

Returns at Any Cost

**Spain's Push to Repatriate Unaccompanied Children in
the Absence of Safeguards**

Copyright © 2008 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 1-56432-388-9
Cover design by Rafael Jimenez

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

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

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

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

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

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

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

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



Returns at Any Cost

Spain’s Push to Repatriate Unaccompanied Children in the Absence of Safeguards

| | |
|---|-----------|
| Introduction | 1 |
| Spain’s Push for Repatriations | 4 |
| Bilateral Readmission Agreements Lack Safeguards and Transparency | 4 |
| Spanish Funded Care Centers in Morocco May Accelerate Repatriations | 5 |
| Gaps in Legal Protection for Children | 8 |
| Repatriation Procedures Lack Clarity | 8 |
| National Courts Repeatedly Annul Illegal Repatriations | 10 |
| Absence of Independent Representation | 11 |
| Case-Study: Andalusia | 15 |
| Conclusions and Recommendations | 21 |
| To the Government of Spain | 21 |
| To the United Nations Human Rights Committee..... | 22 |
| To the Governments of Morocco and Senegal | 22 |
| Acknowledgements..... | 23 |

Introduction

Human Rights Watch has previously documented that unaccompanied children in Spain face detention upon arrival and may face abuses in residential centers, and expulsion without due process to countries where they are at risk of cruel, inhuman, or degrading treatment.¹

This report identifies a fundamental flaw in Spain's repatriation of unaccompanied migrant and refugee children: the government's failure to provide children with independent legal representation during repatriation procedures. This gap in protection leaves children unable to challenge decisions that fundamentally affect their lives and may result in children sent back to situations where their well-being is at risk. Adult migrants, in contrast, receive free legal assistance from lawyers in a deportation procedure.

There are significant procedural weaknesses in how Spanish law, which generally reflects international standards on children's rights, is translated into practice. Under international law, an unaccompanied child may be returned only if it is in the child's best interests and if adequate care is available. However, failure to regulate procedures for repatriating children in detail mean that best interest determination is not a reality, and government departments or entities repeatedly fail to fulfill their international obligations. The fact that child protection services may initiate repatriation procedures and yet are also responsible for representing children within them is a conflict of interest.

Spain has been a significant destination country for unaccompanied migrant and refugee children for the past 10 years. The majority of these children are from Africa, especially Morocco and, to a lesser extent, Senegal and other West African countries.

¹ See Human Rights Watch, *Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco*, vol.14, no. 4(D), May 2002, www.hrw.org/reports/2002/spain-morocco/; Human Rights Watch, *Unwelcome Responsibilities: Spain's Failure to Protect the Rights of Unaccompanied Migrant Children in the Canary Islands*, vol. 19, no. 4(D), July 2007, www.hrw.org/reports/2007/spain0707/.

Today there are approximately 3,000-5,000 unaccompanied foreign children in Spain, with most in the Canary Islands, Andalusia, Madrid, and Catalonia.²

The number of unaccompanied children Spain repatriated in the past two years is low compared to the overall number of unaccompanied children in the country.³ In an effort to increase the overall number of repatriations of unaccompanied minors, Spain has recently concluded bilateral agreements with Morocco and Senegal. These agreements lack basic procedural guarantees to ensure that children are not repatriated to situations of risk. Spain has also financed the construction of reception facilities for returned children in Morocco. Spain's ruling party's pledge to increase repatriations of unaccompanied children furthermore featured prominently in the run-up to the March 2008 general elections.⁴

In practice, Spain has repeatedly sent unaccompanied children back to situations of risk in their countries of origin. Numerous reports document repatriations that were not in the child's best interests, or cases in which children were returned without being reunited with their families or taken care of by child protection services.⁵ In

² Official figures on the total number of unaccompanied migrant children in Spain are unreliable. Figures are compiled by regional authorities and are not recorded in a uniform manner; children may be recorded multiple times in various autonomous communities due to the lack of a functioning centralized registry. According to UNICEF, Spain reported 5,200 unaccompanied Moroccan children registered in Spanish residential centers at the end of 2007. Human Rights Watch interview with Lenin Guzman, deputy director, UNICEF Morocco, Rabat, May 9, 2008. According to the Ministry of Labor's Childhood Observatory, 9,117 unaccompanied migrant children were taken into care in 2004, the most recent year for which the ministry makes figures available on its website. In contrast, the Ministry of Interior reported 1,873 children taken into care in 2004. Ministry of Labour and Social Affairs (Ministerio de Trabajo y Asuntos Sociales), *Childhood in Figures: Number 2 (La Infancia en Cifras: Número 2)*, (Madrid: 2006), www.mtas.es/SGAS/FamilialInfanc/infancia/AcuertosConvenios/InfanciaCifras.pdf (accessed June 20, 2008) p. 182; Ombudsman (Defensor del Pueblo), *Report on Legal Assistance for Foreigners in Spain (Informe Sobre Asistencia Jurídica a Los Extranjeros en España)* (Madrid: 2005), p. 460.

³ Spain repatriated a total of 111 unaccompanied children in 2006, out of which 81 were returned to Morocco. The official figure in 2007 of repatriated children stood at 27. Amnesty International, "Spain: Briefing to the Human Rights Committee," AI Index: EUR 41/012/2008, June 2008, www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_Spain93.pdf (accessed September 24, 2008), p. 34.

⁴ "Rumí underscores the government's will to 'facilitate' the assisted return of children with 'rigor and seriousness'" ("Rumí subraya la voluntad del Gobierno para 'agilizar' el retorno asistido de menores con 'rigor y seriedad"), *La Región*, October 26, 2007, www.laregioninternacional.com/noticia/8485/ConsueloRum%C3%AD/emigraci%C3%B3n/retornoasistido/menores/inmigrantes/menoresolos/menoresnoacompa%C3%B1ados/asistenciasocial/retornodeinmigrantes/ (accessed September 24, 2008); "De la Vega assures that the government has initiated repatriation files for children" ("De la Vega asegura que el Gobierno ha puesto en marcha expedientes de repatriación de menores"), *Granada Digital*, December 10, 2007, www.granadadigital.com/index.php/nacional_gr/86963-Redacci%C3%B3n%20GD (accessed September 24, 2008).

⁵ Human Rights Watch, *Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco*, vol.14, no. 4(D), May 2002, www.hrw.org/reports/2002/spain-morocco/; Association for Human Rights – Andalusia (Asociación pro derechos humanos de Andalucía) (APDHA), "Migrations and Rights of Unaccompanied Children" ("Migraciones y Derechos del

2007, the police repatriated two Moroccan boys even though police had been informed that a judicial decision suspended the boys' repatriation.⁶ Moroccan unaccompanied children face routine ill-treatment and detention by Moroccan security forces and border guards.⁷ Spanish Ombudsmen in 2005 described repatriation decisions as "random" and "automatic."⁸

Human Rights Watch urges Spain to ensure that all unaccompanied children who face repatriation are represented by an independent lawyer, and to carefully examine and document the child's best interests, and the risks and dangers awaiting the child upon return, before making a repatriation decision.

Menor Extranjero no Acompañado"), 2006; Spanish Commission for Refugee Assistance (Comisión Española de Ayuda al Refugiado) (CEAR), Letter to the Office of the High Commissioner for Human Rights, Madrid, September 8, 2006; Ombudsman (Defensor del Pueblo), *Annual Report 2005 and Debates in Parliament (Informe anual 2005 y debates en las Cortes Generales)* (Madrid: Parliamentary Publications, 2006) www.defensordelpueblo.es/documentacion/informesanuales/Informe2005.zip (accessed September 25, 2008); Ombudsman (Defensor del Pueblo), *Annual Report 2004 (Informe Annual 2004)*, www.defensordelpueblo.es/index.asp?destino=informes1.asp (accessed March 12, 2008), p. 433; Ombudsman (Defensor del Pueblo), *Annual Report 2007 (Informe anual 2007)*, www.defensordelpueblo.es/InformesAnuales/informe2007.pdf (accessed September 19, 2008), pp. 486-489; SOS Racism (SOS Racismo), "Children Between Borders: Repatriations Without Safeguards and Abuses Against Moroccan Children" ("Menores en Las Fronteras: De los Retornos Efectuados Sin Garantías a Menores Marroquíes y de los Malos Tratos Sufridos"), 2004, www.mugak.eu/ef_etp_files/view/Informe_menores_retornados.pdf?revision%5fid=9202&package%5fid=9185 (accessed June 11, 2008); UN Commission on Human Rights, Report of the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, Visit to Spain, E/CN.4/2004/76/Add.2, 14 January 2004, paras. 55-56; Amnesty International (Amnistía Internacional), "Spain: Identity crisis, and racially motivated torture and ill-treatment by state agents" ("España: Crisis de identidad; tortura y malos tratos de índole racista a manos de agentes del Estado"), AI Index: EUR 41/001/2002, April 15, 2002, www.amnesty.org/fr/library/info/EUR41/001/2002/es (accessed March 31, 2008) pp. 73-82; US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices – 2006: Morocco," March 6, 2007, www.state.gov/g/drl/rls/hrrpt/2006/78859.htm (accessed March 17, 2008); US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices – 2005: Morocco," March 8, 2006, www.state.gov/g/drl/rls/hrrpt/2005/61695.htm (accessed March 17, 2008); United Nations Committee against Torture, "Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Spain," CAT/C/CR/29/3, 23 December 2002, para 11(b); UN Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations, Spain," CRC/C/15/Add.185, June 13, 2002, para 46(c).

⁶ See: Ombudsman (Defensor del Pueblo), *Annual Report 2007 (Informe anual 2007)*, www.defensordelpueblo.es/InformesAnuales/informe2007.pdf (accessed September 19, 2008), p. 488.

⁷ Under official procedures, Spain repatriates unaccompanied Moroccan children by handing children over to Moroccan border guards (Royal Decree 2393/2004, art. 92(4); and Ministry of Labor and Social Affairs Protocol on unaccompanied foreign children, cited in Observatorio de la Infancia, "Protocolo de Menores Extranjeros no Acompañados," Ministerio de Trabajo y Asuntos Sociales, Madrid, December 2005). Returned children face the risk of being detained on the basis of article 50 of the Moroccan Act on Immigration and Emigration, law No. 02-03, which criminalizes "irregular emigration" from Morocco with a fine and/or imprisonment of up to six months.

⁸ Ombudsman, *Annual Report 2005 and Debates in Parliament*, p. 313; Children's Ombudsman in Madrid (Defensor del Menor en la Comunidad de Madrid), *Annual Report 2005* (Madrid: 2006), p. 75.

Spain's Push for Repatriations

Bilateral Readmission Agreements Lack Safeguards and Transparency

The government of Spain concluded readmission agreements for unaccompanied children with both Senegal and Morocco in late 2006 and early 2007, followed by bilateral meetings with both countries.⁹ The agreement with Morocco is pending ratification at the time of writing, while the one with Senegal came into force in July 2008.

Both agreements include general references to international legal obligations and the child's best interests, but fail to specify safeguards and guarantees to this effect before, during, and after a child's repatriation. In both cases, a committee of government representatives is to oversee the agreements' implementation.¹⁰

The bilateral agreement with Senegal obliges the two countries to exchange information about an unaccompanied child and to trace the child's family within a very short timeframe: Spain agrees to inform Senegal of the presence of an unaccompanied child within 10 days; Senegal is then required to trace the child's family and to issue documents confirming the child's identity within 20 days. Such tight deadlines raise questions as to what extent authorities on both sides will be

⁹ For more information on Spain's readmission agreement with Morocco, see Letter from Human Rights Watch to Prime Minister José Luis Rodríguez Zapatero, January 9, 2007, <http://hrw.org/pub/2006/SpainMorocco010907.pdf>; Letter from Human Rights Watch to Prime Minister José Luis Rodríguez Zapatero, April 2, 2007, <http://hrw.org/english/docs/2007/04/02/spain15628.htm>. The implementation of these agreements was discussed during the July 9, 2007 high-level meeting between Spain and Morocco in Toledo, and the February 2008 meeting with a Senegalese government delegation in Madrid. See "Spain gives incentives for a 'resolute action' by Moroccan consulates with repatriation files of unaccompanied children" ("España incentivara la 'acción resolutiva' de consulados marroquíes con expedientes de menores extranjeros no acompañados"), *Europa Press*, July 9, 2007, www.europapress.es/noticiasocial.aspx?cod=20070709172722&ch=313 (accessed September 24, 2008); "Spain and Senegal intensify cooperation in the return of unaccompanied children to their families" ("España y Senegal intensifican la colaboración en el retorno de menores no acompañados con sus familias"), Ministry of Labor and Social Affairs (Ministerio de Trabajo y de Asuntos Sociales), February 12, 2008, www.tt.mtin.es/periodico/inmigracion/200802/INM20080212.htm (accessed September 24, 2008).

¹⁰ Human Rights Watch urged Spain to include independent organizations and the UNHCR as members of the monitoring committee and to make the agreements' implementation transparent. See Letter from Human Rights Watch to Prime Minister José Luis Rodríguez Zapatero, January 9, 2007, <http://hrw.org/pub/2006/SpainMorocco010907.pdf>, and letter from Human Rights Watch to Prime Minister José Luis Rodríguez Zapatero, April 2, 2007, <http://hrw.org/english/docs/2007/04/02/spain15628.htm>. The Spanish government, however, told us that committee members will only consist of government representatives. Letter by María Consuelo Rumí Ibáñez, state secretary for immigration and emigration, Ministry of Labor and Social Affairs, to Human Rights Watch, May 7, 2007. The letter is on file with Human Rights Watch.

able to assess sufficiently the circumstances behind the child's departure and the situation awaiting the child upon return. The deadlines also increase the risk that information will be shared with the Senegalese government before an assessment is made whether a child or his or her family are subject to persecution and have a claim for protection under the Refugee Convention. Under these circumstances, sharing such information could conceivably place the child or the child's family at additional risk of persecution.

Spanish Funded Care Centers in Morocco May Accelerate Repatriations

The Moroccan child protection system is not ready to provide adequate care for children repatriated from Spain. Moroccan government officials repeatedly told Human Rights Watch that Morocco has no procedures or capacity to receive and care for repatriated children, including to identify unaccompanied children, trace their families, or ensure that their families are able to receive them.¹¹

As part of Spain's efforts to return children more quickly, the Spanish government is financing the construction of residential centers for unaccompanied children in Morocco.¹² The construction of two residential centers and several flats was financed by the autonomous communities of Madrid and Catalonia with the contribution of three million Euros from the European Commission.¹³ Additional facilities for

¹¹ Human Rights Watch interviews with Noufissa Azelali, director of the Ministry of Social Development, Family, and Solidarity's National Institute of Social Action, Tangier, May 5, 2008; Abdeljalil Cherkaoui, executive director for social action, Entraide Nationale, Rabat, May 8, 2008; Dr. Abellah Taleb, regional coordinator of the Entraide Nationale in Tangier-Tetuan, Tangier, May 6, 2008; and Abdelatif Berdai, chief of cabinet, Andane Jazouli, advisor to the minister, and Leila Frohj, director of children's division, Ministry of Social Development, Family, and Solidarity, Rabat, May 9, 2008.

Less is known about the capacity of the Senegalese child protection system to care for unaccompanied children and Spain has not repatriated children to Senegal so far.

¹² The reception facilities are: Assadaqa, in Tangier, with beds for 40 children; in Nador, with beds for 40 children; in Beni Mellal, with beds for 40 children; Taghramt, in Fahs Aujer, with beds for 40 children; in Ben Gurir, near Marrakesh with beds for 40 children; in Tangier, two apartments with total capacity for 10 children. Human Rights Watch interviews with Abdeljalil Cherkaoui and Raja Nazih, Entraide Nationale, May 8, 2008; with Vicente Sellés Zaragozaí, Mercedes Cornejo Bareas, and Isabel Fajardo Lopez, Agencia Española de Cooperación internacional, May 8, 2008; and with Laura Lungarotti, IOM, May 9, 2008.

¹³ Reception facilities that received funding from the European Commission are Taghramt center, the center near Ben Gurir, and the two apartments in Tangier (see footnote above).

repatriated children are reportedly planned by the Andalusia autonomous community.¹⁴

Some centers, including two centers financed by the European Commission, were initially designed to receive repatriated children, whereas services in other centers reportedly are available for Moroccan children who are at risk of migrating to Spain.¹⁵ European Commission representatives recently stated that the objective of the centers in Taghramt and near Ben Gurir has changed and that these centers would rather be used to “prevent” children’s migration by providing services to those who intend to migrate to Spain.¹⁶ Despite these assurances, representatives from the Entraide Nationale, Morocco’s implementing agency, told Human Rights Watch that they cannot rule out centers might receive repatriated children.¹⁷

Valid concerns remain that centers will be used to speed up children’s removal from Spain to a country without a functioning child protection system to receive them.¹⁸ Although it is permissible under international standards to return a child to the country of origin if advance arrangements of care and custodial responsibilities are made,¹⁹ it is questionable, generally, to what extent the return of children to such centers will serve their best interests. The Committee on the Rights of the Child has clearly stated that “non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations.”²⁰ Furthermore, if

¹⁴ EFE, “Andalusia promotes in Morocco a reception project for minors” (“Andalucía promueve en Marruecos un proyecto de acogida de menores”), *Sur*, August 3, 2008, www.diariosur.es/prensa/20080803/andalucia/andalucia-promueve-marruecos-proyecto-20080803.html (accessed September 24, 2008).

¹⁵ The International Organization for Migration (IOM) representative stated that the centers in Nador and Beni Mellal are designed to receive street children, not for children repatriated from Spain. Human Rights Watch interview with Laura Lungarotti, IOM, May 9, 2008.

¹⁶ Human Rights Watch interview with Lidia Rodríguez-Martínez and Miguel Forcat Luque, EuropAid Cooperation Office, Brussels, April 4, 2008.

¹⁷ Human Rights Watch interview with Dr. Abdellah Taleb, regional coordinator for Entraide Nationale, Region Tanger Tetouan, and Zeinab Ouljahon, director, Assadaqa Center, Tanger, May 6, 2008. Such decisions, the officials said, were in the hands of the Ministries of Interior and Foreign Affairs.

¹⁸ See for example Peio M. Aierbe, “Protecting foreign minors or getting rid of them?” *SOS Arrazakeria/SOS Racismo*, September 6, 2007, www.statewatch.org/news/2007/sep/08minors-reception-centre.htm (accessed September 22, 2008).

¹⁹ “In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principles, not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin,” Committee on the Rights of the Child, “Treatment of Unaccompanied and Separated Children outside their Country of Origin,” General Comment No. 6, CRC/GC/2005/6 (2005), para. 85.

²⁰ Committee on the Rights of the Child, General Comment No. 6, para. 86.

services in these centers are only accessible for repatriated children, such programs possibly create incentives to migrate for children who otherwise don't have access to such services.

Gaps in Legal Protection for Children

Repatriation Procedures Lack Clarity

The repatriation of an unaccompanied child is an administrative procedure that involves central and regional administrations, and the office of the public prosecutor, which is under direct instruction from the prosecutor general and independent from central and regional administrations.²¹

Spanish law considers all unaccompanied migrant children to be in need of protection, and thus entitled to state guardianship (*tutela*).²² Regional child protection services act as children's guardians and provide a care placement, usually in a residential center, for the child.²³ They also act as children's legal representatives during a repatriation procedure and may propose to the central government that a child be repatriated.²⁴ The decision to repatriate a child, however, is taken by the central government, either upon proposal from child protection services, or upon its own initiative, and following a report from child protection services.²⁵ Central government representatives have to hear the child and decide about the child's repatriation in accordance with the child's best interests.²⁶ They also contact diplomatic representations of the child's country to process travel documents and to trace the child's family.²⁷ The office of the public prosecutor is charged with overseeing this process to ensure that repatriations comply with the law and the administration has to communicate to the prosecutor its decisions on whether a child will be repatriated.²⁸

²¹ Organic law 8/2000 of December 22, article 35, and Royal Decree 2393/2004, article 92.

²² Spanish Civil Code, art. 172.3.

²³ *Ibid.*, Royal Decree 2393/2004, article 92.

²⁴ Spanish Civil Code, arts. 172, 222.4.

²⁵ Royal Decree 2393/2004, article 92(4).

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*, Circular 2/2006, Attorney General (Fiscal General del Estado), 2006, p. 133.

Spanish law generally reflects several binding international norms and standards around children's rights, including that the child's best interests trump any other consideration and that children must be heard in all administrative or judicial proceedings.²⁹ Under the country's immigration regulations, a child can only be repatriated if the repatriation does not put the child at risk or danger and if a child is reunited with the family or receives adequate care from protection services in the country of origin.³⁰

However, procedures for repatriating an unaccompanied child are not regulated in more detail. For example, the law fails to specify how the hearing with the child should be conducted, or who should be present. There are no formal criteria for assessing a child's best interests. There are no instructions as to what and who must gather information before making a repatriation decision. There are no definitions of the risks and dangers that need to be verified before returning a child, nor is it defined who is in charge of doing so. The role of public prosecutors during the procedure is left vague (see section below). As a result, government entities contradict one another as to what their responsibility is during the procedure, they repeatedly fail to fulfill their legal obligations, for example by not hearing the child during the procedure and by not submitting individualized reports, which contributes to a lack of legal protection for children (see Andalusia case study below).

The Committee on the Rights of the Child, the body that oversees the implementation of the Convention on the Rights of the Child, specifies that "the ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution," and that "the search for a durable solution commences with analyzing the possibility of family reunification."³¹ The committee adds, however, that further separation of a child from his or her family may be necessary for the child's best interest and that a decision to repatriate must be weighed against other

²⁹ Organic law 1/1996 of January 15, arts.2, 9, 11(2); Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Spain on December 6, 1990, arts.3, 12(2). Under article 3 of the Convention on the Rights of the Child, the child's best interests must be a primary consideration in all administrative and judicial proceedings, including repatriation decisions.

³⁰ Royal Decree 2393/2004, art. 92(4).

³¹ Committee on the Rights of the Child, General Comment No. 6, paras.79-90.

forms of durable solutions such as remaining in the host country or transfer to a third country.³²

Family reunification in the country of origin should not be pursued where there is a “reasonable risk” that such return would lead to the violation of a child’s fundamental human rights. Such a determination of risks includes, among other things, the availability of care arrangements, the child’s level of integration in the host country, and the duration of absence from the home country, as well as socioeconomic conditions upon return.

National Courts Repeatedly Annul Illegal Repatriations

National courts in Spain have repeatedly halted repatriation decisions made by the administration and ruled that these decisions violated procedural obligations and children’s rights. National courts, however, only review a fraction of all children’s repatriation cases and, thus, are not effective substitutes for fair procedures in initial hearings. However, that national courts have taken such strong measures in the few cases that they do hear is additional evidence that the repatriation system is flawed. Moreover, in at least two instances identified by the Spanish Ombudsman, Spanish authorities disregarded judicial suspensions of repatriations and repatriated unaccompanied children.³³

Within the past two years, courts have suspended and in many cases subsequently annulled the repatriation of at least 24 unaccompanied children to Morocco.³⁴ Several cases have been upheld at the appeals level³⁵ and one case was pending before Spain’s constitutional court as of September 2008. In all cases, the court suspended or annulled repatriations ordered by central government representatives and approved by public prosecutors who found them in conformity with the law. Grounds for the suspensions and annulations included both procedural and

³² Ibid.

³³ See: Ombudsman (Defensor del Pueblo), *Annual Report 2007 (Informe anual 2007)*, www.defensordelpueblo.es/InformesAnuales/informe2007.pdf (accessed September 19, 2008), p. 488.

³⁴ These decisions are on file with Human Rights Watch. The most recent case on file with Human Rights Watch at the time of writing dated from June 6, 2008.

³⁵ For example, High court of Madrid (tribunal superior de Madrid), chamber of administrative litigation (sala de lo contencioso administrativo), ruling 767 (sentencia 767), appeal number (apelación numero): 148-2007, April, 26, 2007.

substantive grounds, including that the administration decided to repatriate without hearing the child and without taking into consideration the possible consequences after the child's return,³⁶ and that repatriation would violate a child's best interests and right to legal representation.³⁷

These cases are atypical in that lawyers independently challenged repatriation decisions on behalf of unaccompanied children. Most children in repatriation proceedings do not have access to a lawyer, and even in the national court cases the Spanish administration repeatedly tried to block lawyers from representing children, challenging children's right to be represented on the grounds that they lack the legal capacity to appoint lawyers.³⁸ While most of these cases were argued before Madrid courts where lawyers have organized themselves to take up repatriation cases on a pro bono basis, in most parts of the country, no such organization exists.

Absence of Independent Representation

In practice, unaccompanied children are left without independent representation during a repatriation procedure which prevents them from challenging a repatriation decision, as required under international law. Child protection services—children's only legal representatives—can and frequently do recommend repatriations. However, Human Rights Watch found that such proposals are made without any assessment of the child's best interests or information about possible risks for the child after return. That child protection services represent children in a procedure that they initiate, without adequate information, for the purpose of removing the

³⁶ For example, litigation/administrative court (Juzgado contencioso/administrativo) No.4, Madrid, proceeding (procedimiento) PA 32/07, of January 19, 2007; litigation/administrative court (Juzgado contencioso/administrativo) No.11, Madrid, abbreviated proceeding (procedimiento abreviado) 35/2007, of January 18, 2007; litigation/administrative court (Juzgado contencioso/administrativo) No.12, Madrid, sole identification number (número de identificación único): 28079 3 0074792/2006, of November 22, 2006.

³⁷ For example, litigation/administrative court (Juzgado contencioso/administrativo) No.15, Madrid, sole identification number (número de identificación único): 28079 3 0074793/2006, of November 22, 2006; litigation/administrative court (Juzgado contencioso/administrativo) No.15, Madrid, sole identification number (número de identificación único): 28079 3 0070166/2006, of April 27, 2007. One judge concluded that the child's representation by protection services during a repatriation procedure constituted a conflict of interest and that the child must be given independent representation. See: litigation/administrative court (Juzgado contencioso/administrativo) No.24, Madrid, sole identification number (número de identificación único): 28079 3 0015827/2008, of June 6, 2008.

³⁸ For example, litigation/administrative court (Juzgado contencioso/administrativo) No.15, Madrid, sole identification number (número de identificación único): 28079 3 0015687/2007, of March 4, 2008; litigation/administrative court (Juzgado contencioso/administrativo) No.14, Madrid, general registry (registro general) 359/06, of September 25, 2006.

child from Spain constitutes a conflict of interest (see the Andalusia case study below).³⁹ Even if a child expresses the wish not to return to the country of origin during the procedure, no judge necessarily reviews the decision made by the administration. The child remains represented by the child protection services, without the legal capacity to initiate such a review. As such, unaccompanied children are unable to challenge repatriation decisions, and in comparison to adult migrants who receive free legal assistance from bar associations during deportation procedures, they are worse-off.⁴⁰

The public prosecutor has the power and the impartiality to challenge a repatriation decision on behalf of the child. However, the prosecutor is not required by law to meet face-to-face with the child during the repatriation procedure, and a child is not given an opportunity to communicate real concerns to the prosecutor. Furthermore, the prosecutor is only instructed that he or she “may verify” whether the repatriation is in the child’s best interest.⁴¹ In practice, prosecutors repeatedly failed to ensure that repatriation decisions were compliant with the law. At least two dozen repatriation cases that were successfully challenged by independent lawyers before court had all been approved by public prosecutors, but were found to violate procedural obligations or children’s rights subsequently by courts (see section above about national court decisions).

The International Covenant on Civil and Political Rights (ICCPR) grants migrants the right to submit reasons against an expulsion decision, to have his or her case reviewed by the competent authority, and to be represented for that purpose before that authority.⁴² The European Convention on Human Rights (ECHR) grants any

³⁹ Furthermore, heads of child protection services in autonomous communities are appointed and can be removed by political parties in power. As such they may become subject to political influence.

⁴⁰ Organic Law 8/2000, of December 22, article 22(1); Royal Decree 2393/2004, article 156(a).

⁴¹ See Prosecutor General’s instruction 6/2004; and Spanish Civil Code, art. 174.

⁴² “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority,” International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Spain on April 27, 1977, art.13. Spanish law considers all unaccompanied migrant children to be in need of protection, and thus entitled to state guardianship (*tutela*); by law, children under state guardianship are legal residents. Spanish Civil Code, art. 172.1; Organic Law 4/2000, modified by Organic Law 8/2000, art. 35(4).

person the right to an effective remedy whose rights and freedoms are violated under the Convention's provisions.⁴³ The European Court of Human Rights (ECtHR), specified that states also have an obligation to guarantee an effective remedy against the risk of rights violations⁴⁴ and that the "the remedy required by Article 13 must be 'effective' in practice as well as in law."⁴⁵

The Committee on the Rights of the Child stipulates that "individuals or agencies whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship," as such an arrangement fails to secure proper representation of the child. In addition, the Committee has stated that children in administrative or judicial proceedings should be provided with a legal representative in addition to a guardian.⁴⁶ Spanish repatriation procedure fall short of this recommendation given that child protection services are in a potential conflict of interest with the child they represent; furthermore, they remain the child's only representative in a repatriation proceeding.

An additional binding legal obligation on Spain is the principle of non-refoulement under the Geneva Convention relating to the Status of Refugees, which prohibits Spain to return a person to a place where his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.⁴⁷ The obligation of *non-refoulement* is further enshrined in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and under article 3 of the European Convention on Human Rights (ECHR). Both treaties prohibit Spain to return a person

⁴³ "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity," ECHR, art.13.

⁴⁴ "Secondly, even if the risk of error is in practice negligible... it should be noted that the requirement of Article 13, and of the other provisions of the Convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement." *Conka v. Belgium*, (Application no. 51564/99), Judgment of 5 May 2002, available at www.echr.coe.int, para. 83.

⁴⁵ *Z and others v. The United Kingdom*, Application no. 29392/95, Judgment of 10 May 2001, available at www.echr.coe.int, para 108.

⁴⁶ Committee on the Rights of the Child, General Comment No.6, paras.21, 33.

⁴⁷ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, ratified by Spain on August 14, 1978, art.33. These obligations are reflected in Spanish law 9/1994, dated May 19, of the amendment of law 5/1984, dated March 26, on the right to asylum and refugee status, arts. 2(1), 12.

to a place where he or she is subjected to torture, inhuman or degrading treatment.⁴⁸ The ECtHR, in interpreting this provision, has held that persons must not be returned if they face a real risk of ill-treatment.⁴⁹

State parties furthermore have positive obligations under Article 3 of the ECHR. They need to take requisite measures and precautions against torture or inhuman or degrading treatment. In the case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, which involved the deportation of a 5-year old Congolese girl, the ECtHR concluded that a child's deportation amounted to inhuman or degrading treatment including on the grounds that Belgian authorities "did not seek to ensure that she [the child] would be properly looked after or have regard to the real situation she was likely to encounter on her return to her country of origin."⁵⁰ In *Nsona v. The Netherlands*, which also involved the forced removal of an unaccompanied child, the court explained State parties' responsibility under Article 3 of the ECHR as follows:

The responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting States at the time of the expulsion.⁵¹

⁴⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Spain on October 21, 1987, art.3; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, ratified by Spain on October 4, 1979, art.3.

⁴⁹ *Saadi v. Italy*, (Application no. 37201/06), Judgment of February 28, 2008, available at www.echr.coe.int, para. 142.

⁵⁰ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, (Application no. 13178/03), Judgment of October 12, 2006, available at www.echr.coe.int, para 68.

⁵¹ *Nsona v. The Netherlands*, (23366/94), Judgment of June 26 and October 26 1996; 63/1995/569/655, available at www.echr.coe.int, para 92(c).

Case-Study: Andalusia

Because of its location on the Mediterranean Sea across from the coast of Morocco, the autonomous community⁵² of Andalusia has for a long time dealt with high numbers of unaccompanied children within its territory. A Spanish newspaper reported in June 2008 that Andalusia's child protection system was caring for 1,210 unaccompanied children.⁵³

In early 2007, the regional government, which had previously pursued a policy of not repatriating unaccompanied children, announced that it would begin efforts to start returning unaccompanied children to Morocco. Andalusia government representatives were quoted in the media saying that protection centers could no longer cope with the high numbers of children, and that unaccompanied children from Morocco were not really in need of protection because they deliberately left families who cared for them; the children's repatriation, they argued, was in their best interest.⁵⁴ The responsible regional Minister stated in October 2007 that

⁵² Spain is politically organized into 17 autonomous communities and 2 autonomous cities. Autonomous communities consist of one or more provinces; Andalusia is divided into eight provinces.

⁵³ J. Martín-Arroyo, "Crossing the straight and becoming an adult" ("Cruzar el Estrecho y hacerse mayor"), *El País*, June 14, 2008, www.elpais.com/articulo/andalucia/Cruzar/Estrecho/hacerse/mayor/elpepiespand/20080614elpand_12/Tes/ (accessed September 19, 2008).

⁵⁴ The Andalusia Minister for equality and social affairs is quoted in a newspaper article advocating for children's repatriations "for the best interest of the child." See Antonio Fuentes, "Múgica condemns the Junta for not protecting immigrant children" ("Múgica desaprueba que la Junta evite amparar a los menores inmigrantes"), *Europasur*, June 12, 2008, www.europasur.es/article/andalucia/153515/mugica/desaprueba/la/junta/evite/amparar/los/menores/inmigrantes.html (accessed September 23, 2008). She was also quoted saying that Moroccan children come to Andalusia like children on a scholarship program and are not in need of protection. See José Bejarano, "Immigrants with Erasmus scholarships" ("Inmigrantes con becas Erasmus"), *La Vanguardia*, May 14, 2008, www.lavanguardia.es/lv24h/20080514/imp_53462931788.html (accessed September 25, 2008).

Within the past year, Andalusia child protection services attempted twice to evade their legal obligation to assume guardianship for every unaccompanied child. They issued a circular in fall 2007 arguing that unaccompanied children would no longer automatically be put under state guardianship, because they deliberately left their families and caused the lack of protection themselves—a move considered illegal by the Spanish Ombudsman. A second circular was issued in spring 2008 instructing child protection services not to assume guardianship for unaccompanied children who are close to reaching adulthood. See Antonio Fuentes, "Múgica condemns the Junta for not protecting immigrant children" ("Múgica desaprueba que la Junta evite amparar a los menores inmigrantes"), *Europasur*, June 12, 2008, www.europasur.es/article/andalucia/153515/mugica/desaprueba/la/junta/evite/amparar/los/menores/inmigrantes.html (accessed September 23, 2008).

repatriations would fulfill all legal guarantees “to always respect the rights of these children” and that every case would be studied “in greatest detail.”⁵⁵

However, Human Rights Watch’s investigation of repatriation procedures in Seville, Málaga, and Cádiz provinces in Andalusia in early 2008 revealed that officials in charge were unable to explain to us how they made a best interest determination and generally assumed a child’s interest is served through a repatriation. We were, for example, told that families were in frequent contact with their children, which demonstrated that they cared about their fate and that repatriation was therefore in the child’s best interest. Officials who proposed or approved repatriations did not seek relevant information to assess the child’s best interests or the risks for a returned child. Children were not informed that their repatriation had been proposed or decided, and they were unable to legally challenge such decisions before a competent authority; children also did not receive information about their right to seek asylum or enjoy access to asylum procedures.⁵⁶

Government entities either did not carry out hearings with children at all or the hearings they carried out were very superficial. Officials displayed a lack of clarity as to whom is responsible to hear the child during a repatriation procedure. Child protection services said central government representatives or public prosecutors conducted hearings with the child; central government representatives in turn told us that this was the responsibility of public prosecutors, law enforcement bodies, or the child protection services. One public prosecutor explained to us that he halted the repatriation of two children because the administration had not heard the children. Human Rights Watch viewed one transcript of a “hearing” with a child that was only two sentences, and simply said that the child did not want to return.

None of the officials we spoke with was able to explain to us how a best interest determination is made; however, officials of child protection services consistently

⁵⁵ See the statement of the Andalusia Minister on Equality and Social Affairs Micaela Navarro Garzón before the Andalusia parliament, Andalusia Parliament (Parlamento de Andalucía), “Journal of Sessions, No. 390” (“Diario de Sesiones, No. 390”), October 3, 2007, www.Parliamentodeandalucia.es/webdinamica/portal-web-Parlamento/pdf.do?tipodoc=diario&id=21293 (accessed September 18, 2008), pp. 12511-12515.

⁵⁶ We shared these conclusions with central government and regional authorities in Andalusia with a letter dated May 9, 2008, and requested clarification on how identified shortcomings will be remedied. We informed them in a second letter on August 13, 2008, that our findings will be made public but have not received a response.

told us that the best interest of the child is to be repatriated.⁵⁷ A child protection service official told us that it was generally in the best interest of a child to return to his or her country and the mere fact that the Moroccan consulate agreed to take responsibility for a child was a sufficient guarantee for the child's well-being.⁵⁸ Morocco, the official said, is a sovereign country, party to the Convention on the Rights of the Child, and says it has a child protection system; therefore, it is not possible for Spain to question such a guarantee, he said. The central government delegation in another province told us that they seek a written guarantee from the consulate that Moroccan authorities will assume protection and care for the child.⁵⁹ However, when we sought to confirm this with the consulate, consulate officials were not aware that such guarantees were issued.⁶⁰

Even if Moroccan consulates issued guarantees or gave assurances to take care of the child, this would not lift the obligation on Spain to carefully assess the risks for a child of being subject to inhuman or degrading treatment, neglect, or exploitation upon return, before making a repatriation decision. By arguing that a child's well-being is guaranteed because Morocco ratified the Convention on the Rights of the Child, the Spanish administration deliberately refuses to objectively assess all risks and dangers for the child upon return as well as the child's best interests.⁶¹ The European Court of Human Rights has made clear that the fact that a receiving country

⁵⁷ Human Rights Watch interviews with Agustín López Sánchez, head of child protection services in Cádiz province, Cádiz, January 29, 2008; Francisco Caleros Rodríguez, secretary of the subdelegate in Cádiz and Juan Ortuño, chief of cabinet, Cádiz, January 29, 2008; Inmaculada Dugo Benítez, head of child protection services in Seville and Isabel Gragera Murillo, head of office for child welfare, Seville, February 4, 2008; Carmen Belinchón Sánchez, director general of child protection and family affairs in Andalusia, Seville, February 5, 2008; Vigente Vigil-Escalera Pacheco, area director for labor and social affairs, central government representation in Seville, Seville, February 6, 2008; Juan Alcover, area director for labor and social affairs, central government representation in Málaga, Málaga, February 7, 2008; Isidro Ramos Rengifo, head of child protection services in Málaga, Málaga, February 7, 2008.

⁵⁸ Human Rights Watch interview with Isidro Ramos Rengifo, head of child protection services, Málaga, February 7, 2008.

⁵⁹ Human Rights Watch interview with Juan Ortuño, chief of cabinet, and Francisco Calero Rodríguez, secretary of the subdelegate, Subdelegación del Gobierno, Cádiz, January 29, 2008.

⁶⁰ Human Rights Watch interview with Nadia Kourima, responsible for social affairs, consulate of Morocco, Algeciras, January 30, 2008.

⁶¹ The Andalusia minister for social affairs herself declared in October 2007 that the Moroccan child protection system may not provide adequate care and protection for unaccompanied children returned by Spain because the protection system was known to be "fragile." Andalusia Parliament (Parlamento de Andalucía), "Journal of Sessions, No. 390" ("Diario de Sesiones, No. 390"), October 3, 2007, www.Parlamentodeandalucia.es/webdinamica/portal-web-Parlamento/pdf.do?tipodoc=diario&id=21293 (accessed September 18, 2008), p. 12509.

has ratified human rights treaties is not sufficient to satisfy a sending countries duty to protect a person from ill-treatment.⁶²

We also found that the Andalusia administration had only scant knowledge about the children in its child protection system. Staff who work in care centers often have valuable knowledge about a child's history and reason behind the child's displacement, which should inform a best interest assessment in the search for a durable solution. Additionally, they may have a relationship of trust with the child, which is conducive to documenting sensitive information, for example, that a child has been subject to abuse or neglect. These personnel therefore should receive guidance from child protection services in documenting their background and the reasons for their displacement. Care center staff we met with in Andalusia, however, told us that they were not required to document information that is relevant to a repatriation decision, such as whether a child suffered from domestic violence, whether a child has lived in the streets, has suffered from labor exploitation, or whether a child faces trafficking risks upon return.⁶³ Instead, staff were primarily tasked to note the child's identity and family contacts. They were also not aware which children had been proposed for repatriations. Andalusia authorities also told us that Moroccan consulates do not cooperate and facilitate the exchange of information about a child's background or the child's family.⁶⁴

We found that unaccompanied children in Andalusia, with few exceptions, are not given information about their right to seek asylum and have no opportunity to ask for or be considered for asylum.⁶⁵ Central government and child protection services representatives possessed very limited knowledge about asylum and their

⁶² "The Court observes that the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where...reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention," *Saadi v. Italy*, (Application no. 37201/06), Judgment of 28 February 2008, available at www.echr.coe.int, para. 147.

⁶³ Human Rights Watch interviews with several staff who work in care centers in Seville, Cádiz, and Málaga provinces (exact names and dates withheld).

⁶⁴ Human Rights Watch interview with Juan Ortuño, chief of cabinet, and Francisco Calero Rodríguez, secretary of the subdelegate, Subdelegación del Gobierno, Cádiz, January 29, 2008; with Santiago Yerga Cobos, provincial coordinator on migration policies, January 28, Cádiz; with Agustín López Sánchez, head of child protection services, Cádiz, January 30; with Isidro Ramos Rengifo, head of child protection services, Málaga, February 7, 2008.

⁶⁵ These findings are consistent with earlier findings in the Canary Islands. See Human Rights Watch, *Unwelcome Responsibilities*, pp. 49-54.

obligations under international law, and some wrongly assumed that staff who work in care centers give such information.⁶⁶ One central government representative in a province even remarked that children could not be subject to persecution and in order to get a resident permit, children need not apply for asylum.⁶⁷ This statement, while made by just one person, raises concerns about how widespread sentiments like this may be amongst officials.

Despite this glaring absence of objective information about the possible fate awaiting a child upon return, Andalusia child protection services propose the repatriation of unaccompanied children on a continuous basis and apparently without any prior assessment.⁶⁸ Central government representatives who make the final decision to repatriate a child in turn told us that they generally do not question proposals submitted by the child protection services and were confident that such repatriation proposals were made in the child's best interests.⁶⁹ Officials complained, however, that Moroccan consulates did not provide any assistance to process children's repatriations.⁷⁰ In at least two cases, in which the central government approved the repatriation of two unaccompanied boys to Morocco, the public

⁶⁶ Human Rights Watch interview with Juan Ortuño, chief of cabinet, and Francisco Calero Rodríguez, secretary of the subdelegate, Subdelegación del Gobierno, Cádiz, January 29, 2008; with Agustín López Sánchez, head of child protection services, Cádiz, January 30; with Ana Hermosa Martínez, protection prosecutor, Sevilla, February 4, 2008; with Inmaculada Dugo Benítez, head of services, and Isabel Gragera Murillo, head of office for child protection, child protection services, Sevilla, February 4, 2008. Human Rights Watch interviews with several staff who work in care centers in Sevilla, Cádiz, and Málaga provinces (exact names and dates withheld).

⁶⁷ Human Rights Watch interview with Juan Alcover, area director for labor and social affairs and legal advisor of the government's subdelegation, Málaga, February 7, 2008.

⁶⁸ This finding is consistent with Human Rights Watch's previous findings in the Canary Islands. See Human Rights Watch, *Unwelcome Responsibilities*, p.100. We were told that child protection services in Cádiz province proposed the repatriation of more than 60 children in 2007. In Sevilla province, child protection services made proposals to repatriate children on a continuous basis, and 58 from September 2007 to January 2008. Within four years, Andalusia child protection services made 988 repatriation proposals for unaccompanied migrant children to central government representatives. See, Andalusia Parliament (Parlamento de Andalucía), "Journal of Sessions, No. 390" ("Diario de Sesiones, No. 390"), October 3, 2007, www.Parliamentodeandalucia.es/webdinamica/portal-web-Parlamento/pdf.do?tipodoc=diario&id=21293.

⁶⁹ According to press reports, an investigation by the Spanish Ombudsman in Andalusia revealed that the files of unaccompanied children for whom a proposal for repatriation has been made did not include detailed and individualized reports. The Ombudsman reportedly found a tendency to automatically propose a child's repatriation. See "Ombudsman requests a 'detailed and personal' report about migrant children for their repatriation" ("Defensor del Pueblo reclama un informe 'detallado y personal' sobre los menores inmigrantes para su reagrupación"), Europa Press, July 14, 2008, www.europapress.es/epsocial/inmigracion-00329/noticia-defensor-pueblo-reclama-informe-detallado-personal-menores-inmigrantes-reagrupacion-20080714154006.html (accessed September 24, 2008).

⁷⁰ Human Rights Watch interview with Juan Ortuño, chief of cabinet, and Francisco Calero Rodríguez, secretary of the subdelegate, Subdelegación del Gobierno, Cádiz, January 29, 2008; with Santiago Yerga Cobos, provincial coordinator on migration policies, January 28, Cádiz; with Agustín López Sánchez, head of child protection services, Cádiz, January 30; with Isidro Ramos Rengifo, head of child protection services, Málaga, February 7, 2008.

prosecutor intervened and their repatriation was stopped in August 2007 because the boys had not been heard during the procedure and because there was no guarantee that they would be reunited with their families.⁷¹

⁷¹ Human Rights Watch interview with Álvaro Conde, prosecutor on alien affairs, and Angeles Ayuso, chief prosecutor, Cádiz, January 30, 2008.

Conclusions and Recommendations

Human Rights Watch found that repatriation procedures in Andalusia fall short of guaranteeing that repatriations serve children's best interests and ensure their safety and well-being. In fact, we found that there is a fundamental misunderstanding of the best interest principle and dangerous presumption that return for an unaccompanied child is in the child's best interest and need not be determined on an individual basis and in combination with a risk assessment. These findings are consistent with repeated criticism by the Spanish Ombudsman and non-governmental organizations, and with rulings by national courts. They also show that repatriation procedures lack crucial safeguards: unaccompanied children are not given independent representation during a procedure that has a fundamental impact on their lives and may put their well-being and the exercise of their fundamental rights at risk.

To the Government of Spain

Change repatriation procedures to include, at the minimum, the following safeguards:

- Provide all unaccompanied children with competent and independent legal representation, in addition to representation by child protection services. Legal representation should be made available at the initiation of a repatriation proceeding.
- Precede any repatriation proposal or decision with a formal determination of the child's best interests, in line with UNHCR's guidelines on formal best interest determination, and the Committee on the Rights of the Child's General Comment No. 6.
- Carry out a thorough and individualized analysis of whether a repatriation would place the child at risk of having his or her fundamental rights violated or persecution or abuse targeting the child or family.
- Create a mechanism that guarantees every child's right to be heard during a repatriation proceeding in the presence of the child's legal representative.

Make the implementation of the bilateral readmission agreements transparent by allowing for independent monitoring of their implementation and by making the periodic reports by the committees tasked to oversee the agreements' implementation public.

To the United Nations Human Rights Committee

Urge Spain to improve its safeguards for unaccompanied children who face repatriations in order to comply with its obligation under article 13 of the ICCPR, in accord with the above recommendations to the Spanish government. Recommend in particular that Spain provide unaccompanied children independent lawyers during repatriation procedures.

To the Governments of Morocco and Senegal

Urge the government of Spain to grant unaccompanied children their full rights as stipulated by national law and binding international obligations.

Make the implementation of the bilateral readmission agreements transparent and allow for their independent monitoring.

Cooperate in the return of an unaccompanied child when such a decision is in the child's best interests and if adequate care arrangements can be guaranteed for the returned child.

Acknowledgements

Simone Troller, researcher in the Children's Rights Division, wrote this report based on her research in Andalusia in January and February 2008, that of Clarisa Bencomo, researcher in the Children's Rights Division, in Morocco in May 2008, and that of Rocío Aznar Dabàn, consultant in the Children's Rights Division, in Andalusia in September 2007. Jaime Sanz Gallego, former intern in the Children's Rights Division, and Cassandra Mikicic, associate in the Children's Rights Division, provided additional research assistance.

The report was edited by Zama Coursen-Neff, deputy director in the Children's Rights Division; Bill Frelick, director of the Refugee Policy Program; Ben Ward, associate director in the Europe and Central Asia Division; Aisling Reidy, senior legal advisor; and Andrew Mawson, deputy program director.

Production assistance was provided by Cassandra Mikicic and Kennji Kizuka, associates in the Children's Rights Division; Anna Lopriore, creative manager; Grace Choi, publications director; and Fitzroy Hepkins, mail manager. The report was translated into Spanish by Guillermo Sanz and Maria Estalayo, and into French by Marie-Hélène Corréard; it was vetted in both languages by Cassandra Mikicic.

We wish to thank authorities who generously allocated time to speak to us and to non-governmental organizations and human rights defenders in both Spain and Morocco.