



SPAIN

# Eternal Emergency

No End to Unaccompanied Migrant Children's  
Institutionalization in Canary Islands Emergency Centers

HUMAN  
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WATCH





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Human Rights Watch  
350 Fifth Avenue, 34th floor  
New York, NY 10118-3299 USA  
Tel: +1 212 290 4700, Fax: +1 212 736 1300  
hrwnyc@hrw.org

Poststraße 4-5  
10178 Berlin, Germany  
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629  
berlin@hrw.org

Avenue des Gaulois, 7  
1040 Brussels, Belgium  
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471  
hrwbe@hrw.org

64-66 Rue de Lausanne  
1202 Geneva, Switzerland  
Tel: +41 22 738 0481, Fax: +41 22 738 1791  
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor  
London N1 9HF, UK  
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800  
hrwuk@hrw.org

27 Rue de Lisbonne  
75008 Paris, France  
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22  
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500  
Washington, DC 20009 USA  
Tel: +1 202 612 4321, Fax: +1 202 612 4333  
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



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## **No End to Unaccompanied Migrant Children’s Institutionalization in Canary Islands Emergency Centers**

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## I. Background and Summary

The Canary Islands were in the spotlight of international media attention in 2006 when more than 30,000 migrants arrived in rickety boats from West Africa. Among them were 928 children who arrived without a parent or care-giver. These children are entitled to special protection from the state under Spanish and international law, and Canary Islands authorities at that time hastily opened temporary structures to house them—so-called emergency centers.

In 2007 Human Rights Watch documented serious allegations of ill-treatment, substandard accommodation conditions and neglect, and authorities' failure to oversee these emergency centers institutions and protect children from harm.<sup>1</sup>

Three years later, the Canary Islands government continues to keep its emergency centers open. At the time of our research, they housed 276 children, with 201 accommodated in large-scale facilities of 50 and more children. The authorities have not included the centers within the existing legal framework that defines minimum standards for temporary care nor have they established occupancy limits. As a result centers provide widely different conditions, including conditions that fall short of international and national standards. Conditions, practices, and the lack of safeguards against abuse mean that children's rights under national and international law are not being met.<sup>2</sup>

Although these institutions were set up as a temporary response to the sudden arrival of a high number of unaccompanied children, the emergency centers are being used as permanent placements for children. Children's stay in these facilities is not limited and the Canary Islands government has no definite plans to close the centers down. Out of the 25 children we interviewed, 10 had spent more than a year, six more than two years, and two boys had spent more than three years in an emergency center.

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<sup>1</sup> Human Rights Watch, *Unwelcome Responsibilities: Spain's Failure to Protect the Rights of Unaccompanied Migrant Children in the Canary Islands*, vol. 19, no. 4(D), July 2007, <http://www.hrw.org/en/reports/2007/07/25/unwelcome-responsibilities>.

<sup>2</sup> Most children who now live in emergency centers have arrived after 2006, and those who were in centers at the time of our initial research in January 2007 have turned 18 in the meantime and left these institutions. As of March 1, the Canary Islands government was operating six emergency centers for a total of 276 unaccompanied migrant children, all of them boys. In mid-April, it closed the small-scale emergency center in Las Mercedes. The vast majority of unaccompanied migrant children who arrive in the Canary Islands are boys. Migrant girls are not kept in centers for foreign children but are referred to protection institutions for Spanish girls. Three of those centers are large-scale institutions with 50 and more children, accommodating a total of 200 children. In 2007 and 2008, 752 and 813 children arrived, and in 2009, the number of arrivals hit a low with the arrival of only 242 children. In the first three months of 2010, 10 unaccompanied children arrived to the Canary Islands. Email communication from Carmen Steinert Cruz, general director, Child Protection Directorate, Canary Islands government, to Human Rights Watch, March 1, 2010.

Under Spanish law, the Canary Islands government is legally responsible for the care and protection of unaccompanied migrant children.<sup>3</sup> Since it opened emergency centers in 2006, it has simultaneously tried to find permanent solution for children outside the Canaries and pushed for children's transfers to other regions in Spain; the central government of Spain helped broker such transfers.

However, ongoing arrivals after 2006 have kept the number of children in the Canaries high and Canary Islands authorities have kept emergency centers in operation. In 2007 the authorities claimed the archipelago could cope with a maximum of only 300 children. Currently, 250 children are distributed in permanent small group homes where care is generally adequate, on seven different Islands.<sup>4</sup> Rather than provide a permanent solution and adequate care for all unaccompanied migrant children on the Islands, the local government has since kept children above the self-declared limit in the emergency facilities.<sup>5</sup>

When Human Rights Watch documented serious allegations of abuse, sub-standard and overcrowded conditions in these emergency centers in 2007 and called for their closure, the Canary Islands authorities responded that they wanted to close emergency centers. However, they said, the archipelago was overburdened and could not integrate all children, and so the authorities could not close emergency centers unless children were transferred to other parts of Spain with the assistance from the central government. The position of Canary Islands authorities is unchanged, and they continue to call for the urgent transfer of children to other regions of Spain and assistance from the central government.<sup>6</sup>

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<sup>3</sup> As of March 1, 2010, a total of 507 unaccompanied migrant children had been transferred from the Canary Islands to other regions in Spain. Email communication from Carmen Steinert Cruz to Human Rights Watch, March 1, 2010. Adult migrants, in contrast to unaccompanied children, fall under the responsibility of the central government, are detained and may face deportation. Spanish law forbids the detention of unaccompanied migrant children and obliges authorities to refer them to child protection services. Organic Law 2/2009, of December 11, modifying Organic Law 4/2000, of January 11, on the Rights and Freedoms of Foreigners in Spain and their Social Integration (Sobre derechos y libertades de los extranjeros en España y su integración social), art. 35.

<sup>4</sup> Canary Islands authorities stated in public that they could cope with a maximum of 300 children; the current agreement with authorities on the seven Islands provides for care places for a total of 250 unaccompanied migrant children. *Unwelcome Responsibilities*, p. 16. "The Canary Islands Lament the Lack of Rigor in Human Rights Watch's report about Centers for Unaccompanied Migrant Children" (Canarias lamenta la falta de rigor del informe de Human Rights Watch sobre los centros de menores extranjeros), Canary Islands government press release, July 26, 2007, <http://www.gobcan.es/noticias/index.jsp?module=1&page=nota.htm&id=25949> (accessed March 31, 2010).

<sup>5</sup> This limit is the result of an agreement between the Canary Islands government and the government of each of the seven Islands (so-called *cabildo*) determining the number of unaccompanied migrant children that each Island is to provide for.

<sup>6</sup> "The Canary Islands Lament the Lack of Rigor in Human Rights Watch's report about Centers for Unaccompanied Migrant Children" (Canarias lamenta la falta de rigor del informe de Human Rights sobre los centros de menores extranjeros), Canary Islands government press release, July 26, 2007. José Luis Cámara, "The Social Affairs Counselor Demands the 'Urgent' Transfer of Migrant Children" (Bienestar social insta al traslado 'urgente' de menores inmigrantes), *El Diario de Avisos*, January 6, 2009, <http://www.diariodeavisos.com/diariodeavisos/content/248737/> (accessed March 31, 2010).

There have been welcome improvements in emergency centers since our initial visit in 2007. Conditions at Arinaga emergency center in particular have improved, one reason being that fewer children are housed there. Yet with no minimum standards defined, and no occupancy limit governing the functioning of these centers, conditions at Arinaga center may slip back to being overcrowded and substandard, putting children at real risk of violence again.

Authorities should bring the functioning of Arinaga and Tegueste emergency centers into the existing legal framework that limits occupancy levels for children in temporary care to 20 children per institution and the maximum time children may spend in such temporary facilities to 30 days, during which the child's situation is to be assessed and a permanent solution to be identified.

In La Esperanza emergency center, which as of early March housed 100 children, the sub-standard conditions, reported frequent violence, low quality of food, lack of heating and hot water, and the restricted number of blankets per child, violate children's right to protection from violence and may amount to inhuman and degrading treatment, in violation of binding international law. Authorities should close down La Esperanza center as a matter of priority.

Monitoring of the centers by prosecutors and the Child Protection Directorate has improved since our initial research, but oversight remains insufficient. None of the emergency centers offers a functioning confidential complaints mechanism, and children interviewed were largely unaware of where and how to file a complaint. Several children at La Esperanza emergency center were afraid to be interviewed by Human Rights Watch during our visit, saying they feared negative repercussions if they spoke out about conditions.

Large-scale emergency centers hinder children's opportunities for integration into the local community. They contribute to the stigmatization of migrant children by keeping children at a distance from the local community, and the local media regularly highlight violent incidents or alleged criminal behavior of children housed there.

The children's guardianship agency, the Canary Islands Child Protection Directorate, charged with safeguarding children's rights and interests, fails to fulfill its mandate. The Child Protection Directorate is part of the regional government that decides on children's continued placement in emergency centers despite an agreement that the level of care there is inadequate. The guardianship agency also fails to ensure that children are granted their residency rights in accordance with Spanish legislation.

Unaccompanied migrant children are entitled to temporary, renewable residence permits. But all children we interviewed were issued permits that were timed to expire the day they turn 18 years of age. This is a deliberate policy that turns children into irregular migrants the day they have to leave the center. The impact of this policy is severe and means that children almost inevitably will face homelessness, marginalization, and irregular status upon leaving care structures. Without access to lawyers, children are unable to defend their rights, and they are left without avenues to challenge authorities' treatment counter to their rights and interests. Instead, they are dependent on authorities who are mandated to safeguard their rights but fail to do so in practice.

The head of the Canary Islands Child Protection Directorate described emergency centers as "unregulated" and not offering proper care for children. Yet, despite the universal recognition among all interlocutors in the Canary Islands that emergency centers are inadequate, almost four years into their existence, the Canary Islands government still has no definite plan to close them down.<sup>7</sup>

Authorities say the eventual closing of these centers depends on a variety of external factors: that there are fewer arrivals of migrant children; that other regional governments in Spain agree to receive children from the Canary Islands; and that those children due to turn 18 leave centers as expected. If all these conditions are met, we were told, emergency centers would eventually be closed down, unless and until they are needed again.<sup>8</sup> But migratory flows, and the reluctance of other regional governments to take in migrant children from the Canaries, make the confluence of all these factors unlikely for the foreseeable future. Without a concrete plan to close these centers or to bring their function in line with existing minimum standards, unaccompanied migrant children arriving in the Canary Islands are likely to remain in limbo for years to come.

The Canary Islands has demonstrated that it is capable of running a better system. Parallel to emergency institutions, the Islands runs around 25 small-scale centers that offer adequate care and integration opportunities for roughly 250 unaccompanied children.<sup>9</sup>

The Canary Islands government has told Human Rights Watch that it has tried to open additional smaller home-like centers to provide permanent solutions for children but has

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<sup>7</sup> Human Rights Watch interview with Carmen Steinert Cruz, director general, Child Protection Directorate, Canary Islands government, Santa Cruz de Tenerife, February 17, 2010.

<sup>8</sup> Ibid.

<sup>9</sup> Human Rights Watch visited eight such centers on five different Islands in January 2007 and found conditions and care to be generally adequate; *Unwelcome Responsibilities*, pp. 3-6, and 16.



faced resistance from local communities and municipalities.<sup>10</sup> In fact, Canary Islands authorities closed existing smaller centers in Arucas, La Orotava, and Las Mercedes while keeping a substandard and secluded center like La Esperanza up and running.<sup>11</sup> In 2009 the government even requested permission from the Ministry of Interior to open a new large-scale center for 500 children.<sup>12</sup> Such initiatives are not evidence of the Canary Islands' stated intention to improve care for children.

Many interlocutors Human Rights Watch met with in the Islands recognized the difficulties in opening care centers for migrant children but also expressed the view that the local population prefers small home-like residences. And none of them believed that it had been impossible for the Canary Islands authorities to open smaller and better residences.

All interlocutors we spoke to, from employees working in emergency centers to non-governmental organizations and public prosecutors, agreed that the local government deliberately keeps children in emergency centers. Some were of the view that emergency centers are used as a strategy to keep up pressure on the central government in Madrid, to claim the archipelago is overburdened, and to continue demanding children's transfer to other regions of Spain.<sup>13</sup>

The central government in Madrid has helped the Canary Islands negotiate the transfer of hundreds of children to other autonomous communities in Spain, and it has made substantial financial contributions to the Canary Islands child protection system. In 2009, it covered more than half of the archipelago's €26 million budget for unaccompanied migrant

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<sup>10</sup> Contrary to emergency centers, these small-scale home-like centers are managed by the Islands authorities, and not directly by the Canary Islands Child Protection Directorate. Islands authorities agreed with the Canary Islands government to provide for the protection of a total of 250 children and they manage care centers for children on their respective islands. Email communication from Carmen Steinert Cruz to Human Rights Watch, March 1, 2010. For an overview of the division of responsibilities for child protection in the Canary Islands see: *Unwelcome Responsibilities*, pp. 22-25, and 89-93.

<sup>11</sup> We asked the head of the Child Protection Directorate why existing small centers had been closed down while La Esperanza emergency center continued to operate. We have not received a response to our question by the time this report went to press. Email communication from Human Rights Watch to Carmen Steinert Cruz, March 9, 2010.

<sup>12</sup> Miguel Ángel Autero, "The Canary Islands asks the Interior Ministry to open Las Canteras for Children" (Canarias pide a interior abrir Las Canteras para los menores), *La Opinión*, January 8, 2009, [http://www.laopinion.es/secciones/noticia.jsp?pRef=2009010800\\_9\\_191927\\_\\_SOCIEDAD-Canarias-pide-Interior-abrir-Canteras-para-menores](http://www.laopinion.es/secciones/noticia.jsp?pRef=2009010800_9_191927__SOCIEDAD-Canarias-pide-Interior-abrir-Canteras-para-menores) (accessed March 31, 2010).

<sup>13</sup> A local journalist concluded in early January 2009 that Canary Islands authorities have an interest in highlighting violent incidents in emergency centers as a means of pressure on the central government: José Luis Cámara, "The Social Affairs Counselor Demands the 'Urgent' Transfer of Migrant Children" (Bienestar social insta al traslado 'urgente' de menores inmigrantes), *El Diario de Avisos*, January 6, 2009.

We asked the head of the Child Protection Directorate why existing small centers in Arucas and La Orotava had been closed down while La Esperanza emergency center continued to operate. We had not received a response to our question by the time this report went to press. Email communication from Human Rights Watch to Carmen Steinert Cruz, March 9, 2010.

children.<sup>14</sup> While Spain's support to a region that faces an increasing migration pressure is important, the Spanish government has an obligation under international law to ensure that all children on its territory are protected from violence and granted a level of care that ensures their adequate development. The central government in Madrid therefore also shares the responsibility to ensure the closure of emergency centers in the Canary Islands or their alignment with established minimum standards, in so far as they currently fail to meet the standards of protection and care owed to children.

Human Rights Watch urges the Canary Islands to immediately commit to the closing of La Esperanza emergency center as a matter of priority. Due to the substandard infrastructure, its size, and its isolated location, it is inadequate as a care center to ensure children's well-being, even for short periods.

The Canary Islands should further bring all remaining emergency centers in line with applicable minimum standards (as laid out in Decree 40/2000) and transform them either into small-scale homes for extended stay or into short-term facilities in which a permanent solution for the child is identified within 30 days.

The Spanish central government should link its financial contribution to the Canary Islands child protection system and its role as negotiator for children's transfers to other regions to a policy designed to end the use of emergency centers in the Canary Islands and to align the functioning of all centers for unaccompanied migrant children with established minimum standards. Detailed recommendations are provided at the end of this report.

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<sup>14</sup> The central government paid €15 million into the budget of the Canary Islands child protection system in 2009, compared to €4 million in 2008. Human Rights Watch meeting with Carmen Steinert Cruz, February 17, 2010 and email correspondence from Carmen Steinert Cruz to Human Rights Watch, March 1, 2010.

## II. Methodology and Terminology

This report examines the situation for unaccompanied migrant children in three large-scale emergency centers in the Canary Islands. It follows up on comprehensive research conducted on the Islands in January 2007, published in a July 2007 report: “Unwelcome Responsibilities: Spain’s Failure to Protect the Rights of Unaccompanied Migrant Children in the Canary Islands.”

Human Rights Watch visited the emergency centers of Tegueste and La Esperanza wing one and two on Tenerife Islands, and the emergency center of Arinaga (also known as Agüimes center) on Gran Canaria Islands between February 17-22, 2010. We interviewed a total of 25 unaccompanied migrant children in- and outside these centers. All interviews were conducted in private, and where necessary, with the help of interpreters. We also interviewed two former and two current staff members of emergency centers.

This report does not include a detailed assessment of conditions for unaccompanied migrant children in smaller emergency centers and in regular reception centers, so-called CAMEs (*centros de acogida para menores extranjeros*). We visited a large number of CAMEs in 2007, and found conditions in those centers to be generally satisfactory. We did not visit smaller emergency centers for this report but spoke to children who had been housed there.

The children we interviewed were boys, between ages 15 and 17. One boy had turned 18 three days before we met him and was awaiting the decision to leave the center. Children we spoke to originated from the following countries: Guinea-Conakry, Ghana, Mali, Senegal, Morocco, Western Sahara, Ivory Coast, and Mauritania. To protect their identity we have changed their names and withheld the date and place of the interview.

We met with the general director of the Canary Islands Child Protection Directorate, and with children’s prosecutors for Santa Cruz de Tenerife and Gran Canaria provinces. We further sent a letter to the State Secretariat for Immigration and Emigration in Madrid, and exchanged communication with the Spanish Ombudsman. We also met with several non-governmental organizations working with migrants and refugees in the Canary Islands.

In line with international instruments and Spanish law, in this report the term “child” refers to a person under the age of 18.<sup>15</sup> For the purpose of this report, we use the term “unaccompanied child” to describe both unaccompanied and separated children as defined by the Committee on the Rights of the Child:

“Unaccompanied children” are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. “Separated children” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.<sup>16</sup>

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<sup>15</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Spain on December 6, 1990, art. 1. Organic Law 1/1996, on the Legal Protection of the Child (de Protección Jurídica del Menor), *Boletín Oficial del Estado*, no. 15, art. 1.

<sup>16</sup> UN Committee on the Rights of the Child, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin,” General Comment No. 6, UN Doc. CRC/GC/2005/6 (2005), paras. 7-8.

### III. Conditions at La Esperanza, Tegueste, and Arinaga Emergency Centers

The three large-scale emergency centers in the Canary Islands that currently house 50 or more children—La Esperanza, Tegueste, and Arinaga—put children at increased risk of violence and limit children’s opportunities for integration into the local communities.

There are systemic factors that increase the risk for children in these three emergency centers to experience violence: the absence of an occupancy limit for emergency centers; the lack of confidential complaints mechanisms; and insufficient monitoring and oversight (these issues are discussed in the section on insufficient safeguards against ill-treatment).

In the case of La Esperanza center, the risk of violence for children is immediate. Substandard conditions mean that children housed there are kept in an environment that violates their right to protection from all forms of violence, and to a standard of living adequate for their development.<sup>17</sup>

For decades, studies have shown the inadequacy of institutions and have underscored the risk of violence for institutionalized children.<sup>18</sup> Large-scale and isolated facilities in particular put children at risk of ill-treatment, including from their peers; industrialized countries in Western Europe and North America have deliberately moved away from this kind of care.<sup>19</sup> Sub-standard conditions in institutions, in themselves a potential violation of children’s rights, are reflective of the low level of importance accorded to institutionalized children, which also manifests itself in inadequate staffing, poorly trained and motivated employees, and lack of oversight.<sup>20</sup>

As of March 1, 2010, the three largest emergency centers in the Canary Islands accommodated a total of 201 children. La Esperanza center on Tenerife was home to 100

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<sup>17</sup> CRC, arts. 3, 19, and 27.

<sup>18</sup> For a discussion and overview of findings regarding the risk of violence for children in institutions see Paulo Sérgio Pinheiro, *World Report on Violence against Children* (Geneva: United Nations, 2006), pp. 171-230.

<sup>19</sup> *Ibid.*, p. 183.

<sup>20</sup> *Ibid.*, p. 180-182.

children; Tegueste center on the same Island accommodated 48 children; and Arinaga center on Gran Canaria housed 53 children.<sup>21</sup>

Some important improvements have taken place within the past three years since Human Rights Watch first visited these facilities. Conditions at Arinaga center have improved, largely because fewer children are housed there. Also, children now generally enjoy access to education and vocational training opportunities outside their centers, and emergency centers facilitate children's rapid insertion into training programs through language classes starting right after their arrival.

That notwithstanding, emergency centers in the Canary Islands are operated outside regulated minimum standards. There are no occupancy limits for these centers, and their size and location is not conducive for children's integration.

In contrast, legal minimum standards for small-scale residencies, so-called CAMEs (centros de acogida para menores extranjeros), where 250 unaccompanied children are currently accommodated, prescribe a limit of no more than 10 children in a single center, and that these homes be located in or close to populated areas.<sup>22</sup> Next to CAMEs, Canary Islands legislation also regulates minimum standards for centers that provide urgent and temporary placements, so-called centers for immediate placements (CAI, centros de acogida inmediata). The objective of these centers is to provide immediate protection, for the time strictly necessary, in order to assess the child's individual situation and to determine the best protection measures. The occupancy limit in these centers is 20, and children's stay is to be limited to 30 days.<sup>23</sup>

## Emergency Centers Restrict Children's Integration Opportunities

Children housed in large-scale facilities face obstacles to their integration into the local community, both economically and socially. Children's institutionalization has been

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<sup>21</sup> Email communication from Carmen Steinert Cruz to Human Rights Watch, March 1, 2010. As of March 1, 2010, the following smaller centers were also classified as emergency centers: the emergency center in Icod de Los Vinos on Tenerife housed 34 children; the emergency center in Las Mercedes on Tenerife housed 25 children; and the emergency center in Salto del Negro on Gran Canaria was home to 16 children. Canary Islands authorities closed the center in Las Mercedes in mid-April.

<sup>22</sup> Decree 40/2000, of March 15, Approving the Reglementation for the Organization and Functioning of Attention Centers for Children in the Canary Islands (por el que se aprueba el reglamento de organización y funcionamiento de los centros de atención a menores en el ámbito de la Comunidad Autónoma Canaria), arts. 17-20. Human Rights Watch visited numerous CAMEs during our 2007 research and found conditions, with few exceptions, to be satisfactory. See *Unwelcome Responsibilities*.

<sup>23</sup> *Ibid.*, arts. 13-16.

described by UNICEF as the most widely-used mechanism of social exclusion, and institutions are seen as an inadequate setting to promote life within society.<sup>24</sup>

Various serious incidents in emergency centers that are regularly reported in the local press reinforce a negative image of these children and contribute to children's stigmatization. Incidents highlighted in the local media over the past two years have included the sexual assault of a boy by two other boys in Icod emergency center; a presumed stabbing attack by a boy from La Esperanza center; the death of a child in La Esperanza who fell from the second floor; and a series of violent attacks by children at Tegueste center.<sup>25</sup>

In February 2010, according to local media reports, the center director, and the head of the child protection services, approximately 30 local residents living in the neighborhood around Arinaga emergency center ended up in a fight with three boys from the center. After other children ran out to help their peers the fight developed into a major scuffle that left three children injured.<sup>26</sup> As a result, children told us, their permission to leave the center and go into the local neighborhood was suspended for their own safety and they had to be transported in cars from the center to their destination.<sup>27</sup> The incident prompted the office of the public prosecutor to call on the public not to stigmatize children in the center, according to a local newspaper report.<sup>28</sup>

The presence of three emergency centers around the town of La Laguna on Tenerife Island resulted in a complaint by the town of La Laguna about the presence of large numbers of

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<sup>24</sup> United Nations Fund for Children (UNICEF), *Children in Institutions: The Beginning of the End?* (Florence: Innocenti Research Center), pp. v-vi.

<sup>25</sup> EFE, "Two Children Detained for Sexual Assault against a Subsaharian Child in Icod" (Detenidos dos menores por agresión sexual a un niño subsahariano en Icod), *El Día*, April 27, 2008; News Agencies, "A 17-year-old Child is Detained in La Laguna over Stabbing" (Un menor de 17 años es detenido en La Laguna acusado de apuñalamiento), *La Opinión*, July 30, 2009; EFE, "A Migrant Child in Serious Conditions after Falling from Window in a Tenerife Center" (Un menor inmigrante, grave tras caerse de una ventana en un centro de Tenerife), *Canarias 7*, October 19, 2008; Pedro Fumero, "Complaint about Food Provokes Fight in Tegueste Center for Migrants" (La queja por la comida provocó la pelea en el centro de extranjeros de Tegueste), *El Día*, October 27, 2009; B. Molina, "Three Fights in Tegueste Center in Only One Week" (Tres altercados en el centro de Tegueste en sólo una semana), January 28, 2009; Pedro Fumero, "Moroccan Child Dies Due to Fall at Nivaria Center" (Muere en el hospital el menor magrebí que sufrió una caída grave en Nivaria), *El Día*, February 14, 2010.

<sup>26</sup> Human Rights Watch interview with Gabriel Orihuela, director, Arinaga center, February 21, 2010; with Carmen Steinert Cruz, director general, Child Protection Directorate, Canary Islands Government, Santa Cruz de Tenerife, February 17, 2010; EFE, "Migrant Children and Neighbors Fight with Sticks and Stones" (Inmigrantes menores y vecinos se pelean con palos y piedras), *El Día*, February 2, 2010; Europa Press, "Three Migrant Children from Arinaga Center Charged Over Violent Incident with Neighbors" (Imputados tres menores del centro de inmigrantes de Arinaga por un enfrentamiento con vecinos), *Canarias 7*, February 4, 2010.

<sup>27</sup> This violent incident occurred despite various initiatives by the director of Arinaga center to promote children's integration into the local neighborhood, such as the painting of houses with local residents.

<sup>28</sup> Europa Press, "Three Migrant Children from Arinaga Charged for Violent Encounter with Neighbours" (Imputado tres menores del centro de inmigrantes de Arinaga por un enfrentamiento con vecinos), *Canarias 7*, February 4, 2010.

migrant children.<sup>29</sup> It led centers to restrict the number of children who are granted autonomous leave. Children at La Esperanza wing one for example told us that only 20 children, one fourth of all children, were eligible for autonomous leave on a weekend day.<sup>30</sup>

Children may spend years in emergency centers before leaving them, either upon turning 18, or because they are transferred to smaller homes either in the Canaries or in other regions of Spain. Out of the 25 children we interviewed in the three largest emergency centers, 10 have spent more than a year, six more than two years, and two boys had spent more than three years in an emergency center.

The consequences of children's limited integration opportunities are serious. They are more likely to be without a work contract or housing after turning 18 and upon leaving the center, both requirements to renew their temporary residence permits and secure a regular status after they turn 18. Although some center staff try to help children find jobs before they leave the center, the isolated location of these centers restricting interaction with the local community, the large number of children in a single facility, and the limited job opportunities available within the vicinity of such big centers, makes their task daunting. Without a job and a place to live, children are unable to renew their temporary residence permits. As a result, children leaving these centers at the age of 18 almost inevitably end up living on the streets and without legal status (these consequences are discussed further in the section about the lack of effective guardianship and access to legal representation).

### **Substandard Conditions at La Esperanza Emergency Center**

The worst emergency center in terms of infrastructure, size, and location is La Esperanza center, the formerly abandoned juvenile detention center "Nivaria" on Tenerife Island. Tucked away in the woods leading up to Mount Teide, at more than 900 meters above sea level, it is shielded from populated areas and far from public transportation. At the time of our visit, the vast facility was separated into two different wings, each managed by a different director. After our visit in late February, wing two was shut down and children were transferred to wing one, or Tegueste and Arinaga emergency centers. As of March 1, 2010, wing one hosted 100 children after wing two was shut down.

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<sup>29</sup> Human Rights Watch interview with Manuel Campos, children's prosecutor, Santa Cruz de Tenerife, February 18, 2010; with Caroline Miranda, director of la Esperanza emergency center, February 18, 2010.

<sup>30</sup> Besides autonomous leave, children can leave in groups and accompanied by center staff with transportation offered by the center. One boy told us the center car takes children to places with few tourists not to create too much attention. Human Rights Watch interview with Mohamed S. (exact date and place withheld).



Human Rights Watch found few changes to the infrastructure compared to our first visit three years ago. Staff and children alike told us that they suffer from pervasive cold during the winter months, and there is a non-stop cold draft running through the center's corridors. The center was extremely cold the day of our visit.<sup>31</sup> Some window panes in wing two were missing on the day of our visit, which exacerbated the lack of protection against the cold. "With the exception of three months in summer, nights are cold," one staff who works at La Esperanza told us.<sup>32</sup>

Children told Human Rights Watch that they were so cold that it prevented them from sleeping at night. "I am cold. Sometimes I don't sleep because it's cold," a 15-year old boy told us.<sup>33</sup> According to several children interviewed, they are given two sheets and one blanket and one staff told us that they are not supposed to give children a second blanket.<sup>34</sup> Several children told us they would not get a second blanket even if they asked for it:

It is very hard, especially in the winter ... of course I'm cold at night. I have one blanket ... there is no point to ask for another blanket. They won't give it to you. nobody has two blankets.... Sometimes it's so cold you can't sleep.<sup>35</sup>

It's very cold here, because we're in the mountains. It's permanently cold.... At night I'm cold. I have two sheets and one blanket and another sheet. I have one blanket only. That is what they gave to everybody. That's the rule. You're so cold you use the sheet as a blanket. We put on warm clothes before we go to sleep.<sup>36</sup>

Toilets and showers are very basic. Although the center director assured us that there was constant hot water, several children said that there was only hot water for the handful of children who shower first in the morning.

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<sup>31</sup> One boy who was transferred from La Esperanza to the emergency center of Las Mercedes told us that he suffered sometimes as much from the cold in Las Mercedes center as in La Esperanza. Human Rights Watch interview with Lakh S. (exact date and place withheld).

<sup>32</sup> Human Rights Watch interview with staff of La Esperanza center (name, date, and place of interview withheld).

<sup>33</sup> Human Rights Watch interview with Saliou N. (exact date and place withheld).

<sup>34</sup> Human Rights Watch interview with staff of La Esperanza center (name, date, and place of interview withheld).

<sup>35</sup> Human Rights Watch interview with Moussa P. (exact date and place withheld).

<sup>36</sup> Human Rights Watch interview with Yunus B. (exact date and place withheld).

The water is cold. Those who are courageous shower with cold water. I can only shower when there's hot water. There's hot water only for the first children who shower ... afterwards it's cold.... Sometimes I don't shower because the water is already cold.<sup>37</sup>

One staff member told us that it was impossible for employees to make sure all children regularly took showers and observe personal hygiene.<sup>38</sup> A former staff member told us: "Hygiene is a problem. Children are far from their families, they have many problems. They neglect themselves. Some educators<sup>39</sup> are not prepared to talk to them in an adequate manner. They tell a child 'you stink, black guy, wash yourself!' They don't talk to them in a good way. It's normal that these children forget and neglect themselves."<sup>40</sup> Despite a striking omnipresence of cleaning ladies the day of our visit to the center, the date of which was arranged in advance, one staff member told us that there are generally few staff in the center, including cleaning personnel, and that the cleanliness was insufficient when the center is overcrowded.<sup>41</sup> One child also told our interpreter that center walls had been painted before our visit.

Individual rooms for children are bleak. Each room houses between two and eight children in bunk beds. Children's rooms do not contain desks. The center runs a locker room where children can leave and withdraw their personal belongings during fixed hours, a change since our last visit. But children still have nowhere to lock up their personal belongings inside their rooms and risk having them stolen if they leave them there. The center contains three barren and windowless classrooms for language classes on the ground floor next to a walled-in concrete courtyard.

The quality of food from a local caterer appears to have improved somewhat from three years ago when children reported regular and severe food poisoning and stomach problems.<sup>42</sup> Although the center director assured us that the catering company prepares meals for local schools and that the quality of meals is the same and supervised by dieticians, what we learnt suggests that there are ongoing concerns. "The food is not good. Generally, they

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<sup>37</sup> Human Rights Watch interview with Yunus B. (exact date and place withheld).

<sup>38</sup> Human Rights Watch interview with staff of La Esperanza center (name, date, and place of interview withheld).

<sup>39</sup> The term "educator" (*educador*) refers to general staff working in residential centers, and not those who provide education for children in centers.

<sup>40</sup> Human Rights Watch interview with former staff of La Esperanza center (name, date, and place of interview withheld).

<sup>41</sup> Human Rights Watch interview with staff of La Esperanza center (name, date, and place of interview withheld).

<sup>42</sup> *Unwelcome Responsibilities*, pp. 76-78.

sometimes serve you food that is no longer good. It happened one of these days. That day nobody ate,” 17-year-old Yunus B. told us.<sup>43</sup> He was not alone in criticizing the food served at the center. Both a former and a current staff member voiced concern over the quality of meals served and told us that they stopped eating the food after falling ill.

Many times we saw food [that seemed bad] and based on what children tell us it’s not really edible. I used to eat [in the center] but after I got sick I stopped. I got sick once.... Some educators eat it but they can choose what to eat.<sup>44</sup>

The food is of very low quality. It’s very bad. I sometimes ate it but even my body sometimes threw it up.... Each time I ate that food I had stomach problems. I felt it was not good for me.<sup>45</sup>

Among positive developments, the center offers training opportunities outside, which include computer courses, carpentry, and training as electricians or kitchen aide. The director told us that some children are members of a local soccer club. Due to the high number of children present in the center, however, such opportunities are limited. Wing one also offers one room for religious services. Some children only follow educational courses inside the center, limited to Spanish language classes. The center director told us that some had to leave local schools, including because they repeatedly skipped classes and caused disruption.<sup>46</sup>

The following accounts by two children who are not enrolled in training programs outside the center are a strong indication that children at La Esperanza are submitted to collective routines rather than being offered an environment that responds to their individual needs, fosters their autonomy or responsibility, and their reinsertion into training programs.

I feel imprisoned. There are many rules and I don’t feel free. In the morning we wake up at nine and have breakfast. Then they put us down in the

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<sup>43</sup> Human Rights Watch interview with Yunus B. (exact date and place withheld).

<sup>44</sup> Human Rights Watch interview with staff of La Esperanza (name, date, and place of interview withheld).

<sup>45</sup> Human Rights Watch interview with former staff of La Esperanza (name, date, and place of interview withheld).

<sup>46</sup> Human Rights Watch interview with Carolina Miranda, director of la Esperanza emergency center, February 18, 2010.

courtyard. They lock us outside there until 1pm or 1.30 pm. I'm not motivated to learn Spanish.... When you are locked up what do you learn?<sup>47</sup>

I wake up at 9am and have breakfast at 10am. Then I go down to the courtyard. They lock us out in the courtyard and nobody can go inside.<sup>48</sup>

## **Tegueste and Arinaga Emergency Centers**

Conditions at Tegueste emergency center are better compared to La Esperanza. Tegueste center is located on the outskirts of the village of the same name. Children live in communal rooms with one toilet and shower for eight children in the room. Rooms for children contain no desks and there is no room in the center that offers children a place to study. The center offers a small fenced-in courtyard and has an overgrown patio next to it. Contrary to La Esperanza center, and improved from our visit there three years ago, food at Tegueste center is prepared in the center, and children did not raise any complaints about the quality or quantity of the food served there. Tegueste center was home to 48 unaccompanied migrant children on March 1, 2010.

Arinaga emergency center, which was home to 53 children as of March 1, 2010, is located 20 kilometers from Las Palmas, in an industrial area next to a highway and close to a neighborhood of Agüimes municipality. Conditions at the center have improved remarkably since our visit there three years ago. The center has opened a computer room, a small library to borrow books or board games, a study room, a gym, and it has transformed the outside and back area into a pretty garden area. It continues to prepare food in the center and also offers laundry service. Rooms contain bunk beds for up to eight children who share a common bathroom. Due to the low occupancy level, children were distributed in fewer numbers per room across the center. Children can keep their belongings safe in closets inside their rooms. The center has a fenced-in concrete courtyard and offers an adjacent barrack for religious services.

Both centers, if brought in line with established minimum standards on occupancy and time limit, and after addressing the lack of sufficient safeguards against ill-treatment (as will be discussed in following sections), would be adequate for the short-term accommodation of unaccompanied migrant children.

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<sup>47</sup> Human Rights Watch interview with Ahmad R. (exact date and place withheld).

<sup>48</sup> Human Rights Watch interview with Mohamed S. (exact date and place withheld).

## Violence in emergency centers

Our visit to the three largest emergency centers confirmed that substandard and overcrowded conditions often foster peer violence, and that the higher the number of children housed in an institution, the greater the risk.

Arinaga center housed 38 children at the time of our visit, and 10 children were in the process of being admitted from La Esperanza. Children told us in private interviews that there were no fights among children nor arguments with staff. One child summed up the situation as: “Everybody goes after his own business, we’re all busy.” Yet, these same children had seen Arinaga center with more than 100 or even close to 200 children and said there had been a completely different atmosphere at that time.

When there were a many there were a lot of fights—now it’s going well.<sup>49</sup>

I have been here for six months. [before] it was a disaster; we were 200 boys.... It was tense, there were many fights and escapes.<sup>50</sup>

Now it’s better here. Before there were many and there was a lot of noise... before there were only fights. I was involved in fights myself [because] they made fun of me. Mainly the difference is that there are fewer children and those who made trouble have left. We were 180 children at the beginning.<sup>51</sup>

There were 198 boys here. It changed slowly.... It was different then. It was difficult with a lot of sanctions. Really, it was difficult. It can’t be the same when there are only 20. There were many conflicts among children.<sup>52</sup>

Similarly, 17-year-old Zubair F. told us about Tegueste center: “when there were 140 or 150 [children] here there were fights almost every day.”<sup>53</sup>

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<sup>49</sup> Human Rights Watch interview with Ousmane A. (exact date and place withheld).

<sup>50</sup> Human Rights Watch interview with Abdul R. (exact date and place withheld).

<sup>51</sup> Human Rights Watch interview with Rashid D. (exact date and place withheld).

<sup>52</sup> Human Rights Watch interview with Papis T. (exact date and place withheld).

<sup>53</sup> Human Rights Watch interview with Zubair F. (exact date and place withheld).

There are no established maximum occupancy levels for emergency centers. In the absence of minimum standards to govern the functioning of emergency centers, nothing prevents the centers from again becoming overcrowded and conditions from deteriorating in the future.

La Esperanza emergency center in contrast is characterized by a tense atmosphere with reports of widespread violence among children, recurring theft, routine sanctioning of children for breaking center rules, drug abuse, and in some instances, conflict with staff. One staff member described the atmosphere in the center as “too tense”.<sup>54</sup>

Children at La Esperanza told us that fights with peers were frequent and that educators regularly had to intervene to separate children attacking one another. Children described in detail how staff react in cases of violence and immobilize, separate, and calm down aggressive children. One child felt such interventions were humiliating, but children did not allege violent behavior by staff.

Recently, one boy had problems with an educator. They don't try to understand who's right and just came and took the boy. They were four and took him from the back and made him fall. They sat on him to immobilize him. I was so angry I threw myself on the educators. They neutralized me and took me here.<sup>55</sup>

Children's descriptions of the climate at La Esperanza center differed strongly from those of Tegueste emergency center, where we received fewer reports of peer violence, and from those gathered at Arinaga emergency center, where we did not receive any current reports of violence inside the center.

According to children interviewed, a frequent cause for violence at La Esperanza center is theft. Children told us that their mobile phones, money, or clothes were stolen. The absence of lockers inside children's rooms at the center makes it impossible for children to keep their belongings safe at all times. Although La Esperanza center has a central locker room where children can deposit and fetch belongings during fixed hours, they naturally do not keep all of their belongings there, such as clothes, mobile phones, or personal effects.

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<sup>54</sup> Human Rights Watch interview with a staff member of La Esperanza center (name, date, and place of interview withheld).

<sup>55</sup> Human Rights Watch interview with Yunus B. (exact date and place withheld).

Another contributing factor to violent incidents at La Esperanza center is an apparent policy of transferring difficult and disruptive children from other centers to la Esperanza. Several children told us that they had been transferred there after they “behaved badly”.

A staff confirmed to us this practice. “Children who are difficult were always sent [to La Esperanza]. My colleagues have the same impression. Maybe they suppose we are better prepared [but] it is a lot more difficult to integrate children once they are in contact with a group who behaves badly.... and they themselves know they are sent to a worse center.”<sup>56</sup>

The center director of La Esperanza’s wing one acknowledged a high presence of difficult children. She estimated that out of 79 children who were in wing one on the day of our visit, 10-15 children regularly demonstrate disruptive behavior and 30-40 kids displayed such behavior from time to time.<sup>57</sup>

One former and one current staff member of La Esperanza center suggested that some of their colleagues did not always behave professionally in situations of conflict, with their actions helping to escalate tension rather than defuse it.<sup>58</sup>

There are educators who shouldn’t work there; some because they are very aggressive and some because they are very defensive towards children. Children always provoke or insult you, and some educators lose their nerves and react.... Some educators entered with the spirit they could give orders. They found themselves [out of the job and] on the streets; that happened very quickly.<sup>59</sup>

[Some] educators are not trained to work there. Communication is also difficult. Sometimes educators are not professional, are not mature enough; they don’t know how to control a situation. Generally, many children are very quiet. The problem starts when an educator is yelling at children; children remain quiet, but the educator continues. Then at some point children

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<sup>56</sup> Human Rights Watch interview with a staff member of La Esperanza center (name, date, and place of interview withheld).

<sup>57</sup> Human Rights Watch interview with Carolina Miranda, director of La Esperanza emergency center, February 18, 2010.

<sup>58</sup> The prosecutors on Gran Canaria shared concerns that staff may not always be well prepared or trained for their work. Human Rights Watch interview with Montserrat García Díez, prosecutor for children (fiscal de menores), and with Guillermo García-Panasco Morales, chief prosecutor (fiscal jefe), Las Palmas de Gran Canaria, February 22, 2010.

<sup>59</sup> Human Rights Watch interview with a staff member of La Esperanza center (name, exact date and place of interview withheld).

explode as well.... I saw several times verbal aggressions, [educators] calling children niggers; but I never saw an educator hit anybody.<sup>60</sup>

Drug abuse, and specifically the inhalation of paint thinner fumes by Moroccan children appears to be a problem in all emergency centers we visited, but particularly in La Esperanza. One staff member of La Esperanza told us in February that drug abuse, although a recurring phenomenon at the center, had been out of control in recent months. In his view, the behavior of children who inhaled such fumes was affected by the drug, and they often turned violent.<sup>61</sup>

Frequent episodes of violence also take their toll on staff who work there and who need to confront sometimes dangerous and violent situations that involve weapons. Paid very little, working in changing shifts, and according to staff, with no legal overtime pay, and in the same substandard conditions as children, La Esperanza neither offers an acceptable environment for children to live in, nor an environment where staff can apply their skills and commitment.<sup>62</sup>

The way staff administer sanctions appears to be one reason for conflicts among children and staff in the center. Many children were of the view that sanctions were applied unfairly and arbitrarily. Examples of behavior that was sanctioned included: refusal to carry out assigned tasks; non-respect of rules; violence; smoking; drug abuse; unauthorized leave; insults; threats; theft. Sanctions range from work assignments in the center such as cleaning or helping with a task, the withholding of pocket money or phone cards, and restriction of leave. For serious acts of violence, children may be reported to judicial authorities and police.<sup>63</sup>

Sometimes [educators] come and order you to clean [in the center] and if you refuse they sanction you and cut your pocket money. They look for a pretext to cut your money.... There were children here who were treated in such an

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<sup>60</sup> Human Rights Watch interview with a former staff member of La Esperanza center (name, date, and place of interview withheld).

<sup>61</sup> Human Rights Watch interview with staff of La Esperanza center (name, date, and place of interview withheld). The director of Arinaga center told us that drug abuse was a recurring phenomenon in his center. He has set up a project and sends children to local programs for drug-consuming youths. Human Rights Watch interview with Gabriel Orihuela, director, Arinaga center, February 21, 2010.

<sup>62</sup> According to a former and current staff, educators at La Esperanza emergency center earn 860 Euros per month. One staff told us they do not receive extra pay for shifts at night or on weekends. Human Rights Watch interviews with former and current staff of La Esperanza center (names, dates, and places of interview withheld).

<sup>63</sup> At the time of our visit, 14 children had been sent to juvenile detention center in Tabares valley.



unjust way. I was very angry about that. What hurts me is the provocation to look for problems. They find trivial reasons to sanction you and I find that unfair and it hurts me ... For example, they draw up a list for cleaning. If they want to provoke you they put you on the list earlier. If you protest they argue and you get sanctioned.<sup>64</sup>

I once returned at 3pm in the afternoon and asked [a staff member] to open the room to get my jacket. He refused. I started fighting and he fought back and another educator intervened. They called the police and denounced me. I also got my pocket money cut.<sup>65</sup>

We were not in a position to determine whether the sanctions were indeed applied unfairly and recognize that centers need to have rules to ensure proper functioning. Not all children interviewed were of the view that sanctions are generally unjustified. However, we received a large number of complaints about unfair and excessive sanctioning at La Esperanza center, in stark contrast to Arinaga center, for example, where the majority of children felt that sanctions were applied fairly: “Here, they sanction you in a just way,” a 17-year-old boy described the sanctions regime there.<sup>66</sup>

Both a former and a current staff member at La Esperanza shared children’s assessment that sanctions in the center were not always applied fairly. One told us:

There are many injustices [in the way sanctions are applied]. Some educators cut pocket money for too long ... educators often want to impose sanctions and some cut pocket money for insults.... Some children have a long history of offenses but they did not go to Tabares (juvenile detention facility); others went very quickly to Tabares even though they hardly did anything.... Recently some children went to Tabares but they didn’t deserve it, in comparison to others.<sup>67</sup>

Several times they sanctioned [children] in an unjust manner.<sup>68</sup>

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<sup>64</sup> Human Rights Watch interview with Yunus B. (exact date and place withheld).

<sup>65</sup> Human Rights Watch interview with Saliou N. (exact date and place withheld).

<sup>66</sup> Human Rights Watch interview with Papis T. (exact date and place withheld).

<sup>67</sup> Human Rights Watch interview with staff of La Esperanza (name, date, and place of interview withheld).

<sup>68</sup> Human Rights Watch interview with a former staff member of La Esperanza (name, date, and place of interview withheld).

Our interviews suggest that there is a lack of trust between children and staff at La Esperanza and a sense of bitterness among children stemming from the sanctions regime at La Esperanza. Many were particularly upset about the cutting of pocket money as a sanction as they tried to save that money for the day they leave the center to join friends or family members and to avoid immediate homelessness. With few exceptions, children told us they did not trust any staff in the center and said they generally avoided talking to staff, including about their problems.

I don't trust anybody. Sometimes [staff] come and ask me whether I have problems and if I'm well. I don't want to tell them about my problems. It's not worth telling them. They won't solve them, so why should I tell them?<sup>69</sup>

As an example of good practice, the director of Arinaga issued guidelines to staff to ensure staff apply sanctions in a proportionate and fair manner and generally recommended that staff apply sanctions in the form of work rather than the cutting of pocket money.<sup>70</sup>

## **International Obligations Regarding Children in Care**

States are obliged under international law to provide special protection and care for children deprived of a family environment and to take into account children's best interests as a primary consideration. They must also ensure that institutions responsible for the care of children conform with established standards in the areas of safety, health and suitability, and they must periodically review the treatment of children placed in state care.<sup>71</sup>

Under the International Covenant on Civil and Political Rights (ICCPR), the European Human Rights Convention, as well as the Convention on the Rights of the Child, states must also protect persons from inhuman or degrading treatment.<sup>72</sup>

The Canary Islands authorities' decision to house unaccompanied migrant children in emergency centers that operate outside established minimum standards, that limit children's integration opportunities, and where children are exposed to an increased risk of

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<sup>69</sup> Human Rights Watch interview with Moussa P. (exact date and place withheld).

<sup>70</sup> Human Rights Watch interview with Gabriel Orihuela, director, Arinaga emergency center, February 21, 2010.

<sup>71</sup> CRC, arts. 3(1)(3) and 25.

<sup>72</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Spain on April 27, 1972, art. 7. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 213 U.N.T.S. 222, entered into force September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, ratified by Spain on October 4, 1979, art.3. CRC, art. 37(a).

violence, runs contrary to its duty to ensure children a level of care adequate for their development and in their best interests.<sup>73</sup> The accommodation of 100 children in substandard conditions at La Esperanza emergency center for prolonged periods of time, furthermore, may amount to inhuman and degrading treatment.<sup>74</sup>

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<sup>73</sup> CRC, arts. 20, 19, and 27.

<sup>74</sup> The Council of Europe's Committee for the Prevention of Torture (CPT) assessed conditions for unaccompanied migrant children at La Esperanza emergency center in September 2007, as part of its periodic visit to Spain. The Spanish government to date has not agreed to make the CPT's report public.

## IV. Insufficient Safeguards against Ill-Treatment

As highlighted in the previous section, the risk of violence continues to exist for children housed in Tegueste and Arinaga emergency centers in the Canary Islands, in particular because of no occupancy limit. Peer violence is a real and present risk for children in La Esperanza emergency center. Our 2007 research into these emergency centers not only brought to light widespread and severe allegations of ill-treatment, in addition, we documented an absence of effective oversight by responsible bodies.<sup>75</sup>

Monitoring of emergency centers has improved since our last visit but not to a satisfactory level. A commendable move was the separation of younger children from their older peers with the opening of a center at Icod de los Vinos exclusively for children below age 16. But this policy was apparently abandoned when authorities closed a nearby center and transferred children who were all 16 and 17 years old to the center in Icod. The center is now reported to house a 10-year-old jointly with much older children.<sup>76</sup> The mixing of different levels of vulnerability among children in institutions increases the risk of violence from peers. Such mixing is currently limited to Icod emergency center only, but it means that Canary Islands authorities fail to provide separate accommodation for younger children as a safeguard against peer violence.

One improvement is children's access to education and training outside their centers, compared to undue limitation on such access documented in early 2007, which severely hampered children's ability to establish contacts with persons outside the center whom they could have alerted about serious incidents within the center.<sup>77</sup>

The prosecutor of Santa Cruz de Tenerife province told us he visits residential facilities for unaccompanied migrant children twice a year, unannounced; staff at La Esperanza confirmed that these visits take place. The prosecutor for children in Gran Canaria province

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<sup>75</sup> *Unwelcome Responsibilities*, pp. 55-69, 81-98.

<sup>76</sup> EFE, "The Canary Islands are the Guardian for 727 Unaccompanied Migrant Children" (Canarias tutela a 727 menores inmigrantes no acompañados), *El Día*, March 31, 2010. "Closure of Migrant Children's Center in La Orotava Due to Decrease in Cayucos" (Cierra el centro de menores extranjeros de La Orotava ante el descenso de cayucos), *El Día*, December 15, 2009. The center in Icod proved not immune against serious abuses when a local newspaper reported the detention of two boys for sexual assault of another boy. EFE, "Two Children Detained for Sexual Assault against a Sub-Saharan Child in Icod" (Detenidos dos menores por agresión sexual a un niño subsahariano en Icod), *El Día*, April 27, 2008.

<sup>77</sup> *Unwelcome Responsibilities*, pp. 64-67. Because of La Esperanza's isolated location, children said their leave from 4pm – 8pm was too short because they had to spend a large part of that time on the road to the nearest town.

told us that she visited the center more often and on an irregular schedule.<sup>78</sup> Public prosecutors hold the mandate of overseeing state guardianship of children. Prosecutors assured us that they would do private and confidential interviews with children during their visits to centers but we were unable to confirm that this is the case for La Esperanza center.

Employees at emergency centers further told us that staff from the Child Protection Directorate visited centers on a regular basis.

None of the emergency centers we visited had a functioning mechanism that would permit children to file a confidential complaint. Arinaga emergency center installed a complaints mailbox upon a proposal by the local prosecutor but children were unaware of its purpose and the mailbox was open the day of our visit. The center director told us staff would open the mailbox and forward messages without reading them to the child protection services and mentioned that he had received one complaint so far. It is questionable whether the opening of the box by center staff is sufficient assurance of confidentiality for children who wish to file a complaint.

The head of the Child Protection Directorate assured us that her office receives complaints directly from children, but none of the children we interviewed knew who their guardian or the service responsible for their center was.<sup>79</sup>

The children's prosecutor on Tenerife, responsible for overseeing La Esperanza emergency center, told us that he had never received a complaint about the center. Asked what the reason might be for the total absence of complaints, he replied: "[children] are either afraid or they have nothing to complain about." When we asked how children could complain to him he assured us that children there knew him and that he visited the center twice a year.<sup>80</sup>

With few exceptions, children we spoke to at La Esperanza center were unaware of who the prosecutor was or that they could file a complaint to him. Only the few children who had been summoned to his office after being accused of criminal offenses said they knew him. When we asked one of them, a 17-year-old boy who was critical about conditions at La

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<sup>78</sup> Human Rights Watch interview with Manuel Campos, children's prosecutor (*fiscal de menores*), Santa Cruz de Tenerife, February 18, 2010; Human Rights Watch interview with Montserrat García Díez, children's prosecutor (*fiscal de menores*), and with Guillermo García-Panasco Morales, chief prosecutor (*fiscal jefe*), Las Palmas de Gran Canaria, February 22, 2010. There is one prosecutor office for Gran Canaria province, and one for Santa Cruz de Tenerife province. Gran Canaria province covers Gran Canaria and all islands east of it, Santa Cruz de Tenerife province covers Tenerife and all Islands west of it.

<sup>79</sup> Human Rights Watch meeting with Carmen Steinert Cruz, general director of child protection services, Canary Islands government, Santa Cruz de Tenerife, February 17, 2010.

<sup>80</sup> Human Rights Watch interview with Manuel Campos, children's prosecutor, Santa Cruz de Tenerife, February 18, 2010.

Esperanza, why he never filed a complaint with the prosecutor, he told us: “He already knows this is the worst center!”<sup>81</sup>

None of the children we spoke to at La Esperanza had ever seen the prosecutor in the center, including those who knew him. One possible explanation came from a staff member who told us: “We get visits sometimes from political bodies.... All [visitors] come in the mornings. Generally, children are out in the mornings. When responsible [authorities] come we do everything that they come in the morning to avoid them meeting disruptive children. We prepare before visitors come to avoid such encounters.”<sup>82</sup>

None of the children we spoke to at La Esperanza center had ever been interviewed in private by an outside visitor. Several of them recalled that they had seen visitors at the center. “Other people came to do interviews with us, these were journalists. I never had a long interview,” a 17-year-old boy who lived at La Esperanza center told us.<sup>83</sup> Another boy said: “We never had a visitor like you who asked us questions. Others come to visit the center. I don’t really know who they were and why they came.”<sup>84</sup>

One staff member at La Esperanza told us he didn’t recall that any of the visitors actually interviewed children. A staff member in another emergency center said that staff from the Child Protection Directorate sometimes came and interviewed specific children whose names they had beforehand.<sup>85</sup>

Some children were desperate to talk to trusted persons outside the center about problems they face in their centers. We asked children who stayed at La Esperanza center whether they were confronted with incidents that they wanted to share confidentially with a trusted person outside. They answered us:

All day I think about that—how to tell somebody outside. If only I could talk to somebody how unjust it is. That people here leave without residence permits [...]. I wouldn’t know who to talk to.<sup>86</sup>

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<sup>81</sup> Human Rights Watch interview with Mohamed S. (exact date and place withheld).

<sup>82</sup> Human Rights Watch interview with staff of La Esperanza center (name, date, and place of interview withheld).

<sup>83</sup> Human Rights Watch interview with Mohamed S. (exact date and place withheld).

<sup>84</sup> Human Rights Watch interview with Youssouf I. (exact date and place withheld).

<sup>85</sup> Human Rights Watch interviews with staff of La Esperanza and with staff of another emergency center (names, dates, and places of interview withheld).

<sup>86</sup> Human Rights Watch interview with Moussa P. (exact date and place withheld).

I can't talk about it. Here it's not Africa. In Africa you have somebody to tell everything like an older brother. Here you can't tell everything, it will create problems. Yes, it happened that I wanted to talk to somebody—then I thought one day it will be over.<sup>87</sup>

The manner in which the [center director] speaks—it makes me angry. They tell ... they tell you 'you eat for free, sleep for free, and drink for free, why do you care about that?' it makes me so mad ... you don't have another place to go and where you can talk about that.... Sometimes I cry a lot because I can't go anywhere to talk.... It's quite difficult right now because I don't have anybody here. I have friends but they are far away from here. When I'm angry I go outside where nobody is and sit down until it's over.<sup>88</sup>

When we visited La Esperanza center and explained the reasons for our visit and offered private interviews to a group of 15 children, none of them agreed to speak. They told us they were afraid to speak to us. When we stressed that interviews would be confidential and held in private they said they all wanted to talk to us but were afraid because center staff would witness who we were talking to. Asked what they were afraid of, they said they feared they would not receive their residence permits or a place to stay after leaving the center. One boy told us later outside the center: "I'm afraid in our center. Educators who are there will know what I have said and if I said something. Many would like to complain, but they screw up your papers when you leave. They will write that you behaved in such and such a way."<sup>89</sup>

The need for children to access a confidential complaint mechanism is not sufficiently recognized by responsible bodies in the Canary Islands. Directors of emergency centers in Tegueste and La Esperanza told Human Rights Watch they did not provide children with addresses where they might seek help. They told us that children trusted staff in the center and could address grievances with them. Center directors also told us that children had mobile phones and knew exactly whom to call for help. Yet, several children told us they did not have mobile phones and the following account by a boy in Tegueste center shows that there is no system for children to safely file complaints to authorities in charge:

One friend and I were eating breakfast. I didn't see exactly what happened but three educators took him into this room and ill-treated him. They took his

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<sup>87</sup> Human Rights Watch interview with Assane C. (exact date and place withheld).

<sup>88</sup> Human Rights Watch interview with Lakh S. (exact date and place withheld).

<sup>89</sup> Human Rights Watch interview with Amadou M. (exact date and place withheld).

arms behind his back and lifted him up. [he explains that a number of boys witnessed the scene through the room's window]. One boy called the police. The police came and wanted to find out who called them. Everybody got sanctioned [afterwards] because the police gave the mobile phone number to the director. That was four months ago.<sup>90</sup>

We also received information that staffing ratios at La Esperanza emergency center were inadequate. There is a risk that insufficient number of staff in a large-scale facility like La Esperanza may leave peer violence or harassment among children undetected.

Directors of emergency centers assured us that for every ten children at the center there is one staff member on duty, day and night. One staff member, however, told us confidentially that this has rarely been the case at La Esperanza center. We were told the situation had improved recently only after the closing of centers made more staff available. In practice, according to the staff, staff ratio was at best one person for 12 children. Often, though, staff would call in sick, in particular for evening shifts that are seen as more difficult because children are present in the center, and then the ratio would drop to one staff member for 18 children. During night shifts, we were told, they ended up at times with only one staffer for 20 children.<sup>91</sup>

States are obliged under international law to take all appropriate measure to protect children from all forms of violence, injury or abuse, neglect or negligent treatment while in care. Such measures include forms of prevention and identification such as reporting and investigation mechanisms. States are furthermore obliged to ensure that institutions responsible for the care of children conform to established standards, are supervised by competent bodies, and that the treatment of children placed in care is subject to regular review.<sup>92</sup>

The decision by Canary Islands authorities to keep children in large-scale institutions where the risk of exposure to violence is increased, the failure to provide separate accommodation for younger children, the absence of functioning complaint mechanisms, the lack of recognition among decision-makers and center directors for the need of such safeguarding measures, and the lack of systematic private and confidential interviews with children in centers and with the help of interpreters by bodies mandated to oversee conditions are

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<sup>90</sup> Human Rights Watch interview with Zubair F. (exact date and place withheld).

<sup>91</sup> Human Rights Watch interview with staff of La Esperanza center (name, date, and place of interview withheld).

<sup>92</sup> CRC, arts. 3(3), 19, and 25.



strong indications that authorities are failing to take steps which would ensure that the standards established under international law are met.

There is no evidence that the Canary Islands have adopted minimum standards that regulate the functioning of emergency centers. The head of the Child Protection Directorate described these centers as “unregulated.”<sup>93</sup> The prosecutor’s office on Gran Canaria told us the Canary Islands government issued an order in March 2006 that defined minimum standards for emergency centers. Yet, no such order has been published in the Canary Islands official bulletin and the prosecutor’s office was unable to provide us with a copy despite repeated requests. The absence of minimum standards for emergency centers, such as maximum occupancy or staffing levels results in an unregulated limbo for children housed there and does not allow for effective supervision. It also thwarts children’s ability to seek legal redress for conditions that fail to comply with established norms.

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<sup>93</sup> Human Rights Watch interview with Carmen Steinert Cruz, February 17, 2010.

## V. Absence of Effective Guardianship and Legal Representation

International standards also provide guidance on the obligations of guardianship for unaccompanied migrant children. Guardians are responsible for ensuring the child's well-being and safety, ensuring that the child's needs are met, the child's rights respected, and that the child's best interests are taken into account in all decisions affecting the child.<sup>94</sup> Guardianship for all unaccompanied migrant children in the Canary Islands is exercised by an institution, the Canary Islands Child Protection Directorate.<sup>95</sup>

As mentioned previously, children we interviewed were not aware of who their guardian was or of the body that was responsible for their center. It is difficult to see how a guardian's mandate to safeguard children's best interests is fulfilled in the absence of a direct relationship. Our findings, detailed below, show that the best interests of children in emergency centers are not being met.

Children in emergency centers do not enjoy access to lawyers. Children's status as third-country nationals brings with it complex legal questions ranging from participation in training programs that require work permits, access to documentation, and the issuing of residence permits, questions that require sophisticated legal help. Yet the organization that runs emergency centers does not have a lawyer on staff for children's legal matters, nor is there any mechanism to allow children in the centers to consult with a lawyer.<sup>96</sup>

### Transfers Failing Children's Best Interests

Emergency centers do not provide children with the certainty of a permanent solution, yet the maximum limit of time a child may spend there is not regulated. Children may be transferred to other centers, including on the Spanish peninsula, at any point in time, and months after the child's arrival.

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<sup>94</sup> CRC, art.3; UN Committee on the Rights of the Child, General Comment No. 6, para. 33. Spanish law goes further than the UN Convention on the Rights of the Child and stipulates that the best interest of the child trumps any other consideration. Organic Law 1/1996, art. 2.

<sup>95</sup> See *Unwelcome Responsibilities*, pp. 16-18, 89-93, for a discussion of guardianship system and residential centers for migrant children in the Canary Islands.

<sup>96</sup> Human Rights Watch interview with José Manuel Barreiro Vilas, director, Tegueste emergency center, February 17, 2010; with Carolina Miranda, director of La Esperanza emergency center, February 18, 2010. We were told that social workers in emergency centers sometimes consult with outside lawyers for help over legal questions. Human Rights Watch interview with Ataretaco Foundation, Santa Cruz de Tenerife, February 19, 2010.

There may be valid reasons to move children, including to better care arrangements, but because they can take place long after the child's arrival and after the child has established new friendships, these transfers may have negative side-effects, such as the interruption of a training course or separation from support networks that the child has established since his arrival. It appears that the Child Protection Directorate insufficiently takes into consideration the child's views about an upcoming transfer, or when such a transfer should be made, and does not make a best interest determination by balancing the various factors before deciding on a child's move.

The director of Arinaga center told us that children who are better integrated are less likely to be transferred, and that he himself had advised against such transfers in the past. However, without a clear policy based on the primacy of the best interest of the child, children may still be transferred at times which will have unnecessary negative impact on their well being. For example one staffer who works in an emergency center said that in mid-2009 several children were transferred right before they were about to graduate from a vocational training course and that authorities did not take into consideration the impact of the transfer on their education. He added, though, that this had not been the case more recently.<sup>97</sup>

Both sources told us that children are not properly consulted about planned transfers and that children who did not wish to leave the Canary Islands, sometimes because they did not want to be separated from friends or interrupt their education, were compelled to leave.

They decide where you go. I wanted to stay at [La Esperanza] but they decided I should go. They didn't ask me. That day they came and took us to Las Mercedes center. I had friends at [La Esperanza] so I didn't want to go to the other center.<sup>98</sup>

I behaved badly... then they sent me here. [Name withheld] asked me to go with him for a ride. Then he took me here to La Esperanza but all of my clothes remained there....Nobody told me I'd be taken to La Esperanza.<sup>99</sup>

Transfers that disrupt children's education or their social networks and take place without proper consultation, are unlikely to be based on decisions, or procedures, in which the best

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<sup>97</sup> Human Rights Watch interview with a staff member of emergency center (name, date and place of interview withheld).

<sup>98</sup> Human Rights Watch interview with Lakh S. (exact date and place withheld).

<sup>99</sup> Human Rights Watch interview with Mohamed S. (exact date and place withheld).

interest of the child has been properly determined. They also potentially hinder children's opportunity for integration into local communities and exacerbate their social exclusion.

International standards recommend that authorities limit the children's transfer to different facilities and require that the child's views and best interests are taken into account when making such decisions.<sup>100</sup>

For example, the Committee on the Rights of the Child has advised states that when choosing alternative care for children deprived of their family environment, "the particular vulnerabilities of such a child, not only having lost connection with his or her family environment, but further finding him or herself outside of his or her country of origin, as well as the child's age and gender, should be taken into account." The committee clarifies that changes in residence should be "limited to instances where such change is in the best interest of the child," and that "children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration."<sup>101</sup>

### **Violation of Children's Rights to Residency under National Law**

Children are unable to obtain residence permits in accordance with their entitlements under Spanish legislation because of an absence of effective guardianship and lack of access to lawyers. Spanish law provides that all unaccompanied migrant children on its territory enjoy legal status and that they are entitled to temporary residence permits initially valid for one year, followed by a two-year renewable permit. Their entitlement to such a residence permit starts the day they are placed under state guardianship.<sup>102</sup>

Unaccompanied migrant children who turn 18 and have to leave state care therefore should possess residence permits that remain valid for between one month and two years, depending on when the child was placed under state guardianship.<sup>103</sup> In reality, however, all children we spoke to had permits of variable length that were deliberately timed to expire on

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<sup>100</sup> CRC, arts. 3(1) and 12.

<sup>101</sup> UN Committee on the Rights of the Child, General Comment No. 6, para. 40.

<sup>102</sup> Organic Law 2/2009, of December 11, modifying Organic Law 4/2000, of January 11, on the Rights and Freedoms of Foreigners in Spain and their Social Integration (Sobre derechos y libertades de los extranjeros en España y su integración social), art. 35(7). Royal Decree 2393/2004, of December 30, approving the Reglementation of Organic Law 4/2000, of January 11, on the Rights and Freedoms of Foreigners in Spain and their Social Integration, arts. 36 and 37(4). The issuing of a temporary residence permit for unaccompanied children does not foreclose their possible repatriation, if such is deemed in their best interest. Those young adults who turned 18 and need to renew their residence permit may apply for a new permit up to three months after their residence permit expired. Requirements to obtain a new permit include proof of a permanent address and sufficient economic means, for example through a work contract.

<sup>103</sup> Ibid.

their 18<sup>th</sup> birthday, irrespective of the date on which they were issued.<sup>104</sup> The consequences of this policy are severe. The day they are kicked out onto the streets most of these children almost inevitably face homelessness and irregular status.<sup>105</sup>

The director of Arinaga center told us that the central government delegation recently changed this practice and now issued residence permits in compliance with Spanish law, which means that children who now receive permits would be given permits with a validity of one or two years, irrespective of the age of the child.<sup>106</sup>

We saw no evidence of this changed practice, however. None of the children we spoke to, a majority of whom were close to becoming 18, had residence permits issued in accordance with the law. Instead their permits were of varying length with each one expiring on their 18<sup>th</sup> birthday. All were therefore destined to face irregular status the day they leave the center. Even if this practice has changed for those children who apply for residence permits henceforth, authorities have failed to rectify past violations and replace permits already issued that expire on children's 18<sup>th</sup> birthdays.

Some children we spoke to were undocumented altogether with no residence permit or identity document. Although this did not limit their ability to access health care or training, one boy told us he would not leave the center on his own before he spoke sufficient Spanish, in case he ran into an identity check by police: "When I didn't speak Spanish I stayed with the educators."<sup>107</sup>

In order to obtain residence permits children need to present identification documents. All children interviewed said they were told they need to bring passports from their countries of origin. Most children never possessed identity documents and although most manage to organize passports through relatives in their home countries, a few said they faced

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<sup>104</sup> We documented in 2007 that children are deliberately issued residence permits that expire the day they have to leave the center: *Unwelcome Responsibilities*, pp. 39-42.

<sup>105</sup> There are a couple of centers that offer temporary accommodation for adult migrants in the Canary Island but places available are very limited and most children are not referred to such centers. One staff member of an emergency center also told us that some educators helped children and took them into their homes for a limited period of time after they turned 18. Human Rights Watch interview with staff member of La Esperanza center (name, exact date and place of interview withheld).

<sup>106</sup> Human Rights Watch interview with Gabriel Orihuela, director, Arinaga center, February 21, 2010. The issuing of residence permit is the responsibility of the central government representative in the Canary Islands, and does not fall under the authority of the Canary Islands government.

<sup>107</sup> Human Rights Watch interview with Salem R. (exact date and place withheld).

insurmountable obstacles in trying to obtain these documents.<sup>108</sup> One boy told us that he was simply unable to obtain a passport from his home country; a family member then bribed an official from a neighboring country and obtained a fake passport for him.<sup>109</sup>

Children generally had scant information about their entitlements under Spanish law and were largely unaware of the rights they could claim. One boy told us: “They didn’t tell me much but I found out anyway,” a 17-year-old boy told us.<sup>110</sup>

We asked the Canary Islands Child Protection Directorate, the children’s guardian, what efforts it had undertaken to ensure children’s residence permits are issued in compliance with the law.<sup>111</sup> We had received no reply at the time this report went to press.

We also asked the responsible prosecutors, mandated to oversee the legality of children’s guardianship, what steps they had undertaken to address this malpractice. The prosecutor for Santa Cruz de Tenerife province told us he had organized several meetings with relevant stakeholders. He added that he had not received any instructions from the office of the Prosecutor General to address this issue and could therefore not act on his own. The prosecutor responsible for Gran Canaria province, in contrast, told us they had already pressed child protection services to rectify those practices and were now considering legal action on behalf of children against the government.<sup>112</sup>

The threat of homelessness, marginalization, and irregular status was real for almost all children we met with.<sup>113</sup> The vast majority of boys we spoke to did not know where to go or how to survive upon leaving the center. They were clearly distressed about the fate awaiting them and spoke about difficult experiences encountered by their friends who had left centers earlier.

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<sup>108</sup> The former Spanish immigration law provided for documentation to be issued by Spain in the absence of an identification document through a foreigner’s diplomatic representation. The revised immigration law adopted in late 2009 is silent on this question, and no regulation on the new law’s implementation had been adopted when this report went to press.

<sup>109</sup> Human Rights Watch interview with Assane C. (exact date and place withheld).

<sup>110</sup> Human Rights Watch interview with Papis T. (exact date and place withheld).

<sup>111</sup> Email communication from Human Rights Watch to Carmen Steinert Cruz, March 9, 2010.

<sup>112</sup> Gran Canaria prosecutor office told us they considered taking legal action on behalf of children, but added this may not be successful, as the only body authorized to file an appeal on behalf of children is their guardianship institution, the Canary Islands Child Protection Directorate. Human Rights Watch interview with Montserrat García Díez and Guillermo García-Panasco Morales, Las Palmas de Gran Canaria, February 22, 2010.

<sup>113</sup> The director of Arinaga center told us that few children at the center managed to secure work contracts before leaving. Human Rights Watch interview with Gabriel Orihuela, Arinaga center, February 21, 2010.

One staff member also told us that children have to break off their participation in educational programs the day they turn 18 and leave the center, including when as little as one or two months remain to complete the educational cycle and obtain a diploma.<sup>114</sup> A 17-year-old boy who had been enrolled in carpenter classes for six months and was about to turn 18 told us: “I think my course will finish in two months. I don’t know if I can stay here after turning 18 and continue.”<sup>115</sup>

The failure to identify durable solutions for each child and an apparent policy of not letting them complete their training and education cycles makes their participation in such programs appear futile. The uncertainty about what would happen after a child turned 18 affects children’s motivation to follow rules or participate in training programs. According to one staffer, children’s realization that they may never be able to finish their training programs has a negative impact on their motivation to participate in such courses.<sup>116</sup> One boy also told us how he changed his behavior when he realized that he would end up on the streets after turning 18.

I have been [in the Canary Islands] for three years. The first two years I created problems. It’s true. Afterwards, I behaved well. They said I will not be sent to a center for adults [when I turn 18] because I didn’t behave well. I said I was a young boy and made mistakes. When they told me that [there would be no place for me to go to when I turn 18], I started to escape [from the center]. I escape to find out what I can do when I have to leave [the center].<sup>117</sup>

The absence of effective guardianship and the lack of children’s access to lawyers leave children without guarantees that their best interests will be taken into account, and it leaves them without legal avenues to challenge authorities who fail to safeguard their rights. With no lawyer intervening on their behalf, with a guardianship institution that remains passive in the face of practice that violates children’s rights, children end up deprived of numerous entitlements, including their right to temporary legal residence.

International standards ask governments to search for a durable solution for unaccompanied migrant children. Such a durable solution has to be in line with the child’s best interests and may include the child’s return to the home country, family reunification in

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<sup>114</sup> Human Rights Watch interview with staff of emergency center (name, exact date and place of interview withheld).

<sup>115</sup> Human Rights Watch interview with Ousmane A. (exact date and place withheld).

<sup>116</sup> Human Rights Watch interview with staff of emergency center (name, exact date and place of interview withheld).

<sup>117</sup> Human Rights Watch interview with Mohamed S. (exact date and place withheld).

a third country, or to the child's integration in the host country. The UN Committee on the Rights of the Child urges states to determine measures facilitating the integration of children who remain in the host country. It also states clearly that local integration must be based on secure legal status.<sup>118</sup>

The Canary Islands has planned in the past the return of large numbers of unaccompanied migrant children, but no repatriations have been carried out. The children's prosecutor in Gran Canaria told us that requirements for return under Spanish law, which require returns to be in the child's best interest and that a care-giver for the child to be identified, had not been met and therefore had not been approved.<sup>119</sup>

### **Lack of Access to Asylum Procedure**

Unaccompanied migrant children in emergency centers have insufficient access to the asylum procedure and do not receive information about the possibility of filing an asylum application. Center directors told us that their staff in contact with children would detect if a child's reasons for migration might give rise to a need for international protection. If such cases are found, we were told, the center would contact a local refugee rights organization for assistance. The office of the Spanish Refugee Council (CEAR) in Gran Canaria was aware of only one unaccompanied child who had asked for asylum in the past. Their office on Tenerife was aware of two children who had sought asylum during the past three years.<sup>120</sup>

Center directors we spoke to were generally aware of the possibility for children to file an asylum application but the training and the level of information provided to staff working at the centers remains very limited. Few center staff have participated in past training by the United Nations High Commissioner for Refugees (UNHCR).<sup>121</sup>

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<sup>118</sup> CRC, art. 3(1), UN Committee on the Rights of the Child, General Comment No.6, paras. 79-90.

<sup>119</sup> Human Rights Watch interview with Montserrat García Diez and Guillermo Garcia-Panasco Morales, Las Palmas de Gran Canaria, February 22, 2010. The Canary Islands proposed the return of 288 unaccompanied migrant children in 2008. Ministry of Labor and Immigration (Ministerio de Trabajo e Inmigración), "Unaccompanied Migrant Children" (Menores Extranjeros no Acompañados), February 5, 2009. The document is on file with Human Rights Watch.

<sup>120</sup> Human Rights Watch interview with Kimi Aoki, lawyer, CEAR, Las Palmas de Gran Canaria, February 22, 2010, and with Rocío Cuellar, lawyer, Santa Cruz de Tenerife, February 19, 2010. Human Rights Watch referred one of the two children who had asked for asylum to CEAR after interviewing the boy in 2007.

<sup>121</sup> UNHCR has carried out one workshop in 2008, and one in 2009. Approximately 25 of the 100 participants in these trainings were staff in direct or indirect contact with unaccompanied migrant children in care centers, including emergency centers and CAMEs. Human Rights Watch telephone interview with Margarita de la Rasilla, UNHCR Spain, April 20, 2010. There are almost 30 different centers for unaccompanied migrant children on seven different Islands in the Canaries. Due to the large number of centers and because of staff turn-over, the number or percentage of staff who have undergone training and currently are working with children remains very limited and cannot be quantified.



Children do not receive any information about their right to seek asylum after arriving at a center. Several children furthermore told us they had never had an extensive, private interview with staff of the center, which calls into question how staff are supposed to detect reasons for migration that may give rise to a need for international protection. The high number of children in emergency centers and the negative climate between staff and children at La Esperanza center in particular are not conducive to identifying children in need of international protection.

One boy from the Ivory Coast we briefly spoke to at La Esperanza center said he had fled his country during the war and unsuccessfully tried to apply for refugee protection in Mauritania before reaching Spain. He was unaware of his right to seek asylum.

One employee of another emergency center told us he knew about the possibility of seeking asylum but understood the scope of international protection only after participating in UNHCR training. He told us that after the training he approached an Ivorian boy who originated from a conflict area to check whether the boy wanted to file an asylum application. The boy told him that he had asked earlier to file an asylum application, but was advised he would need to prepare an asylum application by himself. According to the employee the boy never filed an asylum application and soon afterwards turned 18 and had to leave the center.<sup>122</sup>

Human Rights Watch did not seek to determine whether any of these children had a valid asylum claim. Instead, we assessed whether they have access to the asylum procedure and receive information about their right to protection from persecution. The presence of numerous children from West African countries and from the Western Sahara, combined with the fact that children can be the victims of child-specific forms of persecution require that a functioning mechanism is available for children to access the asylum procedure. Such a mechanism should include information about international protection in a language children understand, ongoing training for staff in emergency centers, children's access to lawyers, and proactive identification of potential asylum seeking children.<sup>123</sup>

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<sup>122</sup> Human Rights Watch interview with staff of emergency center (name, date and place of interview withheld).

<sup>123</sup> UNHCR concluded in early 2009 that there are no procedures in place to identify refugees or potential asylum seekers among unaccompanied migrant children in the Canary Islands. It concluded these children do not have access to the asylum procedure unless they proactively request to file an asylum application. United Nations High Commissioner for Refugees, "Refugee Protection and International Migration: a Review of UNHCR's Role in the Canary Islands, Spain," PDES/2009/01, April 2009, <http://www.unhcr.org/4a1d2d7d6.html> (accessed March 30, 2010), p. 17.

Child-specific forms of persecution or rights violations that may justify the granting of refugee status include under-age recruitment of children; trafficking of children for prostitution; sexual exploitation or female genital mutilation. UN Committee on the Rights of the Child, General Comment No.6, para. 74. Some scholars argue that the recent jurisprudence expanded the meaning of persecution to include several child-specific forms, such as child abuse, child sale and trafficking, or

## VI. Recommendations

### To the Canary Islands government

- Close the center of La Esperanza as a matter of priority and transfer children to adequate care arrangements.
- Immediately and publicly commit to bringing all emergency centers in line with existing regulation on care centers for children requiring protection and designate all remaining emergency centers either as CAMEs for long-term placements, or as CAIs for placements of temporary nature, and strictly observe occupancy level and time limits for placements in accordance with Decree 40/2000.
- Adopt a program to promote alternative forms of care for unaccompanied migrant children that includes foster care placements, in particular for younger children.
- Set up a complaints mechanism in all care institutions that is safe, accessible, and confidential and ensure that all children in residential care receive full information as to whom they can approach outside their center to file a complaint. Act upon complaints in a swift, confidential, and effective manner.
- Separate children in residential care centers according to their age and other vulnerability factors to ensure protection from harm by others, while taking into account family relations or other factors that would speak against the separation of children.
- Ensure that all children in care have access to independent and qualified legal advice and representation and receive full information about their rights and entitlements in a language they understand.
- Ensure that all unaccompanied migrant children in the Canary Islands receive information about the asylum procedure and their right to seek protection from persecution and rights violations in a language they understand, and that they are assisted in filing asylum applications by competent staff.

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vulnerabilities arising out of being a street child. Also, certain behavior (such as the witnessing the death of close relatives) do not rise to the threshold of persecution for an adult but may do so for a child. See Jacqueline Bhabha, "Children, Migration and International Norms," in T. Alexander Aleinikoff & Vincent Chetail, *Migration and International Legal Norms* (T.M.C.Asser Press: The Hague, 2003), p. 217.

## **To the Spanish government**

- Link financial support to the Canary Islands child protection system as well as assistance for children's transfer to other regions of Spain to a policy by Canary Islands authorities designed to lead to the closure of La Esperanza emergency center and the compliance of the remaining emergency centers with existing legal standards regulating the care for children on the archipelago.

## **To the Prosecutor's Office**

- Conduct an investigation assessing whether the Canary Islands government's decision to keep unaccompanied migrant children in emergency centers violates the obligations on the government with respect to the rights of the child, including protection from violence, right to equal treatment, and serves their best interests. Take concrete steps to rectify government policies that are contrary to children's entitlements under Spanish and international law.
- Immediately investigate conditions at La Esperanza center, including reports of peer violence, the quality of food, infrastructure, children's ability to protect themselves from the cold, and children's ability to ensure personal hygiene. Include confidential interviews with children and staff members as part of the investigation. Interview children in private and with the help of interpreters, preferably outside the center.
- Take legal steps against the Child Protection Directorate to ensure that children who are issued residence permits that expire on their 18<sup>th</sup> birthdays are able to replace these by temporary permits in accordance with Spanish legislation.

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Simone Troller, researcher in the children's rights division, wrote this report, based on her research.

Lois Whitman, executive director of the Children's Rights Division; Benjamin Ward, deputy director in the Europe and Central Asia Division; Bill Frelick, director of the Refugee Policy Program; Aisling Reidy, senior legal advisor; Andrew Mawson, deputy program director, edited this report.

Cassandra Mikicic and Kyle Knight, associates in the Children's Rights Division; Anna Lopriore, creative manager; Grace Choi, publications director; and Fitzroy Hepkins, mail manager, provided production assistance. Maria Estalayo Vega translated the report, and the translation was vetted by Cassandra Mikicic.

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## Eternal Emergency

### No End to Unaccompanied Migrant Children's Institutionalization in Canary Islands Emergency Centers

More than 250 unaccompanied migrant children remain in unregulated emergency care centers in the Canary Islands. The Canary Islands government opened the centers as temporary shelters four years ago, following an unprecedented arrival of migrant children from West Africa and Morocco. In 2007 Human Rights Watch documented children's ill-treatment, substandard accommodation, and neglect, and authorities' failure to oversee these emergency centers and protect children from harm. In 2010 Human Rights Watch returned to the centers and found that despite some improvements, serious problems persist.

There are five emergency care centers in the Canary Islands that operate outside established minimum standards. Three facilities house up to 200 children between them. The biggest of those is La Esperanza emergency center on Tenerife Island, which houses 100 children. Children there report frequent peer violence, low quality food, lack of heating and hot water, and restrictions on blankets. Monitoring of the centers by prosecutors and the Child Protection Directorate has improved, but oversight and safeguards against ill-treatment remain insufficient. None of the emergency centers offers a functioning confidential complaint mechanism.

Although these centers were set up as a temporary response to the sudden arrival of a high number of unaccompanied children, they are now being used as permanent placements. Human Rights Watch interviewed children who had been in emergency centers for more than 3 years.

The Canary Islands government is legally responsible for these children's care and admits that it is inadequate. While stating that it wants to close these centers, the government has failed to take steps to do so. The Spanish central government in Madrid provides part of the budget for these centers but has never made the funds dependent on children receiving adequate care. Human Rights Watch urges the Canary Islands to close La Esperanza emergency center immediately, and to bring the conditions in the remaining emergency centers into conformity with established legal standards.

*Two Spanish policemen help a child get off a boat at the Puerto de los Cristianos port Sunday, Aug. 6 2006, in the Spanish island of Tenerife. The boat carrying 104 would-be immigrants, including six children, was intercepted off the coast and escorted to port.*

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