COMPLEMENTARY REPORT TO THE III AND IV REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN SPAIN

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INTRODUCTION

UNICEF Spain is the entity that represents the United Nations Children's Fund in Spain. For many years, this National Committee has been engaged in awareness-raising, education, training and policy influencing activities in Spain regarding the situation of children's rights in developing countries but also inside our own borders. These activities, combined with the mission to collect funds for UNICEF, have increased awareness of the implementation status of the Convention on the Rights of the Child (hereinafter CRC) in Spain.

For this reason, the current review of the implementation of the CRC by the Committee of the Rights of the Child represents a very special opportunity for UNICEF Spain to recognise progress, extract learnings and call attention to certain aspects of the situation of children in Spain. It is our aim to help to prevent possible rights violations, remove obstacles to the adequate implementation of the Convention and identify areas in which improvements are possible and desirable in the interests of child well-being.


Our initial analysis of the III and IV Report, submitted by the Spanish Government to the Committee on the Rights of the Child, highlights the imbalance between description and analysis. Although Annex II on Indicators and Statistical Data contains some analysis and evaluation, the Report as a whole provides a great deal of information on actions taken and measures implemented but in many cases fails to examine them from the viewpoint of the realisation of rights or challenges to implementation. This complicates the understanding of the real scope and progress of the measures adopted and the causes of the difficulties and problems detected. The preparation and submission of this complementary report to the Government's report is therefore an opportunity for UNICEF Spain to develop this analysis and provide reliable information, at least in relation to the areas in which UNICEF has broader experience or knowledge due to the work performed by the organisation in recent years.

The content of this report is focused on the General Measures of Implementation and on eleven specific matters in the clusters Civil Rights and Freedoms; Family Environment and Alternative Care; Basic Health and Welfare; Education, Leisure and Cultural Activities; and Special Protection Measures. The absence of the clusters II and III, Definition of the Child and General Principles, is justified because their content is sufficiently reflected in the General Measures cluster and in the specific matters addressed in the report. The numbering of the rest of the clusters follows the official outline for Reports to the Committee, approved by the Committee in 2005.

UNICEF Spain recognises the importance of the Rights of Children with Disabilities, particularly in connection with the Convention on the Rights of Persons with Disabilities, which came into force on 3 May 2008. However, at the date of this report UNICEF does not have sufficient experience or reliable information to refer to this matter. The National Committee would like to be able to work on the rights of children with disabilities in the future.

It should also be noted that UNICEF Spain has been actively involved in the preparation of the Complementary Report submitted by the Spanish Child Rights Coalition (“Plataforma de Organizaciones de Infancia de España”), of which UNICEF Spain is a member, particularly in matters such as children and the media or child poverty. We consider that UNICEF Spain's own report supports some of the matters addressed in the Coalition's report, clarifies other issues and contributes new matters, aspects and viewpoints that may enrich the evaluation process conducted by the Committee on the Rights of the Child.
EXECUTIVE SUMMARY

For the first time, UNICEF Spain submits to the Committee on the Rights of the Child a Complementary Report on the Implementation of the Convention on the Rights of the Child (CRC) in Spain. This document is the product of careful (though necessarily biased) analysis of the situation of boys and girls in the Spanish context, focused on the progress made and challenges encountered since the Committee issued its Concluding Observations in 2002.

Achievements

During this period, considerable progress has been made in the implementation of the CRC:

- Progressive consolidation of the CRC as a reference text in legislative and judicial contexts: the Convention is increasingly used by Judges and Magistrates in their activities, both to interpret laws and to support their own decisions.

- Significant structural changes in systems for child protection and juvenile justice: regulations, creation of child care institutions and infrastructures, assignment of resources and professional training.

- Improved strategic planning of matters that affect children at all territorial levels, such as the approval of the first National Strategic Plan for Children and Adolescents 2006-2009.

- Increased public awareness and improved training in relation to the rights of the child: inclusion of specific content on the CRC in primary school education, although Spain is still among the EU countries in which children and adolescents are least aware of their rights.

- Considerable growth in the number of public and private bodies focused on children and their rights, such as the regional and municipal Observatories and Councils on Children.

- Start-up of a process to create a child-youth psychiatry specialty.

Unresolved issues

The Committee’s analysis provides an excellent opportunity to conduct a careful review of the remaining obstacles to the full implementation of the Convention in Spain. In this regard, three major concerns are reflected in this complementary report:

1. Political relevance: Responsibility for policies relating to children has been transferred through different ministries, losing its specific nature along the way, to its current shared position in the Ministry of Health, Social Policy and Families. Moreover, policies relating to children in Spain still receive a low level of institutional commitment and are often excluded from parliamentary and political debates. An example of this is the absence of references to children in key areas such as election programmes and proposals to overcome the current economic crisis.

2. Coordination among public bodies: This matter was already addressed by the Committee in its 2002 Concluding Observations but remains fully relevant, as reflected in this report in connection with intercountry adoption and unaccompanied foreign children. Spain’s complex territorial organisation and power structure gives rise to different laws and regulations, different child care or protection procedures, a lack of consensus in many areas and incomplete data collection that often prevents analysis at the national level. This situation arises between the national, regional and local administrations, and also between different areas of the same administrations.

3. Investment in children: Despite the efforts made, Spain is still below the European average in terms of economic resources earmarked for social policies targeting children and families. This is particularly worrying in the current economic crisis: with nearly 20% of the active population jobless, more than one million unemployed households and almost one out of four children at risk of poverty, the absence of specific measures to address the position of children in the plans and proposals announced to combat the crisis is of particular concern.
Other challenges

The above-mentioned challenges are reflected in virtually all the matters analysed in the Supplementary Report. The following issues are particularly relevant:

- The phenomenon of foreign children, especially unaccompanied foreign children, was analysed by the Committee in 2002 and is still cause for concern for UNICEF Spain, due to the spectacular growth in the number of cases. The number of children, their changing national origins and their special needs have been and are still a huge challenge for the Autonomous Regions’ protection systems and for the Central Administration. The aim of ensuring that their status (and, therefore, their rights and best interest) as children prevails over their status as foreigners, irrespective of the child’s legal status, has still to be fulfilled.

- During this period, Spain has become one of the countries with the highest number of intercountry adoptions in the world. The new Law on Intercountry Adoption (2007) is a major improvement, but there are still coordination problems and doubts regarding the quality of intercountry adoption processes. The presence of 23 Central Authorities in Spain for the purposes of the Hague Adoption Convention, the existence of numerous officially-authorised private adoption agencies, pressure from families wishing to adopt and limited monitoring of adoption processes, entail that greater involvement is required from the Central Administration to guarantee that adoptions are completed in the best interests of the adopted child.

- In recent years there has also been an increase in the privatisation of public services for children. This has not been limited to education (which was already managed under private subsidised arrangements), many other services having been delegated to non-profit entities or companies. The generalised privatisation of residential child protection centres and of judicial detention institutions is particularly relevant, and reports of the infringement of rights and questionable practices during this period, relating to the lack of regulation and the limited public monitoring of the privatised services, are a major cause for concern.

- The media and its relations with children have received specific attention in recent years, in two main areas: protection from harmful content and practices (in both television and the Internet) and the treatment afforded to children in the media. In both cases, regulation and self-regulation have proven inadequate in terms of their form or application. UNICEF Spain favours the implementation of more solid and effective measures by the Administration, increased commitment from companies and a process of reflection in society on the values that are promoted and permitted in connection with children and adolescents.

- Finally, education remains a focus for public and political debate: with a high school drop-out rate and legislation that is continuously changing, the current Ministry of Education’s initiative to reach a consensus or State Pact that guarantees the stability of the education system is good news.

In short, UNICEF Spain considers that, for the CRC to be implemented more effectively, progress must be made in three key areas:

1. Political relevance of children.
2. Coordination of policies and practices at all levels of responsibility.
3. Stable and specific allocation of resources.

We believe that in order to fully implement the Convention, children and the principle of their best interest must be placed at the centre of public policies, representing a commitment to children as active citizens not only in the future but in the present. We hope that this contribution from UNICEF Spain will help to stimulate progress in that direction.
I. GENERAL MEASURES OF IMPLEMENTATION

Legislation

1. During the follow-up period for the III and IV Report there has been considerable legislative activity in relation to matters that affect children at both the national and regional levels. However, this activity has not always been guided by the Committee’s recommendation encouraging the Spanish State “to fully implement the legislation using a human rights-based approach and in conformity with the Convention”. In this respect, Organic Law 8/2006 (4 December), which amended Organic Law 5/2000 (12 January) on penal responsibility for minors, brought in longer sentences depriving children of liberty for certain types of crime and the possibility of children that are subject to judicial detention being transferred to adult prisons when they reach 18 years of age. On the positive side, Law 54/2007 (28 December) on Intercountry Adoption is without doubt a major improvement with respect to the guarantees required for adoption in other countries and it also amended Article 154 of the Civil Code on corporal punishment, as requested by the Committee on the Rights of the Child in 2002.

2. In the case of Organic Law 1/1996 (15 January) on judicial protection for children, which partially amended the Civil Code and the Code of Civil Procedure, during the period analysed the necessary enabling regulations have not been issued. As a result, the Autonomous Regions (which hold many of the powers derived from this Law) have prepared their own laws to protect children without an adequate, shared and Central Administration-defined regulatory framework. Consequently, the regulations applied in each region of Spain are inconsistent and incoherent in important areas such as the protection of children that are at risk, neglected or in foster care, or the treatment of unaccompanied foreign children, as reflected in other sections of this report.

3. The CRC is increasingly used by Spanish Judges and Magistrates in their activities, both to support their own decisions and to interpret laws in accordance with the CRC, although there is still room for considerable improvement in training for legal professionals (judges, magistrates, lawyers and prosecutors) as regards knowledge of the rights of the child, since this matter does not currently form part of the curriculum of university law degrees or of many of the specialisations derived from such university degrees.

UNICEF SPAIN RECOMMENDS:

- A binding Child Impact Report should be included in all provisions of law, similar to the Gender Impact Report stipulated by Organic Law 3/2007 (22 March) for the effective equality of women and men.
- Even considering the difficulties affecting the legislative and regulatory harmonisation of all administrations within the State that have the capacity to legislate on matters relating to children (particularly the Central Administration and the Regional Governments), greater effort is required from all the administrations to harmonise laws and other legal provisions to avoid all types of discrimination based on the application of different regulations depending on the child’s place of residence.

4. The first aspect to be analysed is the significance of policies relating to children in the structure of Spain’s Government. In this regard, in recent years the Sub-Directorate General for Children’s structure has changed twice: it was transferred from the Ministry of Employment and Social Affairs to the Ministry of Education, Social Policy and Sport in 2007, under the name Directorate General for Families and Children, and it was transferred again in 2009 to its current position in the Ministry of Health, in a single Directorate General encompassing Social Policy, Families and Children.

5. Spain’s territorial organisation determines that each Autonomous Region, using the powers transferred to it, has broad regulatory and organisational capacity and, in many cases, exclusive powers over matters relating to children. It is true that there is a degree of interregional coordination designed to establish common and basic principles or criteria for the whole of Spain in connection with policies, actions and legislation. However, this coordination is insufficient to prevent significant differences between some Autonomous Regions as regards guaranteeing the full and fair implementation of the Convention on the Rights of the Child. This gives rise to situations of discrimination for children and adolescents, depending on their place of residence.

6. In its 2002 Concluding Observations, the Committee praised the creation of the Observatory on Children, formed by Public Authorities and civil society organisations. The Observatory carries out important work as a data collection and analysis body, and as a forum for reflection and the preparation of shared proposals by the authorities and bodies that participate in the design and application of the main children-related policies. The Observatory is also responsible for preparing the National Strategic Plan for Children and Adolescents. However, its effectiveness as a coordinating body is undermined because:

   a. Rather than coordinating, it cooperates, since its decisions are not binding and application depends exclusively on the political will of each of the authorities that form part of the Observatory, and on the commitment of the social organisations.

   b. Its organic dependence on the public body responsible for Social Policies do not concede the Observatory with the sufficient autonomy to perform a more independent evaluation of public policies and their impact on children.

   c. It does not have a budget item of its own for operational purposes or sufficient human resources to carry out its work more effectively.

7. Also worthy of note is the progressive creation of Observatories on Children or Councils on Children in different Autonomous Regions and Municipalities that perform the dual role of data collection and coordination or exchange of experiences among the parties whose work relates to children at each territorial level.

8. The National Strategic Plan for Children and Adolescents 2006-2009 is a response to the 2002 recommendation from the Committee on the Rights of the Child “to formulate a comprehensive strategy for children on the basis of the principles and provisions of the Convention”. The Plan is based on the Convention and seeks to implement all the rights recognised therein, and to contribute to interterritorial equality and equal opportunities for children and adolescents, while respecting the special nature and self-governing capacity of each of the Autonomous Regions. In this regard, strategic objective number two is to “improve policies relating to children through coordination and cooperation.

9. UNICEF Spain recognises the major progress that this Plan represents and values the preparation process highly, particularly with respect to the broad participation of institutions and social organisations in its design, in which UNICEF played an active role.

10. The actual impact of the Plan is now being evaluated, although the partial evaluation conducted in 2008 brought to light certain structural and methodological weaknesses in the Plan, including:

   a. Its nature as a framework plan and the complexity of coordination together with regional or municipal plans on children or the family.

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4. Sectoral Conference, Committee of Director Generals and Interregional Technical Committee.
I. GENERAL MEASURES OF IMPLEMENTATION

b. The absence of additional, specific economic resources to implement the planned measures; the Plan assumes that the competent public and private entities will channel regular funds to achieve the Plan objectives and measures.

c. The absence of specific goals with respect to the Objectives and Measures. Although it contains some execution indicators, they are not always related to the measures, and levels of Plan fulfilment are not established, which does not facilitate clear processes for the evaluation of the Plan and its impact on the situation of children.

d. The failure to stipulate specific deadlines for the implementation of the planned Objectives and Measures.

e. Excessive Objectives and Measures resulting from the broad consultation process undertaken to prepare the plan, making it very difficult to establish a range of priorities and reducing the Plan’s strategic nature.

UNICEF SPAIN RECOMMENDS:

- The successive National Strategic Plans for Children and Adolescents should include the content and resources necessary to enhance the effective implementation of the Plan, including:
  - Specific human and material resources to support the execution of the measures, and the broad dissemination, permanent follow-up and evaluation of the Plan.
  - A more strategic nature based on the selection of objectives and measures, and the definition of goals, deadlines and impact indicators for the measures established.
  - Improved processes for the participation of children in Plan preparation and monitoring.

- The general recommendation from the 2002 Committee on the Rights of the Child to “strengthen effective coordination within and between government agencies” is reiterated here.

- The coordinating role of the Observatory on Children should be significantly enhanced by:
  - Promoting a more active and permanent role in the follow-up of the National Strategic Plan for Children and Adolescents, policies relating to children and data collection.
  - Assigning it the role of mandatory consultation body for the development of legislation and policies relating to children.

- Strengthening the Observatory’s institutional nature and human and material resources, providing it with its own budget and headquarters, and a greater degree of independence than at present.

- All public administrations should continue to promote the creation of Councils on Children or Observatories on Children responsible for data collection, follow-up and coordination for policies relating to children at the regional and local levels.

Decentralisation, delegation and privatisation of services

11. As indicated previously, the current territorial organisation of the Spanish State and the resulting dynamics generated give rise to different criteria when the Convention is implemented, difficulties in determining which bodies or public administrations will assume responsibility for specific cases or problems, and a diversity of conditions affecting access to services depending on the place of residence, as well as major difficulties in obtaining aggregated data and shared criteria that guide the activities of all the administrations.

12. As regards the privatisation of services, UNICEF Spain calls the Committee’s attention to the absence of information on this matter in the III and IV Government Report. In Spain (particularly at the regional and local levels), a large number of services related to children have been privatised in recent years, particularly in education, protection of children and

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9. 26% of non-university students are in private subsidised schools. From 1992 to 2005, the percentage of public spending on education assigned to private subsidised arrangements rose from 9.1% to 11.2%. Source: Ministry of Education’s Evaluation Institute. http://www.institutodeevaluacion.mec.es/
During this process, many private entities, including companies and non-profit organisations, have taken over the management of public responsibilities and services related to children, while obtaining public financing.

13. A recent report from Spain’s National Ombudsman questions the functioning of some private management centres with respect to protection for children with behavioural problems and the high cost for the public administrations of these privatised services which, on occasions, do not provide sufficient quality care or adequate treatment for the children. It also calls attention to the limited surveillance of the situation of these children by the public administrations and the Department of Public Prosecutions.

UNICEF SPAIN RECOMMENDS:

- Services and institutions responsible for the inspection, surveillance and evaluation of privately-managed public services for children should be promoted, provided with sufficient resources and regulated, if necessary, so that cost cutting and business profit criteria do not take precedence over the CRC principle “in the best interest of the child” and that their rights are not violated.
- Further progress should be made at the State, regional and local levels, and also between different areas of government, with respect to a clear framework of competencies for matters relating to children. Where necessary, the Government and the Central Administration of the State Party must assume their role in establishing basic criteria, which must be clear and concise, in relation to regulations governing aspects of the rights of the child.
- The Spanish Government should be asked to provide detailed information on the private management of public services, particularly in education, protection for children and juvenile justice.

Resources for children

14. UNICEF Spain values the effort made by the Government when estimating the budget for policies relating to children and adolescents, and the increase in budget items resulting from the estimation process. It also values highly efforts made in international cooperation and the growing commitment to United Nations’ multilateral agencies, particularly UNICEF itself.

15. However, it is still very difficult to obtain actual data (not estimates) on the amount and proportion of the budget spent on children by Spain’s public administrations, data that are essential to evaluate the repercussion and effects of investments in children’s rights. Despite the efforts made in recent years (actual 7.5% increase in social policies for children and families from 2000 to 2006), Spain is still at the lowest levels in the European Union in terms of investment in social policies for children and families (1.1% of the Gross Domestic Product, GDP), a long way behind the majority of countries in its geographic, social and cultural context (see section on Child Poverty in this report).

16. Despite the increase reflected in Government data and the actual growth in expenditure per student, public investment in education as a percentage of the GDP was the same in 2006 as in 2000, at 4.2% according to Eurostat, which is below the European Union average.

17. Action plans (such as the National Strategic Plan for Children and Adolescents) or specific laws and policies for children too often lack a budget assignment or the necessary economic report committing the funds required for execution.

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12. It should be noted that these increases are estimated in current currency, without discounting inflation.
I. GENERAL MEASURES OF IMPLEMENTATION

UNICEF SPAIN RECOMMENDS:

● Investment in social policies for children and families and investment in education should be progressively increased until they reach the European Union averages (currently 2.1% of GDP and 5.05% of GDP, respectively).

● Despite the progress achieved, we reiterate the 2002 Observation by the Committee regarding the need to identify "the amount and proportion of the budget spent on children at the national, regional and local levels in order to evaluate the impact and effect of the expenditures on children".

● Plans, policies and laws for children should systematically be provided with resources: an economic report and committed public expenditure for their implementation.

Resources for children (cont.)

UNICEF SPAIN RECOMMENDS:

Data collection

18. There is currently no comprehensive national system in Spain for collecting data to determine the realisation of the rights of the child (i.e. implementation of the CRC) or the situation of children and adolescents. The information is still fragmented, due mainly to the large variety of indicators used by the Autonomous Regions. This prevents comprehensive and detailed knowledge (based on systematically compiled data) of the actual situation of children in Spain so as to be able to formulate and evaluate policies and programmes to implement and supervise the implementation of the CRC.

19. The regular publication of “Children in Figures” (“La infancia en Cifras”14) by the Observatory may be deemed a major improvement in the collection of data from different children-related sources, although it also reflects the diverse quality of the sources and indicators employed, and the difficulty of finding or consolidating data in some areas such as unaccompanied foreign children, children’s participation, etc.

20. The National Institute of Statistics (INE) continues to publish data on the 0-to-16 age group and many bodies do not include in their indicators adequate age groups to allow an accurate analysis of the situation of children. There is no basic consensus on the minimum indicators that should be common to all administrations to allow the adequate monitoring of the situation of children and the implementation of the Convention, although UNICEF Spain is currently working with the Observatory on Children to design a System of Child Welfare Indicators, following the model contained in Report Card 715 of the UNICEF Innocenti Research Centre and other experiences in Spain, the EU and the OECD.

UNICEF SPAIN RECOMMENDS:

● The Central Administration should legislate or actively promote the establishment of a permanent data collection system including basic indicators for monitoring the situation of children in Spain, which should also be assumed by the regional and local administrations.

● We reiterate the Committee’s 2002 recommendation to the State Party that it should “strengthen its mechanism for collecting and analysing systematically disaggregated data on all persons under 18 for all areas covered by the Convention”.

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Dissemination of the Convention and training

21. According to the recent Eurobarometer from the European Commission\(^{16}\), only 58% of adolescent (15-18) Spaniards are aware that children have specific rights compared with those of adults. This piece of data places Spain among the European Union countries in which young people are least aware of their rights.

22. In this regard, significant progress has been achieved through Organic Law 2/2006 (3 May) on Education, which includes human rights content in primary and secondary education curricula in the subject “Education for citizenship”, although the CRC is only specifically mentioned in primary education. Despite this improvement, we are still far from the point at which the CRC will be generally and systematically included in education, teaching and training in Spain.

23. In both professional training and university teaching, including specialisation levels, there is a generalised absence of content on the CRC, even in areas that relate particularly to children such as primary and secondary school teacher training.

UNICEF SPAIN RECOMMENDS:

- Training in rights of the child should be systematically included in all studies and training for professionals that work with children, particularly in education, by adding this content to the curricula of each university degree and to ongoing training processes.
- The Convention on the Rights of the Child should continue to be disseminated among the public at large, children, families and professionals that work with children, and specifically adapted for each group.

Children’s participation

24. The right to be heard and other children’s participation rights are specifically recognised in Spanish legislation, such as the above-mentioned Organic Law 1/1996. However, in certain circumstances it is still necessary to have recourse to the higher courts, such as the Constitutional Court\(^{17}\), to obtain recognition for the right of a child to appear independently from his or her legal guardians in a court proceeding or an administrative ruling that affects the child. An Ombudsman report\(^{18}\) on child protection centres refers to the fact that, in the case of claims, investigations or inspections of the centres, it is still not common practice to obtain the opinion of the affected parties or users of these services when they are children.

25. There is also significant room to improve the implementation of measures for the participation of children and adolescents in education and even in the family environment.

26. In the political sphere, although progress has been made in the creation of children’s participation bodies, particularly at the municipal level, their number and actual impact on public policies is still very limited and, on many occasions, merely testimonial. Less than 12% of Spain’s 8,144 municipalities have children’s participation bodies or councils\(^{19}\).

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\(^{17}\) Constitutional Court Judgement 183/2008 (22 December 2008).


\(^{19}\) According to the data collected by UNICEF-Spain through the programme Child-Friendly Cities. www.ciudadesamigas.org
Children’s participation (cont.)

UNICEF SPAIN RECOMMENDS:

- Stable structures, methodologies and processes for direct and genuine children’s participation should be promoted in a generalised and systematic manner at the local, regional and national levels. These processes should be promoted particularly in the municipal sphere, in education centres and in families.

- The State Party should guarantee the right of boys and girls to be heard and to participate actively in court and administrative proceedings that affect them, applying the criteria recently issued by the Committee on the Rights of the Child in its General Observation 12 and facilitating access to claim and complaint procedures.

- The participation of children and adolescents in family and school contexts should be promoted by encouraging positive parenting and by reviewing and effectively implementing children’s participation in education centres.

International cooperation

27. Official Development Aid grew from 0.26% of Gross National Income in 2001 to 0.43% in 2008, with significant qualitative improvements such as the inclusion of the Millennium Development Goals as the reference framework. The Spanish Government’s growing contribution to UNICEF has lifted Spain from twentieth place in 2002 to eighth place in 2009 in the list of donor countries, and to first place in priority given to the promotion of policies and alliances that favour the rights of the child. Spain’s total contribution rose from USD 1.8 million to USD 114 million in that period (2002-2009).

28. The inclusion of children as a multi-sector priority in the Spanish Cooperation Master plan 2009-2012 is worthy of note, as is the fact that child survival for under-fives is a specific objective in the healthcare sector. Geographic cooperation strategies (Country Strategy Documents and Special Action Plans) are also increasingly focused on children, as well as strategies in some sectors such as education. However, there is hardly any reference to children in structural sectors such as the promotion of democracy and the rule of law. Barring exceptions, in these cases children are not presented in an active or leading role but merely as passive parties and recipients, with scarcely any references to evaluations of the impact of Spanish cooperation on children.

29. Although the volume of Spanish aid (non-repayable multilateral and bilateral aid) for basic education has risen with respect to 2005, it has fallen slightly as a percentage of the total volume of gross official aid.

30. With respect to decentralised cooperation (from regional and local entities), there is no common approach or consistent treatment of the rights of the child. There is a “two-speed” scenario comprising cases in which the focus is clear and determined, even exceeding that of State cooperation, and others in which the rights of the child are not addressed or are only considered on a one-off and general basis. This is often due to a lack of knowledge and technical assistance.

31. The priority afforded by Spanish State and decentralised cooperation to the promotion of basic social services (particularly healthcare and education) is very high. Both sectors clearly have a positive impact on children and we may therefore state that, though not always specifically, children are one of the groups that are particularly benefited in an indirect way, although not through a clear rights-based approach.

32. There is no clear strategy in Spanish cooperation in relation to gender and children. Although there are references to the need to guarantee gender equality in

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20. UNICEF Spain (2008), ¿Garantiza la ayuda al desarrollo española los derechos de la infancia y la adolescencia? [Will Spanish development aid guarantee the rights of children and adolescents?] (p 33 et seq.). Madrid: UNICEF Spain
access to education for girls, there are hardly any other noteworthy initiatives. Strategies designed to guarantee the rights of women (work, healthcare, education) as a means of protecting the rights of the child, or the promotion of paternal responsibility in education and childcare, are difficult to find.

UNICEF SPAIN RECOMMENDS:

- A cross-sector strategy should be prepared for children in Spanish cooperation to help to clarify the basic principles of this cooperation and to be used as a model and guide in decentralised cooperation. This strategy should address positive project evaluation criteria focused on the rights of the child in public tenders.
- Multi-lateral contributions should be increased or maintained in coming years, together with the proportion of children-related contributions with respect to the total volume of official development aid.

IV. CIVIL RIGHTS AND FREEDOMS

Media and new technologies

CURRENT SITUATION

1. The relationship between children and the media has been a cause for concern in Spanish society for a long time. This is mentioned in the Spanish Government’s report and in discussion forums, as well as through claims presented to a variety of bodies, and numerous studies and research projects.

2. The significant and rapid dissemination of the Internet in recent years and the fact that the Internet is increasingly accessible to children and adolescents (the number of computers and Internet connections available for children have growth exponentially during this period) has both positive and negative consequences. The negative consequences include the appearance of new forms of criminal conduct using the new technologies, particularly social networks and online communication through the Internet, to assault children psychologically or sexually (cyber-abuse of children). This has aggravated a worrying scenario and placed children in a particularly vulnerable situation that the majority of adults still have insufficient tools and resources to prevent.

3. For UNICEF Spain, it is important to address the rights of the child not only in terms of protection from illegal or harmful content or practices but also taking into consideration the right to the access to information, which must be adequate to promote the child’s welfare; the right to freedom of expression, including the freedom to search for, receive and disseminate

References to children and to their rights in many framework documents for bilateral aid do not generally result in specific criteria for the positive evaluation of projects that include a focus on the rights of the child in State or decentralised tenders.

information of all kinds (subject to logical limits as regards the safety and rights of others); and children’s right of participation.

CHANGES THAT HAVE BEEN MADE

4. In general terms, Spanish society has sufficient legal instruments to provide proper care and protection for children in this context, due to the broad legal regulation and protection framework (European, domestic and regional legislation). Moreover, the Central Administration has supported research, study and analysis initiatives; some regional administrations have promoted the creation of Regional Audiovisual Councils; and, finally, the media themselves (mainly television companies, but also advertising agencies) have adopted self-regulation measures.

5. UNICEF Spain values highly the efforts made by the Public Administration to prepare a First Draft of a General Bill of Law on Audiovisual Communication (presented on 26 June 2009), the aim being to prepare a general law encompassing and updating the diverse regulations on this matter. Additionally, as the Government indicates, the Law is an instrument to transpose into Spanish legislation the 2007 European Directive on Audiovisual Communication Services. It should be noted that the First Draft of the Bill, in response to considerable demand from different groups, envisages the creation of a State Council for Audiovisual Media, independent from the Government, with the capacity to impose penalties and the responsibility to control and monitor compliance with this law and, in general, with State audiovisual regulations, the Council members being elected by a broad parliamentary majority.

6. However, the current situation in Spain is far removed from the one envisaged: regulations are often infringed and the self-regulation measures have proven to be ineffective. Although there is a high level of commitment from the parties involved in the drafting of laws and self-regulation codes, there is a low level of compliance.

OBSTACLES ENCOUNTERED

7. The Andalusian Audiovisual Council states, in its 2008 General Report on Children and Television, that the analysis of the reports prepared in connection with compliance with the Self-Regulation Code on Television Content and Children in recent years (2005 to 2008) reveals a progressive relaxation of compliance with the Code principles, the limited dissemination of the Code and the virtual absence of penalties imposed for infringements. These conclusions could be extended to the rest of the State, in view of the degradation of contents, action models and language.

8. Children’s viewing hours include little educational content that is adequate for children. Additionally, in Spain, children watch television a long time after children’s viewing hours have ended, meaning that they watch programmes for adults. For this reason, there has been a progressive “infantilisation” of programmes for adults (general-interest programmes for all the family) in which children are used in adult roles and, also, children are used inadequately in advertising or to win viewers for certain entertainment programmes.

9. Videogames also often have content that distorts reality and provides inappropriate behaviour models. In this case, the problem lies in the inadequacy of certain content for the ages of the potential players and the limited effectiveness or lack of knowledge of the PEGI Code (Pan-European Game Information age rating system). However, manufacturers are expressing a certain willingness to self-regulate the sector that we hope will materialise.

10. As regards advertising, the main self-regulation instrument (Advertising Code of Conduct of the Association for the Self-Regulation of Commercial Communication, Autocontrol) stipulates that advertising which targets children must not harm them, take advantage of their credulity or generate misunderstanding; in this case, it is true that the commitment to the Code by advertising agencies has led to a considerable reduction in malpractice in the use of advertising space.

11. Protection of privacy and the private life of children is increasingly complicated, both in relation to the programmes in which their participation is authorised (consent from their parents or guardians) and in the case of sensitive news stories (schoolroom violence, pederasty, Internet harassment, etc.) affecting a child.

23. This is directly related to the role of parents themselves, who often neglect their responsibility for their children’s media consumption.
12. The current penalty system for infringements of legislation is either not applied or, when applied, has proven not very efficient, and the media may opt to infringe the law and pay the penalties imposed in exchange for advertising revenue.

13. The actual participation of children in the media is virtually non-existent: children are only treated as potential viewers, customers or passive consumers, or even as advertising, but not as persons with rights and even less as persons requiring protection. In general, they do not participate either in the creation and design of programmes or in program scheduling; we know what children watch but we do not know what they like, what type of programmes they prefer, etc. There are virtually no spaces for them to express their opinions and when they do so they are “guided” by adults.

**UNICEF SPAIN RECOMMENDS:**

- In line with the proposal of the First Draft of a General Bill of Law on Audiovisual Communication, an independent, plural, State Audiovisual Council should be created to supervise the protection of children, with the full and actual capacity to impose penalties.

- The competent administrations should assume full responsibility for the protection, defence and application of the rights of the child, which unavoidably entails:
  - exercising, more diligently and effectively, their surveillance, control and penalty competencies in relation to the activities of the media.
  - promoting the existence of quality media, particularly with respect to public services, which inform and educate by transmitting positive values for the integral development of people;
  - contributing towards the “digital literacy” of all the population, both children and adults.

- Children should be involved in their own protection through educational measures that provide them with communication competencies and skills, also taking advantage of the huge educational potential of the media.

- It is necessary to reflect on the advisability of bringing children’s viewing hours stipulated in the relevant EU Directive into line with the lifestyle in Spain, which would entail extending children’s viewing hours to 10 pm.

- Priority should be given to actual participation by children, through adequate channels, in the preparation of children’s content and in the design of children’s programs.

- A stronger commitment should be demanded from companies operating in the Internet sector, through self-regulation, by adopting adequate codes of conduct, in order to continue to improve the basic regulations governing a means of communication that is far from mature.

- Additionally, the adequate use of Internet resources should be encouraged and secure browsing for children in the Internet should be fomented through training and education for children and adults, the inclusion of these new types of crime in criminal legislation and support for police actions against them.
V. FAMILY ENVIRONMENT
AND ALTERNATIVE CARE

Protection of children with behavioural disorders and at social risk

1. According to the Basic Statistics on Measures to Protect Children, there were 29,544 children under the protection of the Spanish Public Administration in 2006, 11,257 of whom were living in institutions.

2. In this cluster, UNICEF Spain wishes to refer to a 2009 Ombudsman report entitled “Centres for the protection of children with behavioural disorders and at social risk”, as we consider the conclusions and recommendations of that research to be particularly important. Another more recent report on this matter from Amnesty International reiterates many of the points contained in the Ombudsman report. These reports have generated a fierce debate and have given rise to some specific changes and to reflection processes on the minimum rules and conditions governing these centres.

3. The following conclusions drawn from the research performed should be noted:
   a. There are a large variety of centres engaged in protecting girls and boys with behavioural disorders which do not appear to respond to an orderly planning of resources by the public authorities. The majority of these centres are privately managed and financed by public administrations, there being a huge variety of projects and intervention programmes applied to children, ranging from highly restrictive intervention programmes to more open, socialising initiatives.
   b. In the majority of cases there is no protocol for assigning children to specific centres for behavioural disorders. Most Autonomous Regions do not have regulations governing the diagnostic process or other possible measures to be implemented prior to the placement of a child in a centre, or references to a hearing procedure or to the possible consent of the child to placement in these centres. Placements are not usually based on court decisions and the Public Prosecutor is not generally informed of the placement of these children, since it is treated as a protection measure, even though the child’s rights are restricted in many cases.
   c. The inadequate regulation of this matter by the Autonomous Regions means that management entities are practically free to impose a disciplinary regime that could be even harsher than the regime applied in institutions for children that have infringed the law. Isolation measures and the administration of drugs are common practice in cases in which a child’s behaviour is severely disordered.
   d. The intervention models currently applied are not fulfilling the objectives that should be pursued, show an alarming absence of guarantees of the rights of the child and, in many cases, limit potential development.
   e. None of the competent administrations perform a frequent follow-up of the situation in

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25. Excluding Andalusia, Majorca and Melilla, for which these statistics include no data.
these centres and very few are in regular contact with the children. The centres demand more contact, involvement and even the specialisation of the technical staff of the public entity responsible for the direct monitoring of each child.

**UNICEF SPAIN RECOMMENDS:**

- **UNICEF SPAIN RECOMMENDS:**
  - **Panel Protocols should be developed that define the scope of the care given to children with behavioural disorders and with social difficulties, including criteria for quality, evaluation, follow-up and good practices in these intervention programmes, as part of the National Strategic Plan for Children and Adolescents.**
  - **The inclusion in the same programme of children that need protection measures and children that have psychological disorders should be eliminated.**
  - **The need for court authorisation to place a child in all centres that apply measures which impose any limit on the rights of the child should be studied. The child’s right to be heard must be observed in all cases. All centres should have a complaints and claims procedure, and the public entities and the Department of Public Prosecutions must obtain evidence of the existence of this procedure.**
  - **The penalty regime should be defined in the internal regulations and may not include corporal punishment, psychological ill-treatment, deprivation of food and sleep, deprivation of the right to personal relations, deprivation of the right to a compulsory school education or infringe personal dignity.**
  - **Restrictions may not equal or exceed the provisions of legislation on the criminal liability of children.**
  - **The competent Administration and the Department of Public Prosecutions should fulfil their obligations to guarantee the protection of the rights of the child, by inspecting and supervising all the centres in which children are placed; for this purpose, the inspection bodies and the Department of Public Prosecutions must be provided with sufficient resources to perform this supervision.**

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**Intercountry adoption**

**CURRENT SITUATION**

4. In Spain, intercountry adoption has reached significant levels in the past 10 years. According to data collected by the International Social Service, since 2001 Spain has been the second-ranked country in the world for this type of adoptions, at between 3,000 and 5,500 per annum (4,472 adoptions in 2008). Spain is also ranked second in terms of the intercountry adoption rate, i.e. the number of intercountry adoptions per 100,000 in inhabitants, below Norway and above Sweden and Denmark.

5. The following factors currently define Spain in relation to intercountry adoption:

   - **a.** Significant growth in both the number of intercountry adoption requests and the number of intercountry adoptions completed.
   - **b.** A very high percentage of Suitability Certificates and a very low rate of unsuitability to adopt.
   - **c.** High pressure from applicants on the competent authorities to expedite formalities and increase the number of countries in which intercountry adoption is possible.
   - **d.** Domestic regulations that are reviewed and amended to bring legislation into line with the current social reality; the recently approved Law 54/2007 (28 December) on Intercountry Adoption, which has helped to tighten the necessary and adequate guarantees for intercountry adoption processes by providing clear regulatory instruments to ensure that the rights and interests of the child are observed in the adoption process.
   - **e.** Existence of numerous Intercountry Adoption Agencies, which complicates control, evaluation and

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follow-up processes. These agencies (with functions delegated by the competent public authorities) may help to guarantee an adoption process that respects the higher interests and rights of the child, but they will only be effective if the State guarantees support, training, supervision and control for the agencies, pursuant to Law 54/2007 on Intercountry Adoption (Articles 5 to 8).

f. A broad network of associations of adopting families that helps to improve the dissemination of information and supports applicants during and after the process.

g. Improved knowledge of intercountry adoption on the part of professionals and society at large.

6. It is true that the system established for interregional coordination enables the Central Administration, as the “Central Information Body for relations and formalities between the Autonomous Regions and the children’s countries of origin” 29, to maintain and foment smooth relations between the different public authorities holding powers in intercountry adoption processes, and to unify actions to be undertaken in these processes so as to guarantee the adequate internal implementation of the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (hereinafter the Hague Adoption Convention).

7. However, as mentioned in the General Measures, the Autonomous Regions have broad powers to determine specific aspects of the intercountry adoption process, precluding the existence of a system of guarantees that are common to the whole State. This could generate differences and a degree of discrimination depending on residence in one Autonomous Region or another, such as:

a) The list of countries of origin with which adoptions may be processed is not common to all the Autonomous Regions, i.e. the Spanish State does not determine the group of countries with which intercountry adoptions may be processed from Spain (although there is a recent commitment to reach a consensus on this decision, it is not a binding decision).

b) Each Autonomous Region must authorise the activities of the Intercountry Adoption Agencies that wish to operate in the region and must also guarantee that they are supervised and controlled. This means that there are a large number of officially authorised Intercountry Adoption Agencies in a single country, which causes significant problems when an Autonomous Region suspends authorisation for an agency and that agency continues to be authorised to operate in other regions.

c) Processing of Suitability or Unsuitability Certificates issued to adopting families may be very different from one Autonomous Region to another, in terms of the information furnished, requirements imposed or the evaluation system as a whole.

8. This complicated situation was clearly presented by a Senate Committee formed on 21 May 2002 specifically to examine intercountry adoption. After studying the opinions and information gathered from authorities and experts, in December 2003 the Committee issued excellent findings and recommendations containing a highly accurate analysis of the actual implications and complexity of the intercountry adoption process in Spain, and of the steps to be taken in this respect 30.

CHANGES THAT HAVE BEEN MADE

9. UNICEF values highly the process undertaken and promoted by the Public Administration to develop some of the Senate Committee’s proposals and recommendations, such as:

a. Review State legislation to adapt it to current circumstances, resulting in the preparation and approval of the new Law 54/2007 on Intercountry Adoption;

b. Creation of the Consultative Council on Intercountry Adoption;

c. Signing of some bilateral protocols for cooperation with countries of origin;

d. Implementation of social (economic tax, etc.), educational and health measures to support adopting families;

e. Support for international cooperation programmes for the protection of children in countries of origin;

f. A number of measures designed specifically to improve supervision and control over the Intercountry Adoption Agencies, which are also included in Law 54/2007 on Intercountry Adoption.

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OBSTACLES ENCOUNTERED

10. Although these measures and other measures adopted by the Public Administration form a system that, in theory, has all the guarantees and safeguards stipulated in international legislation, an analysis of the actual situation reveals that the guarantees are undermined as soon as a lack of consensus between competent authorities in Spain leads to differing decisions regarding the possibility of adopting in a certain country, highlighting the fact that the guarantee of the higher interests of the child whose rights must be protected is not valued in the same manner by two competent authorities in the same country, Spain.

11. Due to the distribution of powers over this matter, each of the autonomous territories with powers to protect children has been designated as a Central Authority for the purposes of the Hague Adoption Convention, entailing a total of 23 Central Authorities in Spain, which complicates the harmonious implementation of this Convention.

UNICEF SPAIN RECOMMENDS:

- A specific body should be created to engage in interregional and interministerial coordination in connection with intercountry adoption, the decisions of which must be binding.

- The role of the Directorate General for Social Policy, Families and Children (Ministry of Health and Social Policy), as the competent authority for national policies relating to children, should be strengthened (pursuant to Article 12.1 of Royal Decree 1041/2009 (29 June)), with respect to the following essential and prominent aspects: “encouragement, analysis, preparation, coordination and follow-up of action programmes to protect and promote families and children, and cooperation with public and private, national and international bodies in relation to intercountry adoption”.

- The competent Public Authorities should assume full responsibility for guaranteeing the higher interests and the rights of the child in intercountry adoption processes, which entails:
  - Employing all means and resources that are necessary and available to provide accurate, objective and up-to-date information on adoption processes in each country, so that applicants may take fully informed decisions, thereby reducing adoption failure to the extent possible.
  - Exercising more diligently and effectively their supervision, surveillance and control powers over the activities of the Intercountry Adoption Agencies, both in Spain and in the children’s countries of origin.
  - Promoting specialised training of the professionals and other parties involved in an intercountry adoption project, since they are best able to both transmit the requirement in adoption that the principle of the child’s best interests and rights must be served and to directly guarantee them during the process.
  - Providing Consulates with the necessary means to adequately perform support functions for intercountry adoption applicants when they are in the countries of origin.

- Following the Senate Committee’s recommendation and proposal, the possibility should be studied of creating a body, in the General State Administration, to assume support and coordination functions in relation to the competent foreign Administrations (and, therefore, in connection with the formalities and procedures carried out in the countries of origin), assistance for intercountry adoption applicants, and support for and control over the activities of the Intercountry Adoption Agencies.

- The Committee on the Rights of the Child should consult the Government on the following aspects:
  - Whether or not the Government of Spain, under the Hague Adoption Convention, should take the decision regarding in which countries children may or may not be adopted.
  - To what extent the social pressure exerted by applicant families is taken into consideration when determining that intercountry adoptions may be processed in a specific country, as the International Social Service has stated on occasions.
  - Whether the actions and functions of the Spanish Consulates are defined in relation to intercountry adoption processes and whether they have the capacity, resources and means necessary to verify the existence of the guarantees stipulated in the Hague Adoption Convention.
VI. BASIC HEALTH AND WELFARE

Child-youth psychiatry

CURRENT SITUATION

1. According to several associations of persons with psychiatric pathology, 10% of the Spanish population under 16 years of age has some type of psychiatric pathology. However, Spain and Rumania are the only EU countries without a child-youth psychiatry specialty or sub-specialty within the public health system.

2. This means that, in Spain, in the absence of consistent, quality training in specially authorised centres, children are attended by general psychiatrists, frequently in general mental health units, sharing space with adult patients who have serious and chronic problems, which creates socio-environmental conditions that are highly unusual and inadequate for children. In general, professionals lack the resources and adequate training to correctly treat children and their families.

3. Additionally, the few but excellent child-youth psychiatrists working in Spain were mostly trained abroad and many of them work in private medicine, due mainly to the lack of resources and quality, and the difficulties encountered, in public medicine.

4. To date, in Spain there are virtually no public Units or Services specialised to any degree in this area, since the approach adopted has been to assign beds for children in Psychiatric Units at Public Hospitals attended, in general, by general psychiatrists and psychologists. In Barcelona and Madrid, at first, and now in some other Autonomous Regions, there are specific psychiatric inpatient units for children, but adolescents aged between 14 and 18 are not admitted and are sent to general psychiatric units.

5. Nowadays there are numerous and varied problems in Spain generating the need for psychiatric care for children and adolescents: high demand for care relating to psycho-pathological disorders such as attention deficit disorders or depression; eating disorders are now appearing in 10-year-old girls; school drop-out caused by emotional or behavioural disorders is more serious than was previously believed; and consumption of alcohol and other drugs is growing steadily, starting at 11-12 years of age.

6. Additionally, as reflected in some studies, emotional and behavioural problems and violent attitudes towards their family have increased in children placed in protection centres; in other words, an increase in the psychopathology of these children has been detected in connection with behavioural or mental health problems, which require more specialised and qualified care at these centres so as to perform a better diagnosis of possible issues in the children and, if applicable, detect the issues earlier.

7. The consequences of this precarious situation include children and adolescents with problems that are diagnosed incorrectly or late, without adequate psychotherapeutic and psychiatric treatment, cared for in general mental health centres or services. This generates clear situations of depression, school drop-out, social rejection, drug addiction, violence, etc., i.e. the negative evolution of disorders, all having a negative impact on the family environment, which does not receive adequate guidance to face a

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problem of this nature, and generating a burden for other areas of society.

8. However, the majority of Spain’s Autonomous Regions have created “Centres for children with behavioural problems and social difficulties”. They are residential child protection centres (already mentioned in this report) who, due to their serious lack of adaptation to their family and school environment, could cause harm to themselves or to others34. All the centres, barring three that are owned and managed by the relevant Regional Government, are managed by various kinds of private entities.

9. We must not forget that this situation is once again accompanied by the significant differences between the Autonomous Regions resulting from the transfer of powers over health and healthcare matters. Clear examples of this are the differences in the provision of the healthcare required in these cases, the different care resources available in each region and the lack of consistent, shared records and information systems.

10. At the social level, there is still major prejudice in relation to these patients, due mainly to society’s ignorance of mental disorders, which generate such anguish among sufferers and their families that they reject the existence of the illness.

CHAN GES THAT HAVE BEEN MADE

11. According to experts35, problems related to mental health are growing in significance daily in Spain, both in terms of their seriousness and their prevalence and the psychosocial and economic costs that they generate.

12. In recent years, however, considerable progress has been made in care services for the mental health of children and adolescents: evolution of outpatient programmes (though very disparate in each Autonomous Region); the number of psychiatric inpatient units for children (basically adolescents) has grown thanks to a major effort by the relevant Public Administrations.

13. From this perspective, UNICEF Spain values positively the effort made by the Spanish Administration in recent years to improve the resources assigned to these children. Of course, we congratulate the Administration on the step taken in response to demand from different professional and patients’ organisations, the Ministry of Health having announced in April 2009 the creation of the medical speciality Child-Youth Psychiatry although, as a consequence of the regulatory formalities that must be completed, the first training courses will not be available before the 2011-2012 competitive examination for new resident doctors (MIR) is held.

14. This promising situation must not conceal the huge deficiencies in this area, since it is essential to prioritise healthcare resources, particularly intermediate alternatives such as rehabilitation, and to promote coordination with other resources relating to children and adolescents, such as social, educational and judicial services, etc.

Inpatient conditions for children have improved significantly in the majority of hospitals in developed countries and Spain is no exception. Even so, there is still a long way to go before the European Charter for the Rights of Hospitalised Children and the CRC are fully implemented in our hospitals and healthcare centres.

There are already European initiatives promoting and implementing the European Charter for Hospitalised Children, some of which have been adopted to a certain extent in Spain, where work is in progress in hospitals and healthcare centres, as well as in professional organisations and associations in the healthcare sector.

However, there appears to be a lack of clear and determined support from the Public Administrations for actions aimed at facilitating the improvement and specialisation process, since scarcely any resources are assigned to the reforms required in hospitals and healthcare centres.

UNICEF SPAIN RECOMMENDS:

- A network of specialised services for children and adolescents should be created (particularly new inpatient units). These should be specific, coordinated together with the general mental health services and formed by interdisciplinary teams and professionals specialised in child-youth psychiatry.

- Coordination between Public Administrations should be improved in order to offer children and adolescents the same resources in different Autonomous Regions, thus avoiding potential discrimination due to residence and guaranteeing equality and fairness in care services.

- Coordination between mental health units and primary care units, and between teams of educators and social and judicial services, should be enhanced to offer a community-focused care model integrating, to the extent possible, the child’s family, school and social environment.

- Consistent national records should be prepared to allow up-to-date, comparable and detailed information to be obtained on the actual status of children’s psychiatric problems in Spain, so as to determine needs and undertake research for the design of specific techniques to prevent and treat this type of pathologies.

- Research in the field of child and adolescent psychiatry should be encouraged, both in the study of the prevalence of these pathologies and needs that are not covered, and in their causes, development and treatment.

- Efforts should be made to provide resources and to train professionals, particularly following recognition of the Specialty.

- Awareness-building and information initiatives should be encouraged in relation to psychiatric pathologies (through a specific campaign or other mechanisms) to combat the social stigma and prejudices that they generate.

Children in hospitals and health centres

The quality of care and healthcare provided to children and adolescents in hospital and healthcare centre environments should be improved and specialised from the perspective of the promotion of children’s rights as reflected in the European Charter for Hospitalised Children and in the CRC.

Knowledge of the European Charter for the Rights of Hospitalised Children and the CRC should be fomented among both medical and healthcare professionals in hospitals and healthcare centres, and in the content of the compulsory courses studied to obtain professional qualifications.

This would comply with the Committee’s June 2002 observation encouraging the Spanish Government to improve its “mental health and psychological guidance services, ensuring that they are accessible to adolescents and account for their needs”, a recommendation that continues to be fully applicable.
Breastfeeding

CURRENT SITUATION

18. There is currently no information available on the prevalence of breastfeeding in Spain and there is no strategy to promote it, or active supervision of compliance with the WHO Code (although it has been incorporated into Spanish legislation\(^{37}\)), or basic actions to reinstate breastfeeding.

19. In Spain there is no official policy for the feeding of babies and infants, there is no National Committee and, therefore, no national breastfeeding coordinator, as recommended by UNICEF in its 1990 Innocenti Declaration\(^ {38} \).

20. The ILO and Spanish legislation protect women’s right to breastfeed, but there are, in practice, to many women, such as women in domestic service, agricultural labourers, immigrants, self-employed, etc. who encounter serious obstacles to breastfeeding.

21. The transfer of powers over public health care and promotion to the Autonomous Regions complicates the implementation of national policies by the Ministry of Health and Consumption, but the Interterritorial Council has repeatedly declared the need for the Central Administration and the Regional Administrations to work together to reinstate breastfeeding.

22. There is a formal commitment from Spain’s institutions in the form of 14 Non-Legal Proposals from 14 Regional Parliaments and from the Spanish Parliament encouraging the Central and Regional Governments to transform maternity and children’s hospitals by applying the strategy promoted by the Baby-Friendly Hospital Initiative (BFHI) launched by the WHO and UNICEF.

CHANGES THAT HAVE BEEN MADE

23. UNICEF and the BFHI have brought about new institutional commitments in the form of collaboration agreements with the Ministry of Health and Consumption and with the Autonomous Governments, including the creation of regional committees to implement the agreements. There are now 15 BFHI Hospitals, strategies have been designed to transform hospitals and healthcare centres, and there are official training courses for healthcare personnel. This has all been achieved with support and financing (not always sufficient) from the health authorities.

UNICEF SPAIN RECOMMENDS:

- Determined policies should be developed to promote, protect and support breastfeeding as part of a national programme with its own budget, objectives, goals and indicators of the effectiveness of the actions taken.
- Maternity leave should be extended to six months to make it compatible with the essential and exclusive breastfeeding of babies during the first six months of their lives.

Adequate iodine intake

CURRENT SITUATION AND CHANGES THAT HAVE BEEN MADE

24. The National Strategic Plan for Children and Adolescents 2006-2009 states the following in measure 9.8: “promote actions for the eradication of iodine deficit disorders to prevent the serious consequences of this deficit in children and adults, entrusting compliance with this measure to the Ministry of Health and Consumption in association with the Autonomous Regions”.

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25. Additionally, the “Guide for the prevention of congenital defects”, published in 2007 by the Ministry of Health and Consumption, recommends 200 mcg iodine supplements during pregnancy and breastfeeding, in accordance with the recommendations of the main scientific societies.

26. Nonetheless, the most recent studies continue to confirm:

a. Adequate iodine intake by schoolchildren despite the low consumption of iodised salt.
b. Many expectant mothers with iodine deficiency.
c. Limited data on iodine nutrition in children under six.
d. Improvable figures for new-born babies.
e. Very low consumption of iodised salt by the general population.

OBSTACLES ENCOUNTERED

27. There is no National Programme for the eradication of Iodine Deficiency Disorders and limited sensitivity of politicians to the problem of iodine deficiency in Spain.

28. There is a high concentration of iodine in commercial cow’s milk due to uncontrolled cattle raising practices, which explains the adequate intake of iodine by schoolchildren and generates a mistaken perception of problem resolved.

29. There is no legislation in Spain that helps to promote the universal consumption of iodised salt.

30. Responsibility to eradicate Iodine Deficiency Disorders is still being assumed by scientific societies and healthcare professionals who are aware of this issue.

31. Some regions of Spain are still unaware of the actual situation of iodine malnutrition.

UNICEF SPAIN RECOMMENDS:

- The eradication of iodine deficiency in Spain should be an immediate objective of the Central Government and of all the Regional Health Departments through regulatory changes (such as the regulation of iodisation of salt for human and animal consumption), awareness-raising among healthcare professionals and the society at large, and an increase in research resources.

UNICEF SPAIN RECOMMENDS:

Child poverty

CURRENT SITUATION

32. Child poverty is a problem of fundamental importance in Spain. According to national statistics39, nearly one out of four children (23.4%) is living in a household with income below the “poverty risk” threshold. This places Spain fourth among European Union countries with the highest rates of child poverty, together with Italy and Portugal.

33. Since 2002, child poverty rates have remained stable at around 25% of children41. This is despite the recommendations of the Committee on the Rights of the Child that the Spanish State should “identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated to the maximum extent of available resources for the full implementation of the economic, social and cultural rights of children, in particular for children belonging to the most vulnerable groups in society”42.

34. UNICEF Spain is concerned at the limited emphasis placed on child poverty and the limited coordination of policies and strategies to combat child poverty in

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40. Defined as the percentage of boys and girls that live in households whose income (after taxes and welfare benefits) is below 60% of the average income of all households.
different environments. Although since 2002 there have been several national Social Inclusion plans and National Plan for Children, child poverty and social exclusion have not been prioritised in social policies. A good indicator of this is the scarce references to this matter in the Action Plans for Social Inclusion in Spain (PENAin) for the periods 2006-2008 and 2008-2011.

35. The PENAin 2008-2010 plan is mainly focused on promoting employment, guaranteeing a minimum income, quality education and social integration of immigrants. Only one of these objectives, to “Achieve a quality education”, is clearly focused on children, but it is designed more to ensure the future access of students to the labour market than to promote their rights. This PENAin plan includes children in the section on actions for persons in the most vulnerable situations, but refers to the National Strategic Plan for Children and Adolescents. Despite this, the current PENAin plan is an improvement on previous plans as regards the presence of children and their rights, which were almost absent from earlier texts.

36. In the National Strategic Plan for Children and Adolescents 2006-2009 (PENIA) there is no specific objective to reduce child poverty, although the plan addresses several related aspects: work-life balance, study grants, fight against school absenteeism, support for the work of NGOs in poverty prevention, etc. Strategic objective 6, the objective most closely related to poverty (“Promotion of care and social intervention for children and adolescents at risk, unprotected, disabled and/or socially excluded, establishing shared criteria for assessable quality and best practices”), is implemented through several measures, one of which is precisely (through a curious circular reference) the inclusion of measures to combat child poverty in the National Social Action Plan for Social Inclusion.

37. Also at the regional and local levels, child poverty is generally absent in objectives and actions planned, both in plans for families and/or children (if any) and in social inclusion plans.

CHANGES THAT HAVE BEEN MADE

38. In the period covered by the report, general poverty has decreased in real terms (poor people’s standard of living has risen in absolute terms). However, the data reflect an increase in poverty risk for certain groups and, in particular, the aggravation of the situation of families with children.

39. The difference between child poverty and the poverty of the rest of the population remains high. Child poverty is 33% higher than that of adults between 18 and 65 years of age, above the average for the total population and only exceeded by the poverty rate for persons aged over 65.

40. A study issued by the Foundation FOESSA expresses concern at the increase in child poverty in the last 10 years and at the particular impact of severe poverty (households with income below 25% of average income) on children (3.5%), which exceeds the rates of other age groups.

41. The composition of households and the employment situation of parents are still determining factors for child poverty in Spain:

a. Family structure: in single-parent households and in families with three or more children, child poverty is 12% above the average. Law 40/2003 (18 November) on Protection for Large Families, which extended large-family status to families with three children for access to certain benefits or discounts on public services, does not appear to have had the desired impact.

b. Employment situation: adult unemployment is virtually a determining factor for household poverty. Historically and at present, Spain’s unemployment rate has been and is higher than that of neighbouring countries. Specifically, Spain has very high rates of child poverty in households in which at least one parent works (second place in the EU behind Portugal). This fact is closely related to the precarious nature of employment, low salaries and undesired part-time employment.

48. European Commission (2008), (p. 34)
42. Other factors make boys and girls particularly vulnerable to poverty: forming part of certain minorities, scarce focus on the education of children between 0 and 3 years of age, and immigrants’ children. For example, in Spain the poverty rate for children born in Spain is 21%, while the rate for children born outside the EU is an alarming 52%. This difference heightens in the case of severe poverty (4% as compared with 28%). Other groups of children, such as Roma children or disabled children, also show poverty rates well above the average.

43. Child poverty must also be addressed in more detail from the viewpoint of gender, the comparison of different Autonomous Regions (which show significant changes in relation to the poverty of the population as a whole, depending on the territory) and improved information on child poverty in different environments (e.g. rural and urban).

44. As regards the permanence of poverty, and according to research carried out, the persistence of poverty is more significant for children than for the rest of the population. Children are also more likely to fall into low income and less likely to escape poverty than adults or than the total population.

45. The EU’s analysis of child poverty places Spain in country group D, characterised by high levels of child poverty, very high levels of poor working families, due to the “low intensity of employment” (few households with two incomes) and the lowest levels of welfare benefits and of the efficiency of those benefits in the European Union.

OBSTACLES ENCOUNTERED

46. According to analyses performed, one of the main causes of this high rate of child poverty is the scarcity, and even absence, of public policies and specific measures to combat this serious phenomenon. The level of welfare benefits for families with children is among the lowest in the European Union. According to Eurostat (2008), social investment in policies for families and children stood at 1.1% of the Gross Domestic Product in 2005, as compared with 2.5% in France, 1.5% in Greece and 3.2% in Germany.

47. Although there has been an increase in social investment for families and children since 2000, it remains very low in comparison with neighbouring countries and is clearly ineffective. Besides the national plans for children and social inclusion, which scarcely address this phenomenon, child poverty has not been addressed in an integrated manner at the national, regional or local levels.

48. The design of social protection and inclusion policies has focused on particularly vulnerable groups (also with limited resources and little success) rather than on universal policies for the well-being of children. According to Foessa, “the current design of the benefit system therefore provides relatively less protection for children than for the rest of the population. Its contribution to the reduction in poverty also declines over time, demonstrating that its effectiveness is limited and there is a gradual loss of protective intensity”.

49. While Spain did not take advantage of the economic bonanza to 2007 to reduce child poverty rates, initial analyses by social organisations are currently demonstrating the serious impact of the economic crisis on young families with small children, who have become the most vulnerable to the effects of the crisis.


50. Using 25% of the median as a threshold.


52. European Commission (2008), (p.49).


UNICEF SPAIN RECOMMENDS:

- Planning and coordination require urgent improvements to reduce the high rates of child poverty in Spain. A National Plan should be created to combat child poverty which establishes a coherent framework identifying priority actions against the exclusion of children, with specific and measurable objectives, clear indicators, deadlines and sufficient economic and financial support. This plan must be capable of effectively coordinating actions at the national, regional and local levels, actions in different areas (particularly economy, healthcare, social policy and education) that are particularly responsible for children, and must include the necessary participation of girls and boys, as well as other members of society.

- The Spanish Government and regional and local administrations should substantially increase their resources for families and children, paying particular attention to child poverty.

- A comprehensive study and analysis should be performed of fiscal, healthcare, educational and social policies affecting families and children, and of their impact on children’s well-being, with a rights-based approach. This includes, among other issues:
  - Defining and improving child poverty and exclusion indicators, focused on the child as an individual (not only on the family situation);
  - Designing welfare instruments that specifically benefit children, in addition to general welfare for families.
  - Services, resources and welfare of all kinds for low-income or unemployed persons should always consider the presence of children in households in order to evaluate amounts, which should be estimated based on the actual proportion of the cost of children in a household and not using priori estimates.

- Special support measures should be applied to children and families most exposed to poverty, particularly children in institutions, single-parent families headed by young women with precarious employment, large families, single-income families, unemployed families, immigrant families and families including disabled persons.

- In addition to the specific policies for low-income families and particularly vulnerable groups, progress should be made in the development and improvement of broad or universal policies, services and welfare for the prevention of child poverty, such as a guaranteed minimum income for families, genuinely free education (textbooks, school meals), welfare and services for families with children aged 0 to 3, improved life-work balance, and a reduction in the school drop-out rate.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education

CURRENT SITUATION

1. Now that virtually all children attend school in the second cycle of Infant Education (from 3 to 6 years of age), the Administration is making considerable efforts to increase early schooling (0 to 3 years of age), recognising its importance both to subsequent school performance and to the life-work balance; in this case, however, there is still a long way to go.

2. The rate of premature school drop-out\(^6\) in Spain remains very high, at 31% in 2007 (second highest in the European Union behind Portugal). Government forecasts for 2010\(^6\) indicate a reduction to 23.9%, while the EU forecast is 10% for 2010. Differences between Autonomous Regions are considerable, ranging from 15.3% (Basque Country) to 54.8% (Ceuta and Melilla).

3. Another highly relevant issue is the power to determine the use of the State’s different official languages and resulting models for the organisation of schools. A matter that should be addressed in terms of cultural richness and the appreciation of diversity is generating a negative perception of language diversity and is even used by political parties, with undesirable results that may range from exclusion to the rejection of diversity.

4. The participation of children and adolescents in the school environment is still under-developed and is limited by law to a tiny presence in School Councils commencing in secondary education (12 to 16 years of age).

5. Finally, Spanish universities face a major challenge in relation to training in the rights of the child, as the majority of courses relating or linked even partially to children and adolescents (such as legal sciences, teaching, education, psychology or medicine) do not even devote a part of their content to this matter.

### CHANGES MADE AND OBSTACLES ENCOUNTERED

6. Since 2002 two General Laws on Education have been enacted in Spain with very different focuses (coinciding with the Governments formed by two different political parties), in addition to numerous new regional regulations on education, entailing the derogation of old regulations when the new regulations were approved. This means that the direction of educational policies has continuously changed, complicating development and undermining the stability of the education system. The Government is now in talks with all its political and social interlocutors to arrive at a Social and Political Agreement on Education that will hopefully increase stability in the future.

7. Additionally, despite the effort made by the Administrations to increase the number of places in 0 to 3 infant education (which UNICEF Spain values highly), they are still insufficient to meet demand and their cost is still very high for many Spanish families. This increase in school services must ensure minimum conditions as regards personnel and facilities to guarantee the educational nature of this cycle.

8. The Central Administration’s efforts to include the rights of the child (CRC) in the school curriculum is worthy of note, even though it is only mandatory in primary education in the subject “Education for citizenship”, while its development and implementation in the Autonomous Regions varies significantly.

9. In universities, timid progress has been made in the inclusion of the rights of children in course content, particularly in three- and four-year degree subjects, and in specialisation courses for jobs relating to children. The vast majority of Spanish university students have not heard of the rights of the child, which prevents these future professionals from affording children’s issues the priority they require to ensure that the rights recognised in the CRC are realised.

10. Also relevant is the step taken by the Administration to promote the inclusion of new technologies in both the school curriculum and in schools, although this is only the beginning since, as teachers indicate, their own training in the use of these techniques requires a significant investment.

11. It should also be noted that the participation of children and adolescents in the school environment has lost momentum and there are few projects in this area.

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\(^6\) Defined as a percentage of the population aged from 18 to 24 that have completed, at maximum, the first phase of Secondary Education and do not go on to study or train.

UNICEF SPAIN RECOMMENDS:

- The process initiated by the current Ministry to reach a State Pact that guarantees the stability of the education system should continue.
- The number of quality school facilities for the first cycle of infant education (0-3) should be increased.
- Mechanisms for the control, evaluation and follow-up of minimum requirements relating to personnel and facilities at all infant education centres must be improved to guarantee quality and equality through the cycle.
- The right of children to participate in the school environment should be actively and genuinely realised.
- Work should continue on the inclusion of the Convention on the Rights of the Child and of Human Rights in the education curriculum of all school cycles and universities, as well as in initial and ongoing teacher training.
- The necessary resources should be allocated to avoid any possibility of exclusion due to a lack of knowledge of the vehicular language in each Autonomous Region and to foment actions to promote the appreciation of the cultural richness of language diversity in Spain.

CURRENT SITUATION

1. According to data from Spain’s Home Office, the number of unaccompanied foreign children in Spain was 6,475 at the end of 2007, although the source refers to the limited reliability of this figure for three reasons: the territorial mobility of children, i.e. the same child could be counted more than once; the criteria for determining who is an unaccompanied foreign child vary depending on the Autonomous Region; and figures are not reported by all the regions. It is clear that the number of unaccompanied foreign children arriving in Spain has been on the increase since 2001, collapsing acceptance and protection systems. Protection services have been unprepared and have therefore not always complied with Organic Law 4/2000 (11 January) on the rights and freedoms of foreigners in Spain (LOEX) and the related enabling regulations.

2. The repatriation of children has declined considerably (62 children repatriated in 2004; 61 in 2005; 111 in 2006; 27 in 2007; and 10 in 2008), due largely to the work of immigration organisations and lawyers, although the efforts made by the Public Administration, aware that the repatriation procedure did not include the necessary guarantees or protect children’s interests, are worthy of note. However, there are still hundreds of children subject to repatriation orders, which causes great distress and insecurity regarding their future.

3. The entry in the EU of Rumania and Bulgaria has generated confusion in this respect; children of these nationalities are still accounted for and registered as unaccompanied foreign children and also appear in the figures for repatriated children. Additionally, in Spain a total of at least 64 children have returned voluntarily since 2000, and the majority of cases in which more detailed information has been obtained relate to unaccompanied Rumanian children, particularly children in prostitution. In some cases, the “voluntary

82. Spanish Bar Council And UNICEF Spanish Committee (2009). Ni ilegales ni invisibles: realidad jurídica y social de los menores extranjeros en España (Neither illegal nor invisible: legal and social reality of foreign children in Spain). Madrid, CGAE, UNICEF-Spanish Committee and BANESTO. Most of the data in this section have been obtained from this recently published report.
nature” of their return could be questioned, or the suitability of this measure could be doubted in the case of adolescents that have been victims of sexual trafficking and exploitation by criminal organisations in Spain, who may not be welcomed by their families and could be victims of social stigma.

4. In its previous Concluding Observations, the Committee reiterated its recommendation for Spain to perfect its data collection and analysis mechanism, particularly for unaccompanied migrant children. Although the Enabling Regulations for Organic Law 4/2000 (11 January) on the rights and freedoms of foreigners in Spain and their social integration envisages the creation of a National Register of Unaccompanied Foreign Children, but this register is not currently operational and both the data collection system and the use of the data are clearly improvable.

CHANGES THAT HAVE BEEN MADE

5. In the period to which this report refers there have been several legislative changes that affect the legal reality of unaccompanied foreign children. On 11 December 2009, the Law on Immigration was amended to include some of recommendations made by non-governmental organisations and jurists’ associations: in particular, for all matters relating to the repatriation procedure, the law recognises children’s right to be heard and the capacity to act in the procedure, whether personally or through his or her representative (children over 16), or by appointing a defence counsel where the child’s will conflict with that of his or her guardian or representative (children under 16).

6. Also worthy of note is the abolition of Instruction 3/2003 of the Spanish Public Prosecutor’s Office, “On the legitimacy of returning foreign minors that wish to illegally enter Spain and who are not in a legal situation of neglect”, whereby all unaccompanied foreign children aged over 16 were treated as emancipated minors for all purposes and were therefore subject to legislation applicable to adults. This Instruction allowed their immediate return to the border, i.e. these children were prevented from accessing the protection system. It was abolished (at the end of November 2004) by Instruction 6/2004 (26 November), “On the legal treatment of unaccompanied immigrant foreign children”, representing a highly positive change.

7. We are concerned at some of the reforms of the recently approved Law 2/2009; specifically, the capacity granted to the Autonomous Regions to directly establish agreements with the countries of origin, and the possibility of the General State Administration and the Autonomous Regions assigning guardianship of unaccompanied foreign children to non-governmental organisations, foundations and entities engaged in protecting children.

8. It is true that there has been an attempt to enhance this coordination role by creating the Observatory on Children, which prepared a Protocol for Foreign Children in 2005. The Protocol basically seeks to harmonise the procedure to be followed once an unaccompanied foreign child is detected (determination of their age, placing in care, repatriation) but, in our opinion, it fails to address many other fundamental aspects of a child’s life (protection, request for asylum, plan for education and life).

9. As regards the right to education, the reformed LOEX stipulates the right of children to have access to basic, free, compulsory and post-compulsory education. This could exclude children of foreign origin aged under six, since compulsory education begins at that age. Indeed, the following paragraph was eliminated from the previous law: “In the case of infant education, which is voluntary, the public administrations shall guarantee the existence of sufficient places to ensure schooling for the population that requests it”.

10. Another cause for concern are unaccompanied foreign children and children separated from their families without access to the Spanish protection system, or who leave the system at their own choice or because a family member living in Spain is identified. The profiles detected during research for the report “Neither illegal nor invisibles” are:


b. Children living with large families that do not provide the necessary care or guarantee their rights.

c. Children who are victims of trafficking or exploitation by organised groups.

These children are rendered invisible and do not appear in any statistics. The protection system provided by Spanish legislation does not therefore work for them.

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OBSERVATIONS ENCOUNTERED

11. The Central Government has competence for immigration and the Autonomous Regions have competence for the protection of children. Moreover, each Autonomous Region establishes its own criteria, causing a lack of coordination and grey areas.

12. The Committee also recommended adequate compliance with the LOEX to provide foreign children with a temporary residency document. Although the LOEX and its Enabling Regulations stipulate the right of unaccompanied foreign children in Spain’s protection system to obtain a residence permit (after the impossibility of returning to their family or country of origin has been demonstrated), in practice this authorisation takes an unreasonable length of time, which is a serious obstacle to the exercise of their rights (education, job training, etc.), in addition to the emotional suffering caused by uncertainty. Some of the children are adults before their situation is regularised, automatically becoming illegal aliens. Both the Ombudsman and the Madrid Region’s Ombudsman for Minors have expressed concern at these situations.

13. This means that many children who are in this situation, and children in respect of which a repatriation order has been issued, run away from the child protection centres and the Autonomous Region in which they are placed with the hope of receiving better treatment in a different region. The whole process (determination of age, declaration of neglect, repatriation procedure, placement and authorisation of residence) then recommences.

14. Moreover, in the case of the “assignment” of foreign children protected in one Autonomous Region to a different region, protection is still the responsibility of the Autonomous Region of origin, while guardianship is the responsibility of the Autonomous region of destination. In view of the legal and administrative consequences of these situations (in addition to the personal consequences when the child’s guardian is physically remote) will always be detrimental to the child’s higher interests.

15. In its 2002 Concluding Observations, the Committee expressed concern that the non-discrimination principle was not being applied fully to children of migrant workers, particularly when they are not legal and with respect to access to adequate health and education services. Although the law generally provides guarantees in this regard, the obstacles encountered by children of foreigners in irregular situations include the obtaining of a school certificate, affiliation to a sport’s governing body, participation in excursions with schoolmates, or obtaining of a healthcare card, since the requirements of some administrations and bodies include the presentation of the parent’s identity document (excluding their passport). Although there are rulings reiterating that this is not a necessary requirement, it still occurs in practice.

VIII. SPECIAL PROTECTION MEASURES

UNICEF SPAIN RECOMMENDS:

● In all aspects relating to foreign children, their status as children must prevail over their status as foreigners. In the case of children, an economicist approach and the interests of the State must not be applied to regulate migratory flows. The vision of the child as a person with rights should be at the core of all actions and procedures followed.

● A comprehensive strategy and coordination led by the Central Administration is required. This strategy should address the coordination of technical experts, data collection and shared criteria in each Autonomous Region. One essential aspect is the start-up of the Register of Unaccompanied Foreign Children envisaged in the LOEX.

● The Committee’s 2002 recommendation that unaccompanied foreign children should be informed of their rights, particularly the right to asylum, should be reiterated. In this respect, the Observatory on Children’s current Protocol for Unaccompanied Foreign Children should be extended to include multi-disciplinary professional assistance (doctors, psychologists, interpreters, cultural mediators, lawyers, etc.), paying particular attention to the detection of children that are the victims of traf.

● The fact that an unaccompanied foreign child is, by definition, vulnerable and defenceless should be recognised. We therefore recommend that, immediately after their age has been determined, a declaration of neglect should be issued and the competent child protection body should take charge of the children.

● We must recall the significance of the Committee’s recommendation to improve the conditions and security of the protection centres and to train protection centre personnel, as well as the need to supervise and review the care they receive and the circumstances of their placement.

● The General State Administration should make a special effort to detect and protect unaccompanied foreign children and children separated from their families that reside in the Administration’s territory but do not have access to the rights guaranteed in that territory.

● The General State Administration and the Autonomous Regions should not allocate guardianship of unaccompanied foreign children to non-governmental organisations, foundations or private entities engaged in protecting children. This measure is only applied to unaccompanied foreign children, which infringes the principle of non-discrimination stipulated in Article 2 of the CRC, as well as General Observation 6 of the Committee on the Rights of the Child, which stipulates that the State is obliged to apply the CRC to all children in its territory or subject to its jurisdiction. The delegation of these obligations could generate major legal uncertainty for the children. In this respect, the Enabling Regulations for the new LOEX must guarantee strict compliance with the provisions of the Convention on the Rights of the Child for foreign children.

Unaccompanied foreign children (cont.)

Sexual exploitation and sexual abuse of children

CURRENT SITUATION

16. According to some studies, knowledge of the sexual exploitation and abuse of children in Spain is limited, since data relate only to cases that reach the social and legal system, which represent a small percentage of actual cases. Even so, the data provided by the Spanish Government in its III and IV Report to the Committee on the Rights of the Child are clear in this regard: “the number of victims has increased in the majority of offences, 3,651 victims having been registered in 2006.”

17. We may therefore state that this phenomenon exists in Spain and that adolescent girls are known to be the main victims of this type of offence, accounting for

around 80% of cases (prostitution mainly affects girls aged between 15 and 17), while child pornography affects both girls and boys (particularly children under 13)\textsuperscript{71}.

18. In recent years there has been a significant increase in known child pornography offences, due largely to decisive police investigations monitoring offences of this nature committed using the Internet.

19. What appears clear is that the growing presence of unaccompanied children and the increase in trafficking of children and women from other countries, particularly Eastern Europe and Latin America, raises major concern that this phenomenon will increase further in Spain in the short and medium term.

20. Moreover, the considerable and rapid growth of the Internet in recent years and, consequently, the appearance of new forms of criminal conduct using the new technologies, particularly social networks and online communication through the Internet, to sexually abuse children (cyber-abuse of children) could aggravate the situation.

**CHANGES THAT HAVE BEEN MADE**

21. UNICEF Spain values highly the process undertaken and encouraged by the Spanish Public Administration to combat the sexual exploitation of children. The Observatory on Children has prepared and approved two Action Plans (2002-2003 and 2006-2009) against the Sexual Exploitation of Children and Adolescents, demonstrating its decision to address this issue both from an integrating perspective (Public Administrations, experts and NGOs specialising in children participated in the design and development of these plans) and through an integrated approach (combining proposals, actions and projects that range from the review of regulations, data collection, analysis and study, and claim systems to prevention, social awareness-building, and protection of and care for victims).

22. Additionally, growing concern for this matter in the last year, caused by a number of events in Spain, has led the Spanish Public Administration, in line with the commitment included in its II Action Plan against the Sexual Exploitation of Children and Adolescents 2006-2009, to adopt a more active stance in the fight against this serious problem. This posture has resulted in the signing of Convention 201 of the European Council on the Protection of Children against Sexual Exploitation and Sexual Abuse, and in the creation and launch of the Register of Precautionary Measures, Rogatory Proceedings and Non-Binding Rulings.

23. The Register is a database the main purpose of which is to support the activities of judicial bodies and to facilitate connections between Spain’s registration system and the systems of other European Union Countries, so as to contribute towards the prevention of recidivism of sexual aggressors, particularly in relation to sex attacks on children. Some experts have indicated that this could be the first step on the path towards the creation of a public register of paedophiles, which already exists in some neighbouring countries.

24. Although considerable progress and improvements have been made in recent years in the State legal framework, in relation to both the ratification of international legal instruments and the adaptation of internal legislation (mainly the Criminal Code) to those international instruments, Spain’s internal regulation still need to be improved. This is the opinion of both the Committee on the Rights of the Child, in its “Concluding Observations on Spain’s Initial Report to the Committee on the Rights of the Child on the CRC’s Optional Protocol on the sale of children, child prostitution and child pornography,” and of different NGOs, political parties and institutions committed to the observance and guarantee of the rights of the child, such as the Madrid Region’s Ombudsman for Minors\textsuperscript{72}. These entities, pressured by NGOs and civil society, are proposing amendments to the Criminal Code, in line with regulations in other European countries\textsuperscript{73}, to improve protection for children in this context.

**OBSTACLES ENCOUNTERED**

25. As indicated, the Observatory on Children has no power to demand the implementation of its Plans, proposals and recommendations, meaning that the member institutions have no legal obligation to observe the decisions taken by the Observatory.

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26. There has been no specific budget item for the two Action Plans, although some of the funds earmarked for actions contained in the Plans derive from government grants for social organisations.

27. There is still a great deal of ignorance of the sexual exploitation of children (particularly the differences between exploitation and abuse, which has repercussions when cases are treated) and of the Plan itself among persons (in both technical and political spheres) responsible for protecting children. Additionally, the Plans have not been adequately disseminated.

28. Data collection and in-depth studies on the reality of child sexual exploitation in Spain, which are among the basic objectives of the two Plans, have not yet been undertaken and it is therefore difficult to decide which type of actions should be prioritised. It should be noted that, although efforts are being made in this direction in Spain, there is still no centralised registration system for cases of child sexual abuse and exploitation, not even for cases reported to the police.

29. The Unified Register of Child Ill-treatment (RUMI), prepared and approved by the Observatory on Children, proposes a system for the notification and registration of cases of child ill-treatment detected in different areas of child care, in order to expedite the processing of such cases and obtain unified data from each Autonomous Region. This includes child sexual abuse and exploitation, entailing a major improvement in this respect. However, the RUMI has not yet been implemented throughout Spain, precluding the above-mentioned studies. The separate information held by the Autonomous Regions and other institutions, and even by different police forces, further complicates any diagnosis of the situation.

30. As some experts have indicated, this low level of coordination is also reflected in two specific areas:

a. The incipient improvements made to adopt shared and adequate protocols or mechanisms for case reporting and response, such as the “Reference Module for the development of an action protocol in cases of child ill-treatment” prepared recently by the Observatory on Children to improve inter-institutional coordination mechanisms for the prevention and processing of cases of child ill-treatment.

b. The lack of exchange of information, knowledge and experience, due mainly to limited knowledge of child sexual abuse and exploitation in Spain, as research in this area is scarce.

31. The Spanish Government itself recognises these limitations in the Report submitted to the Committee on the Rights of the Child in 2008: “(...) it should be noted that it is difficult to obtain data on child ill-treatment at both the State and regional levels, due to the absence of systematic studies and of sufficient official records74”.

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UNICEF SPAIN RECOMMENDS:

- The legislative and legal framework should be improved and completed, bringing it into line with prevailing international regulations, which entails both substantive reforms of criminal regulations (mainly in relation to the Criminal Code) and procedural reforms.

In particular, these reforms should:
- Raise the age of consent to sexual relations (established at 13 years of age in Spain).
- Raise, reasonably and adequately, sentences for sex offences against children, to ensure their deterrent nature, as Spain has short sentences compared with some neighbouring countries.
- Bring in new criminal offences:
  a. customer of child prostitution
  b. conduct that uses the new technologies to sexually abuse children, such as the cyber-abuse of children.
- Stimulate the debate on the advisability or otherwise of defining the mere viewing of child pornography as a new criminal offence, in line with the provisions of the European Council’s Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
- Avoid the second victimisation of the victim during the judicial proceeding, guaranteeing the adequate protection of victims and their families during proceedings, and seeking not to aggravate the traumatic experience.

- Coordination of Public Administrations (Central, Regional and Local) must be enhanced, which means:
  - Making better use of existing resources.
  - Collecting data and conducting research and studies to determine the true size of the problem.
  - Sharing and exchanging information, knowledge and experience.
  - Promoting the use of shared prevention, detection, reporting and response protocols and mechanisms in order to establish a centralised register or central database, thereby guaranteeing that offences of this kind will be monitored and that the data obtained will be analysed.

- A specific and adequate budget item should be assigned to the Action Plan against the sexual exploitation of children and adolescents.

- Care and treatment for victims of these offences should be improved, which requires investment in support programmes (including specific programmes for each type of offence), in psychological, medical and legal care services for victims and their families, and in the training of the professionals that participate in these processes.

- Mechanisms for reporting these offences should be promoted and improved, such as telephone or Internet help lines, which have proven to be useful for children, facilitating access and use.

- Secure Internet browsing for children should be implemented, requiring work on a number of aspects:
  - Inclusion of the new offences in criminal legislation;
  - Promotion of training-education of both children and adults on the hazards of using the new technologies;
  - Further support for police actions against the offences that are being committed in the Internet;
  - Demand for greater commitment from companies that provide Internet access, services and content so that the codes of conduct adopted through self-regulation processes are really effective.

- Public awareness and social mobilisation should be promoted to achieve “zero tolerance” in society for this type of offences, without forgetting the importance and advisability of involving children in the defence and protection of their own rights. To this end, training and awareness programmes must be designed to provide children with the necessary and adequate information, depending on their age, so that they become aware of the risks of sexual abuse and exploitation, learn how to avoid these situations and strategies to protect themselves against this type of offences, and discover how they may obtain specialised assistance.
