

I. Summary

I am not happy here; if I could I would leave this center. We don't receive any good food. When we tell them that we are hungry they tell us that we were starving in Senegal and should be happy to be given food at all.

—Lakh S., age 17, La Esperanza emergency center, Tenerife

We are not happy here; we know that we won't be taken to the peninsula [mainland Spain]. The majority wants to return to Morocco. We're tired. The [staff] hit us and we are tired. Before your visit the center smelled very bad. We don't live well and we don't eat well.

—Malik R., age 14, Arinaga emergency center, Gran Canaria

The Canary Islands must not turn into Africa's daycare center.

—José Luís Arregui Sáez, director general, Canary Islands Child Protection Directorate

In response to the unprecedented arrival of some 900 unaccompanied children by boat from Africa in 2006, Canary Islands authorities opened four emergency centers to provide care for several hundred children. Conceived as a temporary solution to deal with an exceptional situation that overloaded existing capacity, these emergency facilities have in effect become permanent—neither regional nor national authorities have any plans to close them. On the contrary, Canary Islands authorities plan an expansion of emergency center capacity, while national authorities maintain that the situation in the Canary Islands is not within their responsibility.

The 400-500 migrant boys who currently stay in emergency centers find themselves in makeshift and large-scale facilities. The centers are regularly overcrowded due to the inability of authorities to keep pace with the continuous flow of arriving children by transferring them to more appropriate care arrangements. Placing children in emergency centers rather than the traditional care institutions where conditions and services are typically much better has direct and concrete adverse impact on

children. In comparison with existing care facilities in the Islands, children in these newly created centers are isolated from residential neighborhoods and cut off from municipal services, and are severely limited in their freedom of movement. The children receive substantially fewer hours of education, often limited to one or two subjects. They may be housed with much older children, and are at risk of being subject to violence and ill-treatment by other boys as well as by staff in charge of their well-being. Lacking other recourse to protect themselves, some children abscond from their residential centers.

Conditions are particularly bad in two emergency centers: Arinaga, on the island of Gran Canaria, and La Esperanza, on Tenerife. Human Rights Watch documented allegations of high levels of violence and ill-treatment at Arinaga center, especially against younger children, perpetrated by peers as well as staff working at the center. At La Esperanza center abuses allegedly inflicted upon children between August and December 2006, by their systematic nature and severity, would amount to inhuman and degrading treatment. Authorities in charge, including the Child Protection Directorate, the Police, and the Office of the Public Prosecutor, consistently failed to effectively oversee and investigate conditions in these centers.

Children in the emergency centers have nowhere to turn for help. No confidential complaints mechanism in the centers is available, and children have no access to lawyers. Children who manage to approach law enforcement personnel may find that they are returned to their centers without any tangible action on their complaints.

Upon arrival in the Canary Islands, unaccompanied migrant children may be held in police and civil guard stations for prolonged periods, without seeing a judge and without access to a lawyer who could challenge their detention. Some children told Human Rights Watch that they remained in police stations for several days, and one child was held for two weeks, for no other apparent reason than the registration of basic information. All unaccompanied children arriving in the Canary Islands are screened for a variety of illnesses, but tests are performed without their informed consent and children receive no information about test results unless they specifically ask for it.

Unaccompanied children arriving in the Canary Islands receive no information about their right to seek asylum, whether on arrival or within residential centers. Authorities systematically consider them economic migrants. Children in emergency centers, in particular, are often not interviewed upon their admission. As a result, potential grounds for subsidiary protection or refugee status remain undetected. Human Rights Watch spoke to several children who should have received information and assistance in accessing asylum procedures.

Children typically remain without identification papers even though Spanish law requires that children be provided with documentation and many unaccompanied migrant children are further entitled to temporary residence permits. Authorities prioritize migration control measures over the granting of children's entitlements and use discretionary and possibly discriminatory criteria in meeting these entitlements. Identification papers and residence permits are either not issued at all or they expire on a child's 18th birthday. As a result, upon turning 18, children are pushed into an irregular status as authorities fail to identify a durable solution in which full respect for their rights is guaranteed.

Children have no direct contact with the guardianship institution that decides on their care arrangement and is mandated to ensure their best interest in all decision making. Staff members in residential centers who are in direct and daily contact with these children in turn have very limited influence over care arrangements. Several staff members expressed profound concern about prevailing practices that violate children's rights and undermine their own efforts to care for and facilitate children's development and integration.

After repeated pressure from the Canaries government, the central government entered into an agreement to transfer a total of 500 children from the Canaries to other regions, with costs of the transfers to be borne by national authorities. The implementation of this agreement, which is now complete, has been slow, politicized, and insufficiently coordinated. It has had only limited impact on easing the situation in the Canary Islands as the number of children transferred was almost equaled by the number of new arrivals. Moreover, no Moroccan children have been

chosen for transfers to the mainland under this agreement, even though they account for nearly one-third of all unaccompanied children who come to the Canaries.

Simultaneously, the government of Spain has renewed plans to repatriate unaccompanied children in an accelerated manner. It recently signed bilateral readmission agreements for unaccompanied children with both Morocco and Senegal. Three autonomous communities and one ministry currently are implementing or negotiating the construction of reception facilities for repatriated children in both countries, some of which are funded by the European Commission. As Human Rights Watch and other organizations previously documented, Spain has conducted illegal and ad hoc repatriations of unaccompanied children to dangerous situations in Morocco, in disregard of children's best interests and procedural safeguards. The readmission agreement with Morocco does not sufficiently spell out provisions that would ensure that all repatriation decisions are carried out on a case-by-case basis, in full respect of procedural safeguards, the best interest of the child, and the principle of *non-refoulement*.

Irrespective of whether these children qualify for asylum or other forms of protection they are entitled to special care and assistance provided by the state. Even if these children have no right to remain in the country, while they are on Spanish territory the government of Spain is obliged to guarantee their full entitlements as spelled out in the Convention on the Rights of the Child. The government must identify a durable solution in addressing the fate of these children as soon as possible after their arrival. It must provide them with access to international protection procedures, and it may proceed with family reunification only after a thorough assessment of whether such a move is in the child's best interest and without risk to his or her well-being. If the return of a child is not possible on either legal or factual grounds, the government of Spain should provide these children with real opportunities for local integration and with a secure legal status.

Key Recommendations¹

To the government of Spain and the Canary Islands government

Immediately devise and implement a plan to close emergency centers as care facilities for unaccompanied migrant children and transfer children to alternative care arrangements—either in the Canary Islands or mainland Spain— that are conducive to children’s well-being and development, and where fulfillment of their rights under national and international law can be guaranteed. Ensure that any transfer of children is carried out in a transparent and non-discriminatory manner, in consultation with the child, and in full respect of his or her best interest.

Ensure that any interim care provided by the state before children’s placement in a long-term care arrangement is limited to the shortest time required and provides for these children’s security and care in a setting that encourages their general development. Any interim care arrangement must comply with existing laws and regulations.

Conduct independent and effective investigations into reports of abuses and ill-treatment of children at La Esperanza and Arinaga centers and hold all perpetrators fully accountable. Include private interviews with children as an element of the investigation and ensure confidentiality of the information shared. Provide victims with access to an effective remedy, including access to medical treatment and financial compensation.

Immediately investigate children’s reports of prolonged deprivation of liberty at both national police and civil guard commissariats following their arrival. Ensure that any detention upon arrival of an unaccompanied child is compliant with international law and strictly limited in time for required purposes.

Immediately provide children with full information on their rights in a language they understand, with particular emphasis on children’s right to documentation, legal residence, work permits, education, and health.

¹ Detailed Recommendations can be found in Section IX.

Immediately provide all unaccompanied migrant children with access to a confidential complaint mechanism within and outside their residential centers and with direct contact to their legal guardian.

Immediately set up a system providing children with full information and explanations on their right to seek asylum and other forms of international protection in a language they understand. Refrain from repatriating any children who arrived in the Canary Islands until their grounds for protection are competently assessed and until a system is in place that guarantees children access to asylum procedures.

Immediately address any obstacles that may limit children's full enjoyment of their rights as a result of their transfer to other autonomous communities, within the existing coordination mechanisms, especially the Childhood Observatory. In particular, ensure that all children transferred to other autonomous communities are continuously represented by a guardian who guarantees their best interest in all decision making, that these children's care arrangements are periodically inspected and reviewed by competent bodies, and that they have full access to health services, education, and documentation. Immediately address and rectify discriminatory practices against Moroccan children in choosing children for a transfer.

To the Office of the Prosecutor General

Immediately provide the offices of the public prosecutor in the Canary Islands with guidance and sufficient resources to responsibly carry out their mandate, including the oversight of guardianship, conditions in residential centers, and competent action on any complaint received.

Immediately verify conformity of the legislative basis establishing emergency centers and conditions therein with applicable Canary Islands and national legislation.

Carry out regular and effective oversight, including regular inspections of residential centers, of all children under guardianship. Always include private interviews with children as part of an inspection. Ensure that appropriate measures are taken to

protect the confidentiality of these encounters. Follow up should be conducted to ensure that children are not subjected to reprisals following an interview.

Review the legality of repatriation decisions already issued to children in the Canary Islands, taking into consideration whether the child has been heard, whether the child was granted access to independent legal assistance, whether the decision respects the child's best interest, and whether conditions for a safe repatriation are in place.