

SPAIN AND MOROCCO

NOWHERE TO TURN: State Abuses of Unaccompanied Migrant Children by Spain and Morocco

I. SUMMARY.....	1
Key Recommendations	3
Methods and Scope	3
International Standards	4
Terminology.....	5
II. CONTEXT	5
The Reaction in Ceuta and Melilla	6
The Pressures on Children to Migrate	8
The Structure of the Spanish Government.....	10
III. RESIDENTIAL CENTERS.....	11
Police Abuse During Apprehension.....	11
Failure to Protect Children from Abuse by Other Children.....	13
Abusive Disciplinary Practices.....	14
San Antonio's "Punishment Cell"	15
Physical Conditions in the Centers.....	16
Health Care.....	18
Education	20
Lack of Recreational Space and Leisure-time Activities.....	22
Clothing	23
Food.....	23
International Standards	23
IV. ARBITRARY AGE DETERMINATION PROCEDURES	25
V. EXPULSION AND LEGAL RESIDENCE.....	28
Legal Residence.....	32
Citizenship	36
The Violations of International and Spanish Law	36
VI. THE LACK OF EFFECTIVE MECHANISMS FOR ENSURING RIGHTS.....	37
Lack of Oversight and Clear Lines of Responsibility	37
Lack of Mechanisms for Lodging and Investigating Complaints.....	39
Right to be Heard.....	40
Police Impunity and Judicial Inaction	40
VII. MOROCCO'S FAILURE TO PROVIDE CARE AND PROTECTION.....	41
Abuse in Police Custody Upon Return to Morocco.....	42
Police Release of Children to the Streets.....	43
Failure to Protect Children Living Outside a Family Environment.....	43
Lack of Appropriate Facilities.....	45
International Standards for Protection and Care.....	46

VIII. RECOMMENDATIONS	47
To the Autonomous Cities of Ceuta and Melilla	47
<i>Residential Centers</i>	47
To the Spanish Central Government	49
<i>Ministry of Interior</i>	50
<i>Ministry of Foreign Affairs</i>	50
<i>Ministry of Justice</i>	50
<i>Ministry of Labor and Social Affairs</i>	50
<i>Ministerio Fiscal</i>	51
<i>Ombudsman (Defensor del Pueblo)</i>	51
<i>Government Delegates (Delegados del Gobierno) in Ceuta and Melilla</i>	51
<i>Ministry of Education, Culture and Sports</i>	52
<i>Ministry of Health and Consumer Affairs</i>	52
To the Government of Morocco	52
<i>Ministry of Foreign Affairs</i>	53
<i>Ministry of Interior</i>	53
<i>Ministry of Justice</i>	53
<i>Ministry of Youth and Sports</i>	53
To Donor Countries.....	54
To the United Nations	54
To the Council of Europe	54
To the European Union.....	54
IX. CONCLUSION	56
APPENDIX A	
Excerpts from Organic Law 4/2000, of January 11, Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and Their Social Integration, as amended by Organic Law 8/2000, of December 22, Reforming Organic Law 4/2000.....	57
APPENDIX B	
Excerpts from Royal Decree 864/2001, of July 20, Approving the Implementing Regulation for Organic Law 4/2000, of January 11, on the Rights and Liberties of Foreign Nationals in Spain and Their Social Integration, Reformed by Organic Law 8/2000, of December 22	59
ACKNOWLEDGMENTS.....	61

I. SUMMARY

Every year thousands of Moroccan children, some as young as ten, enter Spain alone, without proper documentation. Sneaking past Moroccan and Spanish police at ports and border posts, they put their lives at risk to pursue their dreams for a better life. Some flee abusive families; others flee poverty and the lack of educational and employment opportunities at home. All too often they find violence, discrimination, and a dangerous life on the streets of unfamiliar cities. When apprehended in Spain they may be beaten by police and then placed in overcrowded, unsanitary residential centers. Some are arbitrarily refused admission to a residential center. The residential centers often deny them the health and education benefits guaranteed them by Spanish law; in these centers, children may be subjected to abuse by other children and the staff entrusted with their care. If they are unlucky, they may be expelled to Morocco, where many are beaten by Moroccan police and eventually turned loose to fend for themselves.

All this takes place in two countries that have undertaken to provide all children within their jurisdictions the rights and guarantees specified in the Convention on the Rights of the Child.

In the case of Spain, this undertaking has been codified in legislation guaranteeing unaccompanied foreign children care and protection on the same basis as Spanish children, including the right to education, health care, temporary residency status, and protection from repatriation if repatriation puts the child or the child's family at risk. The Spanish government has failed to ensure that these provisions are uniformly enforced, and the Spanish regional governments that implement the law selectively or choose to ignore it altogether are not called to account.

For its part, the Moroccan government does not routinely monitor the situation of Moroccan children in Spain, facilitate repatriation from Spain when it is in the child's interest, or ensure that unaccompanied migrant children receive protection and care when they are returned to Morocco.

Conditions for unaccompanied migrant children vary throughout Spain, reflecting differences in the number of children in a particular city, local and regional governments' willingness to implement the law, and the existence of nongovernmental organizations working on behalf of unaccompanied children. Government officials and representatives of nongovernmental organizations agree that conditions for these children are especially dire in the autonomous cities of Ceuta and Melilla, Spanish cities located on the Moroccan coast.

In July, October, and November 2001 Human Rights Watch researchers traveled to Spain and Morocco to investigate the treatment of unaccompanied children in Ceuta and Melilla. We found a consistent pattern of police abuse in both cities. Unaccompanied children in Melilla were beaten, clubbed, and kicked by Spanish police during forced expulsions to Morocco, and then beaten, detained in unsafe conditions, and then released onto the streets by the Moroccan police who received them at the border. Children in Ceuta faced fewer expulsions, but still suffered from brutal beatings if they fled when Spanish police tried to apprehend them. Children in both cities failed to receive the temporary legal residency status they were entitled to under the law because their legal guardian, the Department of Social Welfare, did not apply for it. After two years of such legal residency, children are eligible to apply for naturalization as Spanish citizens: without this status, they face expulsion to Morocco when they turn eighteen.

Severe overcrowding at residential centers for unaccompanied children run by Ceuta and Melilla's Departments of Social Welfare further diminished the level of care they provided and increased the risk that children would be abused by staff and other children. The two worst facilities, Purísima Concepción Fort (Fuerte de la Purísima Concepción) in Melilla and the San Antonio Center in Ceuta, are old facilities that are in the process of renovation for use as child care facilities. The former was originally a fortress; the San Antonio facility is also a former military installation. San Antonio was first adapted to house about thirty children but now regularly holds one hundred or more, with some children sleeping on floors and tables. Children shared one bathroom and complained of filthy bedding, insufficient and poor quality clothing, and meals that they said frequently contained pork, which was inappropriate for many children for religious reasons. Neither facility

provides recreational facilities for residents. Children in the Purísima Concepción Fort were free to wander the city unsupervised during the day; those at San Antonio reported greater restrictions on their movement and were punished if they escaped. They faced days of unrelieved boredom in the small facility.

Neither Ceuta nor Melilla provided unaccompanied children with routine preventive health care and frequently arbitrarily denied children access to health care for more serious medical problems, care to which they are entitled under Spanish law. This was especially true in Ceuta, where many children had not received the government-issued health card (*tarjeta sanitaria*) to which they were entitled. Government-supported medical centers in Ceuta often refused care to children who did not have a health card or were not accompanied by staff from the residential centers.

The vast majority of unaccompanied migrant children in Ceuta and many children in Melilla were not enrolled in school even though in government care—although Spanish law provides for compulsory education for all children aged six to sixteen. The government rarely integrated unaccompanied children into Spanish schools, relying instead on residential center staff to provide basic education. Residential centers, however, often arbitrarily denied children even this level of education. Children older than sixteen also frequently were denied full access to vocational education when the Department of Social Welfare refused to apply for the necessary work documents.

Unaccompanied children living in residential centers faced extortion, theft, and physical abuse by larger, and older, youth in the centers. Residential center staff rarely intervened to protect children, even when witnessing attacks. Staff also engaged in abusive disciplinary practices, including beatings, collective punishment, and threats of expulsion. In Ceuta, staff at the San Antonio center placed children in a small, dark, filthy “punishment room” with only a few mattresses and no toilet. Children told us they had stayed in the room for up to one week for infractions that included smoking, leaving without permission, or running away. Children in both cities cited ill-treatment by staff and other children as the primary reason they ran away from residential centers.

Spanish police regularly summarily expelled unaccompanied children to Morocco in violation of provisions in Spanish law that require children to be returned only to family or social welfare agencies in their country of origin, and only when return does not place the child or his or her family at risk. The Association for the Rights of Children (Asociación Pro Derechos de la Infancia, Prodein), a Melilla-based human rights organization, reports that at least seventy such expulsions have taken place between July 2001 and February 2002. Children we interviewed reported that Spanish police slapped, beat, and threatened them before handing them over to Moroccan police, who also abused them.

Spain is failing to protect and care for these children. No Spanish government agency actively takes responsibility for ensuring that unaccompanied children in Ceuta and Melilla receive care and protection, and no effective mechanisms exist to facilitate the lodging of complaints by children or the exercise of their right to be heard in all proceedings that affect them. Central government officials defer to local government agencies to monitor conditions and investigate abuses. These agencies in turn say they lack the means to do so and rely on residential centers and police to report any abuses.

Moroccan authorities also fail to provide unaccompanied migrant children the care and protection they require. Despite large numbers of unaccompanied children present in Moroccan port and border cities, the government has done little to ensure their care and rehabilitation and in most circumstances only provided shelter to children who had been convicted of crimes, placing them in juvenile detention centers. Children expelled from Ceuta and Melilla to Morocco frequently faced beatings, extortion, and detention in unsafe conditions at the hands of Moroccan police. In Morocco, the children were typically held with adults in Moroccan police stations for hours without access to food, water, or toilets. Moroccan police often beat the children and sometimes stole the children’s money or property before releasing them. Just one of the children expelled from Ceuta or Melilla we met told us that Moroccan police returned him to the custody of family members. In all other cases we investigated, children said that after they were held for a day or more the police simply told them to leave the station, sometimes in the middle of the night. The children then made their way back to Spain, a process that

could take hours or days as the children first walked back to the border, then tried to elude the Moroccan and Spanish police staffing the border crossing.

Key Recommendations

- The Government of Spain should provide for coordination between the Ministry of Education, Culture and Sports, the Ministerio Fiscal, the Ministry of Health and Consumer Affairs, the Ministry of the Interior, the Departments of Social Welfare of the autonomous cities, and the security forces to ensure that unaccompanied migrant children have access to residential care, education, emergency services and other health care, and temporary residency documents, as required by Spanish law.
- The Governments of Spain and Morocco should coordinate to ensure that children are repatriated from Spain to Morocco only when they are returned to family members who are willing and able to care for them or to an appropriate social service agency. In no case should Spanish or Moroccan police be the agency responsible for carrying out unaccompanied migrant children's repatriation.
- The delegates of the Spanish government in Ceuta and Melilla should ensure that no child is repatriated or expelled from Spain unless the delegate has verified that the child is to be returned either to a family member who is willing and able to care for the child or to an appropriate social service agency in the child's country of origin. The delegate should also verify that the child's return would pose no risk or danger to the child's safety or to the safety of his or her relatives before proceeding with repatriation.
- The Government of Morocco should facilitate the return to Morocco of unaccompanied migrant children when it is in the children's best interest and should provide resources for their care and protection, including designating a social welfare agency to receive unaccompanied migrant children who have been returned from Spain and, where appropriate, return them to their families.
- The Government of Morocco should take steps to protect unaccompanied migrant children who have been returned to Morocco from Spain from cruel, inhuman, or degrading treatment and other abuses at the hands of police.
- The autonomous cities of Ceuta and Melilla should ensure that residential centers for unaccompanied children meet basic standards of health and safety and provide children the protection and care that are necessary for their well being.

Methods and Scope

This report is the result of one of a series of Human Rights Watch investigations into the treatment of migrants in Western Europe.¹ The report is based on five weeks of research in Spain and Morocco, spanning the months of July, October, and November 2001. Human Rights Watch researchers conducted interviews with unaccompanied migrant children, government officials, representatives of nongovernmental organizations, and local activists in Ceuta, Melilla, and Madrid in Spain, and Tangier, Rabat, and Casablanca in Morocco. We also reviewed an extensive body of official documents relating to individual children's cases and complaints alleging police abuse of children in Ceuta.

¹ See Human Rights Watch, "The Other Face of the Canary Islands: Rights Violations against Migrants and Asylum Seekers," *A Human Rights Watch Report*, vol. 14, No. 1 (D), February 2002; Human Rights Watch, "Trafficking of Migrant Women for Forced Prostitution into Greece," *A Human Rights Watch Memorandum*, July 24, 2001; Human Rights Watch Letter to Members of the Greek Parliament on the Proposed Immigration Bill, February 1, 2001; and Human Rights Watch, "Urgent Concerns: Conditions of Detention for Foreigners in Greece," *A Human Rights Watch Memorandum*, December 20, 2000.

Spanish officials refused us access to residential centers in Ceuta and Melilla where unaccompanied migrant children stay. Nevertheless, we inspected the exteriors of all the centers in Ceuta and Melilla. With the help of representatives of nongovernmental organizations and other activists, we were able to identify and arrange to interview unaccompanied migrant children in both cities. In almost every case interviews were conducted in Spanish or Arabic by researchers fluent in those languages; in addition, some interviews were conducted with the assistance of a translator fluent in the local dialect of the Berber language.

Human Rights Watch researchers interviewed thirty-five unaccompanied migrant children: twenty-three in Ceuta, ten in Melilla, and two in Tangier. Most children traveled to Ceuta and Melilla from nearby towns and villages, but some came from as far away as Agadir, Salé, and Fés. All but one of the children we interviewed, an Algerian, were born in Morocco.

The children we interviewed ranged in age from twelve to seventeen. We also interviewed one twenty-one-year-old migrant who had lived in Melilla since the age of eleven. Thirty-two of the children give their ages as sixteen or younger, and fourteen of the children give their ages as fourteen or younger. Only two of the children we interviewed were girls. Representatives of local organizations told us that girls make up a very small percentage of the total population of unaccompanied migrant children in the two cities, and only a handful of girls were staying in Spanish residential centers for unaccompanied children in Ceuta and Melilla.²

In Spain we interviewed representatives of the Spanish central government and autonomous governments with responsibilities for unaccompanied migrant children. The central government officials included the deputy director for immigration in the Ministry of Interior, the deputy director for foreigners' affairs in the Ministry of Foreign Affairs, the secretary general for social affairs in the Ministry of Labor and Social Affairs, the chief of cabinet in the ombudsman's office (*defensor del pueblo*), the central government delegate (*delegado del Gobierno*) in Ceuta and the chief of staff in the office of the central government delegate in Melilla, the *fiscales* for minors in Ceuta and Melilla, and the president of the court and judge for minors in Ceuta. (A fiscal for minors combines prosecutorial functions with investigative and protection powers.) Local officials included the chief of staff in the office of the Presidency in Ceuta, the director general in Melilla's Department of Social Welfare and Health, and the deputy director in Ceuta's Department of Social Welfare. We requested but did not receive meetings with the minister of education, culture and sports, and the directors of the Departments of Social Welfare in Ceuta and Melilla.

In Morocco we interviewed the minister of justice, the children's rights counselor in the Ministry for Human Rights, the director of the Ministry of Youth and Sports' child protection center in Tangier, and staff at the United Nations Children's Fund (UNICEF) mission to Morocco. We requested but did not receive meetings with the ministers of foreign affairs, interior, youth and sports, and human rights.

Representatives of nongovernmental organizations and activists on children's issues in both Spain and Morocco provided us extensive information on the treatment of unaccompanied migrant children in both countries.

We have assigned pseudonyms to all children mentioned in this report to protect their privacy.

International Standards

We assess the treatment of unaccompanied migrant children in Spain and Morocco according to international law, as set forth in the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention against Discrimination in Education. Spain and Morocco are parties to all of these treaties. In addition, relevant European regional

² Human Rights Watch did not investigate reports that Moroccan girls are sometimes trafficked to Melilla to work as domestic servants. See Jesús Prieto, "Niñas marroquíes esclavas en Melilla," *Andalucía Libre*, Correo No. 96, 2001.

standards include the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms.

Terminology

In this report, the word “child” refers to anyone under the age of eighteen. The Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is obtained earlier.”³

Human Rights Watch follows the usage of the United Nations High Commissioner for Refugees in using the term “unaccompanied children,” to refer to persons under eighteen years of age who have been separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so.⁴

II. CONTEXT

After a period of decline, migration to the European Union sharply increased beginning in 1998.⁵ Much of this migration has been to—and through—Spain, where the total foreign population has increased an average of 14 percent per year since 1998.⁶ Accompanying this increase has been a disturbing rise in the number of children who travel to Spain on their own.

Conservative estimates suggest that at least 1,500 unaccompanied migrant children are present in Spain at any given time.⁷ True numbers are likely to be much higher.⁸ The vast majority are Moroccan; children typically range in age from twelve through seventeen, although some younger children also cross into Spain on their own.⁹

³ Convention on the Rights of the Child, article 1, *adopted* November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990).

⁴ See *Protection and Assistance to Unaccompanied and Separated Refugee Children: Report of the Secretary-General*, para. 3, U.N. General Assembly, 56th sess., provisional agenda item 126, U.N. Doc. A/56/333 (September 7, 2001). The high commissioner uses the term “separated children” to refer to persons under eighteen years of age who are separated from both parents or from their previous legal or customary primary caregiver, noting that “[s]uch children, although living with extended family members, may face risks similar to those encountered by unaccompanied children.” Our interviews did not uncover cases of children who were separated from legal or customary caregivers, and so we have decided to use the more readily understandable term, “unaccompanied children,” or alternatively, “unaccompanied migrant children,” in recognition that these children are primarily migrants, and not refugees or displaced persons. For a discussion of issues affecting separated children in Europe in the asylum context, see Sandy Ruxton, *Separated Children Seeking Asylum in Europe: A Program for Action*, (Stockholm: Save the Children and the United Nations High Commissioner for Refugees, 2000).

⁵ According to Eurostat, the net inflow of international migrants to the European Union increased from 581,000 in 1998 to 1,068,000 in 2000, and was expected to hold steady at about one million in 2001. Eurostat, *Statistics in Focus: Populations and Social Conditions: Theme 3-19/2001, Population and Living Conditions* (Luxembourg: European Communities, 2001).

⁶ Organization for Economic Cooperation and Development (OECD), *Trends in International Migration: Continuous Reporting System on Migration*, 2001 Annual Report (Paris: OECD, 2001) p. 241.

⁷ The number of children present varies seasonally, increasing during the summer when weather is more favorable for sea crossings. A February 2001 study sponsored by the Ministry of Labor and Social Affairs estimated that in 2000 approximately 1,500 known unaccompanied migrant children were present in Spain. The report acknowledges that these numbers only include children who have at some point been registered by a government agency and that great discrepancies exist between the data collected by the autonomous regions and that collected by the central government. See Programa “Migración y Multiculturalidad,” Universidad Autónoma de Madrid, *Menores no acompañados que han entrado en territorio español sin representación legal* (Madrid: Universidad Autónoma de Madrid, 2001).

⁸ For example, the government of Andalucía said it had provided services to 858 newly arrived Moroccan children in 1999, double the number of new arrivals in 1998, and was expecting as many as 3,000 new arrivals in 2000. According to press accounts, the number of unaccompanied child migrants in Madrid alone has ranged between 700 and 1,000 per year since 1996. Ignacio Martínez, “La Junta de Andalucía pide ayuda a la UE y al Gobierno para frenar la entrada de menores,” *El País* (Madrid), August 4, 2000. Patricia Ortega Dolz, “La batalla contra el tiempo del joven inmigrante,” *El País*, August 18, 2000.

⁹ Manel Capdevila i Capdevila, head of the Emergency Care Section of the Directorate of Childhood Care in Catalonia’s Department of Justice, estimates that 90 percent of unaccompanied child migrants in Spain are North African, of whom 80

Many of these children enter Spanish territory by crossing the land border between Morocco and the cities of Ceuta and Melilla. Located on the Mediterranean coast, these cities have been under Spanish control since the sixteenth century; they are the subject of an ongoing dispute with Morocco, which considers them occupied territories. Both are duty-free ports with significant military presences and economies largely dependent on fishing, tourism, trade with Morocco, illicit drug trafficking, and profits gleaned from the smuggling of undocumented migrants into Spanish territory. Ceuta is the larger of the two cities, with an area of approximately twenty square kilometers.¹⁰

Spanish authorities and human rights activists in these cities estimate that each has a permanent population of approximately 150 unaccompanied migrant children, who are joined by hundreds more during the peak season for crossing to the mainland. The total population of each city is approximately 70,000. “We have a volume of kids on the scale of Barcelona or Madrid in a smaller city,” said Melilla’s fiscal for minors. “During the September holidays we are flooded.”¹¹

Spanish law provides for the care of these children on the same basis as Spanish nationals. The law includes provisions for the care, legal guardianship, and residency of abandoned children.¹²

The majority of the unaccompanied migrant children we spoke with did not come to Ceuta or Melilla intending to stay there but rather saw the cities as starting points for travel to mainland Spain. Even after the border controls at Ceuta and Melilla were progressively tightened starting in 1995, these crossing points were seen as easier to penetrate than other points of entry. ‘Atta A., sixteen, from Salé near Rabat, crossed into Ceuta by sea in late August or early September 2001. He told us, “I came to Ceuta to go to Spain. [Crossing from] Tangier is much more dangerous than Ceuta or Melilla.”¹³ As crossing has become more difficult, more children find themselves staying in Ceuta and Melilla. Deprived of appropriate care and protection, some children make their lives on the street, where they are vulnerable to drug addictions and health problems that sap their strength and make it difficult for them to plan beyond the immediate goal of daily survival. Others, particularly younger children, may stay behind because they are unable to make the dangerous trip alone.

The Reaction in Ceuta and Melilla

Government officials in Ceuta and Melilla have promoted the summary expulsion of unaccompanied migrant children as a solution to the growing number of migrant children present in the two cities. Such proposals enjoy wide public support. For the most part, the public associates unaccompanied migrant children, particularly those living on the streets, with a reported increase in the crime rate. In both cities, members of the public have accused unaccompanied children of robbing businesses in the city center, and some of those who live near residential centers have protested the decision to house migrant children in their neighborhoods.¹⁴

In November 2000, a group of parents protested when Ceuta’s Department of Social Welfare enrolled thirty unaccompanied children from Morocco in a public school. In response, Spain’s minister of education, Pilar del Castillo, announced that the children would receive schooling and that “the schools are everybody’s, they are public, and they are not the personal property of any parent.”¹⁵ The Ceutan authorities then arranged to have the

percent are Moroccan. Manel Capdevila i Capdevila, *Los menores extranjeros indocumentados no acompañados (M.E.I.N.A.): exigencia de nuevas respuestas* (Barcelona: Department of Justice, Catalonia, 2001).

¹⁰ See generally J.F. Salafraña, *El sistema colonial español en Africa* (Málaga: Editorial Algazara, 2001); Ana I. Planet Contreras, *Melilla y Ceuta: espacios-frontera hispano-marroquíes* (Melilla: Ciudad Autónoma de Melilla, Ciudad Autónoma de Ceuta, and UNED-Melilla, 1998).

¹¹ Human Rights Watch interview with Miguel Angel Sánchez Lorenzo, fiscal for minors, Melilla, Spain, October 24, 2001.

¹² See, for example, Organic Law 1/1996, of January 15, Regarding the Legal Protection of Minors, articles 12-23, *Boletín Oficial del Estado*, No. 15, January 17, 1996 (Spain).

¹³ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁴ See, for example, Carmen Echarri, “Vecinos de San Antonio protestan por la cadena de actos vandálicos de menores,” *El Faro* (Ceuta), May 25, 2001, p. 14.

¹⁵ B.M., “Pilar del Castillo afirma que los menores serán escolarizados,” *El Faro*, November 16, 2000.

children take classes apart from the rest of the students and during a different time of day, according to news reports.¹⁶

Authorities in both cities periodically discuss proposals that would result in the creation of centers in Morocco for unaccompanied migrant children expelled from Spain. For example, Ceuta signed an agreement in 1999 with the Moroccan organization Bayti to open a residential center in the nearby city of Tétouan.¹⁷ The agreement was never implemented.

Melillan authorities have regularly expelled unaccompanied migrant children to Morocco, returning children at least seventy times between July 2001 and February 2002, according to the nongovernmental organization Prodein. Although authorities characterize these expulsions as “family reunification” measures, expelled children are rarely returned to their families or placed with Moroccan social service agencies, as Spanish law requires in such cases.¹⁸ Melilla’s Department of Social Welfare reported in January 2002 that 72.2 percent of what it termed “repatriations and family reunifications” had failed, with the children returning to Melilla. In 2001, according to official statistics, the city conducted thirty-six “family reunifications”; twenty-six of those children had returned to Melilla by the end of the year.¹⁹ According to Prodein, all but one of the children it considers to have been expelled between July 2001 and February 2002 has returned to Melilla.²⁰

In June 2001, the government delegate in Ceuta suggested that authorities in the city would begin summary expulsions of unaccompanied children within the next several months.²¹ In August 2001, Mohamed Chaib, the head of Ceuta’s Department of Social Welfare, called for the repatriation of those unaccompanied children who, he said, did not want to live in the San Antonio Center.²² Neither of these proposals appeared to have been implemented at the time of our visit to the city in November 2001.

Most recently, in January 2002, authorities in Melilla backed a proposal that would allow the city to expel legal migrant families whose children commit acts of delinquency.²³ Arturo Esteban, delegate of the government in Melilla, stated that it was a “drastic” measure but one that he did not consider “inhumane or unconstitutional.”²⁴ Juan José Imbroda, the president of Melilla, and Enrique Fernández-Miranda, secretary of state for immigration, announced their support for the proposal, although Fernández-Miranda said that he would send the proposal to the ombudsman’s office for review.²⁵

But lawyers for the city stated that such expulsions would “lack any legal basis,” pointing out that the Foreigner’s Law does not authorize loss of residence for one whose child has committed a crime. “Neither does the Children’s Criminal Code [Ley Penal del Menor] permit any criminal responsibility on the part of parents or guardians, merely making them civilly responsible for the acts their children may commit. In addition—lawyers for the Executive stated—the Penal Code, ‘as with the legislation of all democratic countries, does not permit this

¹⁶ “Escrito remitido por el Defensor del Pueblo,” *El Faro*, November 18, 2000.

¹⁷ José Carlos García, “‘Mensajeros de la Paz’ gestionará el proyecto de la Ciudad con los menores,” *El Faro*, April 12, 2000.

¹⁸ See chapter V.

¹⁹ “El 72,2% de las reintegraciones de menores a Marruecos no prospera,” *Diario Sur* (Melilla), January 24, 2002.

²⁰ E-mail message from José Palazón, president, Prodein, March 1, 2002.

²¹ Luís Manuel Aznar, “Los menores transfronterizos serán expulsados a Marruecos,” *El Pueblo* (Ceuta), June 5, 2001; C.E., “Muy pronto tendremos noticias, que pasan por la repatriación de los menores”; el próximo mes de julio se tratará este asunto en una reunión en Sevilla,” *El Faro*, June 15, 2001.

²² “Chaib pide la repatriación de los niños ‘que no quieren integrarse’; en el centro están acogidos ya 14 menores argelinos y 78 marroquíes,” *El Faro*, August 15, 2001, p. 5.

²³ Sara Sanz, “La Delegación de Gobierno expulsará a los delincuentes sin documentación española,” *Diario Sur*, January 17, 2002.

²⁴ T.R., “El delegado en Melilla niega que expulsar a familias con hijos delincuentes sea inhumano o inconstitucional; su homólogo en Ceuta concluye que se ha malinterpretado a Esteban porque le medida es ilegal,” *El País*, January 17, 2002.

²⁵ “El Gobierno de Melilla posee informes jurídicos que avalan la expulsión de menores delincuentes,” *Diario Sur*, January 25, 2002; Toñy Ramos, “El Gobierno avala el plan para expulsar de Melilla a familias de menores delincuentes; enviará el acuerdo al Defensor del Pueblo,” *El País*, January 22, 2002.

type of collective punishment'"²⁶ The Ombudsman also expressed concerns about the proposal.²⁷ In February, the Ombudsman announced that the Ministry of the Interior had agreed that authorities in Melilla did not have the legal authority to expel families whose children committed crimes.²⁸

The Pressures on Children to Migrate

Children in Morocco are exposed to a variety of factors that encourage migration. Many unaccompanied migrant children we interviewed told us that they saw no future for themselves in Morocco, a stark response to Morocco's demographic and economic reality. Almost one fifth of the total population lives in poverty, up from 13 percent in 1991, and the World Bank classifies almost half the population as "economically vulnerable."²⁹ Forty-four percent of the poor are children under fifteen.³⁰ The majority of those living in poverty are concentrated in rural areas, where many of the children we interviewed had lived.³¹ Official unemployment rates at the end of 2001 stood at 13 percent, with unemployment rates for youth aged fifteen to twenty-four at 20 percent.³² Legislation mandating free, compulsory education from ages six to fifteen³³ and World Bank-financed educational reforms have increased school attendance, but primary enrollment rates remain low compared to other lower-middle-income countries.³⁴ Despite significant rural/urban and gender disparities in access to education, survey data show poverty to be the "single most important obstacle for non-enrollment of school-age children in both urban and rural areas."³⁵

²⁶ M. Sáiz-Pardo, "El Ejecutivo descarta expulsar a las familias de los menores extranjeros que delincan; asegura que esta actuación 'carece de cualquier sustento jurídico o legal,'" *Diario Sur*, January 17, 2002.

²⁷ "El Gobierno dice que actuará legalmente en la expulsión de menores," *Efe*, February 2, 2002.

²⁸ T.B., "Rajoy rechaza la propuesta para expulsar de Melilla a familiares de menores," *El País*, February 2, 2002.

²⁹ According to the Moroccan Bureau of Statistics, the poverty rate rose 58 percent between 1991 and 1998, from 13.1 percent to 19 percent, affecting 27.2 percent of the rural population and 12 percent of the urban population. The World Bank defines the "economically vulnerable" as those who are at or below 50 percent above the poverty line, a group that accounted for 44 percent of the population in 1998/99, up from 35 percent in 1990/91. *Repères Statistiques*, October 2001, No. 62, <http://www.statistic.gov.ma/pop62bis.htm> (accessed January 16, 2002); and Summary, World Bank Poverty Update, Morocco, March 30, 2001, Report No. 21506-MOR, <http://wbln0018.worldbank.org/dg/povertys.nsf/de9638da553fbfbf8525678a0070b1af/79e3d7728d83ef3485256b22005b726c?OpenDocument> (accessed February 8, 2001).

³⁰ Summary, World Bank Poverty Update, Morocco, March 30, 2001.

³¹ In 1998, 3,496,000 rural inhabitants lived in poverty, compared to 1,814,000 urban inhabitants, although roughly half the population (55.2 percent in 2000) lives in urban areas. *Repères Statistiques*, October 2001, No. 62, <http://www.statistic.gov.ma/pop62bis.htm> (accessed January 16, 2002).

³² Unemployment in urban areas was even higher, with total urban unemployment rate of 19.5 percent and a youth urban unemployment rate of 35.1 percent. These rates may understate the actual unemployment rate, as the government figures exclude significant numbers of underemployed, especially in rural areas. *Repères Statistiques*, November 2001, No. 63, <http://www.statistic.gov.ma/pop62bis.htm> (accessed January 17, 2002).

³³ Decree 1.63.071 of November 13, 1963, Relating to Compulsory Basic Education, as amended by Law 04-00 of 2000 (Morocco).

³⁴ According to Morocco's second periodic report to the Committee on the Rights of the Child, the national enrollment rate for six- to eleven-year-olds was 80 percent in 2000/1999, and enrollment rates in rural areas were only 69.5 percent during the same period. Despite significant improvements beginning in the mid-1990s, enrollment rates for girls were even lower, reaching only 62.1 percent in rural areas. The World Bank gives Morocco's gross primary enrollment rate as 86 percent, markedly lower than the average for the Middle East and North Africa (95 percent) and for lower middle income countries (114 percent). The gross primary enrollment rate measures the ratio of the total number of children enrolled in primary school to the total number of children in the primary school age group, and thus may include children older than that age group. Ministry for Human Rights, the Kingdom of Morocco, Second Periodic Report of the Kingdom of Morocco Regarding Implementation of the Convention of the Rights of the Child, July 2000, Part 2, Section 7 (Arabic); World Bank, "Morocco at a Glance," 9/20/01, http://www.worldbank.org/data/countrydata/aag/mar_aag.pdf (accessed January 15, 2001).

³⁵ Net primary enrollment rates for the poor were 36.3 percent in 1998, lower than even the rate for all rural girls (46.8 percent). The net primary enrollment rate is the total number of children enrolled in primary school who belong in the primary school age group, expressed as a percentage of the total number in that group. World Bank Poverty Update, Morocco, March 30, 2001, Report No. 21506-MOR, p. 30.

In contrast to this bleak landscape of poverty and lack of opportunity at home, European television broadcasts and a regular influx of adult migrants returning on annual leave provide children with a window on the opportunities for a better life in Europe. World Bank data for Morocco suggest that worker remittances play a significant role in keeping people out of poverty, and that the decline in remittances during the 1990s have contributed to the rise in poverty.³⁶

Dr. Najat M'jid, an expert on clandestine migration of children and the director of Bayti, a Moroccan nongovernmental organization providing services to children at risk, described some of the factors driving unaccompanied child migration:

They are not street children, but youth from poor neighborhoods who are the only support for their families. They have no job skills and leave school early because they have no hope that schools will improve their situation. Also, when the [adult] migrants return in the summer they provide an image of a good life in Spain. [The children] plan for a long time; sometimes they travel with the agreement of their families, who pay clandestine travel fees to the "smugglers." There is much information [available] on how to get across to Spain. They know not to bring papers, but for the last two years they also know that with documents they can get status and they know who to ask for in Córdoba or Marseille to get help with status. We have never met one youth who comes back who says he failed. We have to work very hard to get them to tell the truth [about their bad experiences].³⁷

During our interviews, children frequently cited poverty and lack of opportunities in Morocco as their motivation for migration. Sixteen-year-old Ra'id I. explained that he had come to Ceuta in August 2001 because "I want to go to Spain to work and to help my family. My family is very poor."³⁸ Fifteen-year-old Shawqi M. told us, "I came to Ceuta because my family is poor and I want to find my life in Spain."³⁹ Seventeen-year-old Mamduh H. came to Melilla two years ago and lives in a residential center there. "Before Melilla I was in Nador for a while. You have to work to live in Morocco but there is no work. . . . The best thing [at the residential center] is the opportunity to study."⁴⁰

Hiba A. and Amal M. are thirteen-year-old girls. Both have families in Fnadeq, the small Moroccan town bordering Ceuta, but sneak into Ceuta to sell gum and cookies on the street and to beg and collect leftover food from tables at sidewalk cafes. "We come to eat," explained Hiba. Hiba has only completed three years of school in Morocco—"I had to leave school about a year ago." Amal attends sixth grade in Morocco and comes to Ceuta for longer periods of time during school vacations. "I live in the Príncipe neighborhood [a poor neighborhood in Ceuta], and I sleep with a group of women who work on the border," she told us. "It isn't scary except at night."⁴¹

Other children articulated a more complex mix of motivations. Fifteen-year-old Thabit S. left his job in a butcher shop in Tangier to travel to mainland Spain at the beginning of 2001, hidden under a large truck headed to Algeciras, Spain. "My heart told me to go to Spain so I went," he said. "My parents let me do what I want."

³⁶ According to survey data for 1998/99, among households receiving worker remittances, the remittances were equivalent to about 17 percent of household expenditures per capita in urban areas and 10 percent of household expenditures per capita in rural areas. Without the remittances, about one million Moroccans would have dropped below the poverty line in 1998/99, raising the incidence of poverty in that year to 23 percent nationally and 31 percent in rural areas. World Bank Poverty Update, pp. 22-23.

³⁷ Human Rights Watch interview with Dr. Najat M'jid, director, Bayti, Casablanca, Morocco, October 28, 2001. The first Moroccan organization with a street children program, Bayti operates outreach programs for children living on the street, including street programs, drop-in centers, vocational and educational programs, shelters, parental education, and foster families in Casablanca, Essaouira, Meknés, and Rabat. For information on Bayti programs, see <http://www.zonebleue.co.ma/bayti/> (accessed March 13, 2002).

³⁸ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

³⁹ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁴⁰ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

⁴¹ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

Asked why he had undertaken such a dangerous crossing, he said “I see my future in Spain. The next time I will go over and become a butcher. I will go to school there and learn. My friends went to Barcelona and Madrid and went to school there. The schools there have everything. They [my friends] call on the phone and say things are good there.”⁴²

Some Moroccan families expressly or indirectly encouraged their children to migrate. Lutfi M., a twelve year-old from Rincon del Mediaq, a town about twenty-five kilometers from Ceuta, told Human Rights Watch that he had come to Ceuta a few months earlier because “my mother told me to look for my life in Ceuta.”⁴³ Other children said they were fleeing broken or abusive homes: “I had a lot of problems with my family,” Munsif M. explained. “My father hit me. I don’t know why he hit me.”⁴⁴ Fifteen-year-old Samir A. traveled to Melilla from Fés. “My father is married to another wife, and my mother is alone,” Although he has a sister living in Ceuta, “it was too far away” and too expensive a trip to risk making.⁴⁵

The Structure of the Spanish Government

The Spanish government is highly decentralized. Responsibility for unaccompanied migrant children is split among various ministries of the central government and the nineteen autonomous regional governments. The central government is represented in each autonomous region by a representative of the central government, known as the *delegado del gobierno*. The autonomous regions are charged with providing direct care and protection for children through their Departments of Social Welfare. Spain granted Ceuta and Melilla the status of autonomous cities in 1995. The central government transferred responsibility for social assistance to Melilla in 1997 and to Ceuta in 1999.⁴⁶

The Ministerio Fiscal, roughly equivalent to an attorney general or state prosecutor’s office, brings legal action to promote the rights of individuals and the public interest; it also watches over the independence of the courts. The Ministerio Fiscal is represented in the autonomous regions by local fiscals, who combine prosecutorial functions with investigative and protection powers. Fiscals for minors (*fiscal de menores*) are charged with monitoring the care of children who are under the guardianship of the state.⁴⁷

The office of the Ombudsman (*Defensor del Pueblo*) may receive complaints and conduct investigations in individual cases and into conditions of residential centers. The ombudsman may refer complaints to the Ministerio Fiscal and may make reference to these complaints in his annual report to the Spanish Parliament. The ombudsman may also bring an action before the Constitutional Court to challenge the constitutionality of an official act.⁴⁸

There are three principal police forces with somewhat overlapping functions: the National Police (Policía Nacional), the Civil Guard (Guardia Civil), and the local police. The National Police, under the Ministry of the Interior, are responsible for passport control, the registration of foreigners, criminal investigations, and other police functions in urban areas. The Civil Guard, also a unit of the Ministry of the Interior, carries out anti-

⁴² Human Rights Watch interview, Tangier, Morocco, November 1, 2001.

⁴³ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁴⁴ Human Rights Watch interview, Melilla, Spain, October 23, 2001.

⁴⁵ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

⁴⁶ See Royal Decree 1385/1997 of August 29, On the Transfer of Functions and Services from the State Administration to the City of Melilla in Matters of Social Assistance, *Boletín Oficial del Estado*, No. 229, September 24, 1997 (Spain); Royal Decree 30/1999 of January 15, On the Transfer of Functions and Services from the State Administration to the City of Ceuta in Matters of Social Assistance, *Boletín Oficial del Estado*, No. 54, February 4, 1999 (Spain).

⁴⁷ See Constitución Española, art. 124; Law 50/1981, of December 30, Regulating the Statute of the Ministerio Fiscal, article 1, *Boletín Oficial del Estado*, no. 11, January 13, 1982 (as amended).

⁴⁸ See Organic Law 3/1981, of April 6, on the Ombudsman, *Boletín Oficial del Estado*, no. 109, May 7, 1981 (Spain); Law 36/1985, of November 6, Regulating the Relationship Between the Institution of the Ombudsman and Similar Officials in the Various Autonomous Communities, *Boletín Oficial del Estado*, no. 271, November 12, 1985 (Spain); Regulation of the Organization and Function of the Ombudsman, *Boletín Oficial del Estado*, no. 92, April 18, 1983 (Spain).

smuggling operations, provides security for borders, airports, highways, and ports, and transports prisoners, among other duties. The local police provide general policing functions in each municipality.⁴⁹

III. RESIDENTIAL CENTERS

When Spanish authorities encounter unaccompanied migrant children, they have the responsibility to place them under the care and protection of the Department of Social Welfare (Consejería de Bienestar Social), a branch of the autonomous provincial government.⁵⁰ Melilla's Department of Social Welfare and Health oversees the operation of five residential centers (*centros de acogida*) for unaccompanied migrant children, the day-to-day operations of most of which are handled by nongovernmental organizations. Ceuta's Department of Social Welfare operates one facility for unaccompanied minors.⁵¹ Despite the existence of these facilities, the majority of unaccompanied migrant children in Ceuta and significant numbers of unaccompanied migrant children in Melilla live on the street, sometimes for years at a time.⁵²

Officials in Ceuta and Melilla initially did not respond to and eventually denied our repeated requests for access to these facilities.⁵³ Nevertheless, we were able to gather information about key aspects of life in these residential centers by speaking with children who had lived in the facilities. Nearly all of the thirty-seven youth we spoke with had stayed in one or more facilities; some were current or recent residents of a center in which they had lived for periods ranging from two months to one year or more.

In both cities, we found numerous instances where the authorities' treatment of unaccompanied children fell far short of international human rights standards and also failed to comply with relevant provisions of Spanish law. This chapter focuses on the most serious abuses children face when being taken to residential centers or while staying at the centers: police abuse upon apprehension, residential center staff's failure to protect children from abuse by other children, abusive disciplinary procedures, substandard physical conditions at some centers, arbitrary denial of access to education, and arbitrary denial of access to health care.

Police Abuse During Apprehension

There are good police officers and bad ones. We know them all. There are about ten from among all of the units—the National Police, the Local Police, the Civil Guard—who are especially bad. They beat you when they catch you.

—Ra'ïd I, sixteen, Ceuta, November 7, 2001

⁴⁹ See Ministerio del Interior, Dirección General de la Policía, "Funciones y Competencias," available at www.mir.es/policia/cnp/seg_ciu.htm (accessed on March 6, 2002); Ministerio del Interior, Guardia Civil, "Misiones de la Guardia Civil," available at www.guardiacivil.org/10organizacion/misiones.asp (accessed on March 6, 2002); Policía Local de Ceuta, *Memoria '97* (Ceuta: Policía Local de Ceuta, 1997), available at ww2.ciceuta.es/inicio.htm (accessed on March 6, 2002).

⁵⁰ See Organic Law 4/2000, of January 11, Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and Their Social Integration, article 35, as amended by Organic Law 8/2000, of December 22, Reforming Organic Law 4/2000 (Spain); Royal Decree 864/2001, of July 20, Approving the Implementing Regulation for Organic Law 4/2000, of January 11, on the Rights and Liberties of Foreign Nationals in Spain and Their Social Integration, Reformed by Organic Law 8/2000, of December 22, article 62 (Spain).

⁵¹ In addition to the San Antonio Center, which provides care for unaccompanied foreign children age eleven and over, the Mediterráneo Center, a residential care facility for younger Spanish children, accepts unaccompanied foreign children age ten and younger.

⁵² According to Prodein, the number of unaccompanied migrant children living on the street in Melilla increased following a series of expulsions that began on July 27, 2001. Human Rights Watch interview with José Palazón, president, Prodein, Melilla, Spain, October 22, 2001.

⁵³ In Melilla we made our request to the the Department of Social Welfare and the fiscal for minors. In Ceuta, we made our requests to the Department of Social Welfare, the office of the Presidency, the delegate of the central government, the judge for minors, and the fiscal for minors.

Eleven of the unaccompanied migrant children we interviewed in both Ceuta and Melilla told us Spanish police had beaten them, sometimes brutally. In Melilla, abuse was most frequent during expulsions, while in Ceuta police also beat children when taking them into custody. This section discusses only cases of children whom police later turned over to residential centers.⁵⁴

Unaccompanied children are generally apprehended by one of three police units: the Civil Guard, the National Police, or the Local Police. Children report being beaten by officers in all units, often with a *porra*, a rubber baton with a metal core. They told us that police become more violent if a child attempts to escape. “Yes, they hit you,” Ra’id I. said of the Local Police. “They hit you on the legs, the knees, the face. They use *porras* and their hands. They’ll hit you if you’ve escaped and they’ve caught you again. Or if they catch you the first time and you try to escape.”⁵⁵ “If they catch you, they hit you,” Shawqi M. said. “They hit you in the face. They don’t treat you well. More than the police, it’s the Civil Guard.” He spoke of one officer who set dogs on the children living in the streets. “The dogs bite the kids. One is a Doberman. The other one, I don’t know. It’s big.”⁵⁶

Ihab J., a sixteen-year-old who had been in Ceuta for five months when we interviewed him in November 2001, told us that the Spanish police had taken him to San Antonio seven times. “They catch you in the port, and they take you to San Antonio. They’ve never hit me. They treat me well. Except for once, when a policeman hit me.”⁵⁷ Other children told us that units guarding the port were especially violent when apprehending children. Shihab R. described how police at the Ceuta port fractured his arm when they beat him in late October 2001:

I was in the port intending to cross to Spain. A policeman saw me and tried to catch me, but three times I escaped. Then the police caught me, six of them, and put me in a car. [In the car] the police beat me on my arms and legs and head. Then another police officer took me to the station and hit me there with a *porra* and with his feet. They were very angry and crazy. Then they took me to the Civil Guard station. I was screaming from the pain. They asked me if I fell but I was afraid because of the other police. The Civil Guard hit me more and then put me in a room for three hours and then took me to San Antonio.⁵⁸

Even children who didn’t flee reported police beatings. Sixteen-year-old Omar H. came from Tangier to Ceuta in September 2001. The police picked him up in the city center shortly after he arrived. “I told them I was a minor, so they took me to the police station. They took down my name and all that. They hit me when I was at the station. They used a *porra* to hit me on the shoulders and thighs. They hit me in places where it wouldn’t leave any marks. Two officers did this,” he said. “I spent the day in the station, in a cell with other boys besides me. There were two other boys in the cell with me.” The police took him to San Antonio at the end of the day.⁵⁹ “There are some police who hit you,” said `Abbas A., age sixteen. “When you’re sleeping, they’ll catch you” on the streets.⁶⁰

Younger, smaller children, particularly those in Ceuta, told us that police ordinarily take them to shelters and do not mistreat them. “The first time the police caught me, I was in Príncipe [a poor neighborhood] looking for something to eat,” said Musa Y., age thirteen. “They picked me up and took me to San Antonio. First they asked my name, the names of my parents, where I came from, all my information. Then they took me to the center.”⁶¹ Similarly, Fares S., fourteen, told us, “The first time, the police took me to San Antonio. They caught me in the

⁵⁴ For a discussion of abuses by Spanish police during expulsions, see Chapter V. For a discussion of abuses by Moroccan police, see Chapter VII.

⁵⁵ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁵⁶ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁵⁷ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁵⁸ Human Rights Watch interview, Ceuta, Spain, November 6, 2001. A copy of his November 2, 2001 INSALUD medical report diagnosing a “stable fracture of the second metacarpal, left hand” is on file with Human Rights Watch.

⁵⁹ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁶⁰ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁶¹ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

port and they took me. They didn't hit me or anything. I went directly to San Antonio. They didn't do anything to me." "They hit you if you try to escape," he later added. "If you don't run away, they don't."⁶²

Failure to Protect Children from Abuse by Other Children

Sometimes the police catch me and take me to San Antonio but I escape. I never stay there long because the older kids hit you and steal your shoes. . . . The officials at the center don't do anything when they see the older kids hitting the small kids. . . . If you have money the older kids take it from you and hit you at San Antonio.

—Lutfi M., twelve, Ceuta, November 5, 2001

Almost every child we interviewed reported suffering extortion, theft, and physical abuse by larger, older youth in the centers. Many reported the existence of youth gangs operating freely in the centers, but even where gangs were absent children said that their money, shoes, and other items of clothing are regularly stolen by older, larger youth. Theft and physical abuse appear to be more common at the largest residential centers, the San Antonio center in Ceuta and Purísima Concepción Fort in Melilla.

Sixteen-year-old `Abbas A. described the treatment from older youth in San Antonio: "At the beginning, they'll ask you for money. If you don't give them any, they'll wait until you're asleep. Then they take what they want."⁶³ Another sixteen-year-old, Ra'id I., said, "The older kids punch you. They bother you. They hit you." When we asked him how old the older youth are, he replied, "They're nineteen or twenty years old. There's one group that is always there; they control everything. One will come to ask you for money. They'll hit you and rob you. There are about six or seven people in the group."⁶⁴ "The older kids are the ones that study. They aren't all abusive. There's a group that abuses us. If you're ten, eleven, twelve, you get abused by them," said Fares S., age fourteen.⁶⁵

Older children often take desirable food items from younger or smaller children. Echoing statements we heard frequently from youth who stayed at San Antonio, fourteen-year-old Sulayman S. told us, "The older kids hit you. They take what you have, chocolate and things like that."⁶⁶ He said, for example, that older youth take the most desirable items from their meals. "They take it if they like it." Thirteen-year-old Musa Y. explained why children preferred to stay at the Mediterráneo Center, a facility for younger children in Ceuta. "We eat well, and they don't hit you, and all the kids are little kids."⁶⁷

At least some centers appear to group children by age for sleeping. Musa Y. told us that children in San Antonio are assigned to modules with six beds each, and that others in his module were within two years of his age. "If there are more than six in the module, you sleep two to a bed," he said, telling us that he shared a bed with another boy during one of his stays at the center.⁶⁸ However, San Antonio does little or nothing to separate children during the day, leaving younger or smaller children vulnerable to abuses. "The bigger kids will do something to you when the educators are changing shift," Ihab J., sixteen, explained. "Or an older boy will take you aside to a place that is apart from the group, someplace where you're alone. They'll say, 'We're going to tell you the places where you can escape.' That's where they'll rob you. . . . They can't steal things from you in front of the educators. If you go to the bathroom, or if you're in one of those hidden places, they'll rob you there," he said.⁶⁹

⁶² Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁶³ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁶⁴ Human Rights Watch was unable to verify independently whether residents in the center included persons over age eighteen. Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

⁶⁵ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁶⁶ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁶⁷ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁶⁸ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁶⁹ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

Several children told us that the conditions at these centers led them to run away in the belief that they would be safer on the streets. “If they take you there [to San Antonio], you escape. You try to escape because they don’t treat you well there,” said fifteen-year-old Shawqi M.⁷⁰ Musa Y., told us that police first took him to San Antonio in August 2001, about an hour before lunch.⁷¹ He escaped at about 7 p.m. “I didn’t want to be there because they mistreat you there,” he said. Since August he has been in San Antonio several times, never staying longer than a week. “They hit you, and take your things . . . That’s the worst thing, the older kids hitting you.”

Many children told us that the staff at San Antonio failed to investigate instances of theft and often failed to intervene even when abuses occurred in front of them. “Sometimes the older kids take our money, and the educators, seeing this, don’t do anything. They rob you of your money. An older kid can hit you in front of an educator,” said `Abd al Hadi S., fourteen.”⁷² Wafiq H., thirteen, described his first night in San Antonio. “When I was sleeping, they took my shoes, mine and a friend’s. We asked for our shoes, but we didn’t find anything. I spoke to the educators, and they told me they couldn’t do anything. In the morning, I escaped.” Later in our interview, he said, “The older kids are bad. They hurt us. They take our food and our stuff. They bother us.”⁷³

Some children speculated about why the staff at San Antonio failed to protect them from abuse by other children at the center. “There are good people and bad people,” said `Abbas A. “The good ones, when you tell them they [the older youth] are hitting you, they try to investigate. The bad ones refuse to do anything. They’ll say, ‘Fight back’ or ‘You need to fend for yourself however you can.’”⁷⁴ Another child, fifteen-year-old Shihab R., explained, “The educators can’t do anything because they’re afraid” of the older children.⁷⁵

Abusive Disciplinary Practices

There are bad people and good people [on the staff]. That’s why we try to escape. The bad educators tell the older kids to bother the younger ones. Or they put you in the punishment cell.

—Majid A., fifteen, Ceuta, November 5, 2001

Some residential center staff—known in both cities as “educators”—hit and threaten children for fighting, escaping, or committing other infractions. Children who had stayed at the Purísima Concepción Fort in Melilla and the San Antonio Center in Ceuta reported the most serious instances of abuse, but even children at smaller centers reported beatings and insults at the hands of staff. “They treated me badly,” Khalil M. said of staff at the Avecina Center in Melilla. “They insulted me, they hit me, there were kids fighting there and they hit me too.”⁷⁶

Salah S. described his punishment for fighting with another child at Purísima Concepción Fort in October 2001. “Last Sunday I was hit and kicked on my calves by a fat guard and a thin guard. One kicked my legs out from under me and the other held me by my shirt and slapped me with an open hand. . . . They are the *educadores* [educators].” Overhearing us when we asked another boy about the term “educators,” Mamduh H. said, “Educators? They’re the ones who give beatings.”⁷⁷

In October 2001, staff at Purísima Concepción Fort forced children to wait outside for hours after a child stole a sheet. “Because of one small boy none of us knew, we were all forced to go outside without blankets in the cold,” said Salah S., fourteen. “Eventually they let us in, one by one or in small groups of three or four. I was let

⁷⁰ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁷¹ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁷² Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

⁷³ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁷⁴ Human Rights Watch interview, Ceuta, Spain, November 7, 2001. Abbas A. reported that the staff would tell children, “Búscate la vida si puedes,” literally, “seek your life if you can.” We heard this phrase often from the children we interviewed; they used it to mean, “You need to look out for yourself” or “you have to fend for yourself.”

⁷⁵ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

⁷⁶ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

⁷⁷ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

in at about 1 a.m. I don't know how long the others stayed outside."⁷⁸ Munsif M. told us, "Everybody had to go outside. We couldn't sleep."⁷⁹

Several youth told us that staff hit them after they attempted to escape. For example, Wafiq H., thirteen, said, "One time we escaped, three of us, when a boy took a piece of metal and broke the door [of the punishment room]. One of the older boys caught us and hit us. They took us and put us in another room and locked the door and then [one of the educators] came and hit us with a baton like the police use. He hit me on the head and the face and leg."⁸⁰

Finally, we heard reports that some staff at the San Antonio center threaten children with expulsion to Morocco as a means of control. "The educators aren't good people," said Omar H. "They don't behave well with the kids. They have a system—if they catch you [misbehaving] the first time, the second time, the third time. The third time, to the border. They really do it. They just threw out two kids two days ago."⁸¹ Asked to describe a bad educator, Shawqi M. said, "For example, one might say, 'I'm going to take you to the border—you're more than fifteen years old.'"⁸² While we were unable to verify independently that staff had actually caused a child to be expelled for disciplinary reasons, we found the use of threats of expulsion extremely troubling.

San Antonio's "Punishment Cell"

The punishment cell is a jail room. When there are a lot of people, you sleep on the floor. There are a lot of people when the police bring kids in. Then the younger ones, the ten- or twelve-year-olds, sleep on the floor. Before, the cell didn't even have mattresses. Now it does.

—Majid A., Ceuta, November 5, 2001

Almost all the children we spoke to in Ceuta described spending time in a "punishment cell," a small, dark, filthy room with only a few mattresses and no toilet. Following a 2000 complaint by the Office of the Ombudsman, officials at San Antonio said they had improved the room, adding light and a window.

But when we spoke with children who had been in the room in the month prior to our interviews in November 2001, they described conditions that raised serious concerns. Majid A., quoted above, told us of being locked in an overcrowded room in which younger and older children were mixed.⁸³ Wafiq H., who spent three days in the room at the end of October 2001, said, "It's very bad. The beds are ripped up. Everybody is very crowded. You don't eat well. It's very bad for you. There were eight of us in the cell. You can't leave. If you need to go to the bathroom, you go in a spot on the floor or in a pail."⁸⁴

Officials told us that the room was used solely for intake. "There is a special room there for children who come very late at night, so that they don't disrupt the others," fiscal Juan Luís Puerta Martí told us. "I don't know how long they stay there. I assume they are released in the morning, but I don't know."⁸⁵

According to children in San Antonio, however, the room was also used to punish children, particularly those who escaped and were brought back to San Antonio. "They put you in the cell if you escape," said Majid A.⁸⁶ "One of the educators, if you escape during his watch, he puts you in there if he's on duty when the police bring you back." Some staff also used the room to punish other infractions. "They put you in the punishment cell if

⁷⁸ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

⁷⁹ Human Rights Watch interview, Melilla, Spain, October 23, 2001.

⁸⁰ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁸¹ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

⁸² Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁸³ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁸⁴ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁸⁵ Human Rights Watch interview with Juan Luís Puerta Martí, fiscal for minors, Ceuta, Spain, November 6, 2001.

⁸⁶ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

you're fighting, or even if you're not doing anything," said Wafiq H., age thirteen.⁸⁷ "They put a lot of kids there. A lot. Loads. It's for those that escape, caught smoking, things like that," said `Abd al Hadi S., fourteen. "They take you to the punishment cell. Sometimes that happens when you leave without permission."⁸⁸

The length of stay in the punishment room ranged from three days to one week. Some children were held with three or four other children, some with as many as nine others. "The number of kids in the cell depends on what the police bring," Majid A. said.⁸⁹

Residential center staff do not closely monitor the room. "Everybody fights in the cell," said Majid A.⁹⁰ In fact, staff members leave some tasks, like bringing food and water, to older children at the center. "The big kids bring the food to the room. The window has openings in the bars and they pass the food to you," said Sulayman S.⁹¹ As a result, younger, smaller children lose out when mattresses and food are in short supply.

Several children complained that when those in the punishment room ask for assistance, staff ignore them. Wafiq H., thirteen, told us, "If you have to go to the bathroom you call for someone and if they don't come you go in your pants. There is no shower."⁹² "You call, and the guards don't come," said Sulayman S., fourteen. "You're left alone, and you start to cry."⁹³

Physical Conditions in the Centers

Residential facilities in both Ceuta and Melilla are overcrowded, particularly from May to September, when they may have two or three children for every bed. "We have serious problems of insufficient places," the director general of Melilla's Department of Social Welfare and Health, told us in late October, 2001. "The centers are overcrowded now. Ninety-six children need places."⁹⁴

Conditions are especially bad in the two largest centers, the San Antonio Center in Ceuta and the Purísima Concepción Fort in Melilla. Both facilities are converted military installations located at a distance from their respective city centers.

Ceuta opened the San Antonio Center in July 1999. A June 2001 press report cites Mohammad Chaib, the director of Ceuta's Department of Social Welfare, as saying that the center housed sixty-eight children in accommodation intended for fifty-five.⁹⁵ In November 2001, the department's deputy director gave us even higher numbers, telling us, "There are ninety to one hundred children in San Antonio. It varies depending on the season."⁹⁶

Children who had stayed at San Antonio described the facility as overcrowded, dirty, and lacking in privacy. Wafiq H., thirteen, estimated that "there were 100 kids there, more or less" during one stay at San Antonio in September 2001.⁹⁷ "When I first got there, I slept with two sheets on the floor and another one to cover me," he said. "About fifteen days later, a boy gave me his place. He went to go sleep with the older kids, the kids who

⁸⁷ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁸⁸ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

⁸⁹ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁹⁰ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁹¹ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁹² Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁹³ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

⁹⁴ Human Rights Watch interview with Inmaculada Casaña Mari, director general, Department of Social Welfare and Health, Melilla, Spain, October 25, 2001.

⁹⁵ Giles Tremlett, "Perilous Lives of Runaways Europe Does Not Want: Street Children Who Flee Morocco Face Beatings and Abuse in Spanish Enclave," *The Guardian* (London), June 15, 2001.

⁹⁶ Human Rights Watch interview with Josefina Castillo, deputy director, Department of Social Welfare, Ceuta, Spain, November 6, 2001.

⁹⁷ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

are fifteen and sixteen. There were about twelve of us in the room, including the four on the floor.”⁹⁸ Ra`id I. told us it was so crowded “I spent the night once in the dining hall, a few months ago. We slept on the tables. Six of us slept on the tables that time.”⁹⁹

With the exception of very long-term residents, children said they had to change bed assignments every night. “Those who have been there a long time have their own beds,” Shawqi M. said. “We have a sheet, that’s all, a very thin one. We just sleep on the floor, without a mattress or anything.”¹⁰⁰

Overcrowding was still severe when we interviewed Wafiq H. in early November 2001. He told us, “Yesterday...there were six kids in two beds in the room. The room is about fifteen feet by ten feet and has a door and a window.”¹⁰¹

In May 2001, *El País* announced it had obtained a report by the Ceuta Department of Public Health that condemned unsanitary conditions at San Antonio. According to *El País*, the report “highlights, among other deficiencies in the San Antonio center, insufficient ventilation in rooms, with mattresses on the floor without bedding in some cases and extremely dirty bedding in other cases, systematic breakage of windows and window panes, an accumulation of urine in the bathrooms, with broken drains that empty sewage directly onto the floor, broken toilets, organic and inorganic waste in cisterns, etc.”¹⁰² Children we spoke with in October and November 2001 echoed many of these complaints, adding that bathroom facilities were inadequate for the number of residents and that children are not separated by age. “The bathroom is far away, and there is only one, for the big kids and the small kids,” said Wafiq H. “Everybody goes in at the same time in the morning,” and children use a pail in their rooms at night instead of the bathroom, he added.¹⁰³

Some children spoke of ongoing construction of new residential units (*módulos nuevos*) at San Antonio, some of which had newly opened. “The new modules are the ones they’re going to open,” Atta A. told us. According to his description, each of the three planned modules will hold twenty-one youth.¹⁰⁴ Only a few children had ever stayed in the newly opened facilities, and we were unable to determine how children were chosen to stay in them. “Only the kids who have been there the longest use them, the same ones that are going to school,” said Fares S., age fourteen. “There are about ten, more or less. They’re all about nineteen or twenty years old.”¹⁰⁵

The smaller of the two centers, Purísima Concepción Fort was opened in February 2001. In October 2001 it housed twenty-four boys and six girls, although it had beds for only twenty-five children.¹⁰⁶

Melilla’s fiscal for minors told us in October 2001 that he last visited Purísima Concepción Fort in July 2001. “In Purísima the section for the girls is very good—it is in a smaller space—but the boys’ section is not good.”¹⁰⁷ The director general of Melilla’s Department of Social Welfare and Health told Human Rights Watch that the department planned to eventually close several smaller centers and move children to Purísima Concepción Fort, which would be expanded.¹⁰⁸

⁹⁸ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

⁹⁹ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁰⁰ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁰¹ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁰² Rocío Abad, “La Consejería de Salud denuncia el estado del centro de menores de Ceuta: cerca de 90 niños ocupan un chalé preparado para alojar a sólo 30,” *El País*, May 29, 2001.

¹⁰³ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

¹⁰⁴ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁰⁵ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁰⁶ Human Rights Watch interview with Inmaculada Casaña Mari, October 25, 2001.

¹⁰⁷ Human Rights Watch interview with José María Montero, fiscal for minors, Melilla, Spain, October 26, 2001.

¹⁰⁸ Human Rights Watch interview with Inmaculada Casaña Mari, October 25, 2001.

Health Care

Unaccompanied migrant children in Ceuta and Melilla suffer a variety of health problems, many of which are exacerbated by poor nutrition and, in some cases, addiction to sniffing solvents, gasoline, or other chemical substances for the short term “high” they provide.¹⁰⁹

Spanish law guarantees foreign children the right to health care on the same basis as Spanish nationals.¹¹⁰ In practice, unaccompanied migrant children’s access to health care varies tremendously. The situation is especially bad in Ceuta, where children we interviewed reported being denied care arbitrarily by staff at both public health clinics and residential centers.

Residential centers provide the majority of medical care unaccompanied migrant children receive. Based on our interviews, none of the residential centers in Ceuta and Melilla appear to have doctors on the premises, and nurses are not always available.¹¹¹ We found no evidence that centers were providing routine preventive care, maintaining files with children’s medical histories, or even providing routine medical examinations upon entry. “They take your name and they pat you down,” Majid A. said. “That’s it.”¹¹²

In the absence of regular visits by doctors, children’s access to health care is dependent on residential centers staff’s ability to recognize medical problems and their willingness to arrange for children to see doctors. Thus, some children we interviewed had received extended, specialized medical care, but other children’s high fevers or fractures went untreated. According to one activist, when children at the San Antonio Center contracted tuberculosis in early July 2001, only those children who showed active symptoms received testing and treatment.¹¹³

Sulayman S. told us that during the year he stayed at San Antonio, “I never went to the doctor,” and only once did he see a doctor come to the center. “The doctor pulled up our pants to look at our feet and legs and looked at our chests,” he said, but made no other examination. Sulayman later became ill with a high fever and vomiting. “I told them I wanted a doctor and they gave me yogurt and a pill and I stayed like that for three days. There were lots of other kids who got sick while I was there,” he added. “Kids that were sick for days.”¹¹⁴ Majid A. told us he had seen a doctor “many times, when I had a fever or hurt my head.” When we asked how residential center staff decided when to take children to a doctor, he said “They take you to the doctor when you are very sick and it shows. Other times you just see a nurse.”¹¹⁵

Other children at the same center reported receiving medical care on various occasions, but complained that it was of poor quality and sometimes arbitrarily denied. Shihab R.’s arm was in a cast, the left side of his face was swollen, and his cheek was visibly red and infected at the site of partially removed stitches when we interviewed him in November 2001.¹¹⁶ The swelling was due to an infected tooth he said, “but they won’t do anything about it.” Recently the swelling became worse after a youth cut him with a knife and the nurse at San Antonio failed to remove all the stitches. Police had fractured Shihab’s hand a few days earlier when taking him

¹⁰⁹ Human Rights Watch telephone interview with Pablo Traspas, projects coordinator, Médecins sans Frontières, March 14, 2002. In February 2002 Médecins sans Frontières’ 4 Mundo program began preliminary research for a one-year project to improve care and protection of unaccompanied migrant children in Ceuta. The project will focus on improving children’s access to medical care and social services.

¹¹⁰ Article 12(3) of Organic Law 4/2000 states, “Foreign nationals in Spain who are younger than eighteen years of age shall have the right to health care in the same conditions as Spaniards.”

¹¹¹ Children generally used the term “nurses” to describe staff at residential centers who provided medical care and “doctors” to describe staff at medical clinics or hospitals. Human Rights Watch was unable to confirm these individuals’ medical qualifications.

¹¹² Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

¹¹³ Human Rights Watch interview, Ceuta, Spain, July 28, 2001.

¹¹⁴ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

¹¹⁵ Human Rights Watch interview, Ceuta, Spain, November 5, 2001

¹¹⁶ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

into custody, but “San Antonio didn’t do anything,” he said. His fracture was not treated until he appealed to a religious group, the Carmelite Sisters of Charity of Vedruna, who took him to the Red Cross Hospital.¹¹⁷

Under Spanish law, unaccompanied migrant children also are eligible to receive health services through the Spanish national health system, even when they lack legal residency, by presenting a government issued national health card (*tarjeta sanitaria*). In Ceuta and Melilla, these services are provided through the Ministry of Health and Consumer Affairs’ National Institute of Health (Instituto Nacional de la Salud, INSALUD).

According to INSALUD guidelines, an unaccompanied minor who is a ward of the state can apply for the health card by presenting personal data verified by the Department of Social Welfare, while a child who is not a ward of the state can present a passport, a report by Social Services, or a report by the Social Worker in the health district.¹¹⁸

While some children we interviewed in Melilla appeared to have national health cards, only one child we interviewed in Ceuta, Majid A., told us that he did have a card that he thought was a health card, issued by San Antonio and used when he went to the doctor.¹¹⁹ The fiscal for minors in Ceuta told Human Rights Watch, “If a child is in a center he has a *sanitaria* card, and the center is responsible for arranging it. A child cannot get a card at the hospital, only at San Antonio.”¹²⁰

‘Ala H. gives his age as thirteen but he looks younger.¹²¹ When he arrived in Ceuta in the last quarter of 2000, police took him to the Mediterráneo Center, a residential center for children age ten and younger. Although he stayed at the Mediterráneo Center for three months before running away, he has never been issued a health card. ‘Ala says he would like to return to the Mediterráneo Center, but the staff there have refused to readmit him. Police have taken him to the San Antonio Center several times but he refuses to stay there “because the big kids hit us,” he says. Instead, he lives on the street, sleeping with other boys and youths among the rocks of the breakwater near the port.

When we interviewed ‘Ala in November 2001 he was barefoot and dressed only in a cotton t-shirt, thin sweatshirt, and sweatpants, despite the cold. He had been ill since September 2001 “from sniffing solvent,” he said.

In September 2001, Sister Ana María Moreno Pérez, a Carmelite nun who operates an outreach program for street children, took ‘Ala to a Red Cross emergency room. Emergency room staff treated him for a high fever and discharged him the same day.¹²² ‘Ala’s condition grew worse, and in October 2001 Sister Ana took him to the emergency room again, where he was diagnosed as suffering from a variety of health problems, including anemia, and discharged again. “After that we took him to the health center, but he didn’t have a health card,” so the clinic refused to treat him, Sister Ana said. “The health center will take him if an educator [at the residential center] brings him in, but not if I take him.” Nevertheless, when she convinced a staff person from the San Antonio Center to accompany her when she again took the boy to the health clinic, he was refused treatment. “The doctor told me, ‘I will not treat this child until he is in a center because it won’t do any good unless he is in a center,’” she

¹¹⁷ A copy of Shihab R.’s November 2, 2001 INSALUD medical report diagnosing a “stable fracture of the second metacarpal, left hand” is on file with Human Rights Watch.

¹¹⁸ The health card is valid for at least nine months, unless the child turns eighteen before that date. Ministry of Health and Consumer Affairs, “Qué tengo que hacer para tener la tarjeta sanitaria?,” <http://www.msc.es/insalud/preguntas/tarjeta.htm> (accessed February 25, 2001).

¹¹⁹ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

¹²⁰ Human Rights Watch interview with Juan Luis Puerta Marti, November 6, 2001.

¹²¹ According to Sister Ana María Moreno Pérez, a forensic exam in October 2001 found ‘Ala to be between eleven and twelve years old. Human Rights Watch interview with Sister Ana María Moreno Pérez, Ceuta, Spain, November 6, 2001.

¹²² Human Rights Watch researchers reviewed a copy of the emergency room doctor’s report, dated September 30, 2001, which showed the child had a fever of 39.3 degrees Centigrade (approximately 103 degrees Fahrenheit) and tested positive for THC (tetrahydrocannabinol), the active ingredient in marijuana.

told us.¹²³ ‘Ala was not receiving medical care and was still visibly ill when we interviewed him in November 2001.

Activists and children in Ceuta told us it was common for hospitals and clinics there to refuse to provide unaccompanied migrant children with medical care if the children do not have the health card or are not accompanied by residential center staff. This was the case even when children were seriously ill, had previously received medical care, and were known to medical staff.

Sixteen-year-old ‘Abd al Samad R. has been in Ceuta for about five years, including two and a half years living at the San Antonio Center. While at San Antonio he was diagnosed as suffering from renal disease, a potentially life-threatening medical condition, and he received medical treatment.¹²⁴ Then, in October 2001 he was told to leave San Antonio, apparently for disciplinary infractions. When we interviewed ‘Abd al Samad on November 8, 2001, he was living with a group of other children and youth in makeshift hovels squeezed between a breakwater and piles of ceramic tiles and other building supplies. He had received no medical treatment since leaving San Antonio, although he was frequently in severe pain. “The pain comes often, when it is cold, or when someone hits me,” he said. “I tried to go to the hospital when I was in pain but they wouldn’t admit me. They won’t accept you at the hospital unless some one from San Antonio comes with you. When the pain comes I can’t move so who will come to take me to the hospital?”¹²⁵

On November 9, 2001 children staying at the San Antonio Center informed ‘Abd al Samad that he had been scheduled for surgery on November 10, 2001 and that he should return to the center. When he went to San Antonio that night, he was refused admission. Carmelite nuns familiar with the case notified the fiscal for minors that ‘Abd al Samad was again being denied medical care because hospital staff would refuse to treat him unless he was accompanied by residential center staff. The fiscal then ordered his hospitalization; ‘Abd al Samad was only admitted to the San Antonio Center for recuperation after the fiscal issued a second order to guarantee his admission.¹²⁶

Education

I wanted to go to school and learn Spanish but they wouldn’t let me. Other kids went, but not me. I went to the director to ask to go to school but it didn’t help.”

—Sulayman S., fourteen, Ceuta, November 5, 2001

The vast majority of unaccompanied migrant children in Ceuta¹²⁷ and many children in Melilla are not enrolled in school even though Spanish law provides for compulsory education for children age six to sixteen, including foreign children.¹²⁸ The education children do receive varies considerably. Only a few children in

¹²³ Human Rights Watch interview with Sister Ana María Moreno Pérez, Ceuta, Spain, November 6, 2001.

¹²⁴ Nuns familiar with his case confirmed that he had traveled to mainland Spain for medical treatment not available in Ceuta. Human Rights Watch interviews with Sister Ana María Moreno Pérez, Ceuta, Spain, November 5-6, 2001.

¹²⁵ Human Rights Watch interviews, Ceuta, Spain, November 8, 2001.

¹²⁶ Email communication from Sister Ana María Moreno Pérez and Sister Paula Domingo Domingo to Human Rights Watch, March 23, 2002.

¹²⁷ According to the Ceuta Diocesan Commission on Migration (Comisión Diocesana de Migraciones de Ceuta), of a total of seventy children resident in the San Antonio center, twenty-three attend on a regular basis a transitional school program at a school in Ceuta, including ten children over the age of sixteen who take vocational courses at an Institute. Children and activists gave us similar attendance figures but gave higher figures for the number of children staying in San Antonio. Comisión Diocesana de Migraciones de Ceuta, cited in Asociación Pro Derechos Humanos de Andalucía, *Los niños de la calle en Ceuta: racismo y desamparo* (Seville: Asociación Pro Derechos Humanos de Andalucía, 2001), p. 12.

¹²⁸ Spanish law provides, “All foreigners under the age of eighteen years have the right and the obligation to education under the same conditions as Spaniards, a right which comprises access to a basic, free, and obligatory education, the obtainment of the corresponding academic degrees, and access to the public scholarship and aid system.” Organic Law 4/2000, article 9(1), as amended by Organic Law 8/2000. Under article 5 of Organic Law 1/1990, of October 3, General Organization of the Educational System, *Boletín Oficial del Estado*, No. 238, October 4, 1990 (Spain), basic education consists of ten years of schooling beginning at age six and extending through age sixteen. Article 10 of Organic Law 1/1996 guarantees foreign

Melilla attend courses with Spanish children, and none of the children in Ceuta appeared to attend such courses. The deputy director of Ceuta's Department of Welfare told us, "Some children go to school and others are receiving a more basic education in the center and may then go on to the school level."¹²⁹

The government's reliance on residential center staff to provide basic education is troubling. Low-quality basic education is a barrier to advancement to regular coursework in Spanish public schools and deprives children of the Spanish language and literacy skills needed to understand and demand rights guaranteed them under Spanish law, including the ability to present effectively complaints about abuses. Statements by government officials also suggest that children's fluency in Spanish is a key determinant in decisions regarding residency and citizenship.¹³⁰

Although children in both Ceuta and Melilla use the term "educators" (*educadores*) to refer to the staff responsible for the day to day running of the residential centers, Department of Social Welfare officials could not tell Human Rights Watch what, if any, qualifications they require of residential center staff. Activists in both cities told us the primary requirement appears to be knowledge of the dialect of the Berber language spoken in northern Morocco.

Officials in both Ceuta and Melilla told Human Rights Watch that unaccompanied migrant children in their care receive education. However, our interviews with children indicate that this is often not the case. `Abd al Samad R. spent two and one half years at San Antonio before being expelled in October 2001; his comments were typical of children we interviewed. "I studied for a year, starting a year and a half after I entered San Antonio," he said. "There weren't studies at the center before that."¹³¹ In addition, several children in Ceuta told us that only older children were allowed to attend classes. "No, we don't go to school," said fourteen-year-old Sulayman S. "Just sometimes we paint, and that's it. Only the bigger kids go to school."¹³² Sixteen-year-old Omar H. said the "older kids" who attended classes were "the ones who are about eighteen."¹³³ Musa Y. also said education was limited to "the older kids. After a while they're supposed to have it for the younger ones."¹³⁴

Children said San Antonio staff sometimes denied education to those accused of bad behavior, including running away. "They chose those for study from among the ones who had been there longer and had good behavior," `Abd al Samad said. "Bad behavior was hitting, or running away."¹³⁵ Majid A. said, "You have to be here for a long time to be able to go to school, five months or something, without escaping."¹³⁶

Under Spanish law, children's right to a free, compulsory education ends with the completion of ten years of basic education.¹³⁷ Normally, basic education begins at age six, and continues until age sixteen, although the law permits children who have not finished the ten-year program to remain in school until age eighteen.¹³⁸

We met no children over the age of sixteen enrolled in basic education courses, although the vast majority had completed less than six years of education in Morocco. Of those who were receiving education, all of the children we spoke to over the age of sixteen were enrolled in vocational educational courses. One seventeen-year-old who was attending a vocational training course in gardening in Melilla told us his request to attend

children the right to education, health care, and other public services, and Article 1(3) of Organic Law 8/1985, of July 3, Regulating the Right to Education, *Boletín Oficial del Estado*, No. 159, July 4, 1985 (Spain), guarantees foreigners resident in Spain the right to receive basic education.

¹²⁹ Human Rights Watch interview with Josefina Castillo, November 6, 2001.

¹³⁰ See chapter V.

¹³¹ Human Rights Watch interview, Ceuta, Spain, November 8, 2001.

¹³² Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

¹³³ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

¹³⁴ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

¹³⁵ Human Rights Watch interview, Ceuta, Spain, November 8, 2001.

¹³⁶ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

¹³⁷ Organic Law 1/1990, article 5.

¹³⁸ *Ibid.*, article 6.

regular classes had been denied. “They told me no, I couldn’t go,” said Munsif M. “I want to go. I want to learn to speak Spanish well.” He had attended ten years of school in Morocco.¹³⁹

Children who qualify for vocational education may be prevented from participating in the practical portion of those classes if they lack the required work permit. `Abd al `Aziz R., another seventeen-year-old enrolled in a vocational training course in Melilla, told us that he would not be able to complete the practical training portion of the course unless the government issued him a work permit.¹⁴⁰

The Ministry of Labor and Social Affairs’ secretary general for social affairs told Human Rights Watch that her ministry automatically issues work permits to children with residency documents if the Department of Social Welfare applies for them. “It is impossible that children who are in this situation [unaccompanied minors] would not get work permits,” she said. “The Ministry cannot deny work permits if the Department of Social Welfare asks for them and the conditions are met. There is a nine-month period to wait to make sure that the child does not return to its family. The nine months should include the period before August 1st [2001] but that is not within our competencies.”¹⁴¹

Lack of Recreational Space and Leisure-time Activities

Most centers lack even rudimentary recreation space, and only a few centers offer any organized activities for children other than chores. With the exception of Purísima Concepción Fort and one other facility that accepts both Spanish and foreign children, the centers in Melilla consist of one or more floors in multistory commercial buildings. None of the Melilla centers have dedicated outdoor recreational spaces, although the grounds at Purísima Concepción Fort are quite large and could easily accommodate recreational facilities. Instead, the Melilla centers generally allow children to leave during the day to wander through the city without supervision. “I leave the center in the morning, at 9 a.m., and I stay outside until the afternoon,” said Munsif M. “Everybody goes downtown, unless you’re being punished. If you’re being punished, you can’t leave.”¹⁴²

The San Antonio Center has no dedicated outdoor recreation space. When Human Rights Watch visited Ceuta in July 2001, we observed barefoot children from the center walking in the area directly adjacent to the building, which was covered in trash, including broken glass and bits of rusted metal. This area had been cleaned when we visited again in November 2001, but it was still too small to serve as recreation space for the large number of children staying at the center.

Children who had stayed at San Antonio described days of unrelieved boredom. Ihab J., sixteen, had been in San Antonio seven times, for periods ranging from one day to one week, during his five months in Ceuta. Describing his typical day at the center, he said, “You clean whatever there is to clean; you eat. You wash the dishes. There aren’t any activities, except sometimes you’ll play soccer or basketball.”¹⁴³ The games he referred to are organized by Carmelite nuns working with unaccompanied migrant children in Ceuta, and take place at a public soccer field near the port, a far distance from the San Antonio Center.

“People don’t do anything,” Munib I. said. “There’s not even a chance to learn. There aren’t any studies or vocational training. Breakfast is at nine, then you clean a little, then do nothing. Lunch is at one. You clean and then do nothing. The *merienda* [a light early evening meal] is at six or six-thirty, maybe seven. We clean a little, then we do nothing. Dinner is at ten—we clean and then do nothing.”¹⁴⁴ Sulayman S. said, “You don’t go outside. You sit in front of the window looking out at the sea. . . . There’s nothing to do.”¹⁴⁵

¹³⁹ Human Rights Watch interview, Melilla, Spain, October 23, 2001.

¹⁴⁰ Human Rights Watch interview, Melilla, Spain, October 25, 2001.

¹⁴¹ Human Rights Watch interview with Concepción Dancausa Treviño, secretary general for social affairs, Ministry of Labor and Social Affairs, Madrid, Spain, November 13, 2001.

¹⁴² Human Rights Watch interview, Melilla, Spain, October 23, 2001.

¹⁴³ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁴⁴ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

¹⁴⁵ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

Clothing

Younger children in particular said that older children often stole their shoes and any desirable items of clothing. Residential centers do not have a secure place for children to keep their possessions, and children said staff at the centers did not prevent the thefts or replace stolen items. Lutfi M., age twelve, said police first took him to San Antonio in July 2001. "I didn't even stay a day," he told us. "The older boys took my shoes, so I escaped." The police have taken him to the center several times since then, but he has only spent the night once, hiding his shoes before he went to sleep.¹⁴⁶

More generally, almost every child we spoke to in Ceuta and Melilla complained that clothing provided by the residential centers was insufficient and poor quality. Children we interviewed in October and November 2001 were poorly dressed for the cold weather, typically wearing some combination of one or two cotton t-shirts or a t-shirt and a sweat shirt and light cotton pants or sweat pants.

Food

Children generally told us that the amount of food they receive is adequate, if sometimes variable. "Sometimes they give you a little; sometimes they give you a lot," said Salah S.¹⁴⁷ Nevertheless, several complained that the food lacks variety or was not prepared to the children's taste. "The food at San Antonio was not good," `Abd al Samad said. "No one liked it. The quantity was okay but we didn't like it. There were vegetables sometimes but no fruit."¹⁴⁸ Children also told us that meals frequently contain pork products, which many of the children refuse to eat for religious reasons. "The food varies—sometimes you can eat it and sometimes not—because of the pork. All the meals have pork," said `Atta A.¹⁴⁹

Human Rights Watch was unable to independently verify the use of pork products in meals prepared for children at residential centers. Given the large numbers of Muslim children in these facilities, residential centers should ensure that if meals do include pork products children are notified of this fact, and children who do not eat pork for religious reasons are provided with suitable nutritious alternatives.

International Standards

International law establishes that every child has the right to protection from physical or mental violence, the right to education, and the right to the enjoyment of the highest attainable standard of health.

The Convention on the Rights of the Child recognizes that children are entitled to special care and protection and that the best interest of the child must be a primary consideration in all actions concerning children. Under article 19 of the convention, children have the right to protection from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."¹⁵⁰

Article 19 of the convention protects children from private acts of violence as harassment as well as from acts committed by state agents; by the provision's terms, the state's obligation to protect extends to "all forms" of violence or neglect committed against a child while the child is in the care of another person. For example, the Committee on the Rights of the Child has relied on this provision to call for state action to address violence or threats of violence by children against other children in schools and other institutions.¹⁵¹

¹⁴⁶ Human Rights Watch interview, Ceuta, Spain, November 5, 2001.

¹⁴⁷ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

¹⁴⁸ Human Rights Watch interview, Ceuta, Spain, November 8, 2001.

¹⁴⁹ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁵⁰ Convention on the Rights of the Child, articles 3 and 19.

¹⁵¹ See Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (New York: UNICEF, 1998), p. 246.

In addition, both the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibit cruel, inhuman, or degrading treatment.¹⁵²

Children enjoy the right to education. As with other economic, social, and cultural rights, the right to education may be achieved progressively. A state party to the International Covenant on Economic, Social and Cultural Rights agrees “to take steps . . . to the maximum of its available resources” to realize the right to education.¹⁵³

Fundamental to the right to education is the state’s obligation to provide it in a nondiscriminatory manner. The right to freedom from discrimination in education flows from the nondiscrimination provisions of the Convention on the Rights of the Child, the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁵⁴ It is explicitly guaranteed in the Convention against Discrimination in Education, which Spain ratified in 1969.¹⁵⁵ As the Committee on Economic, Social and Cultural Rights has observed, the right to freedom from discrimination in education “is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”¹⁵⁶

Under the Convention against Discrimination in Education, states undertake “[t]o give foreign nationals resident within their territory the same access to education as that given to their own nationals.”¹⁵⁷ The Committee on Economic, Social and Cultural Rights has interpreted the principle of nondiscrimination to extend “to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.”¹⁵⁸

Finally, children have the right “to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and the rehabilitation of health.”¹⁵⁹ The Convention on the Rights of the Child requires state parties to “strive to ensure that no child is deprived of his or her right of access to such health care services.”¹⁶⁰

In ensuring these rights for unaccompanied migrant children in residential centers, Spanish authorities should be guided by many of the principles set forth in the U.N. Rules for the Protection of Juveniles Deprived of their Liberty. While the U.N. Rules are not directly applicable to unaccompanied migrant children in residential centers—they are intended to serve as “convenient standards of reference and to provide encouragement and

¹⁵² See International Covenant on Civil and Political Rights (ICCPR), articles 7 and 24, *opened for signature* December 19, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 16, *adopted* December 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

¹⁵³ International Covenant on Economic, Social, and Cultural Rights, article 2(1), *opened for signature* December 19, 1966, 993 U.N.T.S. 3 (entered into force January 3, 1976).

¹⁵⁴ See Convention on the Rights of the Child, article 2(1); ICCPR, article 2(1); International Covenant on Economic, Social and Cultural Rights, article 2(2); and the International Convention on the Elimination of All Forms of Racial Discrimination, article 2, *opened for signature* March 7, 1966, 660 U.N.T.S. 195 (entered into force January 4, 1969).

¹⁵⁵ Convention against Discrimination in Education, *adopted* December 14, 1960, 429 U.N.T.S. 93 (entered into force May 22, 1962). On the right to nondiscrimination in education, see generally Human Rights Watch, *Second Class: Discrimination Against Palestinian Arab Children in Israel’s Schools* (New York: Human Rights Watch, 2001), pp. 162-64.

¹⁵⁶ Committee on Economic, Social and Cultural Rights, *General Comment 13, The Right to Education (Article 13)*, para. 31, U.N. Doc. E/C.12/1999/10 (1999).

¹⁵⁷ Convention against Discrimination in Education, article 3(e).

¹⁵⁸ Committee on Economic, Social and Cultural Rights, *General Comment 13*, para. 34.

¹⁵⁹ Convention on the Rights of the Child, article 24(1).

¹⁶⁰ *Ibid.*

guidance to professionals involved in the management of the juvenile justice system”¹⁶¹—the rules address many issues related to the management of youth facilities that are also faced by those who are charged with providing residential care for unaccompanied migrant children.

IV. ARBITRARY AGE DETERMINATION PROCEDURES

Appropriate age determination is crucial to ensuring an unaccompanied migrant child’s right to protection and services, including admission to a residential center and protection from arbitrary expulsion.¹⁶² Spanish law acknowledges the importance of timely age determinations and requires the Ministerio Fiscal to arrange for health care facilities to conduct age determination tests “as a matter of urgent priority” whenever the minor status of an undocumented foreign national cannot be established with confidence.¹⁶³ Our investigation found that age determination procedures in Ceuta and Melilla are often carried out by individuals who lack appropriate training and are frequently arbitrary, cursory, and in some instances punitive. Age determination procedures that arbitrarily deny children the rights guaranteed them by their status as minors violate international law.¹⁶⁴

Police and residential center staff make the first, and often only, determination of a child’s age. The Departments of Social Affairs and Health provide no training to either the police or the residential center staff on how to evaluate a child’s age, and sources in the Ministry of Interior were unable to tell us if police received training from any other sources. Police make a visual age assessment when taking children into custody. Those the police deem to be over eighteen are summarily expelled from Spain, and those who appear younger are taken to a residential center. Unaccompanied children as young as thirteen told us police had expelled them based on visual assessments. At times, arguing with the police helps, sixteen-year-old Ra’id I. told us. “Sometimes [the police] want to take me to the border, but I insist that I’m under eighteen and I tell them they have to take me to San Antonio,” he said.¹⁶⁵

Residential center staff determine whether to admit a child based on their assessment of the child’s age.¹⁶⁶ Some children reported that staff at residential centers refused them entry to residential centers based on visual assessments that the children were eighteen or older. According to one official in Ceuta, residential center staff sometimes made these assessments at a distance, while children were seated in police cars parked outside.¹⁶⁷

Inmaculada Casaña Mari, the director general of Melilla’s Department of Social Welfare and Health, told us that children were only referred for medical examinations “if there is doubt” about their age, but this was not often the case because “[n]ormally the people working in the center have the experience to know when a child is a child.”¹⁶⁸

¹⁶¹ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, para. I.5, G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A), p. 205, U.N. Doc. A/45/49 (1990).

¹⁶² Provisions in Spanish law allowing unaccompanied migrant children to receive health and educational benefits, temporary residency in Spain, and eligibility for work permits are all age dependent. See, for example, Organic Law 1/1996, article 10; Organic Law 4/2000, article 35, as amended by Organic Law 8/2000; Royal Decree 864/2001, article 62.

¹⁶³ Royal Decree 864/2001, article 62(1). See also Organic Law 4/2000, article 35, as amended by Organic Law 8/2000.

¹⁶⁴ Article 2 of the Convention on the Rights of the Child requires states to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” Article 24(1) of the ICCPR states, “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”

¹⁶⁵ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

¹⁶⁶ In Ceuta, children ten and under are generally placed in the Mediterráneo Center, and older children in the San Antonio Center. Melilla, with its larger number of residential centers, generally separates children older than twelve from those younger, although some nongovernmental organizations running small centers and those only accepting girls are exceptions to this practice.

¹⁶⁷ Human Rights Watch interview, Ceuta, Spain, November 8, 2001.

¹⁶⁸ Human Rights Watch interview, Melilla, Spain, October 25, 2001.

Samir A., who told us he was fifteen, described one such medical exam. A forensic doctor had examined him approximately eight months before we interviewed him in October 2001. “They put my hands on a machine and told me that I was sixteen years old,” he said. When we asked him how long the examination had taken, he replied, “It wasn’t longer than a quarter of an hour.”¹⁶⁹ According to fiscal for minors José María Montero, “now, under the new law, age determination is done with a forensic exam of the wrist, by x-ray.”¹⁷⁰

Experts warn that bone x-rays have a very high margin of error and expose children to unnecessary radiation. The Separated Children in Europe Program, a joint initiative of the UN High Commissioner for Refugees (UNHCR) and the International Save the Children Alliance in Europe, notes that “[e]xisting bone directories are out-of-date and are based largely on the physical measurements of white people. As they neglect the impact of ethnic, geographical, social, environmental and nutritional factors, they should not be used for age assessment.” As a result, the program recommends that age determination “should stress approaches that are based more on psychological than physical factors.” The Program’s Statement of Good Practice concludes, “It is important to note that age assessment is not an exact science and a considerable margin of error is called for. In making an age determination separated children must be given the benefit of the doubt.”¹⁷¹

UNHCR officials told Human Rights Watch “UNHCR’s Branch Office in Spain has expressed on several occasions its concern to the Spanish authorities and to NGOs in relation to the lack of accuracy of the current age determination practices for unaccompanied minors. Against this framework, UNHCR’s Office in Spain suggested amendments to the draft regulation implementing the Aliens Law 8/2000, and shared it with the authorities, NGOs and members of Parliament. None of UNHCR’s suggestions in this regard were followed in the final text adopted in August 2001.”¹⁷²

Children have little recourse if a forensic doctor’s assessment is incorrect. Mamduh H. told us he was seventeen years old and had been in Melilla for two years at the time of our interview, with temporary residency for one and one half years.¹⁷³ A forensic doctor examined him once and told him he was eighteen, which would have made him ineligible to remain at the residential center. “I argued with them and refused to sign the papers,” he said. No action has been taken in his case since then. When asked how a child could appeal the findings of a forensic medical exam, fiscal Montero told us, “The forensic doctor is independent, an officer of the court, so I don’t think there is a review process of his decisions.”¹⁷⁴

Prodein, a Melilla-based nongovernmental organization, wrote to the Melilla Department of Social Welfare and the fiscal for minors in February 2000 to protest the use of unreliable age determination tests such as height tables and dental exams.¹⁷⁵ In its submissions, Prodein cited four cases in which the department used these tests as the basis for removing children under the age of eighteen from residential centers:¹⁷⁶

¹⁶⁹ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

¹⁷⁰ Human Rights Watch interview, Melilla, Spain, October 26, 2001.

¹⁷¹ Sandy Ruxton, *Separated Children Seeking Asylum in Europe: A Program for Action* (Save the Children and the United Nations High Commissioner for Refugees, 2000), pp. 50-54; Save the Children and the United Nations High Commissioner for Refugees, *Separated Children in Europe Program Statement of Good Practice*, October 2000, Principle 6.

¹⁷² Facsimile from UNHCR Branch Office for Spain, to Human Rights Watch, March 18, 2002.

¹⁷³ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

¹⁷⁴ Human Rights Watch interview, Melilla, Spain, October 26, 2001.

¹⁷⁵ Human Rights Watch has criticized the use of such age determination measures in the United States as unreliable. See, for example, Human Rights Watch, *Detained and Deprived of Rights: Children in the Custody of the U.S. Immigration and Naturalization Service* (New York: Human Rights Watch, 1998), p. 6.

¹⁷⁶ The Prodein submissions and government documents referred to in this section are on file with Human Rights Watch. We have assigned children pseudonyms in this report to protect their privacy.

- Although Rashid S.'s birth certificate listed his age as seventeen, the department removed him from a residential center after a doctor estimated that he was eighteen years old based on his height and a dental examination.¹⁷⁷
- The department also removed Karim F. from a residential center after height and dental examinations found him to be an adult. A wrist bone examination later found him to be sixteen years old. Prodein reports, "Karim F. finally remained in the street and without documents, he was expelled numerous times at the Moroccan border, [and] in September 2000 he died crushed under the axles of a truck when he attempted to board a ship in the Moroccan port of Beni Enzar [Beni Ansar] bound for Málaga."¹⁷⁸
- After Ashraf M. was removed from a residential center, an independent doctor found him to be approximately fifteen years and six months old, based on a wrist bone examination.¹⁷⁹
- Nabil K. has lived in Melilla since 1991, when he was eight years old. Department of Social Welfare records establish that he stayed in at least two residential centers during the periods February to May 1998, July to September 1999, and November 1999 to February 2000. Although his Moroccan identity documents give his date of birth as June 25, 1983, Melillan authorities required him to undergo an age-determination examination. In February 2000, when he was sixteen years old, the department removed him from his residential center after a doctor estimated his age as eighteen. He applied for a residence card in July 2001; the Delegate has not yet ruled on his application.¹⁸⁰

Palazón told us in October 2001 that authorities in Melilla had agreed not to use height and dental age-determination examinations.¹⁸¹

Most children we interviewed had not undergone forensic medical exams. Government officials we interviewed were unable to point to a written policy regulating the use of the exams. The Ceuta official authorized to order expulsion told us that in the absence of information on family members, the results of a forensic medical exam are sufficient to force repatriation.¹⁸²

The wide variation in results of age assessments based solely on a physical examination, without adequate allowance for a margin of error, highlight the arbitrary nature of these assessments and the determinations based on them.

Following the recommendations of the Separated Children in Europe Program, Human Rights Watch urges Spain to allow children to present other credible evidence of their age, such as an identity document, health care or school record, or testimony from individuals who know the child.¹⁸³ Estimates of age based on wrist bone examinations should reflect a margin of error of at least twenty months. Finally, authorities should err on the side

¹⁷⁷ Prodein, Submission to the Department of Social Welfare, February 1, 2000, p. 3.

¹⁷⁸ Prodein, Submission to the Melilla Department of Social Welfare, February 1, 2000, p. 3.

¹⁷⁹ Prodein, Submission to the Melilla Fiscal for Minors, March 15, 2000, p. 3.

¹⁸⁰ Declaration of María del Carmen Barranquero Aguilar, acting technical secretary, Department of Social Welfare and Health, Melilla, Spain, February 13, 2001; declaration of Juan M. Fernández Millán, director, Brother Eladio Alonso Center, Melilla, Spain, March 13, 2001; Morocco Ministry of the Interior, Certificate of Birth Registration of Nabil K., copy issued in Fés, Morocco, 1999 (showing birth date of June 25, 1983); Morocco Ministry of the Interior, Residency Permit of Nabil K., issued in Fés, Morocco, February 28, 2000 (showing year of birth as 1983); Order of José María Pérez Díaz, technical secretary, Child and Family Section, Department of Social Welfare, February 23, 2000.

¹⁸¹ Human Rights Watch interview with José Palazón, October 22, 2001.

¹⁸² Human Rights Watch interview with Luís Vicente Moro, delegate of the central government, Ceuta, Spain, November 7, 2001.

¹⁸³ See Sandy Ruxton, *Separated Children Seeking Asylum in Europe*, Recommendation 6, page 53, and Save the Children and the United Nations High Commissioner for Refugees, *Separated Children in Europe Program Statement of Good Practice*, Principle 6.

of extending the protections accorded to minors in cases where an individual cannot be identified as an adult with certainty.

V. EXPULSION AND LEGAL RESIDENCE

Ayman M., sixteen, has lived in Melilla since he was eight years old. He was staying in a residential center and had temporary residence documents when he was expelled to Morocco along with several other children in July 2001. Interviewed later that month after he returned to Melilla, he told Human Rights Watch,

Two of us were in one center, but the other two in different ones. There was me, Walid, Jamal, and Imad. The head of the center told me I was being taken to court to solve a “problem.” We never went to the court because the chief of the court told the caretaker of the center to take us to another place.

It was there that we saw each other. We were all given a different reason. It was at this other center that we realized something was wrong. There were two secret police, guards, and another man who I think was a police officer.

We were taken to the border separately. I was with another kid who was ten. He wanted to jump out of the car but I didn’t let him. They didn’t tell us why we were going. Only, when we got close to the border, the police said, “You are going to go to your family.” There were two secret police in our car plus the other man. They didn’t hurt me, but they hurt the small kid because he wanted to get out of the car. They were slapping him, twisting his arm, and putting their fists under his neck like they were choking him.

They took us into Morocco to a place where we were brought one by one to a small room. Soon we four were there with three adult Algerians, one adult Moroccan, the Spanish police, the Moroccan police, and a translator. It was a cell about five-by-five meters and very dirty. There was no toilet or water. We were asking to go to the toilet and have food, water, anything, but we got nothing. We were hot.

At 2:00 there was a change of guards. We were then taken to the other side of the city [Nador], which is very far—about two-and-a-half to three hours walking. The Moroccan police took us in a car with lots of other people—women, children, the three Algerians, and the Moroccan man. The three Algerians were taken to Algeria and for the Moroccans they just opened the door and said, “Get out.” We four were taken one by one into the police station.

At the police station one of the [Moroccan] police stepped on our toes with his boots; we were wearing flip-flops. He asked us where we were from and how we got to Melilla and stuff. We were put in a storage room with beer and wine. The police were there the whole time. They didn’t abuse us again until the end when they let us free. Then they hit us with a long stick or baton that has high voltage. They hit us all over, all of us. But the biggest one tried to protect the rest of us. All the doors were closed and we couldn’t get out. There were more than ten police in this big storage room. We were cornered together in part of the room where two police were hitting us. The others were laughing and insulting us. It lasted about five minutes. The big kid got really hurt—on his legs, back, arms—and had lots of bruises. He got released first. Then me. Then the others. When we were released we waited outside for the others.

The children made their way back to Spanish territory several days later. When our researcher interviewed Ayman four days after his return to Melilla his left wrist was still visibly bruised with marks about one-half inch long.

Between July 27 and September 18, 2001, authorities in Melilla conducted at least thirty-two expulsions using this summary procedure—which fails to comply with Spanish law—according to the local human rights organization Prodein (Asociación pro Derechos de la Infancia). The youngest of the children expelled was eleven years old; seventeen of those expelled were fourteen years of age or under. Human Rights Watch wrote to the Spanish government on October 12, 2001 requesting clarification of Spanish policies and practices affecting unaccompanied migrant children, including the legal authority for these expulsions and the steps the government had taken to ensure that the expulsions complied with Spanish law. We also raised these cases in meetings with officials at the Ministries of the Interior and Foreign Affairs in November 2001. At the time of this writing we had not received a response to our request. Prodein reported that the total number of unlawful expulsions had risen to at least seventy by February 2002.¹⁸⁴

Table 1: Expulsions of Unaccompanied Children by Spanish Authorities in Melilla, July 27 to September 18, 2001

Source: Prodein (Asociación pro Derechos de la Infancia)

Pseudonym ¹⁸⁵	Age	DATE OF EXPULSION	DATE OF REENTRY
Ayman M.	16	July 27, 2001	July 28, 2001
Hassan K.	12	July 27, 2001	July 31, 2001
Issam R.	17	July 27, 2001	July 31, 2001
Abd al Wahab N.	14	July 27, 2001	July 31, 2001
Ayman M.	16	July 28, 2001	July 31, 2001
Najib H.	11	August 2, 2001	August 3, 2001
Mustafa S.	16	August 2, 2001	August 3, 2001
Shaker F.	12	August 2, 2001	August 3, 2001
Ahmad M.	16	August 2, 2001	August 3, 2001
Abd al Wahab N.	14	August 3, 2001	<i>none</i>
Issam R.	17	August 3, 2001	August 4, 2001
Subhi S.	16	August 3, 2001	August 4, 2001
Subhi S.	16	August 4, 2001	August 6, 2001
Subhi S.	16	August 9, 2001	August 10, 2001
Taha M.	15	August 27, 2001	<i>none</i>
Tariq H.	14	August 27, 2001	September 4, 2001
Ahmad M.	16	August 27, 2001	August 28, 2001
Shaker F.	12	August 30, 2001	September 4, 2001
Anwar I.	14*	August 30, 2001	September 4, 2001
Fahad A.	13	August 30, 2001	September 4, 2001
Ayman M	16	August 30, 2001	September 3, 2001
Mustafa S.	16	August 30, 2001	September 3, 2001
Hafith A.	14*	September 5, 2001	September 5, 2001
Nur F.	14*	September 5, 2001	September 5, 2001
Wael M.	14*	September 5, 2001	September 5, 2001
Anwar I.	14*	September 5, 2001	September 5, 2001
Shaker F.	12	September 5, 2001	September 5, 2001
Fahad A.	13	September 5, 2001	September 5, 2001
Najib H.	11	September 5, 2001	September 5, 2001
Jaber N.	13	September 18, 2001	September 21, 2001
Jawad A.	15	September 18, 2001	September 21, 2001
Abd al Halim R.	16*	September 18, 2001	September 22, 2001

* Approximate age

¹⁸⁴ E-mail message from José Palazón, March 5, 2002.

¹⁸⁵ Children's names are on file with Human Rights Watch.

Other children who told us that they had been expelled gave similar accounts. In addition to reports of beatings and other ill-treatment of children at the hands of the Moroccan police, which are discussed more fully in Chapter VII, eleven of the children we interviewed described beatings and other ill-treatment at the hands of Spanish police.

The official term for the expulsions is “family reunification,” in accord with the principle of Spanish law that unaccompanied children should be reunified with their family members if possible.¹⁸⁶ The law provides that if reunification is not possible, Spanish authorities should place the child with a children’s social service agency in the child’s country of origin. The implementing regulations clarify that “[o]nce the child’s family is located, or in its absence, the child protective services of [the child’s] country, repatriation” may take place only “after verification that no risk or danger exists to the child’s health and safety or of his persecution or that of his family members.”¹⁸⁷

Carlos Guervós Maillo, the Ministry of the Interior’s deputy director of immigration, told us, “We consider that the priority is for returning children to their families, then to social services” in their home countries.¹⁸⁸ Similarly, Enrique Fernández-Miranda, secretary of state for foreign affairs and immigration, declared in October 2001, “The first objective that has to take place is family reunification for these minors, because we believe that the place where these children can best develop themselves is within their families, within their own roots and their own cultures. If this family reunification were not possible from the administrative point of view after nine months of attempting it, Spanish authorities would move to document these children, to welcome and integrate them until they reach adulthood.”¹⁸⁹

Spanish officials frequently claimed that all of the children deported from Ceuta and Melilla were returned to family members. In a comment typical of those we heard, Ministry of Labor and Social Affairs official Concepción Dancausa Treviño told us, “Very few children are returned to their countries, and when we do, we make sure that they are returned to their families.”¹⁹⁰ Similarly, Rocío Rodríguez Bayón, the chief of staff of the office of the representative of the central government in Melilla, insisted “we always find the families before [sending children back to Morocco] . . . through the Department of Social Welfare we collaborate to find the family.” Rodríguez Bayón then noted that Spanish law allows children to be returned to child welfare centers in their country of origin, but said “We only try to find families.”¹⁹¹ In an off-the-record conversation, a Ministry of Interior official insisted to us that any child who was expelled was returned to his family. “The Moroccan police in Nador know the family of every child who is returned. The children come from Nador and the villages around it, and the police there know everyone,” she said.¹⁹²

Local officials offered a more realistic assessment of how expulsions take place. “The law is clear that a child should be returned to his family, or to a social service group, but it is very difficult to implement. For example, the border has many problems; there aren’t enough Moroccan police at the border for them to take a

¹⁸⁶ “The Administration of the State, in conformity with the principle of family reunification of the minor and on the report of the protection agencies for minors, shall take the necessary steps to secure the return of the child to his country of origin or to that in which his family may be found, or failing that, his continued residence in Spain.” Organic Law 4/2000, article 35(3), as amended by Organic Law 8/2000.

¹⁸⁷ Royal Decree 864/2001, article 62(4).

¹⁸⁸ Human Rights Watch interview with Carlos Guervós Maillo, deputy director general for immigration, Ministry of the Interior, Madrid, Spain, November 12, 2001.

¹⁸⁹ Carmen Echarri, “‘Los que llegan a España de forma ilegal no tienen futuro en este país’; apuesta por la repatriación de los menores marroquíes a sus puntos de origen,” *El Faro* (Melilla), October 23, 2001, p. 17.

¹⁹⁰ Human Rights Watch interview with Concepción Dancausa Treviño, secretary general for social affairs, Ministry of Labor and Social Affairs, November 13, 2001.

¹⁹¹ Human Rights Watch interview with Rocío Rodríguez Bayón, chief of staff for the office of the central government representative to Melilla, Melilla, Spain, November 9, 2001.

¹⁹² Human Rights Watch interview, Madrid, Spain, November 13, 2001.

child to his family. If the family is not known, we give the child to the police at the border. The police don't have the qualifications to reunite the child with his family," a fiscal for minors in Melilla told us.¹⁹³

When Human Rights Watch told Rodríguez Bayón that our investigation indicated that unaccompanied migrant children were not being returned to their families, but only delivered to the Moroccan police, who then release them onto the streets, she contradicted her earlier statements, saying: "That's what they say. What is clear is that the Spanish police cannot enter Morocco like the Moroccan police cannot enter Spain. We just give them to the police and they know who the family is. It's not our fault if they escape from their family again. We suppose they are given to their families. It's an international thing; we cannot interfere. I'm convinced that all of them arrive to their families."¹⁹⁴

Spain and Morocco have signed bilateral agreements on migrant workers and readmission of foreigners, but these instruments do not address the treatment of unaccompanied migrant children.¹⁹⁵ A Ministry of Foreign Affairs official told us his ministry had no responsibilities for unaccompanied migrant children and that the Ministry of Interior was responsible for gathering information about their families. "I think that this should be included in our bilateral contacts with Morocco, and perhaps a separate agreement on children should be signed," he added. "[But] we haven't received any suggestions from the Ministry of Labor and Social Affairs on actions to take. They have authority on this issue."¹⁹⁶

Asked what Spanish officials do to verify that returning an unaccompanied migrant child to Morocco will not place him or her at risk, the director general of Melilla's Department of Social Welfare explained, "The north of Morocco is poor, and there are thousands of kids from abusive homes. We are not able to investigate cases of children's treatment in Morocco. It is up to the Delegate to do that and to take that information into account."¹⁹⁷

A September 1999 Department of Social Welfare memorandum to the local representative of the central government listed twelve children, including Subhi S., Sha`ban M., and Asad R., whom the department sought to return to Morocco for family reunification.¹⁹⁸ In the September memorandum, the department noted that it was "providing all information known by this Entity with respect to the parents" of each child. In the case of Subhi S., the department used copies of his parents' identity cards, issued in 1994 and 1995, to establish their domicile.¹⁹⁹

A separate memorandum on Asad R.'s case set forth his parents' names, taken from an extract of his birth record, and recorded a Fés address for his parents, based on "information provided by the minor." On the basis of this information, the department requested that Asad be reunified with his family or turned over to a child welfare agency in Nador.²⁰⁰

In a declaration filed with the fiscal in October 1999, José Palazón, of the nongovernmental organization Prodein, described the expulsions and return to Melilla of three of the twelve children. "The three minors

¹⁹³ Human Rights Watch interview with Miguel Angel Sánchez Lorenzo fiscal for minors, Melilla, Spain, October 26, 2001.

¹⁹⁴ Human Rights Watch interview with Rocío Rodríguez Bayón, chief of staff for the office of the central government representative to Melilla, Melilla, Spain, November 9, 2001.

¹⁹⁵ See Agreement Between the Kingdom of Spain and the Kingdom of Morocco Relating to the Movement of Persons, Transit, and the Readmission of Foreigners Who Have Entered Illegally (provisional), signed in Madrid, February 13, 1992; Agreement on Labor Between the Kingdom of Spain and the Kingdom of Morocco (provisional), signed in Madrid, July 25, 2001.

¹⁹⁶ Human Rights Watch interview with Eduardo de Quesada, deputy general director of Foreigners Affairs, Ministry of Foreign Affairs, Madrid, Spain, November 13, 2001.

¹⁹⁷ The delegate is the representative of the central government to the autonomous city. Human Rights Watch interview with Inmaculada Casaña Marí, October 25, 2001.

¹⁹⁸ Human Rights Watch has assigned the children pseudonyms to protect their privacy.

¹⁹⁹ Memorandum from Department of Social Welfare, Autonomous City of Melilla, to Office of the Delegate of the Government, September 30, 1999.

²⁰⁰ Memorandum from Department of Social Welfare, Autonomous City of Melilla, to Office of the Delegate of the Government, July 28, 1999.

returned to Melilla [the following] Saturday in the morning [and] told us that the Moroccan police hit them to make them admit their real home addresses, ‘not those on the Spanish papers.’” According to Palazón, Sha`ban M., then fourteen, was beaten severely after telling the police that he did not know where his mother was. The second child, Asad R., could only give a telephone number of a neighbor in Fés; when the police called, they discovered that the boy’s family had not lived in the neighborhood for many years. The third, Ziad I., was “left at the door of his house, and the police departed. On seeing him, his father and mother gave him a beating, not because he had run away but so that he would leave the house.”²⁰¹

Spanish officials continue to rely on outdated and unreliable documentation when determining to expel children, despite the new law’s requirement that they locate children’s families and verify whether a child may be safely returned to them. “They’re using these documents eight years later, five years later,” José Palazón told us. “These expulsions take place on the basis of a simple piece of paper, without any verification to see if the family is really there. There’s no process in place for getting in touch with the family.”²⁰²

The expulsions in Melilla lack due process protections provided for by Spanish law. All foreign nationals have the right to free legal assistance “in administrative or judicial proceedings that may lead to the denial of entry, to repatriation or expulsion from Spanish territory, and in all proceedings relating to asylum.”²⁰³ Foreign nationals may designate a nongovernmental immigrant rights organization to intervene in administrative proceedings on their behalf.²⁰⁴ They have the right to an interpreter in such proceedings, and they are guaranteed the right to appeal all administrative decisions with the exception of those relating to expedited cases.²⁰⁵

Nevertheless, none of the children we interviewed had been given access to legal counsel or interpreters. They were not told about their right to appeal in terms that would be understandable to most children. We saw no evidence that Spanish officials regularly notify children that they are facing expulsion, and there appears to be no formal mechanism for children to contest their expulsion.

The lack of procedural guarantees violates the right of these children to have “the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”²⁰⁶

More fundamentally, these expulsions have enormous consequences for the children who endure them. Removed from residential centers or rounded up on the street, many are then detained in inhumane conditions in Moroccan lockups and subjected to beatings. If they were attending school before their expulsions, they face interruptions in their education. Few are actually returned to their families; when they are, neither Spanish nor Moroccan authorities have determined whether they will be safe in their homes. Those who have lived in Spanish territory for years face deportation to a country that they barely remember.

It is not surprising that many of the children we interviewed were visibly agitated at the thought that they might be expelled. Those who live on the streets felt particularly vulnerable. As Hafith A., seventeen, told us, “I spend every day running.”²⁰⁷

Legal Residence

Unaccompanied migrant children who cannot be reunited with family members or placed with social service agencies in their countries of origin are entitled to remain in Spain. As modified in December 2000, Spanish law provides: “For all purposes, the residence of minors under the guardianship of the public administration shall be considered regular. At the request of the entity that exercises guardianship and once the impossibility of [the

²⁰¹ Prodein, Declaration to the Fiscal for Minors, Melilla, October 18, 1999.

²⁰² Human Rights Watch interview, Melilla, Spain, October 22, 2001.

²⁰³ Organic Law 4/2000, article 22(1), as amended by Organic Law 8/2000.

²⁰⁴ *Ibid.*, article 20(3).

²⁰⁵ *Ibid.*, articles 22(1), 21(2).

²⁰⁶ Convention on the Rights of the Child, article 12(2).

²⁰⁷ Human Rights Watch interview, Melilla, October 23, 2001.

child's] return to his family or his country of origin has been certified, he shall be granted a residence permit, the validity of which shall be retroactive to the moment in which the minor was placed in the care of child protective services."²⁰⁸ The law also includes provisions for the granting of work permits to children above the age of sixteen.²⁰⁹ The law in force prior to December 2000 also included provisions for issuing temporary residency permits to unaccompanied children.²¹⁰

The regulations implementing the current law provide that a child should be granted a residence permit after family reunification or return to the country of origin has been unsuccessful, and he or she has been under the authority of the Spanish child protective services for nine months.²¹¹ If applied, these provisions would facilitate children's social integration and ease their transition to a productive adulthood.

However, the authorities entrusted with guardianship for unaccompanied children are not required to apply for residency permits, and they frequently do not. Human Rights Watch interviewed children who had lived in Ceuta and Melilla for more than two years—nine years, in one case—without ever having their status legalized. This was the case even when children had lived in residential centers for lengthy periods. Children without residency documents find themselves in a legal limbo, without any means to regularize their status and vulnerable to summary deportation when they turn eighteen.

Abd al Aziz R., seventeen at the time of our interview, told us that he had lived in Melilla for ten years, eight of those on the street and two in the Purísima Concepción Fort. He did not have a temporary residence permit.²¹² Similarly, Sulayman S., a fourteen-year-old who had spent the past year in Ceuta's San Antonio center, stated, "I don't have residence, nothing, no. There are people who came after me and got everything."²¹³

Fawzi D., age twenty-one, has lived in Melilla for the last nine years, since he was twelve years old. Born near the Moroccan town of Nador, he came to Melilla on his own, entering without proper documents. He lived on the street until he was sixteen or seventeen, when he went to a residential center. "I spent nine months in one center and then one month in another center," he said. "I turned eighteen while I was in the center. I never got a residence permit. Instead, the educators picked me up and took me to the doctor. The doctor told me, 'You're eighteen years old.' That was it; I had to leave the center." The National Police have detained him twice since he left the center. "The first time, they found me in the street. They took me to the police station and then to the border," he said. "When I showed them my Moroccan documents, they ripped them up. They took me to the border and told me to go over to Morocco." Fawzi showed us the remains of his torn documents, which he had retrieved and taped together.

"The second time, I was picked up by two police officers from the National Police. They caught me and said, 'Quiet, you,' and made me get into the vehicle. It was a big car, a van, with license plate number 50 46 31. One of the officers was named Paco; he had a beard and black hair. I know him. They crumpled up my documents and took me to the Moroccan police. I spent two days in Morocco, in the Moroccan police station." He showed us a copy of a complaint he filed with the fiscal to protest his expulsion and the destruction of his documents. "My whole life is here," he told us. "My relatives are here. I don't have any family in Morocco."²¹⁴

An official in the Ministry of the Interior suggested to us that the adoption of new regulations in July 2001 may lead to improvements in processing temporary residence permits. "Prior to the new regulation, the regional authorities had responsibility for asking the central authority for residency, and there was no set time within

²⁰⁸ Organic Law 4/2000, article 35(4), as amended by Organic Law 8/2000.

²⁰⁹ *Ibid.*, article 36.

²¹⁰ See, for example, Organic Law 4/2000, of January 11, Regarding the Rights and Liberties of Foreigners in Spain and Their Social Integration, article 32, *Boletín Oficial del Estado*, No. 10, January 12, 2000 (Spain).

²¹¹ Royal Decree 864/2001, article 62(5).

²¹² Human Rights Watch interview, Melilla, October 25, 2001.

²¹³ Human Rights Watch interview, Ceuta, November 5, 2001.

²¹⁴ Human Rights Watch interview, Melilla, October 22, 2001.

which they had to act. Now the central government can act without a request,” said Carlos Guervós Maillo, subdirector general for immigration.²¹⁵

Nevertheless, we spoke to some children who waited for months to receive residence documents; others have yet to receive a response to their applications. Mamduh H., one of the few children we met in Melilla who has received temporary residence, told us that of the twenty-five youth in his center, four have temporary residence. “You have to be in the center for nine months,” he explained. “But there are two people in the center who have been there for one year and three months without their initial residence card.” He had been in the center in Melilla for one year and five months before he received his card.²¹⁶

Administrative inaction is not the only hurdle that children in Melilla face. City authorities often told us that they interpreted Spanish law as requiring children to spend nine consecutive months in one or more of the residential centers in order to qualify for residency, although no such provisions exist in the amended Law 4/2000 or its implementing regulations. “Normally, the children have to be under our guardianship for the nine-month period to starting counting,” said Inmaculada Casaña Mari, the director general of Melilla’s Department of Social Welfare and Health.²¹⁷ According to Mari, a child who lives on the streets for three months and then enters a center cannot receive a temporary residence permit until he or she has spent one full year in Melilla. In addition, a gap of a single day would be sufficient to break the nine-month period: A child who runs away from a center and returns the same week would have to begin the nine-month accrual anew.

In contrast, Luís Vicente Moro, the representative of the central government in Ceuta, told us, “All who are receiving schooling can have residency. If the children are known to the city, we would also count time in the street.”²¹⁸ It is true that some children in Ceuta told us that they had temporary residency documents. But some of those children also told us that the residential centers kept their documents for them. These children believed that they lost their residency if they left the centers, although the law is silent on this point.

Officials in Melilla tended to justify their restrictive interpretation of the law and its implementing regulations by explaining that the child’s presence in a center was the only reliable way of establishing that he or she had been in Spain for the required length of time. Conceding that alternative interpretations were possible, Casaña Mari told us, “But a child would have to show residency, and how would the child do that if he’s not in a center?”²¹⁹

In addition, some officials told us that the nine-month period started with the adoption of Organic Law 4/2000 in January 2000; they said that time in the city before that date, even in a residential center, did not count toward the nine-month period.

There is no justification for these restrictions. The Department of Social Welfare often has detailed information on a child’s periods of stay in the city’s residential centers. Other public entities, such as schools or hospitals, may have additional records that would document a child’s presence in Spanish territory. Nongovernmental organizations and religious workers may also be able to attest to the length of time a child has lived in the city. In adjudicating residency applications, Spanish authorities should consider all relevant, credible evidence of a child’s length of stay in the country.

A temporary residence permit granted to an unaccompanied child expires when the child reaches the age of eighteen. At that point, the youth may be eligible to apply for permanent residence based on his or her length of

²¹⁵ Human Rights Watch interview with Carlos Guervós Maillo, November 12, 2001.

²¹⁶ Human Rights Watch interview, Melilla, October 22, 2001.

²¹⁷ Human Rights Watch interview with Inmaculada Casaña Mari, October 25, 2001.

²¹⁸ Human Rights Watch interview with Luís Vicente Moro, November 7, 2001.

²¹⁹ Human Rights Watch interview with Inmaculada Casaña Mari, October 25, 2001.

time in the country, or the youth may be able to receive an extension of temporary residence on humanitarian grounds.²²⁰

When we asked officials in Ceuta how many children subsequently received permanent residence, it became clear that it was rare. The chief of staff for the president of Ceuta could name only one. “It was about five years ago, maybe 1997,” she said. “He was a very open boy, and learned Spanish well. I don’t remember other cases, but there could be.”²²¹

Of the cases we reviewed in Melilla, only one youth had obtained permanent residence and work permits. For most, the procedural requirements were daunting, as the following cases illustrate:

- Salah N., now eighteen, has lived in Melilla since at least March 1999, when he entered the Eladio Alonso residential center. With the exception of a five-day period in May 1999 and just over three months between June 22 and October 1, 1999, he was in the care of one of Melilla’s residential centers until January 5, 2001, according to Department of Social Welfare records.²²² He applied for residence and employment permits in April 2001. The Delegación responded with a lengthy list of the documentation he was required to submit within ten days. Among the required documents were a valid passport, a residence visa or offer of employment, an employment contract, certificates from the Department of Social Security and Taxes, and evidence of a place of residence.²²³ Writing to the ombudsman, he stated, “I received on April 24, 2001, a notice from the Office of Foreign Affairs of Melilla in which I was informed that within a ten-day period I have to have a job and a home. In so few days I will not be able to get together the two requirements and so I ask that you help me so that the residency is easier.”²²⁴
- Salim A. was under the guardianship of the Department of Social Welfare for two months in 1997 and then from September 1999 to February 2000, with several short gaps. The department removed him from its care in February 2000 after a doctor estimated that he was over eighteen. His age was approximately fourteen, according to an independent wrist bone examination taken one month later.²²⁵ Three days after his removal from the center, the National Police expelled him to Morocco, Prodein reported. After he returned to Melilla, he lived on the streets. He was badly injured in a fight, nearly losing an eye. He also told Prodein that an adult had tried to abuse him sexually during his time on the streets.²²⁶

In March 2001, he wrote to the Defensor del Pueblo, saying,

²²⁰ The implementing regulations provide that foreign nationals “who certify that they have resided legally and continuously in Spanish territory for five years” are eligible for permanent residence. Eligibility is not affected by absences from Spain for vacations, for periods of up to six months each that do not exceed one year in the aggregate, or for any reasonable length of time if the absence is for family circumstances or health care. Those who do not meet the five-year residence requirement may be able to extend their temporary residence under several provisions that authorize temporary residence for humanitarian reasons or other exceptional circumstances. See Royal Decree 864/2001, articles 42, 41(3)(c), 41(2)(d), and 41(3)(b).

²²¹ Human Rights Watch interview with María Teresa Troya, chief of staff, Office of the President, Ceuta, Spain, November 9, 2001.

²²² See certificate of María del Carmen Barranquero Aguilar, provisional technical secretary, Department of Social Welfare, Autonomous City of Melilla, February 5, 2001; memorandum from Juan M. Fernández Milán, director, Brother Eladio Alonso Center, Melilla, February 12, 2001; certificate of Antonio Ignacio Miranda Céspedes, director, Lucas Lorenzo Children’s Center, Melilla, February 12, 2001; certificate from coordinator of Hogar del Puerto Children’s Welcome Center, Melilla, February 12, 2001.

²²³ Letter from Francisca Gallego Mejías, chief of section, Office of Foreigners, Delegación of the Government in Melilla, April 24, 2001.

²²⁴ Letter from Salah N. to Ombudsman, March 10, 2001.

²²⁵ Certificate of Angeles de la Vega Olías, technical secretary, Department of Social Welfare, Autonomous City of Melilla, February 27, 2001; Counselor of Social Welfare, Autonomous City of Melilla, Order No. 416 of February 9, 2000; Letter of Dr. Enrique Remartínez Escobar, radiologist, Melilla, March 14, 2000.

²²⁶ Prodein, Submission to the Melilla Fiscal for Minors, p. 4.

“My name is Salim A., I was born in Meknés (Morocco), my file number in the Minor and Family Section in Melilla is: 0176/99 and now I am living in Melilla but I don’t have a house. I write to you because I have spent many years in Melilla, almost all living in the street, before it was very difficult to enter a center, now I was in a center but they threw me out because the medical examiner said that I am 18 years old and once more to the street. I don’t have any documents because they began to give them to the children when they threw me out. I write to you because you help me to obtain a residence card and work permit and not to have to continue living like this. —Salim.”²²⁷

The prospect of losing legal status at the age of eighteen and being abruptly cut off from access to social services leads some children to question the value of the services they receive before they reach adulthood. “It’s good because they give you food and clothing until you reach eighteen. And then they throw you over the border,” said fifteen-year-old Majid A., speaking of the San Antonio center in Ceuta. “It’s better to seek your own life. The center is a waste of time.”²²⁸

“If there were possibilities for residence, I’d stay,” Sulayman S. said of the San Antonio Center. “But I don’t want to return to San Antonio. I live in the street.”²²⁹

Citizenship

If few youth receive residence and work permits, even fewer receive Spanish citizenship. Spanish law allows children who are fourteen years of age or older and who had been under the guardianship of a Spanish institution for at least two years to apply for nationality.²³⁰

In Ceuta, Delegate Luís Vicente Moro told us that no child in the San Antonio center has received nationality since the center opened in 1999, a fact which he attributed to the newness of the facility. In Melilla, where the residential centers have been open longer, no government official could name a case in which an unaccompanied child had been granted nationality.

Those who apply face procedural hurdles similar to those in the residency application process. “In practice, it happens that the child’s guardianship runs out before a decision on nationality is made,” said Inmaculada Casaña Mari, director general of Melilla’s Department of Social Welfare.²³¹

As with permanent residence, children receive no help with this process. “We don’t provide any assistance with nationality,” the Ceuta fiscal for minors told us.²³² Similarly, an official in the Department of Social Welfare said, “The only thing we can do is apply for residency, and then the law requires two years of guardianship. We don’t know if the child has a mother or father, so what can we do? If the child is abandoned, at fourteen years of age the child can apply for nationality. We don’t apply for nationality under the two-year residency provision because we don’t have the information.”²³³ Perhaps for this reason, most of the children with whom we spoke had no idea that they might be able to apply for Spanish citizenship.

The Violations of International and Spanish Law

The practice of summarily expelling unaccompanied children violates the implementing regulations of Spain’s Organic Law 8/2000, which specify that unaccompanied foreign children should only be repatriated if,

²²⁷ Letter from Salim A. to Ombudsman, March 26, 2001.

²²⁸ Human Rights Watch interview, Ceuta, November 5, 2001.

²²⁹ Human Rights Watch interview, Ceuta, November 5, 2001.

²³⁰ See Civil Code, article 22(2)(c).

²³¹ Human Rights Watch interview with Inmaculada Casaña Mari, October 25, 2001.

²³² Human Rights Watch interview with Juan Luís Puerta Martí, November 6, 2001.

²³³ Human Rights Watch interview with José Antonio, October 25, 2001. During a meeting with Inmaculada Casaña Mari, director general of Melilla’s Department of Social Welfare, Mari called into her office an individual she introduced as “José Antonio, the department’s legal expert,” and asked him to respond to our questions about residency and naturalization. Human Rights Watch has been unable to confirm his full name and title.

following a hearing, it is determined that a child will be returned to relatives or child protective services and if it is verified that there is no risk to the child's safety or that of his or her relatives. In the absence of such a finding, the child should be granted temporary residency status in Spain if he or she cannot be returned to his or her family within nine months.²³⁴ As the Ombudsman writes in his 2001 report, Spanish law requires child protection services in each autonomous community "to secure family reunification in the child's country of origin, with all guarantees for his or her security. In cases in which reunification turns out to be impossible, these protection services will continue to exercise guardianship over the minor, requesting his or her documentation."²³⁵

Summary expulsions of children that do not effect their reunification with their family members or result in their placement with social welfare agencies violate the state's obligation under article 20 of the Convention on the Rights of the Child to provide special protection and assistance to children deprived of their family environment.²³⁶ In addition, when the state knows or should know that expulsions are likely to place children at risk of physical harm by the officials of another state, expulsions violate the right of children to protection from all forms of violence, guaranteed by article 19(1) of the convention. When the state has knowledge of a pattern of ill-treatment of expelled children by officials of another state, expulsions violate children's right to freedom from cruel, inhuman, or degrading treatment or punishment, guaranteed by article 37(a) of the convention.

VI. THE LACK OF EFFECTIVE MECHANISMS FOR ENSURING RIGHTS

In more than a dozen interviews with Spanish officials at every level of government, Human Rights Watch found an utter lack of effective monitoring and enforcement mechanisms or procedures to ensure that unaccompanied migrant children received the care and protection to which they are entitled in domestic and international law. Time and again officials charged with monitoring, coordinating, and providing care told us that some other body was responsible for investigating and enforcing children's rights to protection, or that they relied on their subordinates to inform them of any problems or abuses involving unaccompanied children, although in almost all cases the subordinates were responsible for the abuses. Without doubt, decentralization and lack of coordination among government agencies contribute to human rights violations against unaccompanied migrant children, but the core problem remains an unwillingness to acknowledge and enforce these children's rights.²³⁷

Lack of Oversight and Clear Lines of Responsibility

No government agency actively takes primary responsibility for ensuring the care and protection of unaccompanied migrant children in Ceuta and Melilla. By law, the primary responsibility should be with the Departments of Social Welfare, which serve as the children's legal guardians. Department officials in both cities told us that they could only help children who wanted assistance, implying that they had no obligation toward children who refused to stay in dangerous, substandard facilities. Neither department actively monitors conditions in the residential centers, depending instead on center directors for information. "If there is a problem we find out about it from the heads of the centers," said the director general of Melilla's Department of Social Welfare. "They tell us all that happens in the centers, the good and the bad."²³⁸ The deputy director of the Ceuta

²³⁴ See Royal Decree 864/2000, article 62(4).

²³⁵ Defensor del Pueblo, "Informe del Defensor del Pueblo correspondiente a la gestión realizada durante el año 2000," *Boletín Oficial de las Cortes Generales, Sección Cortes Generales, VII Legislatura*, No 201, October 8, 2001, p. 66.

²³⁶ Similarly, the Charter of Fundamental Rights of the European Union (2000 Revised) guarantees in article 24(1) that children shall have the right to such protection and care as is necessary for their well-being; article 24(2) of the charter enshrines the "best interest of the child" standard. The International Convention on the Protection of the Rights of All Migrant Workers, which Spain has not signed or ratified and which is not yet in force, would require adequate procedure for all expulsions, prohibit collective expulsions, and provide special protections for migrant children. Charter of Fundamental Rights of the European Union, *Official Journal of the European Communities*, p. C 364 (entered into force December 7, 2000); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *adopted* December 18, 1990, G.A. Res. 45/158 (not yet in force).

²³⁷ See Chapter II for a discussion of the structure of the Spanish government.

²³⁸ Human Rights Watch interview with Inmaculada Casaña Mari, October 25, 2001.

department told us her office did not maintain basic data on the unaccompanied migrant children there, and she did not know if the residential center did.²³⁹

Immediate oversight for the Departments of Social Welfare lies with the autonomous governments' Offices of the Presidency, but these agencies do not themselves monitor or investigate treatment of unaccompanied children. Asked how the presidency exercised its oversight, the chief of staff for the Ceuta presidency told us her office was dependent on reports from the Department of Social Welfare to know if there was a problem, and that it did not engage in what she termed "preventive" investigations. "There must be a problem first," she said.²⁴⁰

Central government officials we interviewed deferred completely to the Departments of Social Welfare on issues relating to unaccompanied migrant children. The Ministry of Labor and Social Affairs' secretary general for social affairs told Human Rights Watch, "The autonomous governments have complete control on issues related to social integration. We cannot inspect centers. We do audits to ensure that they spend the money [we provide them] as they say they will, but we do not control their rules (*normativas*), as each autonomous government writes its own rules for these centers."²⁴¹ The central government's representative in Ceuta told Human Rights Watch that he was not responsible for ensuring unaccompanied children received care and only initiated expulsions at the request of the Department of Social Welfare.²⁴² The department, in turn, denied asking for expulsions, and said it was the Delegate's decision.²⁴³

Only the Ministerio Fiscal, an office roughly equivalent to an attorney general or state prosecutor's office, and the Office of the Ombudsman conduct any monitoring of residential centers. Based in Madrid, the Ombudsman has a small office that accepts and investigates complaints but lacks enforcement powers.²⁴⁴

The Ministerio Fiscal has oversight over wards of the state, including oversight over all residential centers for children.²⁴⁵ This oversight is exercised through the fiscal for minors, a position that combines prosecutorial functions with investigative and protection powers. Melilla has two fiscals for minors, who also deal with adult cases; Ceuta has only one. "We don't have enough staff to do all the investigations for our own cases," said one fiscal for minors.²⁴⁶ Fiscals for minors said they monitor conditions in the residential centers, but only irregularly, and they do not monitor expulsions of unaccompanied children at all. "We just get notification of it," said fiscal for minors José María Montero.²⁴⁷ Montero told us in October 2001 that his last visit to a residential center "was in July, to Purísima." Ceuta fiscal for minors Juan Luís Puerta Martí told us "[t]here are no regular visits to the [San Antonio] center. I can't give you information on our last visit because you don't have a need to know." Later, Puerta Martí said that he visits the San Antonio Center "every six months or less."²⁴⁸ The fiscals in both cities told us their role was to make limited investigations and reports, and only a court could take action to

²³⁹ Human Rights Watch interview with Josefina Castillo, November 6, 2001.

²⁴⁰ Human Rights Watch interview with María Teresa Troya, November 9, 2001.

²⁴¹ Human Rights Watch interview with Concepción Dancausa Treviño, November 13, 2001.

²⁴² Human Rights Watch interview with Luís Vicente Moro, November 7, 2001.

²⁴³ Human Rights Watch interview with Josefina Castillo, November 6, 2001.

²⁴⁴ The ombudsman may refer complaints to the Ministerio Fiscal and may make reference to these complaints in his annual report to the Spanish Parliament. The ombudsman may also bring an action before the Constitutional Court to challenge the constitutionality of an official act. See Organic Law 3/1981, of April 6, on the Ombudsman, *Boletín Oficial del Estado*, no. 109, May 7, 1981 (Spain); Law 36/1985, of November 6, Regulating the Relationship Between the Institution of the Ombudsman and Similar Officials in the Various Autonomous Communities, *Boletín Oficial del Estado*, no. 271, November 12, 1985 (Spain); Regulation of the Organization and Function of the Ombudsman, *Boletín Oficial del Estado*, no. 92, April 18, 1983 (Spain).

²⁴⁵ See, for example, Organic Law 1/1996, articles 21 and 24.

²⁴⁶ Human Rights Watch interview with Miguel Angel Sánchez Lorenzo, October 26, 2001.

²⁴⁷ Human Rights Watch interview with Jose María Montero, October 26, 2001.

²⁴⁸ In fact, Puerta Martí refused to give us his name at the end of our interview, telling us that he did not have to give us that information; he identified himself only as "the fiscal." We established his identity because we were led to his desk when we asked for him by name, we observed him signing documents in the name "Juan Luís Puerta Martí" as he spoke with us, and we asked his coworkers what his name was. Human Rights Watch interview with Juan Luis Puerta Martí, November 6, 2001.

correct an abuse.²⁴⁹ “Until now there has not been recourse to the courts,” said Melilla’s fiscal for minors Miguel Angel Sánchez Lorenzo. “We give our reports to the office of the representative of the central government and the Department of Social Welfare and Health.”²⁵⁰ The chief of staff for the Presidency of Ceuta said the last report on residential centers there was “a few years ago, maybe two years ago.”²⁵¹

Human Rights Watch was refused access to residential centers in Ceuta and Melilla. All the government officials we interviewed told us that other agencies control access to the centers. In Ceuta, the central government representative told us the city controls access to residential centers, and “there would have to be an extreme case to justify a visit.”²⁵² The Department of Social Welfare’s deputy director told us “The center doesn’t let anyone in because the fiscal doesn’t want anyone to go in....We don’t control who goes in. The fiscal has that authority.”²⁵³ In turn, fiscal Juan Luíś Puerta Martí told us, “You would have to ask the city. We don’t have any responsibility in deciding who enters.”²⁵⁴

Lack of Mechanisms for Lodging and Investigating Complaints

Unaccompanied migrant children’s uncertain legal status, poor language skills, and limited education seriously undermine their ability to know and demand their rights. Two agencies with the clearest obligation to investigate children’s complaints—the police and the Department of Social Welfare—are directly or indirectly responsible for the vast majority of abuses they suffer. Children who do complain are unlikely to find relief, and may risk retaliation.

Human Rights Watch asked government officials to describe specific mechanisms that would facilitate the lodging of complaints by unaccompanied migrant children, as required by Spanish law.²⁵⁵ None of the officials we interviewed could name any, although several officials insisted that some process must exist in the Department of Social Welfare. Other officials made general references to the fiscal or the police as having authority to investigate abuses. To the extent that these mechanisms exist at all, they are grossly inadequate to meet Spain’s legal obligations.

The description of Melilla’s Department of Social Welfare’s “complaint process” by that office’s director general was typical of accounts in both cities. “There are kids who come here to tell us a complaint,” she said. “Then we go and investigate. That is the normal process, although it doesn’t happen so often.”²⁵⁶ Neither the centers nor the Social Welfare Departments provide children with information on how to lodge complaints, and to the extent that children know about the department they generally view it as a source of their problems. This is particularly true in Ceuta, where some children told Human Rights Watch that the Social Welfare Department director visits the San Antonio center on a regular basis and threatens children with expulsion. Even if children knew how to lodge complaints at the department, its offices in both cities are located far from the residential centers with the largest populations and worst conditions, and uniformed guards control entrance.

Lodging a complaint with the fiscal for minors is equally difficult. Fiscals in both cities told us that children could either make their complaints directly to the police or present themselves at the office of the fiscal and lodge a complaint there. Ceuta’s fiscal for minors later modified this, saying “If a child has a complaint he would go to the [Civil] Guard, which would investigate and then the fiscal would either bring a complaint before the court or not. It depends on the type of the complaint. If a child was hit by an educator he would go to the fiscal.”²⁵⁷

²⁴⁹ Human Rights Watch interviews, Melilla, Spain, October 26, 2001 and Ceuta, Spain, November 6, 2001.

²⁵⁰ Human Rights Watch interview, Melilla, Spain, October 26, 2001.

²⁵¹ Human Rights Watch interview with María Teresa Troya, November 9, 2001.

²⁵² Human Rights Watch interview with Luíś Vicente Moro, November 7, 2001.

²⁵³ Human Rights Watch interview with Josefina Castillo, November 6, 2001.

²⁵⁴ Human Rights Watch interview with Juan Luis Puerta Martí, November 6, 2001.

²⁵⁵ Articles 9 and 10 of Organic Law 1/1996 guarantee children the right to governmental assistance for the effective exercise of their rights, as well as the right to be heard in all administrative and judicial proceedings affecting them.

²⁵⁶ Human Rights Watch interview with Inmaculada Casaña Mari, October 25, 2001.

²⁵⁷ Human Rights Watch interview with Juan Luis Puerta Martí, November 6, 2001.

None of the children Human Rights Watch interviewed had ever gone to the office of the fiscal for minors by themselves, although a nongovernmental organization in Melilla had taken some children to lodge complaints in that office.²⁵⁸ The offices of fiscals for minors in both cities are located far from the largest residential centers, in government buildings protected by armed guards. When Human Rights Watch visited the office of the fiscal for minors in Ceuta in November 2001, the building was posted with signs stating “no admission without a D.N.I.,” the national identity document (*Documento Nacional de Identidad*) issued only to Spanish citizens.²⁵⁹ Even if this provision were not enforced, an unaccompanied child wishing to make a complaint to the fiscal would still have to talk his or her way past the armed guard on duty, pass through a metal detector, walk up an unmarked stairwell, cross a floor to another stairwell, and then find a poorly marked office.

Right to be Heard

None of the government officials we spoke with could describe mechanisms to ensure unaccompanied migrant children’s participation in administrative or judicial procedures affecting their rights or status, and none of the agencies appear to have made provisions for translation or interpretation for the many children who were not fluent in Spanish.

Asked how decisions to expel children are made, the central government’s representative in Ceuta told us, “The law requires that the *delegacion* must hear the child, but this is not done because the children don’t come to the hearings.”²⁶⁰

Fernando Tesón Martín, Ceuta’s judge for minors and president of the court, told us that any unaccompanied minor has a right to a lawyer in court proceedings, and “the fiscal has to take charge of the child’s case before the court in the case of a complaint (*denuncia*) if the fiscal believes that it is a legitimate case.” Asked how a child would know to claim this right, the judge admitted, “If a child has a case as a complaint (*denuncia*) the fiscal should inform him of his right to a lawyer, but there is no system of informing children of this right.” Questioned about his own role in the process, Judge Tesón Martín said that as judge for minors he had no authority over conditions in residential centers or abuses by adults against children. “I only have penal authority—when a child has committed a crime—but the situation of immigrant children is a protection issue.”²⁶¹

Police Impunity and Judicial Inaction

In October 1998, three local police officers in Ceuta submitted a complaint to the fiscal’s office to protest the systematic summary expulsion of children that was ongoing at that time.²⁶² When we visited Ceuta in November 2001, the daily expulsions reported in the complaint were no longer taking place, although children and activists expressed fear that the government would reinstitute summary expulsions following the renewal of such expulsions in Melilla in July 2001. We share this concern, and we reviewed the case file to see how the judicial system handled a well-documented complaint—the only such complaint, to our knowledge, originating within one of the police forces in the two autonomous cities.

According to the officers, the detention and expulsion of children was a “constant and daily” occurrence in 1998. They reported that these children were detained in a police van together with adults for periods ranging from four to six hours during the roundups that preceded each expulsion. The officers also complained that the police van used to transport the children did “not meet even the most minimal conditions of safety, hygiene, and habitability, as the vehicle mentioned (a Mitsubishi van) is used on a daily basis to remove seized motorcycles and mopeds . . . as well as confiscated vegetables and fish to be auctioned off; as a consequence, the extremely

²⁵⁸ Researchers from Human Rights Watch observed volunteers from the nongovernmental organization Prodein on October 24, 2001, as they attempted to lodge a complaint on behalf of two unaccompanied migrant children facing expulsion. Other complaints brought by Prodein on behalf of unaccompanied migrant children are on file with Human Rights Watch.

²⁵⁹ We were allowed to enter after agreeing to leave a passport with the guard on duty. While some unaccompanied migrant children have other forms of identification, such as temporary residence or health cards, many of the children we spoke with had no identification.

²⁶⁰ Human Rights Watch interview with Luís Vicente Moro, Ceuta, Spain, November 7, 2001.

²⁶¹ Human Rights Watch interview with Fernando Tesón Martín, judge for minors, Ceuta, Spain, November 7, 2001.

²⁶² Complaint to the Fiscal, Ceuta, Spain, October 5, 1998.

strong smell of gasoline, oil, and fish that the undocumented persons detained there, including the minors mentioned above, find themselves forced to inhale.”²⁶³

The complaint was supported by photographs, copies of official documents, and statements from children who had been subjected to expulsion. One of the supporting documents, a declaration intended to be a denunciation of one of the officers who filed the complaint, forthrightly noted that children had been detained together with adults while transported to the border in preparation for their expulsion. It opens with the words, “For your due knowledge and appropriate use, I have the duty to notify you that at 1:00 this morning, the duty sergeant and the undersigned lieutenant proceeded to transfer twelve undocumented individuals to the border at Tarajal, *six of whom were minors.*”²⁶⁴ Other documents listed the names and ages of “Moroccan minors” turned over to the border post at Tarajal for expulsion.²⁶⁵

The declaration continued, “[W]e observed a person who parked a motorcycle in the area surrounding the border, specifically with license plate number CE-9816-E, and he headed toward the place where we were, taking photos. The lieutenant of the Civil Guard called him to order, telling him to refrain from taking photos, asking me if I knew that person, and, if he was a journalist. Right away I told him that he should relax, as it was a colleague, specifically it turned out to be Police Officer Manuel Navia Fernández, dressed in plain clothes.” The officer making the declaration concluded, “I think that behavior of this type should not be allowed, which in my judgment contributes to the clear debasing of the Corps of Local Police of which (I don’t know about him) I am proud to represent.”²⁶⁶

After he and two of his colleagues filed their complaint, Officer Navia was suspended without pay. Several weeks later, according to a declaration he filed with the fiscal, he received threatening telephone calls. In one, the caller told him, “Listen to me good, for your fucking stupidity you’re going to lose a lot of money soon, if you don’t want to lose something more, go to the court and take back you know what. Remember that you’re going to be a father soon.”²⁶⁷ The officers faced other reprisals, according to documents they filed with the court.

Despite the source of the complaint and the evidence that supported it, the case languished for over a year before it was administratively closed. It was reopened in 2000 after a new judge took over the docket; it remains pending as of this writing.

VII. MOROCCO’S FAILURE TO PROVIDE CARE AND PROTECTION

We know what happens to these children in Europe. They go [there] to work but when they are in Europe they can’t work or live their lives and they are vulnerable to all that is illegal and difficult. They are ill-treated in Morocco because we want to stop them from going [abroad], and in Spain because they are vulnerable.

—Moroccan Minister of Justice Omar Azziman²⁶⁸

Morocco, like Spain, has ratified the major international human rights treaties providing for the protection and care of children.²⁶⁹ Recent legislation and draft legislation seeking to improve some aspects of child

²⁶³ Complaint, p. 5.

²⁶⁴ Declaration of Lt. Jesús Ortíz Fernández to the Chief of the Corps of Local Police, Ceuta, Spain, October 3, 1998 (emphasis added).

²⁶⁵ City Council of Ceuta, Local Police, “Presentation of Moroccan Minors,” Ref. 509/98, October 14, 1998; City Council of Ceuta, Local Police, “Presentation of Moroccan Minors,” Ref. 510/98, October 15, 1998.

²⁶⁶ Declaration of Lt. Jesús Ortíz Fernández to the Chief of the Corps of Local Police, Ceuta, Spain, October 3, 1998

²⁶⁷ Declaration of Manuel Navia Fernández, Ceuta, Spain, October 22, 1998.

²⁶⁸ Human Rights Watch interview with Omar Azziman, minister of justice, Rabat, Morocco, October 30, 2001.

²⁶⁹ Morocco has ratified the Convention on the Rights of the Child, the ICCPR, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture, and the Convention against Discrimination in Education. In Human Rights Watch

protection has thus far been incomplete and limited in its implementation.²⁷⁰ Morocco's failure to fulfill its obligations to ensure children the protection and care necessary for their well being exposes unaccompanied child migrants to abuses prior to their departure and following their return. In many cases it has also contributed to the pressures some children feel to undertake the dangers of clandestine migration. A full discussion of Morocco's implementation of international standards regarding children is beyond the scope of this report. Instead, this chapter will focus on the most serious abuses faced by unaccompanied child migrants immediately prior to or following their being in Spain, including abuse by Moroccan police and the Moroccan authorities' failure to provide children with adequate protection and care.

Abuse in Police Custody Upon Return to Morocco

Moroccan police detain unaccompanied children expelled from Ceuta and Melilla at one of several police stations. Border posts at the Ceuta/Fnideq and Melilla/Beni Ansar crossing have small police stations, with larger police stations located in town. Moroccan police also sometimes take children expelled from Melilla to a main police station at Nador, the adjacent city.

When we interviewed him in October 2001, fifteen-year-old Samir A. told us that he had been expelled from Melilla seven times in the three years he had lived in the city.²⁷¹ He described his most recent expulsion in 2001. "The police came and picked us up," he said. "We went to the station. They talked for a while, and they took us to the border. They handed us over to the Moroccan police. We went to the Moroccan police station." He was held in the single holding cell at the station, a room about three meters by four meters. "I spent an entire day there—they didn't give us anything to eat," he said. "There were three Iraqis, five Senegalese, a mix of people, all together eleven people." Samir estimated their ages at between twenty-three and thirty-five. "I was the smallest of them all," he said. "I entered the cell at two in the morning. A policeman put his foot on my back and pushed me in." He remained there for the rest of the day. "If you asked to go to the bathroom, the police would come in and beat you," he said. "At one o'clock in the morning they threw us out onto the streets." He returned to Melilla the following day.

Unaccompanied children we interviewed in Ceuta and Melilla consistently told us that they suffered beatings and other ill-treatment at the hands of Moroccan officials when expelled to Morocco, often showing us scars or marks to corroborate their accounts. "In Morocco, the police search you. If you have anything, a knife or anything, they take it. Then they beat you with a baton. . . . Also they use an electrical cable. There's one police officer from Morocco who does this," Abd al Hadi S. told us, showing us marks on his back that he said came from the electrical cable.²⁷²

Girls Hiba A. and Amal M. told us that if the Spanish police caught them they were invariably handed over to the Moroccan police, who often detained and beat them.²⁷³ "The boys go to a Center but the girls go to the border," said Amal. Amal described her treatment after Spanish police in Ceuta expelled the two girls to Morocco a few days earlier:

[The Spanish police] called the Moroccan police and the Moroccan police took us to the police station and kept us there. If you go in the morning the Moroccan police keep you until the night, if you go in the night they keep you until the morning. The last time was a Friday and they kept us until Saturday. This was last Friday (four days ago). The police told us not to go to the Christians and not to embarrass Morocco....One kicked me. They say, "tell the truth or we'll beat you."

addition, in 1993 Morocco ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

²⁷⁰ For example, compulsory education legislation is poorly enforced, and the current version of draft juvenile justice legislation fails to remedy the lack of alternatives to incarceration.

²⁷¹ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

²⁷² Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

²⁷³ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

These accounts are similar to reports of abuses during expulsions conducted by Melillan authorities in 1998 and 1999, when summary expulsions were more frequent. “Before they built San Antonio, they would take everybody to Morocco. . . . There weren’t educators or anything. They took you to Morocco, to the border. Before, when they caught you, it was easy to enter again. Now it’s difficult. They used to take you to Morocco, and the police there would beat you and tell you to go,” said `Abd al Hadi S., age fourteen.²⁷⁴

`Abd al `Aziz R. told us that when he was handed over to the Moroccan police in 1998, they took him to the holding cell in Beni Ansar. “They hit me. They slapped me and hit me with their fists. They used batons, too,” he said, explaining that police did this to him at the border and again at the police station. He spent the night in the cell with two other teenagers.²⁷⁵

Salah S. described his 1999 expulsion, when he was twelve years old. “The first time I was expelled was about two years ago. They [the Spanish police] took us to the Moroccan police,” he told us in October 2001. “They [the Moroccan police] put us in the lockup. They fined us, and they hit us. They used a plastic stick—it has metal inside it.”²⁷⁶

Police Release of Children to the Streets

Only three children, two of whom were expelled from mainland Spain to Tangier, told us that Moroccan police handed them over to the custody of their guardians or brought them before a judge who could order their placement in a residential facility. Instead, most children expelled from Ceuta and Melilla told us that after being held for a matter of hours, Moroccan police released them on unfamiliar streets, sometimes late at night.

Moroccan police in Fnadeq held thirteen-year-old Amal M. and her friend Hiba for a day before releasing the girls late at night. The girls admitted to the police that they were from Fnadeq and answered questions about their families, but the police did not return them to their homes. “It was about 10 p.m. Moroccan time,” Amal said. “They let us go by ourselves. No one from our families came to get us, we just went home.”²⁷⁷

Once out of police custody, children typically spent hours and sometimes days or weeks first traveling back to the border and then waiting, in view of Moroccan police, for an opportunity to sneak past Spanish border guards. Fourteen-year-old Fares S. spent twenty days in August 2001 on the Morocco side of the Ceuta/Fnadeq border, waiting to cross into Spain.²⁷⁸ Samir A., a fifteen-year-old from Fés, told us, “At one o’clock in the morning [the Moroccan police] threw us out onto the streets. I spent that day and the following night trying to get back in to Melilla. I went to one of the border posts, but they wouldn’t let me enter. I tried at another border post, but they wouldn’t let me enter there either. Finally I got through at 9 a.m. the next day.”²⁷⁹

Failure to Protect Children Living Outside a Family Environment

Unaccompanied child migrants often spend significant periods of time living on the street in Morocco, whether in transit from their homes to a border or port city, while attempting to cross to Spain for the first time, or while attempting to return to Spain after being forcibly returned to Morocco. Recent research suggests that the majority of children living on the streets in Moroccan port and border cities may be unaccompanied child migrants. A March 2000 survey of northern Morocco sponsored by the United Nations Children’s Fund (UNICEF) estimated that only a small proportion of these children were truly street children.²⁸⁰ Instead, the

²⁷⁴ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

²⁷⁵ Human Rights Watch interview, Melilla, Spain, October 25, 2001.

²⁷⁶ Human Rights Watch interview, Melilla, October 22, 2001.

²⁷⁷ Human Rights Watch interview, Ceuta, Spain, November 6, 2001. Morocco is on Greenwich Mean Time (GMT) throughout the year, while Spain is two hours ahead of GMT from the end of March through the end of October, and one hour ahead during the rest of the year. Ten p.m. Moroccan time would have been 11 p.m. Spanish time.

²⁷⁸ Human Rights Watch interview, Ceuta, Spain, November 7, 2001.

²⁷⁹ Human Rights Watch interview, Melilla, Spain, October 22, 2001.

²⁸⁰ See Association Darna, *Enquête action: le phénomène des enfants de la rue à Tanger* (Tanger, Morocco: Darna, 2000).

UNICEF study “found that many of the children are not street children of Tangier but children waiting to cross [to Spain] or children who have been returned from Spain and are trying to cross back.”²⁸¹

Despite the large numbers of children living on the street, Morocco has no system in place to ensure that these children are returned to appropriate guardians or placed in institutions capable and willing to care for them. Moroccan law provides little guidance on what actions should be taken when a child is found outside of a family environment and in need of protection and care, and which government agencies are obligated to act in these circumstances. Children’s rights activists, representatives of international government organizations present in Morocco, and even some Moroccan government officials acknowledge that existing child protection facilities are insufficient to meet demand, and for the most part fall far short of international standards for care.

Moroccan legislation provides two primary avenues for unaccompanied migrant children to be placed in protective care.²⁸² One requires the court to declare a child to be abandoned; the other requires a child to be convicted of a criminal offense. Both are heavily reliant on judicial and police discretion and fall short of international standards for protection and care of children living outside a family environment.

Under the terms of the 1993 Decree Relating to Abandoned Children, a judge may declare a child to be abandoned and order the child placed in a state run or state recognized health or child protection institution, or placed in foster care under the *kafala* system.²⁸³ The decree states that the King’s representative may “either spontaneously or based on notification from another party” request the court to issue a declaration of abandonment. However, it does not require the police or other private or government bodies to bring cases of abandoned children to the attention of the court, and the authorities do not routinely do so. In no case Human Rights Watch investigated did Moroccan police or other authorities ask the courts to declare an unaccompanied child migrant abandoned and in need of protection. With the exception of an official at the Ministry of Human Rights, activists and government officials we interviewed did not cite the decree as being used to address the problem of unaccompanied migrant children or street children.²⁸⁴

An unaccompanied migrant child may also be placed in protective care following arrest for committing a criminal offense. The Penal Code and Criminal Procedures Code grant judges vast discretion to determine whether to return children over twelve to their parents, place them in a penal institution, or place them in a rehabilitative residential facility, and whether to return children under twelve to their parents or order an alternative placement.²⁸⁵ In theory, all unaccompanied migrant children living on the streets infringe the Penal Code’s prohibitions on vagrancy and begging, and could be ordered placed in protective care.²⁸⁶ In practice, police in Fnadeq, Beni Ansar/Nador, or Tangier rarely detain unaccompanied children on vagrancy or begging charges and judges generally do not order residential placements unless children have been charged with more serious crimes. When asked why police were not more active in ensuring that unaccompanied children in Tangier received appropriate care, the director of the government-run Tangier Child Protection Center noted, “there is no

²⁸¹ Human Rights Watch interview with Olivier DeGreef, representative, UNICEF Mission to Morocco, Rabat, Morocco, October 29, 2001.

²⁸² Moroccan personal status legislation also provides for other forms of child custody, including granting guardianship in the form of *hadana* or *kafala* to relatives or families who wish to care for a child in a home environment. These forms of custody are primarily used in cases of young children whose parents have divorced or died. See Decree 1-57-343 of December 6, 1957, Personal Status Code, articles 97-111, as amended by Decree 1-93-347 of September 10, 1993 (Morocco); and Law 33-97 relating to Wards of the State, promulgated by Decree 1-99-191 of August 25, 1999 (Morocco).

²⁸³ Decree Number 1.93.165 of September 10, 1993, Relating to Abandoned Children, article 5 (Morocco).

²⁸⁴ Hind Ayubi Idrissi, the ministry’s children’s rights counselor, told us that the 1993 Decree and Morocco’s personal status legislation provided for the protection and care of unaccompanied child migrants. Human Rights Watch interview, Rabat, Morocco, October 29, 2001.

²⁸⁵ See Decree 1-59-413 of November 26, 1962 on the Penal Code, parts 13, 138, 139 and 140 (Morocco), and Decree 1-58-216 on the Code of Criminal Procedure, parts 514, 516, 517, 518, and 527, published May 5, 1959 (Morocco).

²⁸⁶ Part 326 of the Penal Code punishes any able-bodied person found begging by imprisonment for at least one month and up to six months, and part 329 of the Penal Code punishes any able-bodied person who has no known residence or means of earning a living or regularly practice a profession or craft if the person is shown to have refused work for pay or if the person cannot show that he or she has looked for work without finding it.

provision in our penal code that makes it clear that children who have been returned from Spain have committed a crime.” This lack of clarity, he said, allowed the police wide latitude in how they treated unaccompanied children:

In Morocco the police do what they want because it is not clear in the law. There are no legislative texts so the police have their own manner of responding. [The police response] also depends on the child’s behavior. If the police see the same child four times in the same few days they will probably pick him up.”²⁸⁷

Only three of the thirty-five unaccompanied migrant children Human Rights Watch interviewed had ever come before a Moroccan judge or been placed in a Moroccan residential facility. Two of the children had been expelled from Spain roughly a year earlier, but had only come before a judge when police arrested them on robbery charges months later. They were being held at a Ministry of Youth and Sport-operated Child Protection Center pending a final court review of their cases at the time of the interview. The third child, fifteen-year-old Shihab R., had been expelled to Tangier from mainland Spain three times, and had come before a judge each time.

Shihab R. told us he was twelve the first time he was expelled. “I was in [Tangier Child Protection Center] for ten days before I escaped, and after that I tried again and went to Málaga.” After about seven months in Spain he was expelled to Tangier again: “I was in the Ministry of Youth Center for about ten days and then they released me to my parents. I was at home for about eight months and then I came back to Ceuta.” Shihab’s most recent attempt to enter Spain took place about three months prior to our interview. “I took a truck (*camión*) train to Algeciras and then [the Spanish police] caught me as I arrived and returned me to Tangier. In Tangier the [Moroccan] police took me to the police station, then to a judge who let me go and I left for Tétouan and then directly to Ceuta, without seeing my family. The center in Spain spoke with my family in Morocco, but my family didn’t know that I was being returned to Morocco.”²⁸⁸

Morocco’s obligation under article 20 of the Convention of the Rights of the Child to provide special assistance and protection to children deprived of their family environment applies to all children in that situation, and not only to those suspected or convicted of a criminal offense. Moroccan authorities should act immediately to provide unaccompanied migrant children with appropriate care and protection, and such children should never be subjected to criminal sanctions for begging, vagrancy, or other minor offenses stemming from their status as unaccompanied children.

Lack of Appropriate Facilities

Many unaccompanied migrant children face tremendous difficulties upon their return to Morocco. Children often find themselves abandoned in unfamiliar cities, where they are vulnerable to sexual exploitation and to recruitment by gangs. Children who have been in Spain for longer periods of time, whether living on the street or in residential centers, may find the transition especially difficult. As an activist working with street children in Morocco noted, “There is a big difference between society in Spain or France and society here. They don’t accept easily [re]joining their own society. It is like a shock.”²⁸⁹

Government officials working with children at risk acknowledge that Moroccan child protection facilities are insufficient to meet the demand. The Tangier Child Protection Center is considered to be among the best of Morocco’s sixteen facilities. Center Director `Abd al Hamid Azibou told Human Rights Watch that his center was the only one serving the roughly two million people in the Tangier/Chechaouene/Tétouan region, and was already functioning at capacity with a heavy case load of children charged with theft, burglary, drug or sex-related

²⁸⁷ Human Rights Watch interview with `Abd al Hamid Azibou, director, Child Protection Center of Tangier, Tangier, Morocco, November 1, 2001.

²⁸⁸ Human Rights Watch interview, Ceuta, Spain, November 6, 2001.

²⁸⁹ Human Rights Watch interview with Khaled al Mahmoud, street children educator, Bayti, Casablanca, Morocco, October 29, 2001.

offenses. "If all the children in Melilla and Ceuta were returned there wouldn't be space for them," he said. "In fact, there is not space for all the children in Morocco who need this kind of specialized care."²⁹⁰

Judges have few alternative placements available when the Ministry of Youth and Sports facilities are full. Children arrested on criminal charges may be placed in facilities run by the Minister of Interior. UNICEF officials familiar with some of these facilities describe them as "inappropriate places of detention for children."²⁹¹ Intended to provide a speedier resolution than the ordinary court process, these centers function as holding cells until a child's guardians come to take custody. "There is no education project, they shower and shave the kids and the kids escape as soon as they can and no one runs after them."²⁹²

According to activists, some judges place children in nongovernmental residential facilities, although nongovernmental organizations have no legal authority to act as guardians for children in their care. "None of the centers have legal status for placements," said Bayti's director Dr. Najat M'jid. "Instead we make a legal contract with the children and parents, or with the private sector if the child is over fifteen and in training. It helps the parents understand that we are not the child's guardian."²⁹³

UNICEF officials also raised concerns over the quality of placements, with Olivier DeGreef, UNICEF representative to Morocco, noting "not all NGOs have a child rights approach, most are charities, or orphanages."²⁹⁴ Even activists like M'jid, with significant experience working with street children and unaccompanied child migrants, expressed doubt over Moroccan nongovernmental organization's ability to absorb and rehabilitate many of the children currently in Spain. "I don't support the return of children who have been in Spain for so long. It is impossible for any Moroccan NGO to take a child who has been on the Spanish street for so long and integrate them and give them a life project. Even if the NGOs try, the children go back to Spain."²⁹⁵

International Standards for Protection and Care

Like Spain, Morocco has ratified the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, which require states parties to provide all children with the protection and care necessary for their well-being.²⁹⁶

Among the rights the Convention on the Rights of the Child guarantees all children is the right to protection from violence and neglect, whether at the hands of private individuals or government agents.²⁹⁷ This protection should include preventive social programs and the "identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial

²⁹⁰ Human Rights Watch interview with `Abd al Hamid Azibou, November 1, 2001.

²⁹¹ Human Rights Watch interview with Olivier DeGreef, October 29, 2001.

²⁹² Ibid.

²⁹³ Human Rights Watch interview with Dr. Najat M'jid, October 31, 2001.

²⁹⁴ Human Rights Watch interview with Olivier DeGreef, October 29, 2001.

²⁹⁵ Human Rights Watch interview with Dr. Najat M'jid, October 28, 2001.

²⁹⁶ Article 3 of the Convention on the Rights of the Child requires states parties to "undertake to ensure the child such protection and care as is necessary for his or her well-being," and "ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision." Article 24(1) of the ICCPR states, "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."

²⁹⁷ Article 19 of the Convention on the Rights of the Child requires states parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." Article 37 further requires states parties to ensure that "[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." Articles 2 and 16 of the Convention against Torture and article 7 of the ICCPR also prohibit torture or to cruel, inhuman or degrading treatment or punishment.

involvement.”²⁹⁸ In cases where a child is deprived of his or her liberty, the deprivation must not be unlawful or arbitrary, and “shall be used only as a measure of last resort and for the shortest appropriate period of time.” The child “shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.”²⁹⁹

The convention also recognizes the special needs of children who have suffered abuse or neglect, or who are living outside a family environment. Article 20 requires that “[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” States must “ensure alternative care for such a child,” which “could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.”³⁰⁰ Article 39 requires states to take all appropriate measures to promote the rehabilitation of children who are victims of “any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts,” and to do so “in an environment which fosters the health, self-respect and dignity of the child.”³⁰¹

VIII. RECOMMENDATIONS

To the Autonomous Cities of Ceuta and Melilla

- Provide unaccompanied migrant children with information about their rights under Spanish and international law, including the right to apply for asylum. This information should be available in writing in a language they understand, and should include Spanish, French, and Arabic, with interpreters available for children who cannot understand the written pamphlets.
- Institute mandatory training of members of the local police on the special needs and rights of unaccompanied migrant children.
- Guarantee all unaccompanied migrant children, including those who are not living in residential centers, their right to have access to education, as required by Spanish law.
- Ensure that unaccompanied migrant children are not denied access to emergency services and other health care, including adequate preventive and remedial medical care, and have valid health cards (*tarjetas sanitarias*).

Residential Centers

- In view of the recommendations of the Committee on the Rights of the Child at its September 2000 day of general discussion on state violence against children, the Department of Social Welfare in each of the autonomous cities should embrace the following guidelines and principles in the design and provision of institutional care for unaccompanied migrant children:

(1) Small institutions caring for children in home-type settings often have a better record of caring for children.

²⁹⁸ Convention on the Rights of the Child, article 19.

²⁹⁹ *Ibid.*, article 37.

³⁰⁰ *Ibid.*, article 20.

³⁰¹ “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.” *Ibid.*, article 39.

- (2) Smaller institutional settings can be less costly and preferable for the full enjoyment of the human rights of children than institutionalization in large establishments.
- (3) A lesser number of trained professionals can deliver more appropriate care to children than a large number of poorly trained or untrained workers.
- (4) Efforts should be made to avoid the isolation of children in institutions by ensuring, for example, that education, recreation, and health services are provided outside the institution.

- Provide information about the rules of the center to children on entry into a residential center. This information should be available in writing in Spanish, French, and Arabic, with interpreters available as needed.
- Ensure the safety of children in residential centers. Adopt antiviolence strategies and policies and provide training for staff in their implementation.
- As soon as possible after admission, interview children to determine the specific type and level of care they require. Children should be categorized, grouped, and accommodated—for example, by age—to ensure their protection from harmful influences and risky situations.
- All disciplinary measures inflicted upon children that constitute cruel, inhuman, or degrading treatment should be strictly prohibited. Such measures include corporal punishment, placement in a dark cell, closed or solitary confinement, collective sanctions, and any other punishment that may compromise the physical or mental health of a child. Staff persons found responsible for such violations should be held accountable in disciplinary and/or criminal proceedings depending on the nature and extent of the abuse.
- Ensure that residential center staff are trained in and have the capacity to make effective use of nonviolent methods of discipline, and are aware that violence and other forms of abuse are prohibited and punishable by law.
- Provide medical and psychological services that are administered independently of the authorities running residential care centers. Every child should receive a medical examination upon admission to a residential center. Every residential facility should provide children immediate access to appropriate medical facilities with trained medical staff, and children should receive adequate preventive and remedial medical care.
- Ensure that every child of compulsory school age enjoys the right to education suited to his or her needs and abilities. Education should be provided in public schools wherever possible. Children above compulsory school age should be permitted and encouraged to continue their education, and they should have the right to receive vocational training in occupations likely to prepare them for future employment.
- Provide adequate outdoor and indoor recreational facilities for children, including access to a library adequately stocked with instructional and recreational books and periodicals suitable for children.
- Ensure that the physical facilities meet international standards of hygiene and health.
- Provide food that satisfies, as far as possible, the religious and cultural requirements of children.
- Provide clean drinking water to children in residential centers at all times.
- Ensure that each child has personal clothing suitable for the climate and adequate to ensure good health.
- Establish an effective, independent mechanism to monitor the treatment of children in residential centers. Such a mechanism should:

- (1) Ensure monitors full access to facilities and records.
 - (2) Permit unannounced visits by monitors and include private interviews with children and staff.
 - (3) Monitor the status of children, their development, and safety in addition to inspecting the state of the facilities and the provision of services.
 - (4) Make adequate provision for reporting or complaints to be received from staff, children, and from nongovernmental organizations.
 - (5) Provide appropriate protection from reprisals, particularly for children and staff.
 - (6) Include mandatory reporting by staff of incidents of violence.
 - (7) Ensure that each child is informed and aware of the complaint process in a language he or she understands.
 - (8) Provide full guarantees of independent and thorough investigation of all complaints. Ensure that residential center staff who are perpetrators of violence are appropriately disciplined.
 - (9) Refer particularly serious cases, such as those involving serious bodily harm, to the Ministerio Fiscal and judicial authorities for investigation.
 - (10) Include public reports on investigations, while maintaining children's right to privacy, and make these reports known to relevant government officials and nongovernmental organizations.
- Permit representatives of humanitarian, legal support, religious, migrants' and human rights groups to visit centers regularly to speak with children.
 - Ensure that no child is removed from the Department of Social Welfare's care without legal justification, adequate notice to the child, and the opportunity for the child to be heard.
 - In cases in which the child's age is not known, the department should assess all relevant, credible evidence in making age determinations. Such evidence should include birth certificates or other documents from the child's country of origin, and testimony from the child and others who know the child, in addition to the results of medical and psychological examinations.
 - Where the department employs age assessments, it should take care to ensure that the method of assessment conforms to the recommendations of the Separated Children in Europe Program and the United Nations High Commissioner for Refugees' Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum. Any assessment must take into account both the physical appearance and the psychological maturity of the child. Any examination must allow for a margin of error to the child's benefit and must take into account the possibility of overestimating a child's age because of the inherent unreliability of many assessment tools that purport to measure chronological age. Further, examinations must employ methods which are safe and which respect human dignity. Finally, authorities should err on the side of extending the protections accorded to minors in cases where an individual cannot be identified as an adult with certainty.
 - When the administration and day-to-day operation of residential centers are delegated to a nongovernmental service provider, provide the necessary resources and appropriate supervision.
 - Collect and make public accurate, up-to-date, and disaggregated data on unaccompanied migrant children, both those in residential centers and on the street.

To the Spanish Central Government

- Sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Their Families and the European Convention on the Repatriation of Minors.
- Ensure that all unaccompanied migrant children present in Spain receive without discrimination the protection and care they are entitled to under international law and European law.

- Reaffirm the Spanish government's standing invitation to the United Nations Special Rapporteur on the Human Rights of Migrants to visit Spain. In the event the special rapporteur accepts the invitation, facilitate her investigation by providing logistical support and ensuring that her itinerary includes Ceuta and Melilla.
- Building on the June 22, 1999 recommendation of the Interior and Public Function Committee of the Spanish Senate, the central government should designate an ombudsman for children to protect and promote the rights of children in Spain.

Ministry of Interior

- Immediately make public detailed guidelines on the application of provisions of Organic Law 4/2000 (as amended) and its implementing regulations affecting unaccompanied migrant children, and monitor their implementation at all levels of government.
- Collect and make public accurate, up-to-date, and disaggregated data on unaccompanied migrant children, both those in residential centers and on the street.
- Halt immediately all unlawful expulsions of unaccompanied migrant children, and conduct prompt inquiries into all reports of unlawful expulsions of unaccompanied migrant children.
- Enforce disciplinary action, including dismissal, and where appropriate refer for prosecution officers found to have subjected children to cruel, inhuman, or degrading treatment or punishment.
- Institute mandatory training of members of the National Police and the Civil Guard on the special needs and rights of unaccompanied migrant children.

Ministry of Foreign Affairs

- Raise cases of unaccompanied Moroccan migrant children present in Spain with the Moroccan government, and facilitate the collection of information on these children's family situations.
- Facilitate the lodging of complaints against Spanish authorities by children who suffered abuse during expulsions from Spain.

Ministry of Justice

- Institute training of members of the judiciary on the special needs and rights of children, including unaccompanied migrant children.
- Ensure that the Ministry of Justice or another appropriate agency provides free legal counsel to unaccompanied migrant children who appear in court proceedings or other hearings. Such services should be monitored to ensure that children have adequate access to counsel and effective representation in all proceedings regarding their status and care.
- Work with the General Council of the Legal Profession (Consejo General de la Abogacía Española) to ensure that members of the legal profession receive training on the special needs of and rights of children, including unaccompanied migrant children.

Ministry of Labor and Social Affairs

- Earmark additional funding for the care and protection of unaccompanied migrant children in Ceuta and Melilla, with an emphasis on funding for the creation of smaller, home-type residential facilities with adequate, trained professional staff.
- Monitor conditions in residential facilities for unaccompanied migrant children to ensure they comply with international standards.

- Monitor the Departments of Social Welfare to ensure that all unaccompanied migrant children who qualify for vocational training have the required work permits to ensure their participation in the practical, work-related aspects of such training.

Ministerio Fiscal

- Institute training of members of the ministry on the special needs and rights of unaccompanied migrant children.
- Require family reunification orders to be supported by current documentation that a family member is willing and able to care for the child or that a bona fide child protection agency will accept the child, and that such return poses no risk or danger to the child's safety, or the safety of his or her relatives.
- Conduct prompt inquiries into all reports of unlawful expulsions of unaccompanied migrant children.
- In cases in which the child's age is not known, assess all relevant, credible evidence in making age determinations. Such evidence should include birth certificates or other documents from the child's country of origin, and testimony of the child and others who know the child, in addition to the results of medical and psychological examinations.
- Where the Ministerio Fiscal orders age assessments, ensure that the method of age assessment employed conforms to the recommendations of the Separated Children in Europe Program and the United Nations High Commissioner for Refugees' Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum. Any assessment must take into account both the physical appearance and the psychological maturity of the child. Any examination must allow for a margin of error to the child's benefit and must take into account the possibility of overestimating a child's age because of the inherent unreliability of many assessment tools that purport to measure chronological age. Further, examinations must employ methods which are safe and which respect human dignity. Finally, authorities should err on the side of extending the protections accorded to minors in cases where an individual cannot be identified as an adult with certainty.
- Regularly inspect and issue public reports on conditions in residential centers for unaccompanied migrant children.

Ombudsman (Defensor del Pueblo)

- Inspect and publicly report on conditions in residential centers for unaccompanied migrant children in Ceuta and Melilla, and where appropriate refer cases to the Ministerio Fiscal for investigation.
- Investigate reports of illegal expulsions of unaccompanied children in Melilla and make public the findings.
- Investigate instances of police abuse based on complaints or other information and where appropriate refer cases to the Ministerio Fiscal for investigation.

Government Delegates (Delegados del Gobierno) in Ceuta and Melilla

- Ensure that children have the opportunity to be heard in cases in which expulsion or family reunification is considered. In all cases of expulsion or family reunification, they should have access to free legal counsel and the right to challenge the lawfulness of the expulsion order.
- Promptly provide all unaccompanied migrant children with information on their rights under Spanish and international law, including their right to apply for asylum. This information should be available in written form in several languages, particularly Spanish, Arabic and French. Interpreters should be provided as needed to convey this information to children who cannot understand the written pamphlets.

- Ensure that no child is repatriated or expelled from Spain unless the delegate has verified that the child is to be returned either to a family member who is willing and able to care for the child or to a bona fide social service agency in his or her country of origin, and that such return poses no risk or danger to the child's safety, or the safety of his or her relatives.
- Provide temporary residence documents and, if appropriate, work permits to all unaccompanied children who cannot be returned to family members or a social service agency.
- Advise unaccompanied migrant children of their right to apply for permanent residence and naturalization and of the requirements for each status.
- Act expeditiously on all requests for permanent residence or naturalization submitted by unaccompanied migrant children. The delegate should prioritize applications by children who are nearing the age of eighteen.
- In adjudicating unaccompanied migrant children's applications for temporary or permanent residence, the government should take into account the length of time that children have lived in Spain and other strong ties to the country, consistent with the principle that the best interest of the child shall be a primary consideration in all actions concerning children.

Ministry of Education, Culture and Sports

- Ensure that every unaccompanied migrant child enjoys the right to education suited to his or her needs and abilities, on equal terms with Spanish children. Education should be provided in public schools wherever possible. Children above compulsory school age should be permitted and encouraged to continue their education, and they should have the right to receive vocational training in occupations likely to prepare them for future employment.
- Ensure that any alternative arrangements for the education of unaccompanied migrant children outside of public schools meets all the requirements of national education policy.

Ministry of Health and Consumer Affairs

- Ensure that unaccompanied migrant children are not denied access to emergency services and other health care, including adequate preventive and remedial medical care, and are issued valid health cards (tarjetas sanitarias).
- Where Ministry or National Institute of Health (INSALUD) staff perform age assessments of unaccompanied migrants whose status as minors is in question, the ministry should ensure that the method of assessment conforms to the recommendations of the Separated Children in Europe Program and the United Nations High Commissioner for Refugees' Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum. Any assessment must take into account both the physical appearance and the psychological maturity of the child. Any examination must allow for a margin of error and must take into account the possibility of overestimating a child's age because of the inherent unreliability of many assessment tools that purport to measure chronological age. Further, examinations must employ methods which are safe and which respect human dignity.

To the Government of Morocco

- Ensure that unaccompanied migrant children who have been returned to Morocco from Spain are protected from violence and neglect. In particular, the government should take steps to protect these children from torture and other cruel, inhuman, or degrading treatment or punishment at the hands of Moroccan police.
- Ensure that all children who have been temporarily or permanently deprived of their family environment or in whose best interests cannot be allowed to remain in that environment receive the special protection and

assistance to which they are entitled, with attention given to the rehabilitation of children who are victims of neglect or abuse.

- Enforce the Compulsory Basic Education law and take all other steps necessary to ensure that poor children, girls, and rural children are not discriminated against in access to education.

Ministry of Foreign Affairs

- Ensure that Moroccan embassies and consulates monitor the situation of unaccompanied Moroccan migrant children abroad and provide them with consular services, including responding to foreign governments' requests for assistance in determining children's family situations in Morocco and facilitating repatriation when repatriation is in the child's best interest.

Ministry of Interior

- Institute mandatory training of members of the Moroccan police forces, including those forces responsible for guarding borders, on the special needs and rights of unaccompanied migrant children.
- Initiate investigations of police abuse based on complaints or other information made available to the ministry. Investigators should operate independently of police institutions and have unrestricted access to police stations and all other places of detention used by security forces, and should be directly accessible to children.
- Enforce disciplinary action, including dismissal, and where appropriate refer for prosecution officers found to have subjected children to cruel, inhuman, or degrading treatment or punishment.
- Ensure that all ministry-run juvenile detention facilities meet at least the standards set forth in the U.N. Rules for the Protection of Juveniles Deprived of their Liberty. Priority should be given to improving the conditions in ministry-run temporary facilities, including ensuring they are staffed by qualified and well-trained professionals and provide children with access to education, health care, and services to facilitate their rehabilitation. Detention of children should only be used as a measure of last resort, and the ministry should work with specialized nongovernmental organizations to develop alternatives to detention and programs that facilitate children's reintegration in society.

Ministry of Justice

- Institute training of members of the prosecution office and judiciary on the special needs and rights of unaccompanied migrant children.
- Introduce legislation clarifying the legal obligation of all Moroccan authorities, including the police, to provide special protection and assistance to children deprived of their family environment, including provisions for adequate alternative care for these children and rehabilitation for children who are victims of neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment.
- Promote amendments to the Penal Code and Code of Criminal Procedures to ensure that the best interest of the child is a primary consideration in all proceedings involving children in conflict with the law. In keeping with the principle that arrest, detention, or imprisonment of a child should be used only as a measure of last resort, such amendments should include sentencing guidelines that provide judges with adequate alternatives to incarceration, and provisions to exempt children from criminal penalties for begging, vagrancy, and other minor offenses stemming from their status as unaccompanied minors.

Ministry of Youth and Sports

- Institute mandatory training of the directors and staff of ministry-run child protection centers on the special needs and rights of unaccompanied migrant children.

- Ensure that all ministry-run juvenile detention facilities meet at least the standards set forth in the U.N. Rules for the Protection of Juveniles Deprived of Their Liberty. Priority should be given to ensuring they are staffed by qualified and well-trained professionals and provide children with access to education, health care, and services to facilitate their rehabilitation. Detention of children should only be used as a measure of last resort, and the ministry should work with specialized nongovernmental organizations to develop alternatives to detention and programs that facilitate children's reintegration in society.

To Donor Countries

- Earmark aid for the creation of additional centers in Morocco for children in need of care and protection, as distinct from those who are arrested for acts of delinquency.
- Earmark aid for the training of law enforcement officials on the rights of children.
- Earmark aid for the expansion and improvement of educational and vocational training programs, with a special emphasis on programs designed to ensure that poor children and girls are not discriminated against in access to education.

To the United Nations

- When the Spanish government appears before the Committee on the Rights of the Child in June 2002, the committee should question the Spanish government on its policies and practices with regard to unaccompanied migrant children in Ceuta and Melilla.
- When the Moroccan government appears before the Committee on the Rights of the Child in May-June 2003, the committee should question the Moroccan government delegation on its policies and practices with regard to unaccompanied migrant children.
- The Committee against Torture should evaluate Spain's upcoming report in light of the concerns raised by this report and the reports of domestic nongovernmental organizations about the treatment of unaccompanied migrant children in Ceuta and Melilla.
- The Special Rapporteur on the Human Rights of Migrants should act upon Spain's standing invitation to visit and should investigate the human rights of unaccompanied migrant children in Ceuta and Melilla.

To the Council of Europe

- In its upcoming visit to Spain, the European Commission against Racism and Intolerance (ECRI) should include an investigation of the treatment of unaccompanied migrant children, particularly those in Ceuta and Melilla.
- The European Committee for the Prevention of Torture (ECPT) should monitor conditions in residential centers for migrant children, with a particular focus on the San Antonio center in Ceuta and the Fuerte de la Purísima Concepción Melilla.

To the European Union

- The European Union should ensure that the common policy on immigration and asylum it has been developing since the European Council in Tampere in October 1999 is in full conformity with international human rights standards. Any measures to prevent illegal entry and residence and the removal of illegal residents from the territory of the European Union pursuant to article 63(3) of the EC Treaty must be designed with the view to meeting the obligation of the community and individual member states to protect human rights as part of the general principles of community law.

- In this regard, in the Commission's November 15, 2001 "Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Migration," the Commission undertook to draw up guidelines for the Council's consideration "in view of initiating an open coordination policy in the area of immigration." Such guidelines should establish minimum E.U. standards governing the status and rights of undocumented migrants-including specific measures to ensure the full respect of the rights of migrant children-consistent with international human rights law. The European Parliament and nongovernmental organizations should be duly consulted at all stages of this process.
- The European Parliament should address the treatment of unaccompanied migrant children in E.U. member states by, inter alia, convening a hearing on the subject and inviting nongovernmental organizations to share their expertise on the issue. Following the report of the upcoming visit by a European Parliament delegation to Morocco, the European Parliament should continue to engage the Moroccan authorities on their policies and treatment of migrant children.

IX. CONCLUSION

Under international and Spanish law unaccompanied migrant children, as children, are entitled to protection and care regardless of their residency status. This report has documented serious abuses against these children in two Spanish autonomous cities and in Morocco. Spanish police abused children when apprehending them and during summary expulsions, and summary expulsions from Spain put children at risk of police abuse and neglect in Morocco. Unaccompanied migrant children were often denied care and protection in Spain based on arbitrary age determination procedures. Those who were placed in residential care in Spain frequently faced abusive disciplinary practices, abuse by other children, substandard physical conditions in some centers, arbitrary denial of access to education, and arbitrary denial of access to health care. In Morocco, children returned from Ceuta and Melilla were frequently detained and abused by police, then left to fend for themselves, living on the streets. Both Spain and Morocco failed to provide mechanisms to ensure children's rights were respected, including the right to be heard in all administrative or judicial procedures affecting them. The frequency and nature of the abuses in both countries point to serious structural obstacles to children's enjoyment of their rights.

In Spain the Departments of Social Welfare, as legal guardians charged with protecting unaccompanied migrant children's interests, bear direct responsibility for the human rights violations these children suffer in Ceuta and Melilla, but they are not alone in this responsibility. Spanish officials at all levels of government have failed to ensure unaccompanied migrant children's rights are guaranteed, and have allowed serious abuses to go uninvestigated and unprosecuted. The central government's failure to provide effective mechanisms for coordination and oversight of the treatment of unaccompanied migrant children in Ceuta and Melilla raise serious concerns about its ability to guarantee respect for the rights of children in other autonomous regions.

In Morocco, the government has failed to make clear provisions in law and in practice for the care and protection of unaccompanied migrant children. This lack of care and the government's failure to investigate and prosecute cases of police abuse of children returned from Spain has contributed to a view that these children are deserving of punishment, and not the care and rehabilitation they are entitled to under international law. The government's failure to provide adequate, appropriate rehabilitative facilities for children leads many children to live on the street, where they are vulnerable to a host of other serious abuses, and contributes to the pressures that lead some children to undertake repeated dangerous journeys abroad.

APPENDIX A

Excerpts from Organic Law 4/2000, of January 11, Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and Their Social Integration, as amended by Organic Law 8/2000, of December 22, Reforming Organic Law 4/2000

Article 9. Right to education.

1. All foreign nationals under eighteen years of age have the right and obligation to receive an education under the same conditions as Spanish citizens. This right includes access to basic, free and obligatory education, to the obtainment of the corresponding academic qualifications and to the public system of grants and aid.
2. In the case of pre-school education, which is voluntary, the public administrations shall guarantee that there are sufficient openings to cover the needs of the population that requests schooling.
3. Foreign residents have a right to non-obligatory education under the same conditions as Spanish citizens. Specifically, they have the right to gain access to levels of education and learning not covered by the above section, to the obtainment of the corresponding academic qualifications and to the public system of grants and aid.
4. Public authorities shall take steps to provide education to foreign residents who need this in order to facilitate their social integration, while recognizing and respecting their cultural identity.
5. Foreign residents may gain access to teaching or scientific research positions in accordance with current legislation. They may also create and manage centers in accordance with the stipulations of current legislation.

Article 12. Right to health care.

1. Foreign nationals in Spain who are registered in the municipal census of their usual place of residence have the right to health care under the same conditions as Spanish citizens.
2. Foreign nationals in Spain have the right to emergency public health care if they suffer from serious illness or accident, whatever the cause, and to the continuation of this care until their medical discharge.
3. Foreign nationals in Spain under eighteen years of age have the right to health care under the same conditions as Spanish citizens.
4. Pregnant foreign nationals in Spain have the right to health care during pregnancy, birth and the postpartum period.

Article 35. Residence status of minors.

1. If state security forces or agencies locate an undocumented foreign national whose status as a minor cannot be determined with certainty, the competent services for the protection of minors will provide this person with the immediate attention he or she requires, in accordance with the provisions of legislation for the legal protection of minors. The Ministerio Fiscal will be immediately notified and this office, in collaboration with the pertinent health care institutions, will attempt to determine the person's age by means of the necessary tests, which will be carried out on a priority basis.
2. If the person is found to be a minor, the Ministerio Fiscal will put him or her in the care of the competent services for the protection of minors.
3. The national administration, in accordance with the principle of family regrouping for minors, and on the basis of a report by the services for the protection of minors, will decide what action must be taken to return the minor to his or her country of origin or to the country where his family resides, or failing this, what action to take regarding the minor remaining in Spain.

4. The residence status of minors under the protection of a public administration is considered to be regular to all effects. At the request of the agency that provides this protection, and upon accreditation of the impossibility of the minor returning to his or her family or country of origin, the minor will be granted a residence permit with effects retroactive to the date on which the minor was put under the care of the service for the protection of minors.

5. State security forces and agencies shall take the necessary technical steps to identify undocumented foreign minors in order to discover possible references to them in any national or foreign institution responsible for their protection. Such information may not be used for any purpose other than that stated in this section.

APPENDIX B

Excerpts from Royal Decree 864/2001, of July 20, Approving the Implementing Regulation for Organic Law 4/2000, of January 11, on the Rights and Liberties of Foreign Nationals in Spain and Their Social Integration, Reformed by Organic Law 8/2000, of December 22

Article 62. Unprotected foreign minors.

1. If state security forces or agencies know of or locate an undocumented foreign national whose status as a minor cannot be determined with certainty, they will inform the services for the protection of minors, which will provide this person with the immediate attention he or she requires, in accordance with the provisions of legislation for the legal protection of minors. The Ministerio Fiscal will be immediately notified and this office, in collaboration with the pertinent health care institutions, will order the determination of the person's age by means of the necessary tests, which will be carried out on a priority basis.
2. If the person is found to be a minor, the Ministerio Fiscal will put him or her in the care of the competent services for the protection of minors.
3. If during the procedures for determining the minor's age, he or she should require immediate attention, the state security forces and agencies will request this of the competent services for the protection of minors.
4. The national administration, in accordance with the principle of family regrouping for minors, having heard the minor, and on the basis of a report by the services for the protection of minors, will decide what action shall be taken to return the minor to his or her country of origin or to the country where his family resides, or failing this, what action to take regarding the minor remaining in Spain.

Action will be taken ex-officio by the national administration or upon the request of the public body responsible for protecting the minor. This body must provide government authorities with any information it may have in relation to the minor or his or her family, country or place of residence, as well as indicating any steps that have been taken to locate the minor's family.

Government authorities will inform the Ministerio Fiscal of all action taken to these effects. The national administration is the competent authority for taking the procedural steps to repatriate an unprotected foreign minor, in accordance with civil legislation. This administration will act through the Government Delegations and Sub-Delegations, and the latter will act through provincial offices for foreign nationals and documentation. These will contact the General Office for Foreigners and Documentation so that the necessary steps can be taken with the corresponding embassies and consulates, in order to locate the families of the minors, or failing this, the services for the protection of minors in their country of origin that would take responsibility for them. If the country is not represented diplomatically in Spain, these steps will be taken through the channels of the Ministry of Foreign Affairs.

When the family of a minor, or failing this, the services for the protection of minors in his or her country have been located, the minor will be repatriated after verifying that this would not imply any risk or danger to the minor's well-being or to that of his or her family.

If the minor is involved in judicial proceedings, repatriation will require judicial authorization. In any case, it must be indicated in the case file that the Ministerio Fiscal has been notified.

The Government Delegate or the Deputy Government Delegate must agree that the minor be repatriated, if they have been delegated powers to this effect. Agents of the National Police Force will implement the repatriation. Repatriation will be carried out at the expense of the family of the minor or of the services for the protection of minor in his or her country. Otherwise, the diplomatic or consular representative of the minor's country will be notified to this effect. Alternatively, the national administration will be responsible for the cost of repatriation.

5. Nine months after the minor has been put under the care of the competent services for the protection of minors, referred to in section 2 of this article, and after attempts have been to repatriate the minor with his or family or to his or her country of origin, if this has not been possible, the minor will be granted the residence permit referred to in article 35.4 of Organic Law 4/2000, reformed by Organic Law 8/2000.

6. In the case of minors applying for asylum, this will be governed by the provisions of the fourth paragraph of article 15 of the implementing regulation of Law 5/1984, of March 26, regulating the right to asylum and refugee status, modified by Law 9/1994, of May 19, passed by Royal Decree 203/1995, of February 10.

ACKNOWLEDGMENTS

Clarisa Bencomo, researcher for the Children's Rights Division of Human Rights Watch, wrote this report, with contributions from Michael Bochenek, counsel to the Children's Rights Division. The report is based on four weeks of research conducted by Bencomo and Bochenek in October and November 2001, in addition to one week of preliminary research conducted by Julie Chadbourne, an Osher Fellow with the Europe and Central Asia Division of Human Rights Watch, in July 2001. Maura Dundon, associate of the Human Rights Watch refugee program, Ani Mason, associate of the Europe and Central Asia Division, and Ken Siefert, intern with the Children's Rights Division, provided additional research assistance.

Lois Whitman, executive director of the Children's Rights Division, Julia Hall, counsel to the Europe and Central Asia Division, Wilder Tayler, legal and policy director, and Michael McClintock, deputy program director, edited the report. Julie Chadbourne reviewed the manuscript, while Eric Goldstein, research director of the Middle East and North Africa Division, reviewed the sections dealing with abuses in Morocco. Rachael Reilly, director of the Human Rights Watch refugee program, reviewed the sections dealing with expulsions and residency, and Veronika Leila Szente Goldston, advocacy director for the Europe and Central Asia Division, reviewed the recommendations. Fitzroy Hepkins, Patrick Minges, and Dana Sommers provided production assistance.

This report would not have been possible without the help of the many children who agreed to share their experiences with us. The names of all the children we interviewed have been changed to protect their privacy.

Many individuals in Spain and Morocco assisted us in researching this report, sharing their expertise and advice. In Spain, Sisters Ana María Moreno Pérez and Paula Domingo Domingo of the Hermanas Carmelitas de la Caridad de Vedruna in Ceuta, and José Palazón and María Teresa Echarte Mellado, of Prodein in Melilla, gave us access to their files and provided invaluable logistical assistance, and Jordi Passola, Joan Ignasi Soler, and Pablo Traspas of Médecins sans Frontières generously provided advice and background information on health and sanitary conditions for unaccompanied migrant children in Ceuta and Melilla. Concepción Ballesteros, Plataforma de Organizaciones de Infancia; Itziar Ruiz Gimenez, refugee team, Amnesty International Spain Section; Mar Toharia, Save the Children/Spain; and María Jesús Vega, Office of the United Nations High Commissioner for Refugees (UNHCR) in Spain, provided valuable advice in planning our research, and Magdalena Díaz provided logistical and translation assistance in Madrid. We also received advice and input from Escode, a nongovernmental organization in Ceuta; Sandra Gil Araujo, Instituto de Estudios sobre Conflictos y Acción Humanitaria; and Liliana Suárez Navaz, Department of Anthropology, Autonomous University of Madrid. Finally, we would like to thank Mariano Aguirre, director of Centro de Investigación para la Paz (CIP), for his ongoing support of Human Rights Watch's work in Spain.

In Morocco, `Abd al Hamid Azibou, director, Child Protection Center of Tangier, and Rajae Barrada, child protection officer, United Nations Children's Fund (UNICEF), were valuable sources of information on the enforcement of Moroccan law. Dr. Najat M'jid, director, Bayti, and Olivier DeGreef, representative, UNICEF, provided background information on patterns of clandestine child migration from Morocco to Europe; and Khaled al Mahmoud, street children educator, Bayti; Omar Sa`adoun, head of street children programs, Bayti; and Dr. `Abd al Latif Shahboun shared their experience working on street children issues in Morocco.

We also thank the many who assisted us in Spain and Morocco who asked not to be named. Human Rights Watch wishes to thank the Humans All Foundation and the Third Millennium Foundation for their generous support of our work on the human rights of migrants in Western Europe.

*Human Rights Watch
Children's Rights Division*

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Reed Brody, advocacy director; Carroll Bogert, communications director; John T. Green, operations director, Barbara Guglielmo, finance director; Lotte Leicht, Brussels office director; Michael McClintock, deputy program director; Patrick Mingos, publications director; Maria Pignataro Nielsen, human resources director; Malcolm Smart, program director; Wilder Tayler, legal and policy director; and Joanna Weschler, United Nations representative. Jonathan Fanton is the chair of the board. Robert L. Bernstein is the founding chair.

Its Children's Rights Division was established in 1994 to monitor and promote the human rights of children around the world. The staff includes Lois Whitman, director; Michael Bochenek and Zama Coursen-Neff, counsel; Jo Becker, advocacy director; Clarisa Bencomo, researcher; and Dana Sommers, associate. Jane Green Schaller is chair of the advisory committee.

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

Listserv address: To subscribe to the list, send an email message to hrw-news-subscribe@igc.topica.com with "subscribe hrw-news" in the body of the message (leave the subject line blank).