



**plataforma
de infancia**
españa



**Contributions made
by Plataforma de Infancia
to the List of Issues Prior
to Reporting (LOIPR)**

**For the VII Cycle of the periodic reporting procedure
for Spain to the Committee on the Rights of the Child**



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List of abbreviations and acronyms

- ARPE.** At Risk of Poverty and/or Exclusion.
- AACC.** Autonomous Communities.
- CDN.** Convention on the Rights of the Child.
- ESIA.** Sexual Exploitation of Children and Adolescents.
- IHAN.** Initiative for the Humanisation of Birth and Breastfeeding Assistance.
- MLI.** Minimum Living Income.
- LOIPR.** List of Issues Prior to Reporting.
- LOMLOE.** Organic Law on Education.
- LOPVI.** Law 8/2021 of 4 June, on the Comprehensive Protection of Children and Adolescents against Violence.
- OECD.** Organization for Economic Co-Operation and Development.
- WHO.** World Health Organisation.

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INTRODUCTION

Plataforma de Infancia consists of an alliance of entities created in 1997 for the promotion, protection and defence of children's rights, within the framework of the Convention of the Rights of the Child. As of 1 January 2022, it is made up of 74 entities.

By way of this report, the network aims to undertake contributions to the List of Issues Prior to Reporting (LOIPR), to be remitted to Spain in February 2023, by the Committee on the Rights of the Child. In this report, the entities of Plataforma de Infancia and other external guest entities in the process¹ have identified 47 priority topics or urgent issues that should be the focus of the VII Cycle of the process of periodic reports from the Committee to Spain.



1. The external entities that have collaborated in this report are: Plataforma por la Atención Temprana y los Derechos de la Infancia con Diversidad Funcional (PATDI), Federación Mujeres Progresistas, Fundación GASOL, Fundación Raíces, Comité Español de Representantes de Personas con Discapacidad (CERMI) and Plataforma DESC.



GENERAL MEASURES OF IMPLEMENTATION

01 Specific public policies focused on children

As of 2016, Spain no longer has a National Strategic Plan for Childhood and Adolescence, despite its public commitment to the elaboration of a Strategy on the subject².

Moreover, in 2018 the Government began to develop the **II National Programme for Human Rights**³, which anticipated the inclusion of children's rights as one of its strategic plans. In April 2022, the government started a public consultation and requesting written submissions and inputs to the Plan. No further progress has been reported.

- Establish the process and calendar of elaboration of the future Strategic Plan for Childhood and Adolescence. It outlines human rights indicators, the identification of duty bearers by objectives, budget, accountability and transparency mechanisms and child participation at all stages of the public policy cycle. How will it guarantee the rights of children with disabilities?
- Will the II National Programme for Human Rights include a national reporting and monitoring mechanism and human rights and child rights indicators? Develop the content of the strategic line of the rights of the child.
- How are the different National Strategies⁴ coordinated in order to achieve coherent public policies regarding the rights of the child?



2. In August 2021, the Government began to undertake consultations in order to elaborate the Strategy for the Rights of Children and Adolescents. This commitment is reflected by the Government of Spain (2021). Strategy on Sustainable Development 2030, p.138. Can be accessed here: <https://www.mdsocialesa2030.gob.es/agenda2030/documentos/informeprog21eds30r.pdf>

3. Spain has committed to its approval on an international scale, in the Universal Periodic Review in 2015 and 2020.

4. For example, the Strategy on Childhood and Adolescence, the Strategy on Disability, the Strategy for the Inclusion, Equality and Participation of the Roma Population, the Strategy against Energy Poverty, the 2030 Strategy, the Spain 2050 Strategy, etc.



02 Independent monitoring

On a national scale, there is no Ombudsperson for Children, although one of the Ombudsperson's deputies is responsible for these matters. At regional level, there is no Ombudsperson for Children in most of the Autonomous Communities (CCAA), and some of these offices have been abolished in recent years⁵.

However, these institutions are lacking in terms of accessibility for children, predominantly due to the fact that children are unaware of the possibility of filing a complaint.

- In line with the 2018 recommendation, how does it plan to improve the accessibility of this institution and encourage its use by children?
- Will it promote the creation of regional Ombudsperson for Children?

03 Data collection

Although the creation of a Central Information Register has recently been envisaged, its action is exclusively in the area of violence. **There is, therefore, no coordinated Register with a holistic and child rights approach, beyond statistical websites⁷.**

Of particular concern is the **absence of sufficient, updated and disaggregated data or statistics** to record the reality of children with disabilities and Roma children, in addition to the disparity between the data collected by different institutions regarding unaccompanied migrants.

- Outline steps taken since 2018 in order to expand capacity to collect disaggregated data on all aspects of the Convention at all territorial levels, especially on children in situations of vulnerability.



5. Thus, as the committee highlighted in its last Concluding Observations to Spain (2018), the institution of the Ombudsman of Children in Madrid, that has not been reinstated.

6. As foreseen in Article 56 of Organic Law 8/2021 of 4 June, on the comprehensive protection of children and adolescents against violence (LOPVI)

7. As can be seen on the Portal Infancia en Datos (<http://www.infanciaendatos.es/>), which is currently out of date.



GENERAL PRINCIPLES

NO DISCRIMINATION

04 Childhood discrimination in rural areas

The concept of Empty Spain has revealed the asymmetries between urban surroundings and rural areas. The concentration of both the population and the resources in the urban areas leads to a **clear lack of opportunities for children who live in rural areas**. These are characterised by the disperse nature of lack of services, ageing populations, lack of opportunities for young people, unstable socio-economic situations for families, deficient physical connections to public services, etc.

→ What is the Government of Spain doing to revert the aforementioned situations in rural areas?

05 Digital divide as a result and driver of inequality

The digital divide affects more than one million children and adolescents⁸. The pandemic has worsened the **already significant divide**, affecting various rights of the child. Children in situations of extreme vulnerability are now even more at risk due to the increase in the digital divide as a result of **lack of internet connection and appropriate devices**, by the **suppression of material and human support resources, by the lack of accessibility of classes, platforms, content and materials** and, finally, by **lacking the skills to develop in digital contexts**⁹.

- In addition to the measures adopted in the educational sphere¹⁰ during the pandemic, what actions are to be undertaken to reduce the digital divide? What is the incidence in rural areas?
- How does Spain guarantee access to digital literacy for children, family and teaching staff in order to support the exercise of their digital rights? And children with disabilities?

8. UNICEF (2020). Impact of the COVID-19 crisis on the most vulnerable children. Reimagining the reconstruction of the rights of the child, available at: https://www.unicef.es/sites/unicef.es/files/recursos/informe-infancia-covid/covid19-infancia_vulnerable_unicef.pdf

9. Both in the educational sphere, in addition to other spaces of relation and participation.

10. Digital education has received 528.4 million euros of additional investment during the 2020/2021 period from the State and the Autonomous Communities. Almost 8 of every 10 additional euros invested by the group of territories in digital education have gone towards the acquisition of computing devices. The Political Watch report and the Plataforma de la Infancia (2021), "A school year during the pandemic". In addition to the investment in education for the adaptation to the COVID-19 context, the low investment in training programmes for the acquisition of digital competences stands out, in particular to guarantee the digital inclusion of the most vulnerable collectives.



BEST INTERESTS OF THE CHILD

06 Best interests of the child in legislation and decision-making

Although the 2015¹¹ legislation requires an assessment of the impact on children and adolescents of regulatory provisions, in practice, this does not occur throughout the country, nor is always undertaken adequately.

The measures adopted in relation to children in the **context of the pandemic** have highlighted the absence of a rights-based approach in some decision-making, in which **the needs and rights of children have been put on the back burner**. The strict lockdown during the first months of the pandemic, the restrictions imposed in relation to open playgrounds and parks¹², the situations experienced in centres with children under guardianship, the indiscriminate suppression of a large part of extracurricular and free time activities or the lack of definition in the vaccination plans for children, are some examples of this situation.

- Provide the policy analysis reports that have included a child impact assessment since 2018.
- How is it ensured that the best interests of each child are paramount in the decision-making undertaken by Public Administrations? Are protocols being developed for its determination in different areas?
- How did the Government ensure best interests of the child during the COVID-19 pandemic? Will contingency plans with assigned budgets be developed as a response to exceptional situations in the future? In what way will they include a children's perspective?

RIGHT TO BE HEARD

07 Right to be heard for under 12's

The modifications to regulations required to guarantee under 12's are listened to have not been made. Following the reform of the Organic Law on the Legal Protection of Minors in 2015, children have a recognised right to be heard when they are mature enough, **which is presumed from the age of 12, but not in all cases**.

- Following the recommendations of the Ombudsperson¹³, will Spain remove the age criteria with regards to the right to be heard, substituting them for the assumption of a child's ability to form their own judgement?
- How does it ensure that under 12's can exercise this right?

11. Article 22 of Law 26/2015 of 28 July on the modification of the child and adolescent protection system.

12. Plataforma de Infancia (2020). Playgrounds and covid-19: children's rights at stake, available at: <https://plataformadeinfancia.org/wp-content/uploads/2020/12/parques-infantiles-y-covid-19-los-derechos-de-los-ninos-en-juego.pdf>

13. Ombudsman (2014). Study on Listening and the Best Interests of the Child, p.46, available at: <https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2014-05-Estudio-sobre-la-escucha-y-el-interes-superior-del-menor.pdf>



CIVIL RIGHTS AND LIBERTIES

08 Participation and associationism in childhood

In Spain the child's right to participation is not guaranteed, nor does it have specific economic resources allocated to it. It is not accessible and its effective exercise is difficult to measure due to a significant lack of disaggregated data and statistics. There is a particular lack of representation of Roma children, children of migrant origin and children with disabilities¹⁴.

The content on civic participation is not included in the educational curriculum and channels for student participation are barely promoted in the centres. Therefore, less than 15% of school or high school pupils¹⁵ participate in a student association. The fact that children under the age of 12 cannot participate in student associations is of particular concern.

There is very little promotion of the right to participate via associations, and there is no existing regulatory framework at state level to regulate children's associations.

- ➔ What is the rate of student participation in school councils? And in student associations? What measures have been implemented in order to improve the participation of children in the school environment?
- ➔ Does the State intend to modify the regulations on associationism in a way that eliminates the restrictions in terms of children exercising this right? How will it guarantee that children under 12 years of age can form part of associations and their governing bodies?

14. In the most recent Concluding Observations of the Committee on the Rights of Persons with Disabilities to Spain (2019), the Committee was concerned about the absence of measures aimed at enabling children with disabilities to express their views and recommended eliminating the existing barriers, excluding environments, establishing the necessary means and assistance measures so that children with disabilities can exercise their right to participate in decision-making in accordance with their age.

15. INJUVE (2021). Youth in Spain 2020 Report, Available at http://www.injuve.es/sites/default/files/adjuntos/2021/03/informe_juventud_espana_2020.pdf

09 Secure access to the digital environment

While measures to remove harmful and dangerous content for children from the internet have recently been envisaged, the law¹⁶ **does not establish positive actions** to effectively ensure children do not access adult content¹⁷.

Additionally, since 2018, the drafting of a law aimed at guaranteeing the rights of the child in the face of the impact of the internet and ensuring their safety¹⁸, has remained a pending task in Spain.

- ➔ How will companies be encouraged to comply with General Comment 25¹⁹, protect children's personal data, create accessible complaint processes and develop policies and mechanisms to protect children from violence, excessive screen use and online bullying²⁰?
- ➔ What measures will be adopted by the State in compliance with Directive 2018/1808 in order for digital providers to effectively avoid children having access to adult content?

16. Organic Law 8/2021 of 4 June, on the comprehensive protection of children and adolescents against violence (LOPVI)

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

18. As provided for in the 19th Additional Provision of Organic Law 3/2018, of 5 December on the Protection of Personal Data and Guarantee of Digital Rights (BOE no.294 of 6 December 2018).

19. General Comment No.25 (2021) of the Committee on the Rights of the Child on children's rights in relations to the digital environment, CRC Doc. CRC/C/GC/25 of 2 March 2021.

20. 59% of girls and young women in Spain state that they have been harassed on social media in some way. Most girls start to be harassed on social media between the ages of 12 and 16. Report: "Unsafe Online". Plan International. 2020. Available at: <https://plan-international.es/informes/inseguras-online>



VIOLENCE AGAINST CHILDREN

In 2021 55,354 complaints having as a victim a girl, boy or adolescent were filed²¹. Among these, the 8,317 complaints related to crimes against sexual freedom and indemnity stand out, of which 1 every 2 complaints had children and adolescents and victims. According to data from Fundación ANAR, the growth rate of sexual abuse cases was 300.4%, increasing by four times, from 273 cases in 2008 to 1093 in 2020.

During the pandemic, **the lack of resources and accessible channels**, in addition to the **absence of child-specific surveillance and protection measures**, made children extremely vulnerable²².

With the approval of the Law for the Integral Protection of Children and Adolescents against Violence (LOPIVI)²³, Spain has taken a very important step forward. However, this is only the beginning of the paradigm shift that Spanish society must make, addressing the shortcomings in different areas and territories.

10 State and regional development

The LOPIVI foresees the elaboration of a **multi-annual Strategy** aimed at eradicating violence against children and adolescents, which must be accompanied by an **economic report**.

It also provides for the establishment of accessible **reporting channels** for children; the creation of a **Central Information Register**, coordinated and with criteria common to the Autonomous Regions; and the **Sectorial Conference** as a body for cooperation between public administrations in matters of protection and development of children and adolescents.

- ➔ Provide details of the process of formulating and implementing this Strategy, the actors involved, the deadlines for its approval and the planned budget, broken down on an annual basis. Similarly, provide a detailed explanation on how the Strategy and/or its supporting documents will incorporate the commitments made by the different autonomous communities, the monitoring indicators to assess compliance, and a sufficient budget to carry it out.
- ➔ How will it ensure the minimum standards set out in the LOPIVI are met in all territories?
- ➔ How will the future registry ensure coordination of data with the Autonomous Regions and the establishment of common criteria for information collection?
- ➔ How will reporting channels accessible to children be articulated in each of the settings and how will the existing channels be promoted?
- ➔ What spaces will be reconfigured or articulated in order to ensure the participation and assistance to the government of civil society and children in the development of LOPIVI and the formulation, implementation and monitoring of the policies that derive from it? What human, technical and financial resources will be allocated to it?

21. For more information, you can check the official data of the Ministry of Interior for 2021 <https://estadisticasdecriminalidad.ses.mir.es/publico/portalestadistico/portal/datos.html?type=pcaxis&path=/Datos4/&file=pcaxis>

22. During the period of confinement, the ANAR Foundation attended to a total of 11,682 requests for help via the ANAR Chat and the different ANAR helplines.

Most of these requests for help were due to violence against a child or adolescent. The reasons for physical violence within the family, psychological mistreatment, cases of sexual abuse and cases of gender violence by the father against the mother and adolescent girls subjected to the technical control of their boyfriends stood out.

23. Law 8/2021 of 4 June, on the comprehensive protection of children and adolescents against violence.



11 Shortcomings in the legal sphere

The LOPIVI does not address the **specialisation of the judicial bodies, the prosecutor's office and the technical teams** that provide specialised assistance to the Courts and Tribunals. However, and according to this law, by June 2022, a deadline which has already expired, the Government should have submitted and sent to the Parliament a draft legislative amendment to this effect. Moreover, although the LOPIVI reinforces pre-constituted evidence (evidence which consists of the child testifying only once throughout the entirety of the judicial investigation and that their testimony can be used as evidence, avoiding their re-victimisation), this is **not foreseen as mandatory for children over 14 years of age**.

- ➔ How and within what time frame does the government foresee the configuration and implementation of specialised courts and prosecutors offices?
- ➔ How is it guaranteeing that adolescents between 14 and 18 years of age are not subjected to re-victimisation in the courts?
- ➔ What resources will be allocated in order to create adequate and accessible spaces, in addition to training in the use of pre-constituted evidence? How will their uniform application throughout the territory be ensured?

12 Awareness-raising

The **LOPIVI** has implied a significant step forward insofar as it sends a message to society rejecting violence towards children and provides for awareness-raising measures.

- ➔ What awareness-raising actions are being implemented by public administrations in each of the areas of action and what budget has been allocated? Given the high incidence of cases of child sexual abuse, has a specific awareness-raising and prevention plan been drawn up to deal with it?





13 Protection of children deprived of parental care

In addition to the concern expressed by the Committee in 2018, there are also testimonies from children and organisations about physical, sexual²⁴ and psychological violence suffered in children's centres²⁵. The LOPIVI does not make reference to these protection centres as an environment in which special emphasis should be placed on preventing violence, nor does it establish it as a priority area to be addressed in the National Strategy, nor does it foresee - as in the field of education or sport - the figure of a protection or welfare coordinator in protection centres to coordinate all actions.

With regard to **restraint measures**, although the LOPIVI has prohibited the use of fixed-point mechanical restraints:

- The use of non-fixed-point mechanical restraint measures, such as restraints, handcuffs or shackles, is still permitted in specific centres for behavioural issues and in reform centres.
- Restraint measures are permitted in certain cases²⁶. This provision leaves room for discretionary interpretation and undermines the purpose of these measures, which should not be sanctioned.
- It enables the use of physical restraint measures (restriction of space and movement or immobilisation) in ordinary protection centres, without regulating the cases in which they may be used.

- ➔ Will the future Strategy take into account children under the protection system as a priority area, articulating measures for the prevention, detections and protection against violence exercised, among others, by workers of the protection system?
- ➔ Provide data from the register of restraint measures used against children, disaggregated by age, sex, disability, type of centre, duration of the measure, reason for the measure, individual requesting the sanction and official carrying it out²⁷, so that its exceptional use can be monitored.

14 Violence against children age 0-3 years

The LOPIVI does not foresee specific measures for the protection of the youngest children. While it is particularly important that prevention can occur in early childhood education centre (0-3), the current focus at this stage is on the rights of parents to be able to reconcile their working life.

- ➔ What measures are being taking in order to effectively implement the LOPIVI in infant education centres (0-3) and in health centres in order to guarantee the detection of cases of violence in family and school environments?

24. In recent years, different cases have occurred in different parts of the country (Basque Country, Catalonia, Balearic Islands, Canary Islands, Valencia, etc.) related to young victims of child sexual exploitation in youth centres where they were under guardianship. In recent years, different cases have occurred in different parts of the country (Basque Country, Catalonia, Balearic Islands, Canary Islands, Valencia, etc.) related to young victims of child sexual exploitation in youth centres where they were under guardianship.

25. In line with the concern expressed by the Committee in its 2018 concluding observations to Spain (para. 44), several civil society organisations, such as Fundación Raices and UNICEF have collected testimony on the situations of violence suffered by children within the protection system. Consult the following reports: Fundación Raices (2020). Institutional violence in the child protection system, available at: <http://www.fundacionraices.org/wp-content/uploads/2016/03/2020-Informe-Violencia-contra-la-Infancia-en-el-sistema-de-protecci%C3%B3n.pdf> and UNICEF (2017). Somewhere to stay: support for children and adolescents under the care of the protection system in Spain. Available at: https://www.unicef.es/sites/unicef.es/files/comunicacion/Res_Ejecutivo_acogida_NOV12017.pdf

26. In the event of escape attempts, active resistance that entails a serious disturbance of coexistence of a serious violation of the rights of other minors or a direct risk of self-harm, injury to others or serious damage to the facilities.

27. During its visit to Spain (2017) the Subcommittee on Prevention of Torture noted that, in the register, and in particular in the register that monitors the application of restraint measures, there is no reference to the individual who has requested the application of the sanction, nor to the official who applies it. The Subcommittee considers that including this information may help to prevent acts of torture or mistreatment of adolescents detained in juvenile detention centres, in addition to better monitor complaints of mistreatment or torture of adolescents.



15 Gender-based violence

Between 2013 and July 2022, 47 children have been murdered by their parents as a result of gender-based violence²⁸. 89.6% of the female victims state that their children witnessed or heard the violence against them. Of this group, 51.7% state that they suffered direct violence at the hands of their partner²⁹.

In Spain, **the suspension of the visiting, stay, relationship or communication of the parent involved in the criminal proceedings for a crime of gender-based violence regarding the minors who depend on them is not agreed by judges on a regular basis (3%)³⁰**, despite the provisions of the regulations. In this regard, the LOPIVI and Law 8/2021³¹ introduce amendments. **However, none of these amendments establishes the non-imposition or automatic suspension of the visiting arrangements as an imperative, establishing an exception** that allows this decision to be left in the hands of the judge. It is also of concern that this prohibition is not maintained in the case of suspended sentences³².

On the other hand, there is concern that the psychological care for children who are victims of gender-based violence and domestic violence may be interrupted in cases of provisional dismissal or without court conviction³³, as it requires the consent of both parents, including the parent who, until that time, was the defendant³⁴.

- ➔ Following the entry into force of the new regulations in 2021, how many measures have been adopted in terms of the suspension of visiting arrangements in order to protect children in the context of gender-based violence proceedings? In how many cases has their inappropriateness been justified?
- ➔ What measures will the state take to ensure that no child who has witnessed, suffered or lived with violence is forced to live with their father from the moment a protection order is adopted in favour of their mother until the father is no longer deemed criminally responsible?
- ➔ How does it ensure that the provision of psychological care is not interrupted by the lack of consent of the offending parent, following a provisional stay of proceedings, a non-conviction or, after the latter has served their sentence?

28. Ministry for Equality (2022). Monthly bulletin of statistics, [July 2022 Julio_BEM_def.pdf \(igualdad.gob.es\)](#)

29. Government Delegation for Gender Violence (2020). Macro-survey on violence against women, 2019, available at: <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/macroencuesta2015/Macroencuesta2019/home.htm>

30. If we consult the data presented in the annual report on gender-based violence (2020) of the Judicial Council, we find that, of the civil measures derived from protection orders, the suspension of visiting arrangements was adopted on 3.01% of occasions, guardianship and custody was suspended in 4.27%, parental authority was suspended in 0.72% and measures to protect the minor were only adopted in order to avoid danger or harm in 0.51% of cases.

31. Law 8/2021 of 2 June, reforming civil and procedural legislation to support people with disabilities in the exercise of their legal capacity.

32. See the following news article. El País (2021) https://elpais.com/sociedad/2021-07-23/un-hombre-con-cuatro-condenas-por-maltrato-podra-visitar-a-sushijos.html?outputType=amp&ssm=TW_CC&_twitter_impression=true&s=09

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

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



FAMILY ENVIRONMENT AND ALTERNATIVE CARE ARRANGEMENTS

16 Lack of support for families

State legislation mentions the **prevention** of the separation of children from their families as a principle of action by public authorities, without this being translated into concrete mechanisms to support families in many territories, especially given the dismantling of some municipal services. The focus on the system is not on primary and secondary prevention efforts to **avoid separation**.

In relation to the reconciliation and co-responsibility in childcare, although there have been advances, such as the **extension of the so-called “childbirth and childcare leave” from 12 to 16 weeks**, we consider this leave to be insufficient and that **coverage should be extended to 24 weeks each**, in order to facilitate breastfeeding in the first 6 months of life³⁵, in addition to equal performance in care in the first year.

On the other hand, **Spain lacks adequate, paid parental leave**, which would enable parents to take time off from work to care for their children. The European Directive (EU) 2019/1158³⁶, whose transposition was envisaged for August 2nd 2022. This Directive sets out minimum requirements for parental leave, paternity leave and carers’ leave. It establishes a minimum period of 4 months of parental leave for each parent or carer, 2 of which at least must be paid, that is to be taken before the child reaches the age of 8 years old.

- ➔ How will family promotion and prevention of separation be prioritised? Provide details on policy and institutional instruments and the budget foreseen for this purpose.
- ➔ Is the extension of “parental leave” to 24 weeks envisaged? What legislative changes will be made in order to provide specific protection for single-parent and foster families?
- ➔ How will Spain guarantee paid leave parental leave of 4 months for each parent or carer? How will Spain guarantee the adaptation of conciliation measures to the needs of those families who have more problems to reconcile family and work life, such as single-parent families, large families and families with disabled members in order for those measures to be fair and equitable?

17 Safeguards for removals from guardianship

The Spanish legislative framework suffers from serious shortcomings in relation to legal safeguards in situations of declaration of administrative guardianship, leaving families and children in a situation of defencelessness.

These shortcomings include the non-existence of the **obligation of an administrative resolution** of risk that would provide the process with the minimum guarantees of an administrative procedure; the lack of technical instruments that allow for a **risk assessment** in each case; the lack of **legal assistance** for families and children, which is particularly relevant for families with fewer resources; and the **lack of time limits** that prevent procedures from being extended without limit.

- ➔ The Committee (2018) recommended Spain increase the guarantees in cases of separation of a child from their family. Will the procedure that may involve separations be modified in order to introduce legal guarantees to overcome the above-mentioned issues?

35. In accordance with the recommendations established by the WHO and the Asociación Española de Pediatría.

36. Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on reconciling the work and family life of parents and carers and thus repealing Council Directive 2010/18/EU



18 De-institutionalisation

Spain does not prioritise family placements over residential placements, thus highlighting the lack of resources and public policies for de-institutionalisation³⁷.

According to the data published by the Childhood Observatory in 2020, figures related to foster care (52,65% exceed those of residential care (47,35%). However, it is important to point out that the reason is not linked to the rise in foster care (in fact these figures are stalled or show a slight decrease)³⁸, but to the drastic decrease in residential care of 27% (from 23.309 children to 16.991 in 2020). Of particular concern is the number of children with disabilities³⁹, unaccompanied migrants and children under 6 years of age in residential care, as well as the number of years they spend growing up in the residential centres, some of them macro-centres. There is a significant difference in the protection systems at regional level, generating substantial differences in children's rights, depending on the region.

Additionally, the **prohibition of institutionalising children under 3 years of age** and avoiding it in the case of children under 6 years of age is not complied with. In 2020, 537 children between the ages of 0-3 years old and 640 between the ages of 4-6 years⁴⁰ old were in residential care. There are shortcomings in the work undertaken by social services with families following a **removal from guardianship** to promote **the reintegration of their children** once the circumstances that led to the removal have been eliminated.

- ➔ How does it **monitor and evaluate** the circumstances that led to the situation of abandonment to ensure that children are institutionalised for as short a time as possible?
- ➔ What strategies or policies does it plan to put in place to favour de-institutionalisation, promote foster care and prioritise care in small residential centres and/or homes over macro-centres? Will budget allocations and technical support for foster families be increased?

19 Transition into adult life

Young people previously under guardianship in Spain are in a particularly vulnerable financial and social situation⁴¹. The COVID-19 crisis has had a substantial impact on the social and labour insertion of these young people and has increased their vulnerability and risk of both poverty and social exclusion⁴². Although in 2020 some measures were taken in order to facilitate access to the labour market⁴³, they should be accompanied with sufficient resources for the Independence **Programmes offered by the Autonomous Communities**⁴⁴.

- ➔ How many children under guardianship access an Independence Programme when they turn 18? How many of them are unaccompanied migrants? What technical and financial resources do the Autonomous Communities provide Independence Programmes?

37. En el estudio para la Garantía Infantil Europea se señala la existencia de países con un número alto de niños ingresados en el sistema de protección (se indica el caso de España) donde se advierte de una falta de estrategias y políticas para la desinstitucionalización.

38. Foster care drops from 19,320 in 2019 to 18,892 in 2020.

39. In the latest Concluding Observations of the Committee on the Rights of People with Disabilities to Spain (2019), it recommended taking immediate steps to end the institutionalisation of children with disabilities by, among other measures, developing and implementing a strategy to promote safe and supportive family environments in the community, with time-bound targets and adequate budget allocations. Furthermore, it was recommended that they develop appropriate policies and provide the necessary supports for children with disabilities to remain within the family, including by way of the promotion of foster care services. These recommendations have not been followed.

40. [Observatorio de la Infancia](https://www.mdsocialesa2030.gob.es/derechos-sociales/infancia-y-adolescencia/PDF/Estadisticaboletineslegislacion/Boletin_Proteccion_23_Provisional.pdf). Statistical data bulletin of child protection measures for children. Number 23. 2020 data available at https://www.mdsocialesa2030.gob.es/derechos-sociales/infancia-y-adolescencia/PDF/Estadisticaboletineslegislacion/Boletin_Proteccion_23_Provisional.pdf

41. In accordance with the Red Cross report (2019). Young people in exile and/or at risk of social exclusion, available at: https://www2.cruzroja.es/documents/5640665/13549052/CR_Bolet_Vuln_N19_interactivo.pdf/9ae2bda9-3ff7-3efb-2ba8-90dcdf0e3073?t=1600173851313; 10% of the young people in exile live on the streets or are in a highly precarious situation at the age of 18, 89% of them being non-EU citizens (83.8% young people who have migrated alone). These young people are extremely vulnerable: 84% are at risk of poverty and exclusion, 81.5% are unemployed and 84% do not receive any benefits or subsidies. The risk of poverty and exclusion (ARPE) is 83.9% and 45.7% are in a situation of severe material deprivation.

42. Instruction 1/2020 of the Secretary of State for Migration

43. These programmes provide integral support for young people under 18-21 who were under guardianship, until they can be independent. This support is fundamental for their full, effective socio-labour insertion and should be replicated by public institutions on a municipal, autonomous and state level, as an ideal support model for this collective.

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DISABILITY, BASIC HEALTH AND WELL-BEING

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

The Organic Law on Education⁴⁵ reflects the will to adopt **inclusive education as a fundamental principle**, with the aim of meeting the needs of all pupils fairly and valuing diversity. However, in practice, the **non-mandatory stages do not always have the support resources they require**. For example, Royal Decree 471/2021⁴⁶ **excludes students attending the first cycle of Infant Education** from the study grants and subsidies for pupils with specific educational support needs due to disabilities, severe behavioural disorder or autism spectrum disorder or associated with high intellectual capacity.

- ➔ The fourth additional provision of the LOMLOE on the evolution of the schooling of students with special educational needs is not an explicit and sufficient mandate that complies with the recommendations of the treaty bodies to Spain. How will Spain guarantee an evolution towards an inclusive education in practice?
- ➔ Report on the measures adopted in order for that mainstream schools have the necessary support resources throughout all stages of education, including 0-3, pre-primary and post-compulsory education.

21 Access to healthcare

For years, the Spanish Public Health System resources in general, and particularly for children, have been subject to continuous cuts. This, in addition to the situation caused by the pandemic and consequent increase in waiting lists, has overwhelmed the system⁴⁷.

Likewise, there is also inequality in terms of access to healthcare for children, affected by territorial differences in the availability of services, with particular concern regarding access to health services for children residing in depopulated areas.

- ➔ How does the Government plan to strengthen the public health systems, prioritising Primary Healthcare? Will it develop strategies to reduce the health inequality from within a cross-sectional framework?
- ➔ Are all under 18's diagnosed and treated in paediatric units? Are there specific units for adolescents?
- ➔ Provide data on the treatment of children with cancer in paediatric or adolescent units, their admission to paediatric or adult Intensive Care Units and the percentage of children with cancer with an accredited disability of more than 33% since diagnosis of their disease.

45. Organic Law 3/2020 of 29 December, amending Organic Law 2/2006 of 3 May on Education.

46. Royal Decree 471/2021 of 29 June establishing the income and family wealth thresholds and the amounts of grants and study aids for the 2021-2022 academic year, and partially modifying Royal Decree 1721/2007 of 21 December establishing the system and personalised grants and study aids.

47. See <https://www.semfy.com/ante-el-inesagante-aumento-de-casos-de-covid-19-que-puede-llevar-a-un-nuevo-colapso-de-la-sanidad/> and <http://sectcv.es/wp-content/uploads/2020/05/INFORME-MUD.-Condiciones-de-los-Me%CC%81dicos-Espan%CC%83oles-en-la-Pra%CC%81ctica-Cli%CC%81nica-durante-la-Crisis-del-COVID-19.pdf>



22 Early intervention

Public Services in Spain see approximately **40% of the children believed to require early intervention**⁴⁸. Early intervention is not legally recognised as a free and universal right for children between the age of 0 and 6 years of age. This problem is compounded by the inequality in the exercise of the rights between Autonomous Communities, the lack of official statistics and the regional differences in the distribution of resources, which is seriously detrimental to rural areas.

→ What legislative measures are to be undertaken by the State in order to guarantee children their right to the promotion, protection and support for child development, including the right to Early Intervention, offered both publicly and freely, throughout the country?

23 Mental health

According to a recent study, in Spain the estimated percentage of adolescents aged 10-19 with diagnosed mental health problems is 20,8%⁴⁹. These problems have multiplied and worsened as a consequence of the pandemic⁵⁰. Following the end of the state of emergency, **paediatric emergencies due to psychiatric issues**⁵¹ **have increased by 50%** and paediatric units and some hospitals have tripled/quadrupled the number of children who are admitted with psychiatric pathologies⁵².

Although **the speciality of child and adolescent psychiatry has recently been approved**⁵³, Spain **still does not have its own speciality in psychology or a national child mental health policy**⁵⁴. Furthermore, the new speciality will not imply an increase in expenditure, but will have to be undertaken within the existing budget. Therefore, it does not imply an improvement in the lack of mental health services, but rather maintains the pre-existing shortage of specialised resources - in addition to the consequent waiting lists - and the insufficient number of qualified staff in the field.

- Give details of the timeframe and how the specialty of clinical psychology for children and adolescents is going to be regulated.
- Report on the steps that have been taken for Spain to have a national mental health policy for children and adolescents and the main characteristics - including budget allocation - that this policy will contain in order to respond to the problems described.

48. Future Challenges in Child Development Care. Spanish Federation of Associations of Early Care Professionals, 2021

49. Unicef: [Empeora la situación de la salud mental de los niños en Europa](#)

50. The severity of the cases is reflected in the high number of emergency interventions undertaken by Fundación ANAR: 2,277 during 2020, an average of 6 per day. This demonstrates a significant increase in emergency cases (39.1%) and maximum severity (55.6%). ANAR (2020). ANAR telephone and Chat report during the COVID-19 pandemic, available at: https://www.anar.org/wp-content/uploads/2021/12/Informe-ANAR-COVID_Definitivo.pdf

51. II Digital Congress of the Spanish Paediatrics Association (AEP) Read the press release here: https://www.aeped.es/sites/default/files/20210602_ndp_salud_mental_covid-19.pdf

52. Article in Confidencial Newspaper. See https://www.elconfidencial.com/espana/2021-06-27/pandemia-ninos-salud-mental-verano_3152163/?utm_source=whatsapp&utm_medium=social&utm_campaign=amp

53. Royal Decree 689/2021 of 3 August, establishing the title of doctor specialising in Child and Adolescent psychiatry and updating various aspects of the title of doctor specialising in Psychiatry.

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJEU 30.9.2005) includes "child psychiatry" among the designations of specialised medical training, the training of which must last a minimum of 4 years (Annex V, L 255/99).

Likewise, Article 63 establishes 20 October 2007 as the deadline for its incorporation into National Law.

54. This is despite the fact that in 2018 the Committee on the Rights of the Child recommended Spain to promote the formulation of a national policy on child mental health.



24 The fight against child poverty

Child poverty figures⁵⁵ are the highest in the last five years confirming an upward trend that children's organizations have been warning about in recent years. 31.1% of children are living in poverty and/or social exclusion, 28.9% of them live at risk of poverty (with an increase of 1.5% in 2020) and 14.9% of children and adolescents in severe poverty.

Spain is one of the European countries that invests least in child poverty (around 1.3% GDP, while the European average is 2.3%⁵⁶). Moreover, **our tax system has a very low impact on child poverty**. The current configuration of Personal Income Tax prevents tax relief from having an impact on the reduction of poverty among the most vulnerable children, as their parents are exempt from taxation.

Although the approval of the new **MLI -and its rise as a consequence of the economic crisis⁵⁷ - is to be welcomed as an instrument to combat severe poverty**, it does have some shortcomings that make it less effective, such as the limitation of its application to certain groups, the difficulties in processing and the delays in payment.

The approval of the Minimum Living Income (MLI) has meant **the elimination of the dependent child allowance⁵⁸**. Despite the recent approval of additional child support supplements for families receiving the MLI and other families with low incomes⁵⁹ is considered a positive because it helps families in a situation of poverty⁶⁰, **Spain still does not offer support to families for the upbringing of their sons and daughters**.

- ➔ How and when will the MLI be modified to extend it to other groups, such as families in an irregular situation, and improve and resolve the difficulties in its processing and collection?
- ➔ How many families below the poverty line do not receive the MLI benefit or the additional child support?
- ➔ How does the Government ensure support for parenting? Does it intend to articulate a new benefit that aims for universality? Are refundable tax credits envisaged to implement higher levels of parenting support?
- ➔ How will budget allocations for children's policies be shielded from crisis situations? By how much will the percentage of GDP devoted to combating child poverty be increased?



55. National Institute of Statistics, Living Conditions Survey year 2021 (published: 29/06/2022). https://www.ine.es/prensa/ecv_2021.pdf

56. Ibid

57. Eurostat (2019) Social protection expenditure.

58. The Decree-Law on anti-crisis measures approved on June 2022 reinforces the increase of 15% of the amount of the IMV until 31 December 2022

59. It is maintained for beneficiaries existing prior to its elimination. It is maintained for the case of a child or minor with an accredited disability of more than 33%.

60. Additional supplements: 100 euros in the case of boys and girls from 0 to 3 years old; 70 euros, between 3 and 6 years; and 50 euros, between 6 and 18 years; as well as the thresholds to be a beneficiary are substantially increased. Law 19/2021, 20 December 2021, establishing the MLI <https://www.boe.es/eli/es/l/2021/12/20/19/dof/spa/pdf>



25 Housing

The Spanish legislative framework does not prevent the eviction of children or adolescents due to financial difficulties encountered by their parents. Although evictions for families without housing alternatives and in a situation of vulnerability have been suspended until 31 December 2022, the definition of the **vulnerability**⁶¹ **criterion has limited the scope of these measures and has created situations of lack of protection**⁶².

On the other hand, despite the fact that the State Housing Plan 2018-2021⁶³ contains a specific programme to promote urban and rural regeneration and renovation, **the slums and shanty towns that existed in 2018 still exist in 2022**.

- ➔ After 31st December 2022, will all evictions of families with dependent children be suspended as a precautionary measure until alternative housing is found?⁶⁴
- ➔ What measures have been taken in order to alleviate the difficulties related to housing and its conditions in the case of families with children?



61. By way of Royal Decree-Law 11/2020 of 31 March, which adopts urgent complementary measures in the social and economic sphere to address COVID-19 and Royal Decree-Law 16/2021 of 3 August, which adopts social protection measures to address situations of social and economic vulnerability. The Government extends until December 31, 2022 the social shield in housing matters through Royal Decree-Law 21/2021, of October 26, 2021.

62. Thus, about one third of households with children at risk of poverty living in rented accommodation have not been able to avail themselves of this suspension and the percentage reaches three quarters in the case of families with mortgages. See Save the Children (2020). Childhood in reconstruction measures to combat inequality in the 'new normal', available at: https://www.savethechildren.es/sites/default/files/2020-11/Informe_Infancia_En_Reconstruccion_actualizada_oct_20.pdf

63. The Plan includes a programme to help eradicate degraded areas, slums and substandard housing. The results of this programme will be subject to evaluation over the next few years.

64. The Committee on Economic, Social and Cultural Rights in its Views of 21 July 2017 on Communication 5/2015, concerning an eviction of a family with children, recommended Spain take the necessary measures to ensure that evictions affecting persons without resources to find alternative housing are only undertaken following the completion of the eviction and only after there has been genuine and effective consultation with these persons and that the State party has taken all necessary steps, to the maximum of its available resources to ensure that the evicted persons have alternative housing, especially in cases involving families, elderly individuals, children and/or other persons in vulnerable situations.



26 Energy poverty

Energy poverty in Spain affects 16.8% of households and is above the average in households with children⁶⁵. **The percentage of children who live in families that cannot afford to keep their homes at an adequate temperature in winter reached 13.1%** (an increase of 2.5 points over the previous year)⁶⁶. Furthermore, the rise in electricity supply prices disproportionately affects the most vulnerable families.

Although Royal Decree-Law 11/2022 extends until December 31st the provisional measures to meet the increases in the cost of electricity⁶⁷, and Royal Decree-Law 17/2021 created the minimum vital supply, which prevents supply cuts before of the six months of non-payment, the palliative and temporary measures do not propose a real solution for households in the face of the rise in electricity supply.

Several organisations and institutions have expressed their concern regarding the current situation of different settlements, including the Cañada Real⁶⁸. In addition to the situation of substandard housing, sectors V and VI have been suffering from a lack of electricity supply since October 2020, meaning that more than 1800 children have been without electricity for over six months, as highlighted in Communication 134/2020.

- Indicate the timeframe and the measures that will be put in place in order to adapt and rehabilitate the basic supply network in the areas of highly vulnerable settlements, such as the Cañada Real, while definitive solutions are developed.
- Outline how it will address the ban on cutting off electricity supply to families in vulnerable situations from December 2022.
- Detail the measures it will put in place in order to address child protection in the face of rising electricity prices.



65. Ministry for Ecological Transition and Demographic Challenge (2020). Update of indicators of the national energy poverty strategy, available at: https://www.miteco.gob.es/es/prensa/20201106_actualizaciondeindicadores2020_final_tcm30-516466.pdf

66. National Institute of Statistics, Living Conditions Survey year 2021. (Published: 29/06/2022), https://www.ine.es/prensa/ecv_2021.pdf

67. The reduction in VAT on electricity is deepened: it goes from 10% to 5% which includes the extension of the social bond (bono social) or the reduction of other taxes linked to electricity. It had previously been reduced from 21% to 10%.

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



27 The fight against child obesity and malnutrition

In 2019, **4 in 10 schoolchildren in Spain were overweight**⁶⁹. These results are related to a lack of physical activity⁷⁰ and the poor quality of their diet⁷¹. The prevalence of obesity is significantly higher in lower-income families compared to their peers from higher-income families⁷². In July 2022, the National Strategic Plan on the reduction of child obesity was adopted. However, the effective implementation of the strategy developed, the adoption of the operational plans and the necessary budget allocation to the plan remain to be assessed.

School meals support is not available to all children in poverty. **While poverty affects 28%, support or financial help is only provided to 11% of children in mandatory education**⁷³. There is a generalised absence of school canteens in public schools, in addition to significant territorial differences in terms of availability. Although the Government has committed⁷⁴ itself to this, no progress has been made in terms of establishing the minimum threshold for access to school meal and material allowances throughout the State.

- ➔ What are the actions planned for the implementation of the National Strategic Plan for the reduction of child obesity? When is the adoption of the Royal Decree on the regulation of advertising of food and beverages to children expected?
- ➔ How does Spain guarantee access to school meals for all children living in poverty? Is the promotion of healthy lifestyles included in a cross-cutting manner in the school environment?

28 Breastfeeding

Spain **does not have an official system for the monitoring or follow-up of adequate breastfeeding**. The existing data are mostly from surveys undertaken by health professionals at regional level and on an ad hoc basis⁷⁶.

Only 12%⁷⁷ of health centres are in the process of implementing the methodology of the Initiative for the Humanisation of Birth and Breastfeeding care (IHAN)-UNICEF. **There is no strategy** to ensure the implementation in hospitals, health services and, in particular, maternity wards, of the IHAN to guarantee the WHO-recommended rates of exclusive breastfeeding and compliance with the Code of Breastmilk Substitutes.

- ➔ Does it plan to incorporate a national system of data collection and adequate breastfeeding monitoring in all the Autonomous Regions?
- ➔ Does it plan to implement a National Health System Strategy of the Initiative for the Humanisation of Birth and Breastfeeding Care?

69. This percentage corresponds to a figure of 23.3% in children and adolescents considered overweight and 17.3% considered obese. Spanish Agency for Food Safety and Nutrition (2020), ALADINO Study on Diet, Physical Activity, Child Development and Obesity in Spain 2019, available at: https://www.aesan.gob.es/AECOSAN/web/nutricion/detalle/aladino_2019.htm

70. According to the Gasol Foundation's PASOS study (2019), 63.6% of children and adolescents do not meet the WHO recommendations of 60 minutes a day of moderate or vigorous physical activity; in favour of more time spent on mobile, tablet and TV screens. Available at: <https://www.gasolfoundation.org/wp-content/uploads/2019/11/Informe-PASOS-2019-online.pdf>

71. Ibid

72. Ibid. See also the EAPN (2019) Study: Poverty, Inequality and Quality of life in Spain, available at: https://www.eapn.es/ARCHIVO/documentos/documentos/1577708857_pobreza-desigualdad_calidad_parte2.pdf

73. Save the Children (2020), Coronavirus: Save the Children requests the guarantee of food for all children in situations of poverty, not just those who have access to free school meal. Available at: <https://www.savethechildren.es/notasprensa/coronavirus-save-children-pide-garantizar-la-alimentacion-todos-los-ninos-y-las-ninas>

74. This commitment was contained in the proposal for an opinion of the Commission for Economic and Social Reconstruction and in the coalition government agreement. PSOE and Unidas Podemos (2019). Progressive Coalition, A New Deal for Spain, measures 2.1.5 and 2.5.1., available at: <https://www.psoe.es/media-content/2019/12/30122019-Coalici%C3%B3n-progresista.pdf>

75. https://www.consumo.gob.es/sites/consumo.gob.es/files/Borrador_RD_publicidad.pdf

76. Asociación Española de Pediatría (2016). Breastfeeding in numbers: Breastfeeding initiation and duration rates in Spain and other countries, available at: <https://www.aeped.es/sites/default/files/documentos/201602-lactancia-materna-cifras.pdf>

77. Health center records available at <https://www.ihan.es/centros-sanitarios/registro-de-hospitales/> and <https://www.ihan.es/centros-sanitarios/registro-de-centros-de-salud/>



EDUCATION AND THE RIGHT TO LEISURE AND SOCIO-EDUCATIONAL FREE TIME

29 Educational equality

While investment in education has increased in recent years, so far it has focused on wages, while investing little in infrastructure, grants and grants, school services, training or improvement and support programmes. Moreover, the differences in public spending on education between Autonomous Communities are significant and have grown over the last ten years⁷⁹.

Indirect costs of compulsory education, such as textbooks, transport and school meals, make it difficult for vulnerable children to access education. On average, each household spent €1177 per pupil on education during the 2019-2020⁸⁰ school year, with 82%⁸¹ of households reporting an increase in their educational expenditure as a result of the pandemic.

- ➔ How does the Government plan to shield educational investment, especially in those areas that are key to equity, in order to prevent them from being affected by future budgetary adjustments? How is it going to reduce the significant differences in educational investment between autonomous regions?
- ➔ How will it guarantee free compulsory education and ensure that families do not have to bear additional costs?

30 Early years education, 0-3 years

In Spain, **6 in every 10 children do not have access to the first cycle of early years education**⁸². While 62.5% of children from higher-income families obtain a place, this is only 26.3% in children from lower-income families⁸³. Participation in the 0-3 age range is therefore not generalised, nor is access to nursery school guaranteed for all children, **especially in the most vulnerable families** and in the most deprived areas and areas of social transformation.

The main difficulties encountered in terms of **accessing places (0-3 years)** are limited places, high registration prices, in addition to a lack of coordination between administrations and public resources aimed at this educational stage.

- ➔ Outline, categorised by age and family income, the data regarding children aged 0-3 years in nursery education. How is the government going to guarantee access to the stage of education for children below the poverty line?

78. REDE (2020). Financing of the Education System available at, https://www.dialogorede.es/wp-content/uploads/2020/10/Docfinal_Financiacion_REDE.pdf

79. In 2018, the Community of Madrid invested 4159 euros per pupil in publicly funded schools, while the Basque Country invested 6720 euros. This difference has gone from 2284 euros in 2008 to 2561 euros in 2018. Ministerio de Educación y de Formación Profesional. Statistical Year (2021) Educational expenses, available at: <https://www.educacionyfp.gob.es/dam/jcr:2ff3ce85-65b5-4362-abfd-89099a988fe3/b4-pdf.pdf>

80. Household expenditure survey on education 2019/2020 academic year: https://www.ine.es/prensa/eghe_2019_20.pdf

81. Political Watch y Plataforma de Infancia (2021). Safe School Report: The safety of education during the first quarter of the academic year, 2020/2021, available at: https://coleseguero.es/informes/ColeSeguro_Informe_FINAL_20-21.pdf?pdf=ColeSeguro_Informe_FINAL_20-21

Save the Children (2019). "Where it all begins" - Early childhood education from 0 to 3 years of age to equalize opportunities.", p. 28, accessible at https://www.savethechildren.es/sites/default/files/imce/donde_todo_empieza_0.pdf

83. Ibid. p. 38.



31 School success

The **early school leavers rate** in Spain stood at 13,3% in 2021⁸⁴, still far from the average early school leaving rate in the EU of 9,7%. The repetition rate in Spain, one of the highest in Europe, is up to four times higher among the most economically disadvantaged children⁸⁵. Although the latter has been drastically reduced in the last school year (from 2.3 per cent to 1.2 per cent)⁸⁶, it is important to highlight the exceptional measures taken in the year of the pandemic, with promotion of the course being promoted as a general rule⁸⁷.

Thus, educational inequality is being produced, which is increasingly concentrated among **socially vulnerable pupils**. The figures for school dropout and failure highlight **shortcomings in the educational model** that need to be analysed and consequently corrected⁸⁸.

- ➔ What strategies will be developed to reduce academic failure and **early school leavers** so that it is no longer directly related to poverty in the family nucleus of origin?

32 The fight against academic segregation

Spain is the **third most socio-economically segregated country in the OECD** in terms of primary education, an issue that has worsened over the last decade⁸⁹.

The new education law⁹⁰ includes as an explicit objective of school admissions, the avoidance of school segregation of pupils in situations of socio-educational vulnerability, ensuring balanced schooling and the responsibility of the administrations to intervene in this respect. However, the lack of specificity will make the effectiveness of the measures dependent on their implementation by the Autonomous Communities.

- ➔ Given that the implementation of these measures is a regional competence, how will the government guarantee the reduction of school segregation? What coordination, funding or accountability mechanisms will the Ministry put in place?
- ➔ Does the government plan to adopt an educational inclusion plan against all forms of segregations, with adequate funding, with the aim of curbing rates of academic failure and particularly incorporating groups that suffer both segregation and exclusion into the education system, reinforcing

84. Exploitation of the educational variables of the Labor Force Survey accessible at <https://www.educacionyfp.gob.es/dam/jcr:af6ea820-1941-4105-a6e0-25046d6c47a2/notaresu.pdf>.

85. Save the Children (2018). Everything you need to know about Pisa 2018 on equity, available at: https://www.savethechildren.es/sites/default/files/imce/dossier_pisa2018_espanadatos.pdf

86. Education Statistics. EDUCAbase (mecd.gob.es) available at http://estadisticas.mecd.gob.es/EducaJaxiPx/Datos.htm?path=/no-universitaria/alumnado/matriculado/series/gen-repetidores//10/&file=repetidores_01.px&type=pcaxis

87. BOE.es - BOE-A-2020-4609 Orden EFP/365/2020, de 22 de abril, por la que se establecen el marco y las directrices de actuación para el tercer trimestre del curso 2019-2020 y el inicio del curso 2020-2021, ante la situación de crisis ocasionada por el COVID-19.

89. he Committee on Economic, Social and Cultural Rights in its 2018 OFS (paragraphs 46 and 47)

Showed its concern regarding this issue and recommended Spain continue reducing early school dropout and repetition rates in secondary education, adopting a strategy and intensifying efforts to combat school segregation, including that which is derived from residential segregation that disproportionately affects Roma and gypsy children and migrants

89. Save the Children (2018). Mézclate conmigo report, available at https://www.savethechildren.es/sites/default/files/imce/docs/mezclate_conmigo.pdf

90. Organic Law 3/2020 of 29 December, amending Organic Law 2/2006 of 3 May on Education (LOMLOE).



33 Parental educational veto

Some regional governments intend to implement the so-called “parental-pin”, which implies the need to obtain the **express consent of parents for any activity with ethical, social, civic, moral or sexual values** content for their children in educational centre⁹¹.

This measure, implemented so far in the region of Murcia in the 2019-2020 academic year, and also evaluated in other territories, implies the **possibility of families to choose the educational activities** in which children participate during school hours, constituting a limitation of their right to education that leaves aside their consideration as subjects of rights.

→ How does the State guarantee the fundamental right to education and the best interests of all children in the Communities in which the ‘parental-pin’ is applicable?

34 Children without schooling in Melilla

In the 2020-21 school year, more than 180 children were unable to go to school in Melilla. This issue repeated itself in the 2021-2022 school year, the same issue was repeated, although 160 of the 180 children who were not on the initial lists⁹² were accepted in the extraordinary call for applications in September. Only adolescents over the age of 16 were not admitted, nor were they offered an appropriate alternative.

The main problems lie in the documentation requirements imposed by authorities in Melilla to prove the effective residence of children in the city as a necessary condition for schooling, even though the border remained closed since 2020. Only in the city of Melilla is registration required for schooling. In April 2022, the Supreme Court had ruled that requiring minors to register was discriminatory. To date, 7 individual communications have already been submitted to the Committee on the Rights of the Child requesting precautionary measures, 5 of them have been resolved favourably⁹³.

Alarming, in 2021, 15 families have been notified with an expulsion order after trying to prove their residence in the city in order to send their children to school.

- What measures will be taken to guarantee the right to education for all children, including compulsory education for those over 16?
- Does the State plan to reform the rules governing the admission of pupils in Ceuta and Melilla in order to enable any legally valid means of proof of actual residence to be provided in future calls for applications?
- In accordance with the aforementioned ruling, how will the elimination of the specific formalities required of migrant children from the cities of Ceuta and Melilla for access to the census be articulated?

91. This parental educational veto is a major setback, especially in terms of gender quality education, affective education and the promotion of participation, which are normally developed by way of complementary activities in the educational centre. In others they form part of the compulsory and accessible curriculum.

92. See Plataforma de Infancia (2021). Celebration of the schooling of more than 160 children in Melilla who were unable to go to school due to administrative obstacles, available at: <https://plataformadeinfancia.org/celebramos-escolarizacion-de-mas-de-160-ninos-en-melilla-que-no-podian-ir-al-colegio-debido-a-trabas-administrativas/>

93. It is important to highlight CRC/C/91/D/116/2020: Treaty bodies Download (ohchr.org)



35 Normative and social recognition of socio-educational leisure and free time activities and universal access

Socio-educational leisure and free time activities do not have the recognition nor status of school education, which translates into a lack of opportunities, resources and professional training for their development. There is no legal framework that equates them with the framework of school education. **Furthermore, the lack of recognition of their contribution to the integral education process of the person and entities that undertake them hinders their work and the interrelation with other services, such as access to educational centres.**

Access continues to be an **element of social inequality**. Financial aid and public places to participate in **socio-educational leisure and free time activities** are not sufficient to guarantee access for children **in situations of poverty and exclusion and for children in rural areas**.

- ➔ What measures and means have been put in place for the development of educational leisure and recreation activities so that all children can access and enjoy this right, especially children at risk of exclusion and children with disabilities?
- ➔ Is progress being made on a regulatory framework for socio-educational leisure and free time activities? What actions have been carried out to make visible, recognise and support the work of organisations in this sector?

36 Right of the child to rest

Spain is the European country where children spend the most time on educational tasks. The significant burden of homework and personal work imposed by educational centres is detrimental to the right to rest, play and leisure. Additionally, it has been highlighted that half of the children have seen their right to rest affected during the course of the pandemic⁹⁴.

- ➔ What actions will be undertaken in order to guarantee the right to rest and leisure for young children both inside and outside the educational centre?



94. According to Political Watch y Plataforma de Infancia (2021). A school year impacted by the pandemic: Analysis of the investment in education in order to adapt to the COVID-19 pandemic, available at https://coleseguro.es/informes/ColeSeguro_Informe_FINAL_20-21.pdf?pdf=ColeSeguro_Informe_FINAL_20-21 At 3% of educational centres it was not possible to go outside during playtime and 47% stated they could not go outside every day. In addition to this data, reductions were observed in the length of the break time, play space or the impossibility of accessing the play space in the playground as a result of the measures put in place.



SPECIAL PROTECTION MEASURES

MIGRATION, ASYLUM AND REFUGE

37 Process to determine the age of an unaccompanied migrant child

Until January 2022, the Committee on the Rights of the Child has **issued 15 Views against Spain** in which the Committee on the Rights of the Child has declared that the current age determination procedure violates Children's rights.

The age determination procedure does not validate children's official documentation in order to prove their age; it carries out systematic radiological tests, despite their significant margin of error; it carries out intrusive and inappropriate testing and it is undertaken without the assistance of a lawyer, thus ending with a non-appealable Decree that determines their age.

The LOPIVI, which has banned full nudity, including the genital examinations, foresees that **by June 2022, the Government will proceed with the normative development of the age determination procedure.**

- ➔ Outline the new age determination procedure and how it addresses each of the violations of the Convention identified by the Committee in its Views.
- ➔ In the absence of documentation of a child, is there a formal procedure of international cooperation with the embassies and consulates of origin for the identification of the child?
- ➔ How will it be ensured that the presumption of minority applies until the final judgement and thus also during the appeal procedure? What review procedure is foreseen for the case where, following a final judgement, the child can obtain documentation from the relevant Embassy proving their age?
- ➔ Is there any provision for the creation of a specific round within the Bar Associations for the immediate and free assignment of a lawyer to unaccompanied migrant children?





38 Stigmatisation of unaccompanied migrant children

The Spanish Observatory on Racism and Xenophobia has for two years highlighted the increase in hate content on social networks targeting unaccompanied migrant children, with percentages ranging from 6% to 25%, according to monthly measurements.

The media's treatment of news regarding unaccompanied migrant children and the campaigns carried out by some political parties harm their image and thus hinder integration.

- Describe how Spain combats hate crimes against unaccompanied migrant children and the awareness-raising campaigns it undertakes, prioritising their status as children over that of migrants.

39 Response to the migration crisis

In recent years, mass arrivals of migrants have taken place, further complicating the intervention of unaccompanied child migrants. There is concern regarding the lack of official data, overcrowded and unsanitary conditions, lack of legal aid, difficulties in identifying vulnerable individuals and lack of resources.

In the Canary Islands, since 2019 the arrivals of migrants to the islands continues to increase year after year, registering at beginning of 2022 a 25.7% more than in 2021 (already having an overcrowding of 180%)⁹⁵. On April 30, 2022, 2288 unaccompanied child migrants were assisted⁹⁶.

In Ceuta, in 2021, 306 children were placed in alternative care centres. This figure represents an overcrowding of 247% given that Ceuta has 88 places⁹⁷. Various entities reported rights violations due to the poor conditions in which they are living, and the summary return of many of them⁹⁸, facts that have been confirmed by the Judiciary⁹⁹.

- Provide statistical data regarding the migrant children arriving in the Canary Islands and Ceuta as a consequence of the recent migrant crises.
- Does the Government intend to adopt a contingency plan for emergency situations, specifically future migration crises? Detail how this plan will include a child rights approach and whether it foresees an adequate division of responsibility at the territorial level in the best interests of each child.

95. Ministry of Interior (2022). Informe quincenal sobre inmigración irregular - Datos acumulados del 1 de enero al 30 de septiembre https://www.interior.gob.es/opencms/export/sites/default/galleries/galeria-de-prensa/documentos-y-multimedia/balances-e-informes/2022/18_informe_quincenal_acumulado_01-01_al_30-09-2022.pdf

96. Migration Crisis Response Plan for migrant children 2022-2023 and distribution of the second allocation of the budget appropriation of 20 million euros for the care of children, unaccompanied migrant children and adolescents adopted by the Sectoral Conference on Children and Adolescents at its meeting on 27 July 2022.

97. Migration Crisis Response Plan for migrant children 2022-2023 and distribution of the second allocation of the budget appropriation of 20 million euros for the care of children, unaccompanied migrant children and adolescents adopted by the Sectoral Conference on Children and Adolescents at its meeting on 27 July 2022.

98. For example, see: <https://www.ceares.devolucion-en-caliente-de-un-menor-en-ceuta/> and the following section regarding the deportation of minors in Ceuta. <https://www.ceares.devolucion-en-caliente-de-un-menor-en-ceuta/>

99. Judgment of July 29, 2022, Andalucía High Court of Justice, Andalucía



40 Identification and principle of non-refoulement

In 2019, the Committee on the Rights of the Child condemned Spain for the unwarranted return of a Malian child who jumped the fence at Melilla¹⁰⁰, **without the reforms recommended in the opinion having been undertaken**. The practice of ‘summary returns’ **prevents the identification and consequent protection not only of migrant children**, but also of other particularly vulnerable profiles¹⁰¹.

In the context of the Ceuta crisis, in August 2021 the government proceeded to repatriate some 45 unaccompanied migrant children collectively, and without complying with the legally established guarantees¹⁰². In July 2022 Andalucía’s Supreme Court confirmed the return of those children to their countries of origin.

The removals are currently paralysed by the courts, and there are also precautionary measures from the Committee in this regard¹⁰³.

- ➔ How does the Government plan to adopt a procedure for the identification of vulnerable individuals?
- ➔ How does Spain ensure that the migrants returned immediately in Ceuta and Melilla, without undertaking an individualised process of identification, are not minors, nor are they deemed vulnerable?
- ➔ In the case of Ceuta, how did the Government analyse the individual best interests of each child prior to proceeding with their repatriation? Describe how it complied with the following guarantees in the process: the right to be heard, notification of the initiation of proceedings, report from the Public Prosecutor’s Office and the country of origin; intervention of an interpreter; legal assistance of the appointment of a Legal Defender.

100. Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 4/2016, 15 May 2019, Doc. CRC/C/80/D/4/2016.

101. The recent Constitutional Court Judgement 172/2020 requires the concurrence of three elements in order to be able to carry out these returns: i) that they apply only to individualised entries; ii) that full judicial control is ensured; and iii) that international obligations are complied with when the return is executed. Furthermore, the Constitutional Court formulates an explicit mandate: “the Security Forces and Bodies must pay special attention to the categories of particularly vulnerable persons, which include, with varying projection and intensity, those who manifestly appear to be minors (especially when unaccompanied by their families) (...) and persons in the category of particularly vulnerable”.

102. See Plataforma de Infancia (2021). Children’s organisations remind the President of the Government and the President of Ceuta that the Best Interest of the Child implies individualised solutions, available at: <https://plataformadeinfancia.org/las-organizaciones-de-infancia-recuerdan-al-presidente-del-gobierno-y-al-presidente-de-ceuta-que-el-interes-superior-del-menor-implica-soluciones-individualizadas/> and Plataforma de Infancia (2021). Ceuta: More than 25 NGOs request Pedro Sánchez immediately suspend the removal of unaccompanied migrant children and young people, available at <https://plataformadeinfancia.org/ceuta-mas-de-25-ong-solicitan-a-pedro-sanchez-la-suspension-inmediata-de-las-repatriaciones-de-ninos-ninas-y-adolescentes-no-acompanados/>

103. Judicial sentence by the Andalusian Supreme Court (April 29, 2022) <https://www.abogacia.es/wp-content/uploads/2022/06/20220629-ST-TSJ-139-21-CORRECTA-sin-nombres.pdf>



41 Child trafficking victims

The detection of child victims of trafficking remains a pending challenge in Spain, where more than 44,000 people at risk of being trafficked for sexual exploitation¹⁰⁴ have been detected since 2016. **However, only a total of 80 child victims of trafficking** were identified between 2015 and 2019 (5 in 2019¹⁰⁵), mainly due to lack of training of professionals and lack of proactivity to initiate specific protection actions¹⁰⁶. In addition, **20.1% of the total number of reports of disappearances** registered as of December 31, 2020 (219,425) **correspond to foreign unaccompanied children**¹⁰⁷.

There are also serious shortcomings in terms of the specific protection and assistance they require, such as access to the international protection procedure, due to the lack of training in child protection centres and the lack of specific residential resources for this purpose¹⁰⁸, so that in many cases they end up disappearing.

➔ How does Spain plan to improve the identification, support, hosting and protection of children at risk or being trafficked, based on a specialised cooperation and referral mechanism integrated in the existing child protection systems? How does the future Law against trafficking plan to address this issue?

42 Children seeking international protection

There are serious shortcomings in relation to the identification of children seeking international protection, mainly due to:

- the **lack of training** in asylum for many professionals who intervene with children (especially in relation to unaccompanied children).
- the **lack of information to children** (both accompanied and unaccompanied) about their right to apply for international protection.

In addition, the lack of a child-focused approach makes it impossible to ensure differentiated treatment of children in the asylum procedure, including their effective access to the procedure, in the formalisation, processing and assessment of cases.

- ➔ Provide the number of applications for international protection of children (accompanied and unaccompanied), as well as the number of asylum grants since 2018.
- ➔ Outline the ways in which the above-mentioned problems have been addressed, given that they were already the subject of a recommendation by the Committee in 2018.

104. According to Intelligence Center against Terrorism and Organized Crime, Ministry of the Interior Trafficking in Human Beings in Spain Statistical Balance 2016-20, 2021, available at: <http://www.interior.gob.es/documents/10180/11389243/Balance+estad%C3%ADstico+trata+y+explotaci%C3%B3n+seres+humanos+2016-2020.pdf/b52d26fd-43cb-4b29-85a5-fa65e87375dd>

105. Data collected in Defensor del Pueblo (2014). 2020 Annual Report, p.339, available at: https://www.defensordelpueblo.es/wp-content/uploads/2021/05/Informe_anual_2020-1.pdf

106. See Ibid pp. 339-341.

107. Missing Persons Report 2021, page 31. Ministry of the Interior Available at: <https://www.interior.gob.es/opencms/pdf/prensa/balances-e-informes/2022/Informe-Personas-Desaparecidas-en-Espana-2022.pdf>

108. Counting the steps, available at: https://www.savethechildren.es/sites/default/files/imce/dossier_-_contando_los_pasos.pdf - There is only one residential resource available in Madrid for unaccompanied child trafficking victims.



→ Protocols I and II

45 Arms sales

Spain continues to sell weaponry to countries involved in armed conflict, including **those that recruit and use children in these conflicts**. Spain sells weapons to the following countries, all of which recruit and use children¹¹⁵: Afghanistan, Columbia, Iraq, Israel, Yemen¹¹⁶, India and The Philippines. On the other hand, Spain sells weaponry to Kenya, Pakistan, Turkey, Ukraine and Venezuela, where there were also cases of recruitment declared between 2015-2019¹¹⁷.

- Do the criteria used to decide on licensing authorisations and exports of defence materiel to other countries take into account the commission by the recipient country of grave violations against children in conflict, in particular if children are recruited and used in hostilities?

46 Combating Sexual Exploitation of Children and Adolescents

In Spain there has been no **Action Plan against Sexual Exploitation of Children and Adolescents** since 2013, which makes it difficult to implement and develop a comprehensive strategy to address the problem.

Sexual exploitation in **travel and tourism** is not explicitly criminalised. In addition, “the preparation of travel arrangements” for the sexual exploitation of children in a territory other than the abuser’s place of origin or residence is outside the jurisdiction of Spanish courts.

Also of concern is the unchecked proliferation of **free apps and websites**¹¹⁸ accessible to children where content (e.g., photographs in exchange for money) and even “services” of a sexual nature are exchanged¹¹⁹.

- Report on the possible adoption and implementation of a new Plan of Action against CSEC from a human rights approach.
- Details the reforms carried out since 2018 to adapt the national legal system to the Optional Protocol, in particular on “child prostitution”, sale of children, sexual exploitation of children through travel and tourism, forced marriages, online sexual exploitation and paedophilia.

What measures have been implemented to involve the private sector in the fight against CSEC? How are apps/websites that could be risky because they are so accessible to children combated?

115. In order to find out which countries recruit and use children, Save the Children has cross-checked the Spanish statistics in terms of weaponry exportation, other materials and products and technology of various uses with the annual reports on children and armed conflicts, provided by the UN General Secretary, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1918621.pdf>

116. Spain does not sell weapons directly to Yemen, but it does sell directly to Saudi Arabia, United Arab Emirates and Morocco, all of which form part of the coalition led by Saudi Arabia, which intervenes in the Yemen conflict, and as we have observed, there are cases of child recruitment by armed groups supported by the coalition.

117. Comparison to the Global Coalition to Protect Education from Attack (2020) Report. Education Under Attack, available at https://9ehb82bl65d34vylp1jrly5-wpengine.netdna-ssl.com/wp-content/uploads/eua_2020_full.pdf

118. Sugar Daddies, OnlyFans etc

119. We are talking about the misnamed “transactional sex”, a phenomenon comprising “commodified relationships” in which sexual acts are exchanged for economic goods, educational attainment or social status. When such exchanges involve a minor, they should be considered as a form of sexual exploitation of children and adolescents.



PROTOCOL ON INDIVIDUAL COMMUNICATIONS

47 Articulating a system to ensure compliance with treaty body views

Since the adoption of the Optional Protocol on a communications procedure, the Committee has received 59 communications concerning Spain¹²¹ and has issued 16 Views condemning it. None of these Views have been implemented and great difficulty persists in complying with the interim measures. The same is true of other Committees¹²², where the continuous condemnations of Spain are met with interminable processes of reparation for the victims and ineffective guarantees of non-repetition.

In Spain there is no procedure to ensure the enforcement of the opinion of the Treaty Bodies¹²³, a procedure that does exist in relation to the judgements of the European Court of Human Rights¹²⁴. Thus, the government does not recognise the binding nature or enforceability of the rulings, nor does it recognise the competence of the Committees to issue precautionary measures¹²⁵.

The Spanish Government's Sustainable Development Strategy¹²⁶ has provided for the modification of Circular 1/2020 of the State Attorney's Office - Directorate of the State Legal Service. In addition, it also provides for the modification of Law 24/2014¹²⁷, the approval of the II Programme for Human Rights and the establishment of a Committee for Monitoring the Resolutions of the International Human Rights Bodies. However, these reforms have not yet been undertaken.

- ➔ What channels do children have to request the State to comply with the CRC's interim measures and rulings that affect them?
- ➔ Has the Government implemented the actions established previously in the Strategy for Sustainable Development?

120. 42% of the total number of communications received by the Committee as of March 2021.

121. Communication 4/2016 on the summary return of a minor at the Melilla fence; Communication 115/2020 on the right to education of a child in Melilla and Communications 11/2017, 16/2017, 17/2017, 21/2017, 22/2017, 24/2017, 25/2017, 26/2017, 27/2017, 28/2017, 38/2017, 40/2018, 63/2018 and 76/2019 on the age determination procedure carried out on unaccompanied migrant minors and on the failure to comply with interim measures.

122. Among them, Committee DESC - 7 convictions against Spain for violating the Human right to adequate housing - Committee CEDAW - 2 convictions against Spain, - Committee Rights of People with Disabilities - 2 convictions against Spain - See PlatDESC España (2021) Report, available at https://a0d0455b-cdb9-43e5-8ea6-ece7abf5fc7c.filesusr.com/ugd/10c749_2a5aca2328784ce0bf6bdae4fdeb3d4.pdf

123. Although some judgements have ruled that the opinions of the Treaty Bodies are binding and constitute a prerequisite for requesting compliance with them before the Administration and, subsequently, before the courts of the contentious-administrative jurisdiction (Judgement 1263/2018 of the Supreme Court of 17 July 2018 or Judgement 173/2020 of the Contentious Administrative Court No.4 of Barcelona), there are other more recent contradictory judgements (Judgement 401/2020 of the Supreme Court of 12 February, FD 6 or STC 23/2020 of 13 February, FJ6).

124. Organic Law 7/2015, of 21 July, which amends Organic Law 6/1985, of 1 July, on the Judiciary, establishes in its Article 5 bis the possibility of bringing an appeal for review before the Supreme Court when the ECtHR has declared that a final judicial decision was handed down in violation of any of the rights recognised in the European Convention on Human Rights and its Protocols, provided that the violation, by its nature and gravity, entails effects that persist and cannot cease in any other way than by means of this review.

125. This is recognised in Circular 1/2020 of the State Attorney's Office - State Legal Service Directorate. Transfer of a note on "the legal nature of resolutions issued by the Committees responsible for monitoring the United Nations Human Rights Treaties".

126. Government of Spain (2021). Sustainable Development Strategy 2030, p. 267, available at: <https://www.mdsocialesa2030.gob.es/agenda2030/documentos/informeprog21eds30r.pdf>

127. Law 25/2014 of 27 November, of Treaties and other International Agreements.

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