many institutions and people contributed valuable input: Acción contra el Hambre, Ayuda en Acción, CONGDE, Educo, Entreculturas, Plan Internacional, Plataforma de Organizaciones de Infancia, Proyecto Solidario, Save the Children, UNICEF Spanish Committee and World Vision.

RECOMMENDATIONS

- Ensure the implementation and monitoring of Spanish Aid's Strategy for Children at the national and regional level, through strategic, operational tools and monitoring mechanisms.
- The forthcoming 2017-2020 Master Plan must place children and their rights as a cross-cutting and horizontal priority. In addition, it must contain firm, concrete commitments to restoring Spanish AOD immediately and in a phased manner. The aim must be to get it close to the European average and reach 0.40% of Gross National Income by 2020.
- Gather and release disaggregated data about Spanish AOD directed at fulfilment of children's rights within the framework of aid programmes and projects.

QUERY TO THE GOVERNMENT:

What action are the Government and, specifically the General Secretary for International Development Cooperation and the Spanish International Aid Agency, carrying out to implement the Spanish Aid's Strategy for Children?

F. OTHER AREAS (CORPORATE SECTOR IMPACT)

On 26th June 2014, in line with the Corporate Social Responsibility Strategies, the Spanish government's National Plan on Corporations and Human Rights was submitted for approval by the Spanish Council of Ministers. Since then nothing has been heard about this plan, with certain weaknesses and shortcomings, which tackled the protection of human rights by transnational companies and the obligation of the State to enforce this guideline. Also, in Measure 8 it stipulates the need to promote awareness-raising campaigns aimed at companies at various decision-making levels to encourage the introduction in their business models of actions aimed at protecting collectives with the greatest risk of vulnerability, including children and adolescents.

Furthermore, we emphasize the fact that the new 2030 Agenda strengthens the obligation of companies

to protect the rights of the child in all their actions. The Alliance does not only involve governments but also implicates a wide variety of other stakeholders, both in the private sector and the civil society, to help to achieve the 17 goals. It is clear that the private sector, unlike the outcome of the Millennium Development Goals (MDGs) strategy, is becoming more involved in the Sustainable Development Goals (SDGs) Agenda and recognizes itself as a key player in their implementation.

Promoting the adoption and implementation of a National Plan on Corporations and Human Rights from the Spanish government is thus essential. This political tool must guarantee the fulfilment of human rights, in particular children's rights, by companies and reinforce their role and contribution to the realization of the Sustainable Development Goals. ■

RECOMMENDATION

- Resume the formulation of the Plan Nacional sobre Empresas y Derechos Humanos del Gobierno español [Spanish government's National Plan on Corporations and Human Rights], with significant participation by entities from civil society, the public sector, academia, and business and trade union organizations, and introducing the perspective of the rights of the child and the targets and goals of the Agenda for Sustainable Development.

QUERY TO THE GOVERNMENT:

What is the Government policy with regard to the private sector and the enforcement of the rights of the child?

2. GENERAL PRINCIPLES

RESPECT FOR THE VIEWS OF THE CHILD

SITUATION ANALYSIS

The *Ley Orgánica 1/1996* (15 January) on judicial protection for children already stated that children and adolescents are entitled to participate and gradually become a part of the active society. Similarly, it is contained in the regulations on children of 15 of the 17 Autonomous Regions.²² Subsequent development of this in specific regulations establishing the permanent bodies for the participation of children and adolescents, at both national and regional level, is scant, so the right to participation by children and adolescents is at a high risk of not being implemented.

In the field of education, a research study by the Universidad de Lleida²³ carried out jointly with UNICEF in 11 Autonomous Regions, showed a lack of general awareness of the right to participate, its scope and its consequences in education: children are seen more as the objects of education than the subjects of rights.

It also showed that the CRC is seen as just an element in the curriculum, not as the backbone of the life of the educational establishment or as a methodology and planning tool, which results in a lack of participative processes and actions involving children in schools.

This research study also revealed how scarcely present the rights of the child are in the teachers' guides for degrees in teaching and social education: only 1.26% of all the subjects analysed by this research specifically feature the rights of the child.

22. According to a study by UNICEF Spanish Committee.

23. UNICEF, 2015: "Educación en Derechos y ciudadanía global: Los derechos de la infancia y la ciudadanía global en las facultades de educación" [Education on rights and global citizenship. Children's rights and global citizenship in faculties of education], pages 6-10.

After studying regional regulations, we saw that most of the existing laws on citizen participation do not include any reference to the children's right to participate. Some exceptions are Law 10/2014 (26 September) of Catalonia on non-referendum popular consultations, which stipulates that citizens as young as 16 years old or even younger when the purpose of the consultation so requires can participate in such consultations,²⁴ and Law 18/1999 of Madrid's Autonomous Region which, in addition to regulating the Consejo de Atención de la Infancia y Adolescencia (Council for Child and Teenager Care), provides the creation of obligatory commissions on child and teenager participation "with the purpose of coordinating direct knowledge of the interests and needs of minors".²⁵ Additionally, the bill on public participation of the Autonomous Region of Andalusia envisages that those over 16 can participate in consultation processes.²⁶

In the rest of the Autonomous Regions, their regulations on public participation, if any, either contain no specific reference to the involvement of people aged under 18 years old, or contain references that are too general.²⁷

The Ministry of Health, Social Services and Equality continues to promote the Ciudades Amigas de la Infancia programme launched by UNICEF Spanish Committee in collaboration with the Spanish Federation of Municipalities (FEMP) and the University Institute for the Rights of Children and Adolescents (INUNDIA), whose purpose is to encourage the introduction at local level of policies for children and adolescents.

One of the essential requirements for a town to be considered "child friendly" is the existence of permanent bodies and spaces for participation by children and adolescents, so they can have an influence on their town's life. Likewise, a significant number of autonomous region governments support this programme through the relevant agreements including financial support (as is the case with Andalusia, Asturias, Balearic Islands and

Extremadura). There are presently 170 Child Friendly Towns in Spain.

The boys and girls from the Principality of Asturias aged between 8 and 12 years old who gathered on 6-7 May 2016 in order to discuss the fulfilment of the CRC in their towns emphasized that they cannot express their views in many areas, and highlighted school as the place where it is least possible for them to do so. They also explained that institutions do not tend to listen to children (except for those spaces specifically meant for children participation) and that everybody (their parents, teachers, etc.) talk on their behalf while they are asked their opinion only rarely. In this context, when discussing freedom of speech, one girl said: "We children also have an opinion and often they are missing the opportunity of us giving them another point of view to help them with their problems, because we are children and we don't think in the same way; adults think like other adults, therefore they will always see the same problems and the same solutions". In this respect, the children suggested, as opportunities for improvement, working towards generating a broader culture of involvement in all areas of society (the public society, the school arena, and the family).²⁸

During a meeting with the Spanish Parliament's Commission on Children, on 25 January 2017, representatives from children councils requested the creation of a State council on children participation.

CHANGES MADE

Firstly, the coming into force of both the *Ley Orgánica* 8/2015 (22 July) and Law 26/2015 (28 July), which amended the above mentioned *Ley Orgánica* 1/1996 (15 January), is to be positively highlighted. The amendment of Article 9 reinforces the right of the child to be heard, without discrimination due to age, disabilities or any other reason, both in the family environment and in administrative and judicial proceedings,²⁹ and their specific mention in cases such as children in centres for behavioural disorders.

24. <https://www.boe.es/boe/dias/2015/03/16/pdfs/BOE-A-2015-2743.pdf>. Besides this, Catalan Decree 200/2013 (23 July) on councils on territorial and national participation of children and adolescents is in force.

25. Law 18/1999 (29 April) of Madrid's Autonomous Region regulating the Consejo de Atención de la Infancia y Adolescencia [Council for Child and Teenager Care], Article 14. http://www.madrid.org/wleg_pub/secure/normativas/contenidoNormativa.jsf;jsessionid=67C5788ED2E97C1D55FD789079863958.p0313335?opcion=VerHtml&nmnorma=486&cdestado=P#no-back-button

26. Article 29: "In general, people over 16 years of age who belong to the population sector or group having a direct interest in the subject of the consultation will be entitled to participate in the kind of regional and local participative consultations regulated in this chapter, provided they meet the requirements set by Article 5.1." <http://www.parlamentodeandalucia.es/webdinamica/portal-web-parlamento/pdf.do?tipodoc=bopa&id=117057>

27. For example, comprehensive Law 10/2006 (26 July) on youth from the Balearic Islands Autonomous Region, states that "policies for youth must encourage active participation of young people in society" (Article 2).

28. For instance, in the Santander Manifesto. <http://www.consejosinfancia.es/manifiesto-de-santander>

29. In this sense, UNICEF Spanish Committee stated the advisability of introducing a new paragraph, based on its General Comment 12 (2009). According to this Comment, the Committee establishes a list of "basic conditions for the compliance with the right of the child to be heard" (paragraph 134) to ensure that the participation of children in administrative and judicial proceedings is adequate and relevant. Therefore this right is taken into account, together with how it can be exercised so that the processes for listening to

Another major development is the recognized right to full involvement to minors in foster care.³⁰ Besides this, we would like to draw attention to the inclusion of the participation of the children and adolescents as one of their family duties, and as one of the duties of the foster caregivers.³¹

The 2013-2016 Second National Strategic Plan for Children and Adolescents (II PENIA) sets a specific goal of encouraging participation by children to improve the effective implementation of the Plan. Likewise, the Plans for Children from the Autonomous Regions of Andalusia, Asturias and the Basque Country all contain specific sections on encouraging the participation and citizenship of children and adolescents, and some of them also include them contributing to the preparation of the said plans.³²

As for the legislation in the area of education, there has not been positive progress. The *Ley Orgánica* 8/2013 (9 December) on the improvement of educational quality establishes in a generic form that children have the right to participate in school life and the running of their schools, can elect representatives per class and year and their representatives on the School Council (Article 119.3), and to participate through their own associations (Article 119.4). The preamble to the law states: "Moreover, preparation for both the exercise of citizenship and active participation in economic, social and cultural life, with a critical, responsible attitude and a capacity to adapt to the shifting situations of the knowledge society is also considered a goal which the Spanish education system is aimed at meeting".³³

However, under this same law school councils³⁴ become merely advisory or informative bodies, thus losing their decision-making and binding power over the school, a power which they had prior to the passing of this law,³⁵

which reduces the ability of families and children to actually participate.

Furthermore, it does not contemplate participation as a cross-cutting pedagogic criterion and does not tackle the issue of student participation as a methodological tool, nor does it make compulsory to include of the rights of the child as a part of the subjects studied in teacher's training directly within the classroom, but considers it instead as mediated participation in school life through delegates and representatives or associations.³⁶

This threatens to give rise to paradoxical situations where children are given the opportunity to participate at the municipal level while lacking spaces for formal involvement in the school, the institution where they spend a considerable amount of their time and which should educate in democratic practices.

At the territorial level, since 2010 some Autonomous Regions have approved specific regulation on childhood which include the right to participation. For instance, Law 14/2010 (27 May) on opportunities for children and adolescents of Catalonia, which contain several references to the right to participation as a generic right of children in various areas and situations.³⁷ It also contemplates the creation of councils of regional and national participation (Article 27). Likewise, since 2010 the Autonomous Regions of Cantabria, Castilla-La Mancha and Galicia also approved regulations on childhood containing more or less wide references to their right to participation.³⁸

OBSTACLES ENCOUNTERED

There are no data on child participation in Spain. The UNICEF Spanish Committee's report on Children in Andalusia 2015 includes the recommendation to collect and systematize data at autonomous region and

30. Article 21a: In addition, in cases of foster family care the child has the following rights:

a) Full participation in the caregiver's family life.

3. In cases of residential care the child also has the following rights:

a) Respect of privacy and of keeping his or her personal belongings, provided that they are not inappropriate for the educational context.

b) Participation in the preparation and undertaking of the centre's activity schedule.

c) Being heard in the event of a complaint, and being informed about all the support and complaint systems available to them, including the right to be heard by the public entity.

31. Article 9b and Article 20a. In this regard, UNICEF Spanish Committee and other institutions such as the Office of the Director of Public Prosecutions have objected to the inclusion of the duties of minors in the articles of this law, with a dimension that is more moral than judicial. See also http://eprints.ucm.es/36342/1/Comunicacion_Congresomenores_Zaragoza11marzo2016_AnaLambea.pdf, page 20 ff.

32. For example, in the Third Plan for Children of the Principality of Asturias (2004-2007), and in the IV Plan (2013-2016), as well as the 2016-2020 Second Plan for Children and Adolescents of Andalusia: <http://www.observatoriodelainfancia.es/oia/esp/descargar.aspx?id=4958&tipo=documento>

33. <https://www.boe.es/boe/dias/2013/12/10/pdfs/BOE-A-2013-12886.pdf>

34. Representative body of teachers, parents, the school management team, students (in secondary education) and local authorities involved in the running of the school.

35. The law on the improvement of educational quality (LOMCE in Spanish) amends sections a), b), e), h) and i) of Article 127 of the Education Act (*Ley Orgánica de Educación, LOE*) (2006) on the powers of school councils.

36. UNICEF, 2015: "Educación en Derechos y ciudadanía global: Los derechos de la infancia y la ciudadanía global en las facultades de educación" [Education on rights and global citizenship. Children's rights and global citizenship in faculties of education], pages 6-10.

37. Articles 3, 34, 35, 42, 44, 56, 72, 117, etc.

38. See the Annex with regulations.

local level on child participation.³⁹ Furthermore, the only source of information about officially recognized participatory bodies at municipal level is the Ciudades Amigas de la Infancia (CAI) programme, even though other participatory bodies are informally known to exist in towns that have not yet been granted the CAI label.

The recent law on education does not promote or facilitate any real participation by children either in the education system or in schools. The general regulation has not incorporated any formal mechanism to ensure the involvement of students in primary schools, ignoring the recommendation by the Committee in 2010 that the State must “ensure the right of children to

participate in the school environment, from primary school level”.⁴⁰

As mentioned above, the regulatory framework differs from one autonomous region to another or does not exist altogether, all of which makes it difficult to facilitate participation by children living in Spain.

This problem is even worse among vulnerable groups such as asylum-seeking and refugee children, who are barely heard. Parents usually speak on behalf of their children, since there are no protocols or specific spaces to enable children to express themselves. This issue is also dealt with in the “Migrant and Refugee Children” section of this report. ■

RECOMMENDATIONS

- Encourage laws on public participation (the development of which is incumbent on the autonomous regions) to include explicit references to people aged under 18 and promote suitable mechanisms and spaces so that participation is real and genuine and in keeping with the ages of the participants.
- Promote the collection and systematization of data about the participation of children and adolescents, at all territorial levels.
- Promote a homogeneous framework at all territorial levels to ensure the right to participate within the educational setting, ensuring the participation of primary school students in school councils, and including the right to participate as a pedagogic criterion.
- Acknowledge school councils as binding decision-making bodies for schools and their town councils, and introduce the CRC as a methodological tool serving as conveyor for the task of teaching.
- Encourage the conduction of regular children’s opinion polls by public social research institutions, just as they do with the adult population.
- Create a State Council for child participation and autonomous region councils based on the current experiences of participation at municipal level.

39. Children participation is one of the strategic thrusts of the covenants on childhood signed by the leading political representatives in the Regions since 2010. For instance, the Andalusian Covenant on Childhood signed by the leading political forces in the region in 2010: <http://www.defensordelmenordeandalucia.es/node/8843>

40. CRC/C/ESP/CO/3-4, paragraph 55.

3. CIVIL RIGHTS AND FREEDOMS

ACCESS TO INFORMATION AND PROTECTION FROM MATERIAL HARMFUL TO THEIR WELL-BEING

SITUATION ANALYSIS

Our previous Complementary Report pointed out that “the significant and rapid dissemination of the Internet in recent years and the fact that the Internet is increasingly accessible to children and adolescents (the number of computers and Internet connections available for children have grown exponentially during this period) has both positive and negative consequences”.

This statement from six years ago (February 2010) remains fully valid today. Concepts such as connectivity, interactivity and mobility define the presentday social communication context we are in. With the smart phone, we have the Internet in our pocket, something that not only gives many children and adolescents access and constant connection to the Web, but enables us to make the possibility of “absolute ubiquity” something real.

The virtual world and the real world, so clearly differentiated for adults, are one and the same reality for children. There is no doubt that the technological environment in which they grow up determines their “vital attitude”; being connected is a must.

For this reason, the many positive aspects of this “great digital revolution” cannot be disregarded. On the contrary, it is essential to value the infinite possibilities that the new digital era offers children for learning, being informed, communicating and socializing, participating, leisure and creativity, etc.

However, as experts have explained many times, given the particular characteristics and needs of children and

adolescents, determined by their progressive physical and psychological development, this digital environment exposes children to serious risks that should not be disregarded.

Therefore, it seems obvious that the challenge here is to strike the proper balance, keeping in mind the specific needs of children according to their age, and to develop a strategy to create an “online environment” that is enriching for all children and also safer and protective, so that the idea of digital citizenship can become a reality in the broadest sense.

Such a strategy involves, as has been pointed out on numerous occasions, integrating in schools the learning opportunities offered by the new technologies, through basic digital skills training plans based on formal learning (by introducing specific subjects at different phases of the educational path and during teacher training as well), understanding school learning to be the cornerstone of this training.

As regards protecting children from inappropriate television content, the previous self-regulation system is still in place, together with the age/content rating system of free-to-air broadcasters as a way to protect the younger population against inappropriate content⁴¹ There is a new, more accurate rating system, but which is still open to interpretation.

In the current self-regulation system, the supervising role of the public institution (the National Markets and Competition Commission, or CNMC) and social organizations (users’ associations, childrelated associations and parents organizations) has no recognized decision-making capacity, therefore the system cannot be considered suitable or efficient, since it is exclusively in the hands of the broadcasters.

CHANGES MADE

It is noteworthy that, as shown by the State Report itself, over the last few years this has been the line of work of the Spanish public administration in the area of education (training programmes and activities targeting students and teachers), regulation (approval of several laws contributing

41. Code of Self-Regulation on Television Content and Children. <http://tvinfancia.es/tvinfancia/>

to the improvement of the legislative situation) and technology (with the launch of red.es, a public agency within the Ministry of Industry, Energy and Tourism, promoting the use by Spanish society of the Internet and new technologies to its maximum potential).

Also notable are the reports on this issue presented by the Spanish Parliament in 2012 and by the Senate in 2015, also mentioned by the State Report, for their contribution to guiding the Government's action on this subject. However, these reports have yet to give rise to tangible changes in either policies or regulations.

Besides, after taking heed of demands from both civil society and the private sector, the public administration has fostered the creation of a public-private task force in the framework of the "Digital Agenda for Spain", headed by the Ministry of Industry, Energy and Tourism, which aims to promote a coordinated action between the various stakeholders and adopt shared strategies and action to help further the development of ICTs that are "beneficial" to children yet also safe for them.

In this line of work, we have heard of a Safer Internet Centre (SIC) being recently set up in Spain with EU funds and led by red.es and the Spanish National Institute for Cyber Security (INCIBE). A part of the European network of SICs, the Spanish SIC seeks to launch a series of services considered key by the European Commission to protect children online. In addition, we have been informed that the project submitted to the EC includes the creation of a "collaborative task force" that aims to involve all the agents (public entities, industry sector and the third sector) committed to this issue. Spain is lagging very much behind neighbouring countries in creating the SIC

Furthermore, it is noteworthy that in recent years private-sector stakeholders (mainly telecommunication companies) seem to be showing stronger commitment to

protecting children and adolescents, by developing both training activities on responsible use of ICTs and strategies to address the risks arising from them. However, these actions and strategies are still scarce and inadequate to efficiently and effectively tackle the issue of child safety as regards their exposure to the risks arising from a digital environment.

OBSTACLES ENCOUNTERED

In this rapidly developing, constantly changing and evolving technological scenario, it is clear that the legal system meets with difficulties when trying to regulate certain behaviours. Although Spain has a reasonable regulation framework for the protection of children in this respect, the reality of technological progress shows that we must keep on working to improve the efficiency of that protection, with a more integral approach, promoting the fulfilment of the rights of the child in this new digital era.

As for digital literacy, the legal framework regulating the Spanish education system still features an unpractical, not very useful approach, for both students and teachers. Direct engagement by the public administration, the Ministry of Education and the regional departments of education is paramount in order to define the required public policies and prepare syllabuses and educational programmes that enlarge and improve the present situation of basic digital skills in schooling.

The variety of stakeholders involved in, concerned about and/or related with this issue has led to a wide diversity of initiatives, but without any coordination between them and often with similar contents. It being understood that this is a matter of shared responsibilities, it seems natural that the challenge here lies in improving collaboration and coordination among these stakeholders, in order to join forces, avoid duplication, and optimize management of available resources. ■

RECOMMENDATIONS

To deal with this subject, education has been unanimously considered the top priority area, with other strategies being then added to it: the legal order (an adequate legal framework geared to this new reality), the search for public-private allegiances, self-regulation, and development of technical tools that can as a whole respond efficiently to illicit online content and behaviours, while contributing to an appropriate, responsible use. Therefore, we recommend:

- The creation of syllabuses and educational programmes that enlarge and improve the present educational framework on digital skills (safety and digital literacy) in schooling.
- Keep working on a more comprehensive legal framework to ensure that the legislation provides adequate protection of

children and young people against risks arising from the digital environment, while promoting the use of ICTs as useful tools to aid formal and non-formal education, communication and access to information for children and young people.

- Design, with the participation of all the stakeholders, a real and effectively coordinated collaboration strategy to enable to unite similar actions and to jointly develop new ones considered necessary.
- With regard to self-regulation on television contents: Move towards a co-regulation system in which the administration and civil society representative organizations participate with decision-making capacity, or, as an option, establish supervision by an independent entity of that self-regulation.

QUERY TO THE GOVERNMENT:

What action is being taken by the Government, and more particularly the INCIBE and red.es, to start up the Safer Internet Centre in Spain and provide the services to protect children on the Internet as set by the European Commission to those centres, and to create the “collaborative task force” that is referred to?

4. VIOLENCE AGAINST CHILDREN

ABUSE AND NEGLECT

SITUATION ANALYSIS

The new measures introduced by the reform of the legal system for child protection are currently being implemented, specifically the above mentioned Law 8/2015 (22 July) and Law 26/2015 (28 July). This new legislation seeks to adapt the rule to the situations of many children in our country who are victims of abuse or neglect, or have behavioural disorders which their families cannot cope with.

Nevertheless, UNICEF Spanish Committee considers that this Law, although positive in the field of protection, is not enough as a tool to fight violence against children in our country, a violence that, as occurs in all countries, is real and can be found in its most daily environments (the family, the school, the community) and in very varied forms, even though it still often hidden.

It could be stated that in the popular consciousness children in Spain still “belong” to the private sphere of the family, thus making it hard to gather and unearth actual data.

But, alarmed by recent events related to bullying disseminated by the media, protocols, provisions and resources have recently proliferated which, at autonomous region and local level alike, have attempted to address and prevent this kind of violence. What is lacking is an integral approach to violence on children, though. An example of this fragmentation of efforts at territorial level is the introduction of helplines and other resources operating only in each autonomous region.

These are the available data, per type of crime:

- In 2015, 14,682 crimes against people under 18 were committed, classified as “offences against individuals” (including intentional homicides, murders, injuries, and abuse in the family).
- 3,245 “offences against freedom” were registered (including repeated child abuse in the family) in which the victims were minors.
- 3,919 “offences against sexual freedom” against minors, including “sexual assault with penetration”, co-

ruption of minors and disabled individuals, and child pornography.

Another source of data is the unified register of suspected cases of child abuse (RUMI), which uses information from all the child protection services in the autonomous regions specifically dealing with abuse in the family environment. Such information comes from the “Risk and child abuse notification sheets” in the family (which include physical abuse, psychological abuse, neglect, and sexual abuse), received mainly from schools, health care centres, the police and the social services.

In 2014, 14,280 notifications were registered in the Spanish territory, which led to 17,959 notified cases of abuse (each child could be subject to more than one type of abuse).

OBSTACLES ENCOUNTERED

One of the main difficulties of a comprehensive approach to tackling violence against children is the lack of unified, reliable data that could fully document this phenomenon.

On the one hand, we have the above mentioned data about victims (number of acts reported by individuals declaring themselves victims or harmed due to any criminal offence) released by the Ministry of Home Affairs on an annual basis, based on information registered by the law enforcement agencies, the Navarra Police, and local police departments providing data to the Statistical System on Crime (SEC), but does not include any data from the police agencies of the autonomous regions of Catalonia and Basque Country.

On the other hand, there has been a steady increase since the start of RUMI registrations (from 8,122 in 2011 to 14,280 in 2014) because the register is more and more used.

The new Law 26/2015 envisages developing this register, but it does not mention how. Besides, despite efforts to spread awareness of it and to extend its scope, the Observatory on Children (the body in charge of managing the register) has no leadership capacity to achieve effective implementation. An efficient tool, created with high levels of consensus by the Autonomous Regions and children organizations, we consider it a pity that it is limited to family abuse cases. ■

RECOMMENDATIONS

- Develop a comprehensive Law on violence against children. This children-focused approach encompassing all variables, bringing the issue to the political and public agenda, while also serving the aware-rising objective, is much needed. The law must be accompanied by a mechanism to coordinate the ensemble of action in this area: from prevention to case registration and care. A good example of these pedagogic and coordinative efforts is the action launched to eradicate gender-based violence. The law must envisage the creation of an autonomous body devoted to this issue, and include aware-rising objectives. Such mechanisms would help unify measures relating to violence against children and the resources aimed at it, and make them more efficient.
- Undertake widespread dissemination among the general public of situations of violence against children, the responsibilities of all citizens to inform the public authorities of suspicions of abuse, and the channels to do so.
- Develop, as envisaged by Law 26/2015, the unified register of suspected cases of child abuse (RUMI), extending its scope to other types of violence against children, and promoting its effective implementation throughout the national territory under the management of the Observatory on Children. For that, it will be necessary to disseminate it at autonomous region and local level, and to train the professionals in charge of reporting such cases: teachers, social services, health professionals, and the police.

5. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

CHILDREN DEPRIVED OF FAMILY ENVIRONMENT

SITUATION ANALYSIS

According to official sources (see the State's Report for a more detailed description), 42,628 mi-

nors were taken care of by the protection system in 2015. This includes established guardianships and cases under assessment or with preliminary support measures. The total for residential care was 13,596, while family placement cases were 20,172. In absolute terms, family-placement care remains the main protective measure adopted by the child protection services in the autonomous regions and the autonomous cities.

Some concern has arisen in society after several news stories were published in the media about guardianship being taken away from families and cases of abuse and sexual abuse in protection centres.⁴² It is hard to make the concept of the child as the subject of rights become an ingrained concept, and matters concerning the upbringing and wellbeing of children are still considered to be of the domestic or private sphere. One notable aspect of the new legislation –mentioned Law 8/2015 (22 July) and Law 26/2015 (28 July)– is its bid to prevent minors under six from living in protection centres, an advance that UNICEF Spanish Committee celebrates. However, in order to make this pledge a reality, the autonomous regions, with the help of the central administration, will have to promote support for families with problems, so as to avoid separating the children from their parents. In cases where such measures are unavoidable, administrations will have to promote foster care for these children, with able, trained families willing to take up their upbringing.

Following a trend that started some years ago, the approach to child protection in Spain seems to consolidate at last the supremacy of the principle of the best interests of the child, as a guiding element in all actions and/or interventions in issues that affect them directly or indirectly. The new regulation is a clear example of this.

For this reason, it seems that the concept has been extended in order –from the perspective of ensuring at all times the best interests of the child (i.e. respect for all his/her rights)– to also include other measures or action aimed towards ensuring that the child’s life develops appropriately and fully within his/her family, thus trying to avoid any harm to his/her wellbeing and development.

Thus, in line with Article 11 of the new Law 26/2015 (28 July) on guiding principles of administrative action, the child protection system is no longer understood as a care-providing intervention model that comes into operation whenever “damage” is done, but now gains a wider magnitude: an integral protection system based on the child as a subject of rights that must be guaranteed everywhere and at all times. Therefore, the public administration “must act” to promote respect for the rights of the child as a strategy when tackling preventing risk and abuse.

However, the reality in Spain is far from the underlying purpose of Article 11, a reality that still reveals many

circumstances and behaviours that daily undermine the appropriate development of children and which the public administrations are unable to put an end to. The fact that this “caregiving” intervention by the relevant authorities concerning children is the usual tendency clearly shows that we remain far from the well-being context that would be considered desirable and ideal, so children could be free from harm, abuse and/or violence of any sort.

Given this reality, the thing to do is to intervene in preventing risk, and therefore concentrate efforts on finding out, identifying and detecting the factors that determine the risk in order to act on them and prevent the occurrence of the harm or abuse. This means intervening “in and from” different spheres: family, school, health services, society, police and legal spheres.

But the results from the incomplete data available (some of them mentioned in the previous section) still fail to show all the improvements that could be expected from the measures adopted and the actions put in place. There is no doubt that the cutbacks in resources caused by restrictive austerity measures implemented as a consequence of the economic crisis have contributed to the increase in already worrying figures, even though other circumstances (such as the reality of foreign unaccompanied minors) and the lack of real commitment by both society and the relevant administrations are also key elements to explain this situation.

In order to cope with this reality, Article 17 (on “concept and action of the public administration in situations of risk”) of the new Law 26/2015 sets forth a regulation of the risk at the State level that did not exist until now, and represent a positive step forward in this matter since it attempts to define and specify the meaning of “risk” (as the law itself points out in its Preamble, it “incorporates, as substantive content, what the body of law and autonomous region legislation had been incorporating over the years”); it could be said that, as in the case of the principle of best interests, this law contributes some common assessment elements that enable progress in assessing the different situations that could be classified as situations of risk. However, in view of the complexity of both the definition and its application in practice, some doubts still remain about the concept itself, making it a “certainly uncertain legal concept”. ■

42. For example: <https://www.diagonalperiodico.net/libertades/31716-marea-turquesa-la-lucha-por-hijos-tutelados.html> or <http://www.elmundo.es/cataluna/2016/09/13/57d7f366ca47415a068b4591.html>

RECOMMENDATIONS

It is essential to actively work on applying articles 11 and 17 of Law 26/2015, and to strengthen the structural elements of the system, that is: data on children, and inter-administrative and inter-institutional coordination and collaboration.

- Make use of the new legislation to analyse and review the current child protection system under the umbrella of the rights of the child.
- Develop a joint protocol to determine the child's best interests for the protection system professionals, which can guide their action in subjects such as declarations of risk, removal of guardianship, and protection measures to be applied.
- Earmark the necessary resources for the development of actions enabling proper fulfilment of articles 11 and 17 of Law 26/2015.
- Improve strategies of data collection and analysis, in order to have better information about the risk situations in which children may find themselves.
- Develop training programmes for professionals in charge of reporting on risk situations in relation with the "Intervention protocol against child abuse in the family", in order to improve its application.
- Keep working on positive parenting programmes.

INTER-COUNTRY ADOPTION

SITUATION ANALYSIS

We would like to start by pointing out that in Spain, following a trend already seen in the rest of the world, there is a clear reduction in the number of inter-country adoptions. As experts have said, this is due to a combination of factors, one of the most significant being the fact that fortunately many countries of origin of these children pay more attention to ensuring that the intercountry adoption is the last option for children in need of a different family to their own, and that when the adoption happens, the procedure is legal and safe, for the sake of preventing the fraud and corruption than so often come with these procedures. All this has led to changes in legislation in those countries.

Secondly, we would like to point out that our previous report to the Committee analysed several aspects related

to inter-country adoption and the absence of common guarantees and safeguards throughout the country, something that prevented adequate protection of the best interests and rights of the child to be adopted.

Today UNICEF Spanish Committee is very pleased to see the changes introduced by the new Law 26/2015 in the regulation on adoption for, besides promoting the establishment of common criteria to make it possible to eliminate discrepancies in regional regulations and reinforcing protection of the rights of children by insisting that the best interests principle must remain paramount in the adoption system (following the trend started by previous reforms), it helps to improve, with its new, extended articles, the guarantees of the process throughout all the different steps or phases, as expressed and detailed by the State Report.

With regard to inter-country adoption in particular, we would like to congratulate the State because the new regulation reinforces the protection of the rights of the child by establishing a new framework of competencies with

a higher degree of consistency in the processing of inter-country adoptions. It is embodied in two specific points.

First, the State's General Administration (AGE in Spanish) in collaboration with the Autonomous Regions will decide whether it is advisable to initiate, suspend or stop the processing of adoptions depending on which countries are involved, on the grounds of their climate of conflict or other issues. Second, the State's General Administration is also responsible for the accreditation of the private institutions that can act as intermediaries in the processing of inter-country adoptions and, consequently, for monitoring supervising them. This new approach makes it possible

for the AGE to coordinate not only the activities of these institutions, but also the consequences and repercussions of such activities throughout Spanish territory.

Both points are essential, given their importance in terms of ensuring a process with the same guarantees and safeguards everywhere in our country.

In order to determine their efficacy, the exercise of these powers will have to be assessed, in particular the second one, which requires regulatory development (currently in progress) and probably specific funding to enable appropriate implementation. ■

RECOMMENDATIONS

- Given that Law 26/2015 expressly stipulates that “the measures included in this rule must not lead to any increase in public spending, funding or remuneration, or other staff costs” (20th final provision), and that reality shows the evident need for specific funding to develop these powers of the AGE, we recommend the State to analyse and assess the possibility of “redistributing” the available resources and means to enable the fulfilment of this legislation.
- Likewise, it would be advisable to establish suitable mechanisms to enable proper assessment of the efficacy of the new legal measures adopted.

6. DISABILITY, BASIC HEALTH AND WELFARE

CHILDREN WITH DISABILITIES

SITUATION ANALYSIS

Disability is a factor of special vulnerability for children, something that demands a specific effort from the administration to ensure the fulfilment of their rights. If we add to this other vulnerabilities such as gender-based discrimination or social exclusion of the family, a situation of multiple vulnerability arises that requires measures that are appropriate to that situation.

As stated by the Committee in the Final Comments to Spain in 2010, in Spain there is a lack of data about the number of children with disabilities, their particular circumstances and family situation, and, more notably, about violence against them, given that they are more susceptible to encountering abuse than other groups due to their greater vulnerability. The systematic availability of both data and analyses forms

the essential base from which to develop public policies that properly ensure their rights, and to make available adequate channels for the children to fully participate and express their views on equal terms.

For the full development of children with disabilities, it is particularly important to provide early care and to have comprehensive services and resources (health, education, psychosocial services), especially during early childhood, to enable children and their families to have an adequate intervention pathway, equal everywhere in the country.

In connection with this, it is necessary to ensure their right to live with their families and in their communities, the option of their placement in an institution being only chosen when it is in the child's best interests of the child but never out of lack of public or family resources.

With regard to the right to education, and in compliance with Article 24 of the Convention on the Rights of Persons

with Disabilities (CRPD) and with General Comment 9 of the Committee about the rights of children with disabilities, it is essential that education be inclusive and leave behind the model of segregation of children with disabilities that led to ordinary and special schools, as is the case currently, as shown by the CERMI's newsletters⁴³ and 2015 annual report.⁴⁴ Furthermore, in the current segregated model there are also territorial disparities in the ratio of children with disabilities receiving schooling in ordinary schools, and significant differences as regards inclusion, depending on the type of disability, all of which suggests that the right to quality, inclusive education is exercised to different degrees by different children, depending on the type of disability of the child.⁴⁵

Finally, we find that the essential goal of achieving the highest possible degree of autonomy and development of each child's capabilities is not sufficiently present either in society at large or in the public policies targeted at children with disabilities, something that affects all the above mentioned issues in this section in a cross-cutting manner. ■

RECOMMENDATIONS

- Set up data collecting processes relating to children with disabilities, together with analysis of said data, to make it possible to know in detail about their situation and needs, in order to then create and improve appropriate public policies to ensure their rights.
- Give greater priority and emphasis to the research (via data and analysis) on violence against children with disabilities, enabling the development of adequate preventative and protective measures.
- Promote the participation of all children with disabilities (regardless of the type of disability) in all the decisions concerning them and in the design of public policies that have an impact on their interests.
- Ensure the exercise of the right to inclusive, quality education within the general education system, carrying out the required adjustments so that the type of disability or the place of residence are not ground for inequality in the fulfilment of their rights.
- Prevent the institutionalization of children with disabilities, set up special support measures for deinstitutionalisation, and provide the necessary resources to ensure their living with their families and in their communities.
- Promote each child's autonomy and development of capabilities, directly and also across all the public policies targeting children with disabilities, as an essential goal.

43. Spanish Committee of Representatives of People with disabilities (CERMI in Spanish), "El CERMI lamenta que un curso más la educación inclusiva no sea una realidad para las personas con discapacidad" ["CERMI finds regrettable that, for yet another school year, inclusive education is not a reality for people with disabilities"], 9/07/2015. <http://www.cermi.es/es-ES/Noticias/Paginas/Inicio.aspx?TSMEIdNot=6945>

44. CERMI (2016), *Derechos Humanos y Discapacidad - Informe España 2015*, Madrid. <http://www.cermi.es/es-ES/Biblioteca/Paginas/Inicio.aspx?TSMEIdPub=370>

45. MECD [Ministry of Education, Culture and Sports] (2016), *Las cifras de la educación en España. Curso 2013-2014 (Edición 2016) [Education in Spain in figures. 2013-2014 Academic Year]*, Madrid, (Apartado D7.El alumnado con necesidades específicas de apoyo educativo, cuadro D7.11 [Section D7. Students with specific needs of educational support, table D7.11]). <http://www.mecd.gob.es/dms/mecd/servicios-al-ciudadano-mecd/estadisticas/educacion/indicadores-publicaciones-sintesis/cifras-educacion-espana/2013-14/d7-pdf.pdf>

STANDARD OF LIVING AND MEASURES TO REDUCE POVERTY AND INEQUALITY

SITUATION ANALYSIS

The last people to be responsible for the economic crisis are children. However, children have suffered and are still suffering its consequences as seriously or even more seriously than other population groups. Child poverty and inequality have been among the areas most affected by the situation of economic and social crisis in Spain in recent years.

The high child poverty levels, both in absolute terms and in comparison with neighbouring countries, are a structural issue in Spain, predating the crisis. But those levels were significantly aggravated by the direct impact of the economic crisis (particularly as regards job destruction) and by the political response to it: the general cutbacks in financial resources for public services and social protection affecting children and their families. In 2012 UNICEF Spanish Committee carried out its first study of this context.⁴⁶

According to the European Union's AROPE (At Risk of Poverty or Social Exclusion) indicator, in Spain in 2015, 34.4% of the population aged under 18 was at risk of poverty or social exclusion.⁴⁷ That was a total of 2,863,000 children, as against 2,629,000 in 2009 (32%). In terms of relative income poverty (or monetary poverty), child poverty reached 29.6% in 2015, the highest percentage in the EU, second only to Romania.

If we take the poverty thresholds for 2008 (based on that year's income rates, thus reflecting more clearly the loss of income in households during the crisis), child income poverty went from 28.2% in 2009 to 37.6% in 2015.

The indicator of child poverty or child exclusion for 2015 (34.4%) is in contrast to this same indicator's results in other age groups: 28.6% of the whole of the population, and 13.7% of the population aged over 65 (in this group, it was 24.9% for 2009).⁴⁸

Another indicator –severe material deprivation⁴⁹ shows this impoverishment process as going from 6.7% by 2009 to 9.1% by 2015 in the child population.

If we take an equity indicator such as the income gap between the wealthiest 20% and the poorest 20%, Spain is the EU country where this gap grew the most, reaching 6.9 times for the whole of the population.⁵⁰ In the case of the under-17s, this gap is 8.5 times, increasing by a 20 per cent over the last three years.

The impact of the crisis and the austerity policies have affected households with children in many ways:

- By reducing the household's economic resources in general: due to the parents being unemployed, the rise in tax and the general cuts in financial assistance and grants linked to family protection and education.
- By putting at risk, as a result of the foregoing situation, their household resources for food, health, education, leisure, power, heating, and payments relating to the home itself.
- By increasing social exclusion situations, particularly in cases of evictions of households with children.⁵¹ Although so far there is not enough statistical information on these situations, the Bank of Spain estimated that between 2008 and 2014 there were 97,000 evictions from main dwellings, but there are no data on how many families with children have been affected.
- By impairing the resources of general public services (education, social services) or increasing their cost (for example, medicines).

46. UNICEF Spain (2012). *La infancia en España 2012-2013. El impacto de la crisis en los niños [Children in Spain, 2012-2013. The impact of the crisis on children]*. Madrid: UNICEF Spain. https://www.unicef.es/sites/www.unicef.es/files/Infancia_2012_2013_final.pdf

47. This Eurostat indicator gathers three vulnerability dimensions: unemployment in the household, severe material deprivation, and reduced income (monetary poverty).

48. The guarantee and stability of the spending on old-age state pensions (which was indeed protected) has helped to reduce relative poverty in this sector of the population.

49. Households that cannot afford four of the total nine items defined for Europe. The nine items are: paying their rent or mortgage; keeping their home adequately warm; facing unexpected expenses; eating meat, chicken or fish (or their vegetarian equivalents) three times a week; affording at least a one-week annual holiday; a car; a washing machine, a colour television, a telephone (cell or land line).

50. The wealthiest 20% have a average total income 6.9 times higher than the poorest 20%.

51. An excellent research study about experiences of children having suffered the loss of their housing: Various authors, *Te quedarás en la oscuridad: desahucios, familias e infancia desde un enfoque de derechos [You will be left in the darkness. Evictions, families and children from the rights perspective]*. Enclave, Plataforma de afectados por la hipoteca [Platform for people affected by mortgages] and Quiteria publishers, 2016. In: <https://drive.google.com/open?id=0B-OeAPPoFLpYeFdeVfpxS0JadGc>

CHANGES MADE

Since 2010 the general trend has been characterized by the increase in poverty levels, its severity, and a reduction in public resources earmarked for children's social protection.

Moreover, inequalities between children have increased over this period, as shown by the UNICEF report *Fairness for children. A league table of inequality in child well-being in rich countries*.⁵² In Spain the gap between children in the average income group and children in the lowest income group⁵³ is 62%, the fourth worst percentage in all Europe, which increased remarkably between 2008 and 2013 by 6.7 percentage points.

The impact on young people was even harsher, with income poverty levels going from 21.3% in 2009 to 33.4% in 2015 in the 16-24 age group, with extremely high unemployment rates (up to 55% in 2013), which makes it possible to talk about the process of rising poverty levels among young people and children within the overall impoverishment of the population.

Meanwhile, the system of assistance and welfare benefits has revealed its weakness and limited capacity to provide social and financial protection to children, as a result of the low allocation of resources and its lack of poverty-reduction focus. According to Eurostat, Spain is the EU state where the least portion of GDP is allocated in monetary benefits for families and children: 0.5%, as against a European average of 1.6%.

According to official figures (COFOG), between 2009 and 2014 the expenditure of all the administrations on social protection for families and children decreased by EUR 2.401 billion per year (27%).⁵⁴ Cutbacks particularly affected monetary benefits from both the regional and the central governments (for instance, the universal childbirth allowance, which disappeared in 2010), and other sorts of benefits earmarked for households with children. Depending on the case and the place, benefits have been eliminated, their amounts were cut or the requirements for entitlement were stricter.⁵⁵

In addition, the harsh impact on households with children, and action by social entities, have helped to bring to light a previously hidden issue which had been off the political

agenda, so much so that parliamentary and political initiatives have proliferated since 2012 to tackle the situation.

Some of these initiatives were channelled through governmental plans and strategies such as II PENIA and the 2013-2016 National Plan for Social Inclusion (PNAIN), or the comprehensive plan for family support (PIAF), characterized by a better diagnosis of child poverty but also by the lack of specific financial resources, measurable goals, and specific measures targeting child poverty. The only exception to this lack of funding is the EUR 48 million allocation in 2016 earmarked for specifically fighting extremely severe child poverty, an allocation which had been first assigned in 2013 with EUR 18 million.

But even in the case of measures with higher economic weight, such as dependent child tax credits on indirect taxes, and in particular for single-parent families, numerous families and families with children with disabilities under the PIAF starting in 2015 (estimated by the Government to be EUR 1.042 billion), they lack the focus of equality. Although they are earmarked for family profiles with high poverty rates, they do not benefit any other profiles, nor is the tax credit linked to low household income. Moreover, due to their format of being tax credits in relation to the income tax, those households with the lowest resources or none income at all will not be able to benefit from them.

OBSTACLES ENCOUNTERED

In relation with all this, we can define various kinds of obstacles to both the implementation of the recommendations of the Committee to Spain in 2010 (resource preservation, reinforcement of family benefits, and the drafting of a plan to fight child poverty) and the reduction of the high child poverty rates.

One kind of obstacle is linked to the reduction of economic resources, both public and household:

- For households, the high unemployment rate –hitting 26.1% in 2012 and affecting specially younger families with children– has a direct impact on available revenues. Also, the reduction in salaries and parttime jobs which in many cases do not even provide enough resources to avoid the risk of poverty (in 2015, 16% of households with children are at risk of poverty, despite the fact that the adults do have a job).

52. UNICEF. *Fairness for children. A league table of inequality in child well-being in rich countries*. Innocenti Report Card 13. UNICEF. 2016. <https://www.unicef-irc.org/publications/832/>

53. The 10% with lowest income.

54. As depicted in the section ALLOCATION OF PUBLIC RESOURCES FOR THE IMPLEMENTATION OF THE RIGHTS OF THE CHILD in the Report.

55. Olga Cantó and Luis Ayala. *Políticas públicas para reducir la pobreza infantil en España: análisis de impacto* [Public policies to reduce child poverty in Spain. An analysis of their impact]. Chapter 3. UNICEF Spain. 2014. In: <https://old.unicef.es/actualidad-documentacion/publicaciones/politicas-publicas-para-reducir-la-pobreza-infantil-en-espana>

- The significant reduction in public resources earmarked in social policies for family and children. Moreover, the significant disinvestment in other services such as education and health, which has forced households to make bigger efforts to make up for it or to benefit from those services on equal terms.

A second kind of obstacle is linked to the fact that public policy plans lack quality, resources and equity focus, adding to the poor coordination between the administrations in their fight against child poverty.⁵⁶

The third group of obstacles arises from the overall approach of the social measures, which in Spain are largely linked to employment-related contributions (pensions,

unemployment benefits) or to direct taxes (income tax) allowances, so in many cases they do not reach neither the most vulnerable households, nor the younger workers and workers with limited working experience, nor those with incomes below the required minimum to qualify for the tax allowances. In addition, almost none of these benefits and tax reliefs are specifically child-oriented, or they consider only marginally the presence of children in households.

In this respect, it is remarkable to see the lack of universal child benefits, how low and scattered the existing ones are, how limited their capability to reduce poverty is (as compared to neighbouring countries), and the scant focus on equality of current benefits and tax allowances.⁵⁷ ■

RECOMMENDATIONS

- Provide programmes for children, the family and social protection with clear, objective indicators and definite goals to reduce child poverty and inequality, in compliance with SDGs 1 and 10. Increase and define with clarity the resources earmarked, and the coordination between public administrations and sectors, so that the measures can be really effective. Assess the impact of the programmes on the child population.
- Progressively establish a universal dependent-child allowance at the national level, with the capability to prevent poverty, that is supplemented by specific measures to reduce income poverty in the most vulnerable households with children.
- Firmly support the participation of parents in the labour market by means of economic incentives and work-life balance measures. Progress towards making early-childhood (0-3) education accessible, particularly for the most vulnerable households. Ensure that the nursery schools' admission criteria, or their fees, do not discriminate against unemployed people or job seekers.
- Establish national legislation preventing the execution of evictions without housing alternatives, and developing social rental options, with special reference to situations concerning children and adolescents.

⁵⁶ Please refer to the conclusions of the *Informe sobre políticas públicas para combatir la pobreza en España* [Report on public policies to fight poverty in Spain] by the Spanish Economic and Social Council. January 2017, pages 167 ff <http://www.ces.es/documents/10180/4509980/Inf0117.pdf>

⁵⁷ A good analysis of the distributive approach of benefits can be found in: Olga Cantó. El impacto de las políticas públicas monetarias en la infancia [The impact of monetary public policies on children, in: Las políticas públicas y la infancia en España: evolución, impactos y percepciones [Public policies and childhood in Spain. Evolution, impacts, perceptions]. UNICEF Spain. 2011. Pages 38-42. <https://old.unicef.es/actualidad-documentacion/publicaciones/las-politicas-publicas-y-la-infancia-en-espana>

7. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

THE RIGHT TO EDUCATION

SITUATION ANALYSIS

In recent years, education has become one of the sectors most affected by the crisis, not only due to the remarkable cuts in resources, as shown in the section “Allocation of public resources”, but to the lack of political consensus which in this case led to *Ley Orgánica 8/2013* on the improvement of education quality (LOMCE in Spanish), approved under a climate of strong political and social protest.

Between 2009 and 2015 the education system lost a total of EUR 21.500 billion less at the non-university level, mainly in teaching’ salaries (with the subsequent reduction in the number of teachers) and investment in infrastructure. Other expenditure headings which have suffered heavy cutbacks, though not so significant in absolute terms, include teacher training, compensatory education and grants for school books, closely related to quality and equity in the system.⁵⁸

Public expenditure per student in state and subsidized private non-university education decreased by 19.7% between 2009 and 2013⁵⁹ and disparities between the Autonomous Regions are significant: from EUR 3,908 in the Madrid region to EUR 6,675 in the Basque Country.

UNICEF Spanish Committee has not ceased to warn of the dangers of reducing investment and the increase in dissent and instability in the education system, calling for political and social consensus in order to reach a National Pact on education. Maintaining the conflict over

education means moving away from the best interests of the child, thus giving rise to negative effects on the educational development of children and adolescents in the long run.

Despite the significant reduction of school failure and drop-out rates over recent years, they remain above 20%, the highest in the EU. Both failure and drop-out rates are very much determined, in turn, by the socio-educational characteristics of the families and the students, their gender, national origin and ethnicity.⁶⁰ In addition to the urgency of reducing both rates, it is worth reiterating how important it is that no educational path be met with a dead-end: the situation of students who are not able to obtain their qualifications at the end of the compulsory education period (set at 16 years of age) must be paid special attention, and options should be offered to them so that their academic, individual and professional development is not cut short.

It is our understanding that the duty to ensure that children achieve the general goals of education continues beyond the period of compulsory schooling whenever those goals are not achieved before the end of that period. In this sense, it is worthy of note that the Committee on the Rights of the Child has repeatedly spoken in favour of education systems allowing students themselves and their families to be able to choose their education itinerary, in order to avoid them dropping out or becoming discouraged.

In early education (0-3), despite the positive trend of the schooling rate in recent years (reaching 32.8%), figures vary conspicuously between regions: from 7% in the Canary Islands to 52% in the Basque Country. Austerity measures in 2012 eliminated the EUR 100 million in the government’s budget earmarked for extending these public services by the autonomous region governments.

58. MMinistry of Education, Culture and Sport. Statistics of Public Expenditure in Education. Public Expenditure Series for Education. 1992 to 2014. <http://www.mecd.gob.es/servicios-al-ciudadano-mecd/estadisticas/educacion/recursos-economicos/gasto-publico/series.html>

59. Ministry of Education, Culture and Sport. Statistics of Public Expenditure in Education. Reconciled budget.

60. FSG (2013). *El alumnado gitano en Secundaria. Un estudio comparado*. [Gypsy students in secondary education. A comparative study]. Ministry of Education, Culture and Sport. Madrid: <https://www.gitanos.org/upload/56/22/EstudioSecundaria.pdf>

Moreover, in many Autonomous Regions nursery fees have risen, while free or subsidized places have been cut down.

Research studies carried out by UNICEF on the presence of the CRC in the faculties of education⁶¹ or on teaching

about child rights⁶² have verified a lack of dissemination and awareness of the CRC among the teaching professionals in Spain. This is mainly due to deficiencies in the teachers' initial training, in particular about the right of the child and adolescent to participation, their rights to protection, and their being active subjects of rights. ■

RECOMMENDATIONS

- It is necessary to reach a pact on education. It is the duty of all the political parties and society at large; the consequences of failing to do so become a burden unfairly placed on children and adolescents.
- Ensuring the stability of the education system's financial resources is essential, by setting at least minimum public investment levels, both as a percentage of public spending and in absolute terms.
- Universal access to early schooling (0-3) must be actively promoted, in particular targeting children who are at a disadvantage due to socioeconomic, administrative, family, or disability situations, by improving quality and ensuring the accessibility and affordability of the services.
- The focus on equity, equal opportunities and quality at all educational levels (nursery, primary, secondary, and technical and professional training) must be assured, guiding the structure of the investment in education in order to address diversity (including foreign children recently arrived in the country or with low levels of integration in society, children with disabilities, and children in the protection system), teacher training, the tackling of school failure, and the introduction of new technologies, and to increase both spending on equipment and staffing and the centres' operation.
- The gender focus is essential when dealing with the challenges of inclusion and equal opportunities: the boys' higher school drop-out rates and worse overall performance, and the girl-specific drop-out risks of vulnerable girls for reasons of ethnicity, teenage pregnancy, or culture of origin.
- Finally, it should be kept in mind that the development of future education reforms must ensure avoidance of disparities between territories due to differences in funding, regulatory development and implementation.

61. 1 Urrea, A., Balsells, M.A., Coiduras, J. and Alsinet, C. (2015) Educación en Derechos y ciudadanía global: Los derechos de la infancia y la ciudadanía global en las facultades de educación. [Educating on rights and global citizenship. Child rights and global citizenship in the faculties of education]. Madrid: UNICEF Comité Español.

62. 2 Jerome, L., Emerson, L., Lundy, L. and Orr, K.(2015) Teaching and learning about child rights: A study of implementation in 26 countries. Geneva: UNICEF.

8. SPECIAL PROTECTION MEASURES

MIGRANT AND REFUGEE CHILDREN

SITUATION ANALYSIS

Regarding childhood and the exercise of the right to international protection:

- The information children receive about their right to seek asylum remains to be very deficient. Despite the legal stipulation, asylum-related processes are not adapted to children, and in general international protection needs are not actively identified. Usually, applications by accompanied children are processed together with their families', leaving them out of the information process and the interview, thus depriving them from the chance to be heard individually and according to their age.
- It is often mistakenly thought that, for unaccompanied children, entering the protection system and getting a temporary residence permit means applying for international protection is unnecessary. In this respect, the number of asylum-seeking applications by unaccompanied foreign minors in Spain is astoundingly low: 17 in 2014 and 25 in 2015.
- Furthermore, the constant delays linked to the asylum application files management in Spain have a negative impact on children, who not only are forced to live in a long drawn-out state of uncertainty about their status, but also experience an impairment of their opportunities for social integration.⁶³

Concerning determining the age of unaccompanied children:

One of the most striking issues in recent years is the excessive use of age-determining tests, even when the passport or identity documentation is available. It goes

against the Spanish Supreme Court's repeatedly issued doctrine. The recent reform of the *Law on legal protection of the minor* did not incorporate this doctrine, disregarding the recommendation by UNICEF Spanish Committee and other organizations and institutions. The *Protocol for Foreign Unaccompanied Minors* is not in line with the doctrine either.⁶⁴ Fundación Raíces has studied this matter in detail and issued specific recommendations.⁶⁵

Regarding children and the special regime of refusal at the borders of Ceuta and Melilla:

- Since 2015, a special regime of refusal at the borders of Ceuta and Melilla has been in place, expressly stipulated in *Ley Orgánica 4/2015* (30 March) on protecting citizen security. However, this practice of "summary returns" comes from before that.
- This law establishes that this kind of refusal must be done in compliance with international regulations on human rights and international protection, but it does not stipulate which specific procedure will be applied to ensure doing so.
- Concerning children, the guarantees must be even stronger. For this reason, even with the introduction of this specific procedure, it is really hard for such a succinct procedure to be able to identify the presence of children and to assess their best interests through appropriate means; to ensure the presence of a legal representative, interpreters and specialized personnel; and to provide the child with information about his / her rights, including the right to seek asylum and to be protected as a victim of trafficking, in a format appropriate to their age and maturity.⁶⁶

Regarding reception of asylum-seeking and refugee children:

- In 2015, Spain received a total of 3,720 applications by minors. It is a significant difference when compared with the far lower data for 2013 and 2014. The number of children

63. On these matters, see Defensor del Pueblo (2016): *Estudio sobre el Asilo en España. La protección internacional y los recursos del sistema de acogida* [A study on asylum in Spain. International protection and resources of the reception system], pages 75-76 and 63-67; Lázaro. I (IP), Castaño, M.J., Claro, I., Dubin, A., De Gasperis, T., Maravall, I., Pérez, A., Dos Santos, A. of the Comillas Pontifical University-ICADE (2016): *Acogida en España de los Niños Refugiados. Estudio sobre el Sistema de Acogida de personas refugiadas en España desde la perspectiva de derechos de infancia* [The Reception in Spain of Refugee Children. A study on the reception system for refugees in Spain from the child rights perspective]: UNICEF Spanish Committee, pages 21, 32 and 41.

64. On this subject, see Defensor del Pueblo (2016): *Estudio sobre el Asilo*, op.cit., page 77; Defensor del Pueblo (2012): *¿Menores o adultos? Procedimientos para la determinación de la edad* [Minors or adults? Age-determining procedures].

65. Fundación Raíces (2014): *Sólo por estar solo. Informe sobre la determinación de la edad en menores migrantes no acompañados* [Just because I am alone. Report on age-determination in migrant unaccompanied minors].

66. See UNICEF Spanish Committee (2016): *Niños y niñas en las fronteras. Las políticas de retorno y control de fronteras desde la perspectiva de los derechos de la infancia* [Children at the borders. Return policies and border control, from the perspective of children rights], pages 5-8; Defensor del Pueblo (2016), *Informe Anual 2015* [Annual report], page 243.

in the Spanish reception system is also increasing (although at an unreasonably slow pace) as a result of the fulfilment of engagements concerning relocations and resettlements, entered into by the Spanish State. This reception system has revealed its limitations even before the arrival of the total number of children as part of these engagements.

- In the Spanish system for receiving refugees, the specialized response to needs and the basic services for children varies depending on which team is present and there are no protocols on how to assist them and guarantee their specific rights. In centres with longstanding issues of overcrowding, such as those in Ceuta and particularly in Melilla, this assistance involves unique features and challenges.
- One of the most widespread criticisms concerns the rotation model established in these centres, and the exceedingly short time periods envisaged for each stage of the model. Too often, the itinerary ends before the system has been able to bring children and their families to an adequate stage for them to further their path towards social integration in Spain.⁶⁷

Regarding the end of guardianship of unaccompanied children:

The 2015 amendment of the Spanish Civil Code by the law on the modification of the child and adolescent protection system is extremely concerning, since it enables the end of guardianship if the person is voluntarily absent from the care centre for six months. The Spanish Ombudsman announced that the 2016 Annual Report will contain comments on the matter with regard to foreign unaccompanied minors.⁶⁸

Regarding family reunion processes:

In Spain, most of the children who hold Spanish residency permits do so as a result of family reunion. However, the legal framework (the law on asylum – *Ley de Asilo* – and the law on aliens – *Ley de Extranjería*) has restricted the universality of this right, which is now subject to the fulfilment of certain requirements, which include fixed or semifixed lists of persons entitled to the family reunion process, socio-economic requirements and evidence of dependent relationships and that the parties lived together previously.⁶⁹ ■

RECOMMENDATIONS

- Ensure that children are heard and given differentiated treatment during asylum proceedings, as well as information suited to their age, in a way that helps them exercise their right to international protection.
- Determine their age firstly based on the documentation accrediting it, and only have recourse to the age-determining tests as the last resort, and only with a protection purpose.
- Stop the practice of summary returns and establish a procedure to develop the special regime covering rejections at the Ceuta and Melilla borders including all the legal guarantees for children.
- Develop, in compliance with the law, special reception requirements for refugee children, together with an action guide or protocol.
- Remove from the Civil Code the possibility of public guardianship ending after a voluntary absence of six months from the children's centre.
- In family reunion proceedings, extend the concept of family, with a case-by-case assessment of the existence of personal ties apart from blood ties, and make requirements more flexible so as to always give priority to both the best interests of the child and the right to family life over requirements of dependency or financial capacity.

67. For more information on this matter, see UNICEF Spanish Committee (2016): *El sistema de acogida y los niños refugiados en España* [The reception system and refugee children in Spain]; Lázaro. I et al. (2016), *Acogida en España de los niños refugiados*, op.cit.; Amnesty International (2016): *El asilo en España: un sistema de acogida poco acogedor* [Asylum in Spain, an unwelcoming reception system], pages 41-42.

68. Defensor del Pueblo (2016), Informe Anual 2015, op.cit., page 266.

69. For more information, see UNICEF Spanish Committee (2016): *El derecho de los niños y niñas a vivir con su familia* [The right of children to live with their families]

CHILD TRAFFICKING

SITUATION ANALYSIS

As stated in the yearly report by the US Department of State,⁷⁰ Spain is a country of source, transit and destination for men, women and children who are victims of trafficking.

It is true that the crime of trafficking only entered our legal system in 2010. And the great efforts made by the public authorities and various organization to include the issue on the political and social agendas are undeniable. Achievements include the Spanish national plan against trafficking, a framework protocol for the protection of victims of human trafficking, and the allocation of economic and human resources.

There are two official sources of data: the Ministry of Home Affairs and the Office of the Director of Public Prosecutions. The former publishes⁷¹ the number of officially acknowledged victims in the whole of Spain, and this figure is reported to the European Commission and beco-

mes part of the official statistics. According to these data, in 2015, 22 victims of child trafficking were identified, all of them for sexual exploitation.

The latter offers annually the number of monitoring proceedings initiated to track this type of crime, i.e., police investigations which the Public Prosecutor considers reveal the existence of a possible crime of human trafficking. Such data therefore expand the filter a little, since they are not limited exclusively to convictions. In 2015,⁷² the number of possible child victims of human trafficking came to 48.

Such low figures are in contrast to data provided by care organizations supporting women who have been victims of trafficking, who declare that they were exploited when they were under age.⁷³

Almost all the child trafficking victims are of foreign origin and the large majority of them are trafficked for sexual exploitation, although there are also child victims forced to beg and commit minor offences, and, more recently, forced into child marriage. In some cases, they may be subjected to more than one type of exploitation.

In 2015,⁷² the number of possible child victims of human trafficking came to 48:

Nationality Purpose	Europe	Africa	America	Asia	Unidentified nationality
Sexual exploitation	19 girls	7 girls 1 boy	5 girls 1 boy	0	12
Forced marriage	2 girls	1 girl			

70. Department of State, United States of America (2016): *Trafficking in persons*. June 2016, page. 345. (Available on-line at: <https://www.state.gov/documents/organization/258876.pdf>)

71. Ministry of Home Affairs (2015): "Balance de prevención y lucha contra la trata de seres humanos en España y avance del Informe 2015 sobre delitos de odio" [Assessment on the prevention and fight against trafficking in human beings in Spain, and preview of the 2015 Report on hate crimes], Spain. (Available at: http://www.interior.gob.es/documents/10180/5559091/bal_TSH_sexual_laboral_delitos_odio_2015.pdf/bb67e5cc-a51a-4ce5-ae7a-0dcd396ec70d)

72. Sección de Extranjería de la Fiscalía General del Estado (2016): "Notas Informativas y Diligencias de Seguimiento. Año 2015" [Office of the Director of Public Prosecutions' Aliens Bureau, "Informative notes and tracking proceedings for 2015"], Spain. (Available online at: https://www.fiscal.es/fiscal/publico/ciudadano/fiscal_especialista/extranjeria/documentos_normativa/!ut/p/a/1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcFszcDBzdP-YOdTD08jL3dzYAKIoEKDHAARwN8-oNdjaD68SjAo9_fzwy_fosgE3z6TdZn8esHWUDA_-H6UfiUgF0AVoAviAh5siA3NDQ0wiDT01FREQAuDFrX/dl5/d5/L2dBISEvZ0FBIS9nQSEh/)

73. APRAMP (2015): "A pie de calle. Actuaciones con menores víctimas de trata" [On the street. Interventions with child trafficking victims].

An almost invisible group is that of the children of women who are trafficking victims, whose fate is in the hands of the traffickers but who are missing from the statistics. For 2015 the Spanish Red Cross (in charge of managing the centres for early humanitarian reception of women and children reaching the Andalusian coast) identified 654 cases which showed signs of human trafficking: “of these, 141 were children, of which there are 113 whose whereabouts and situation is unknown”.⁷⁴ The Spanish Ombudsman has also pointed out that since 2013 “between 130 and 180 women and young children in this situation have disappeared”. These children remain in the hands of the networks that blackmail their mothers in order to keep exploiting them, and they live among the population without us being able to spot their situation. Some recent sentences⁷⁵ have reflected the reality of these children, who are found in flats, in the power of traffickers, kept in appalling conditions.

UNICEF Spanish Committee and the University Institute of Studies on Migrations (IUEM) of the Comillas Pontifical University has gathered all this information in the publication “Son Niños, Son Víctimas” [“They are Children, They are Victims”].⁷⁶

OBSTACLES ENCOUNTERED

The measures to combat these crimes are highly focused on trafficking in women for the purpose of sexual exploitation. This makes the detection and treatment of minors

other types of exploitation (begging, children of victims) difficult.

Issues have been detected when attempting to appropriately identify and register the youngest children, who were either born in Spain to undocumented foreign mothers or born abroad but without them being registered in another country.

Failure to identify female teenage victims of child trafficking is a source of concern. Whether at the time of their arrival, when they do not declare that they are under age, or due to an inaccurate assessment of their age identification tests, these female adolescents are not identified as minors and therefore do not enter the protection system. The number of girls registered by the prosecutor’s office for foreigners in the register of foreign unaccompanied minors is strikingly low: there are only 452 girls of a total of 3,341 minors. Given that most of the victims of trafficking are female, it may be that they are not being identified as minors, whether on their arrival or when later found in our country.

There are very few specialized resources for child trafficking victims, and the protection centres for children have not proved effective for this kind of children. Traffickers trace them and subject them to exploitation again. There is also a lack of a clear protocol to make it possible to send child trafficking victims to another autonomous region that is better equipped to give them care. ■

74. Vida Nueva (2016): *A fondo. Niños robados e invisibles* [In depth. Stolen and invisible children], in the 2978 issue of Vida Nueva. (Available online at: <http://www.vidanueva.es/2016/02/26/ninos-robados-e-invisibles-tambien-en-espana-desaparecidos-113-menores-migrantes-o-refugiados/>)

75. <http://supremo.vlex.es/vid/641333945>

76. En: <https://www.unicef.es/sites/unicef.es/files/comunicacion/ninos-victimas.pdf>

RECOMMENDATIONS

- Consider children of victims of human trafficking to be victims as well and include them in the Victim's Statute, as was recently the case with children of victims of gender-based violence. In this way, they will be officially registered and it will therefore be possible to offer them the monitoring and care that they deserve as victims.
- Create a registration, coordination and referral mechanism in Spain for victims of trafficking. The OSCE (Organization for Security and Cooperation in Europe) recommends this mechanism, which already exists in some of our neighbouring countries (Poland, the UK, Albania). It would be in charge of registering the cases (so information collection would be homogenized), and the guiding agency when reporting data to be included in reports and international statistics. In addition, it would be in charge of coordinating all the measures concerning victims of trafficking, including their children, and would facilitate the referral of minors to other autonomous regions if appropriate for their interest and care.
- Create specific resources for child trafficking victims and trafficked women with their children. Framework Protocol for the Protection of Victims of Human Trafficking stipulates that minors must be referred to specialized facilities, in accordance with all international recommendations. Special attention must be paid to minors whose mothers are victims of trafficking, in order to prevent the support measures from violating their right to live with their families and to have contact with their mothers. If we emphasize the principle of the best interests of the child, on a case by case basis and guaranteeing their right to be heard, we will be able to find a solution that is more in line with their interests.
- Train the professionals who will have contact with possible trafficking victims (e.g. health professionals, staff in protection centres, task forces in migrant reception operations), so they become able to spot signs of underage individuals and of human trafficking and the relevant proceedings can start.

ANNEX: LIST OF RECOMMENDATIONS

GENERAL MEASURES OF IMPLEMENTATION

A. LEGISLATION

- Allocate specific and sufficient resources (particularly financial resources) to efficiently and effectively implement the approved legislative measures regarding the protection and promotion of the rights of the child.
- Review the *Ley Orgánica 8/2013* (9 December) on the improvement of educational quality, to advance basic legislation for the education system based on wider political and social consensus.
- Keep working on improving legislative harmonization, ensure the incorporation into the Autonomous Regions' regulations of the reforms of the protection law and improve equality concerning the exercise of the rights of the child throughout Spanish territory.
- Keep reviewing the application of the current regulations in order to modify those aspects which prevent adequate realization of the rights of the child.
- Guarantee, through training and assessment, the preparation by the administrations of early, relevant, good-quality reports on its impact on children.

B. INDEPENDENT HUMAN RIGHTS INSTITUTIONS

- Protect and strengthen human rights institutions, promoting the creation of offices of public advocates for children (Ombudsman for Children) or, where appropriate, guiding Ombudsmen in their different territorial areas towards a particular focus, with specific staff, on the rights of children.

C. DATA COLLECTION

- Emphasize the Recommendation to Spain by the Committee on the Rights of the Child in 2010 about the need to increase the depth of the disaggregation levels. Measuring the scope of the indicators must be

performed at several levels, i.e. state, autonomous region and local level, using a sample that is of sufficient quality to permit a suitable level of disaggregation by sex, age group, territory, ethnics, origin and migratory status, among other things. By disaggregating the information, the first step is taken towards promoting a social protection model with a direct, positive impact on the most vulnerable children in situations of poverty or social exclusion.

- Reiterate the need to have access to data related to the least visible groups of children (children with disabilities, unaccompanied foreign children, children in the protection system, children of women who are victims of violence), in order to design effective policies and programmes that include a perspective of equity.
- The central administration, in particular the Observatory on Children, must act pro-actively in managing and promoting the current system of indicators used to measure the situation of children in Spain, integrating both regional and local administrations. In this sense Spain must establish indicators for the 2030 Agenda at both the state and regional levels, from the child rights perspective, improving childhood data collection and adjusting to the current indicators frame.

D. ALLOCATION OF PUBLIC RESOURCES FOR THE IMPLEMENTATION OF THE RIGHTS OF THE CHILD

- Increase public resources targeting children in key areas (education, health, social protection), getting gradually closer to averages in neighbouring countries (EU) as a percentage of GDP and public spending, taking into account the European Commission's Recommendation on investing in children⁷⁷ and the goals of the 2030 Agenda for Sustainable Development.
- Promote a political deal on the protection of resources dedicated to children, within a National Pact for Children, which defines the budgetary items for the most

77. RECOMMENDATION OF THE EUROPEAN COMMISSION, 20 February 2013. Investing in children: breaking the cycle of disadvantage (2013/112/UE).

vulnerable children, while ensuring that these measures and the resources involved are shielded in periods of economic crisis and recession.

- Apply the new legislation (which stipulates the preparation of an assessment report on the impact of this legislation on children and adolescents) consistently and appropriately to the budgets of all the public administrations.
- Reiterate the 2010 recommendation to Spain to “identify the amount and proportion of the budget for children at national, regional and local level in order to evaluate the impact and effect of that spending on children”, by implementing a monitoring system that helps to identify the resources destined for children through the expenses tools and budgets of the different administrations, in compliance with General Comment 19 about public budgets for the implementation of children’s rights.
- Foster the participation of children in the budgetary decisions concerning them, by specifically promoting their participation in the preparation and tracking of local entities’ budgets.

E. INTERNATIONAL COOPERATION

- Ensure the implementation and monitoring of Spanish Aid’s Strategy for Children at the national and regional level, through strategic, operational tools and monitoring mechanisms.
- The forthcoming 2017-2020 Master Plan must place children and their rights as a cross-cutting and horizontal priority. In addition, it must contain firm, concrete commitments to restoring Spanish AOD immediately and in a phased manner. The aim must be to get it close to the European average and reach 0.40% of Gross National Income by 2020.
- Gather and release disaggregated data about Spanish AOD directed at fulfilment of children’s rights within the framework of aid programmes and projects.

F. OTHER AREAS (CORPORATE SECTOR IMPACT)

- Resume the formulation of the Plan Nacional sobre Empresas y Derechos Humanos del Gobierno español [Spanish government’s National Plan on Corporations and Human Rights], with significant participation by entities from civil society, the public sector, academia, and business and trade union organizations, and introducing the perspective of the rights of the child and the targets and goals of the Agenda for Sustainable Development.

GENERAL PRINCIPLES

RESPECT FOR THE VIEWS OF THE CHILD

- Encourage laws on public participation (the development of which is incumbent on the autonomous regions) to include explicit references to people aged under 18 and promote suitable mechanisms and spaces so that participation is real and genuine and in keeping with the ages of the participants.
- Promote the collection and systematization of data about the participation of children and adolescents, at all territorial levels.
- Promote a homogeneous framework at all territorial levels to ensure the right to participate within the educational setting, ensuring the participation of primary school students in school councils, and including the right to participate as a pedagogic criterion.
- Acknowledge school councils as binding decision-making bodies for schools and their town councils, and introduce the CRC as a methodological tool serving as conveyor for the task of teaching.
- Encourage the conduction of regular children’s opinion polls by public social research institutions, just as they do with the adult population.
- Create a State Council for child participation and autonomous region councils based on the current experiences of participation at municipal level.

CIVIL RIGHTS AND FREEDOMS

ACCESS TO INFORMATION AND PROTECTION FROM MATERIAL HARMFUL TO THEIR WELL-BEING

- The creation of syllabuses and educational programmes that enlarge and improve the present educational framework on digital skills (safety and digital literacy) in schooling.
- Keep working on a more comprehensive legal framework to ensure that the legislation provides adequate protection of children and young people against risks arising from the digital environment, while promoting

the use of ICTs as useful tools to aid formal and non-formal education, communication and access to information for children and young people.

- Design, with the participation of all the stakeholders, a real and effectively coordinated collaboration strategy to enable to unite similar actions and to jointly develop new ones considered necessary.
- With regard to selfregulation on television contents: Move towards a coregulation system in which the administration and civil society representative organizations participate with decision-making capacity, or, as an option, establish supervision by an independent entity of that self-regulation.

VIOLENCE AGAINST CHILDREN

ABUSE AND NEGLECT

- Develop a comprehensive Law on violence against children. This children-focused approach encompassing all variables, bringing the issue to the political and public agenda, while also serving the aware-rising objective, is much needed. The law must be accompanied by a mechanism to coordinate the ensemble of action in this area: from prevention to case registration and care. A good example of these pedagogic and coordinative efforts is the action launched to eradicate gender-based violence. The law must envisage the creation of an autonomous body devoted to this issue, and include aware-rising objectives. Such mechanisms would help unify measures relating to violence against children and the resources aimed at it, and make them more efficient.
- Undertake widespread dissemination among the general public of situations of violence against children, the responsibilities of all citizens to inform the public authorities of suspicions of abuse, and the channels to do so.
- Develop, as envisaged by Law 26/2015, the unified register of suspected cases of child abuse (RUMI), extending its scope to other types of violence against children, and promoting its effective implementation throughout the national territory under the management of the Observatory on Children. For that, it will be necessary to disseminate it at autonomous region and local level, and to train the professionals in charge of reporting such cases: teachers, social services, health professionals, and the police.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

CHILDREN DEPRIVED OF FAMILY ENVIRONMENT

- Make use of the new legislation to analyse and review the current child protection system under the umbrella of the rights of the child.
- Develop a joint protocol to determine the child's best interests for the protection system professionals, which can guide their action in subjects such as declarations of risk, removal of guardianship, and protection measures to be applied.
- Earmark the necessary resources for the development of actions enabling proper fulfilment of articles 11 and 17 of Law 26/2015.
- Improve strategies of data collection and analysis, in order to have better information about the risk situations in which children may find themselves.
- Develop training programmes for professionals in charge of reporting on risk situations in relation with the "Intervention protocol against child abuse in the family", in order to improve its application.
- Keep working on positive parenting programmes.

INTER-COUNTRY ADOPTION

- Given that Law 26/2015 expressly stipulates that "the measures included in this rule must not lead to any increase in public spending, funding or remuneration, or other staff costs" (20th final provision), and that reality shows the evident need for specific funding to develop these powers of the AGE, we recommend the State to analyse and assess the possibility of "redistributing" the available resources and means to enable the fulfilment of this legislation.
- Likewise, it would be advisable to establish suitable mechanisms to enable proper assessment of the efficacy of the new legal measures adopted.

DISABILITY, BASIC HEALTH AND WELFARE

CHILDREN WITH DISABILITIES

- Set up data collecting processes relating to children with disabilities, together with analysis of said data, to make it

possible to know in detail about their situation and needs, in order to then create and improve appropriate public policies to ensure their rights.

- Give greater priority and emphasis to the research (via data and analysis) on violence against children with disabilities, enabling the development of adequate pre-ventative and protective measures.
- Promote the participation of all children with disabilities (regardless of the type of disability) in all the decisions concerning them and in the design of public policies that have an impact on their interests.
- Ensure the exercise of the right to inclusive, quality education within the general education system, carrying out the required adjustments so that the type of disability or the place of residence are not ground for inequality in the fulfilment of their rights.
- Prevent the institutionalization of children with disabilities, set up special support measures for deinstitutionalisation, and provide the necessary resources to ensure their living with their families and in their communities.
- Promote each child's autonomy and development of capabilities, directly and also across all the public policies targeting children with disabilities, as an essential goal.

STANDARD OF LIVING AND MEASURES TO REDUCE POVERTY AND INEQUALITY

- Provide programmes for children, the family and social protection with clear, objective indicators and definite goals to reduce child poverty and inequality, in compliance with SDGs 1 and 10. Increase and define with clarity the resources earmarked, and the coordination between public administrations and sectors, so that the measures can be really effective. Assess the impact of the programmes on the child population.
- Progressively establish a universal dependent-child allowance at the national level, with the capability to prevent poverty, that is supplemented by specific measures to reduce income poverty in the most vulnerable households with children.
- Firmly support the participation of parents in the labour market by means of economic incentives and work-life balance measures. Progress towards making early-childhood (0-3) education accessible, particularly for the most vulnerable households. Ensure that the nursery schools' admission criteria, or their fees, do not discriminate against unemployed people or job seekers.
- Establish national legislation preventing the execution of evictions without housing alternatives, and developing social rental options, with special reference to situations concerning children and adolescents.

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

THE RIGHT TO EDUCATION AND ITS PURPOSES

- It is necessary to reach a pact on education. It is the duty of all the political parties and society at large; the consequences of failing to do so become a burden unfairly placed on children and adolescents.
- Ensuring the stability of the education system's financial resources is essential, by setting at least minimum public investment levels, both as a percentage of public spending and in absolute terms.
- Universal access to early schooling (0-3) must be actively promoted, in particular targeting children who are at a disadvantage due to socio-economic, administrative, family, or disability situations, by improving quality and ensuring the accessibility and affordability of the services.
- The focus on equity, equal opportunities and quality at all educational levels (nursery, primary, secondary, and technical and professional training) must be assured, guiding the structure of the investment in education in order to address diversity (including foreign children recently arrived in the country or with low levels of integration in society, children with disabilities, and children in the protection system), teacher training, the tackling of school failure, and the introduction of new technologies, and to increase both spending on equipment and staffing and the centres' operation.
- The gender focus is essential when dealing with the challenges of inclusion and equal opportunities: the boys' higher school drop-out rates and worse overall performance, and the girl-specific drop-out risks of vulnerable girls for reasons of ethnicity, teenage pregnancy, or culture of origin.
- Finally, it should be kept in mind that the development of future education reforms must ensure avoidance of disparities between territories due to differences in funding, regulatory development and implementation.

SPECIAL PROTECTION MEASURES

MIGRANT AND REFUGEE CHILDREN

- Ensure that children are heard and given differentiated treatment during asylum proceedings, as well as infor-

mation suited to their age, in a way that helps them exercise their right to international protection.

- Determine their age firstly based on the documentation accrediting it, and only have recourse to the age-determining tests as the last resort, and only with a protection purpose.
- Stop the practice of summary returns and establish a procedure to develop the special regime covering rejections at the Ceuta and Melilla borders including all the legal guarantees for children.
- Develop, in compliance with the law, special reception requirements for refugee children, together with an action guide or protocol.
- Remove from the Civil Code the possibility of public guardianship ending after a voluntary absence of six months from the children's centre.
- In family reunion proceedings, extend the concept of family, with a case-by-case assessment of the existence of personal ties apart from blood ties, and make requirements more flexible so as to always give priority to both the best interests of the child and the right to family life over requirements of dependency or financial capacity.

CHILD TRAFFICKING

- Consider children of victims of human trafficking to be victims as well and include them in the Victim's Statute, as was recently the case with children of victims of gender-based violence. In this way, they will be officially registered and it will therefore be possible to offer them the monitoring and care that they deserve as victims.

- Create a registration, coordination and referral mechanism in Spain for victims of trafficking. The OSCE (Organization for Security and Cooperation in Europe) recommends this mechanism, which already exists in some of our neighbouring countries (Poland, the UK, Albania). It would be in charge of registering the cases (so information collection would be homogenized), and the guiding agency when reporting data to be included in reports and international statistics. In addition, it would be in charge of coordinating all the measures concerning victims of trafficking, including their children, and would facilitate the referral of minors to other autonomous regions if appropriate for their interest and care.
- Create specific resources for child trafficking victims and trafficked women with their children. Framework Protocol for the Protection of Victims of Human Trafficking stipulates that minors must be referred to specialized facilities, in accordance with all international recommendations. Special attention must be paid to minors whose mothers are victims of trafficking, in order to prevent the support measures from violating their right to live with their families and to have contact with their mothers. If we emphasize the principle of the best interests of the child, on a case by case basis and guaranteeing their right to be heard, we will be able to find a solution that is more in line with their interests.
- Train the professionals who will have contact with possible trafficking victims (e.g. health professionals, staff in protection centres, task forces in migrant reception operations), so they become able to spot signs of underage individuals and of human trafficking and the relevant proceedings can start. ■

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