

Submission to the report of the Special rapporteur on how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants

The Special Rapporteur is particularly interested in receiving inputs on any or all of the following issues:

1. Please indicate how can regularization processes facilitate the enjoyment of human rights by migrants as well as their cultural, social and economic integration into the host communities.

Save the Children Spain and Fundación Porcausa have documented how irregularity is an obstacle to children in accessing their rights in Spain in the report “Creciendo sin papeles en España” and hoy regularity would ensure:

Right to development. Irregularity is a determining factor for **child poverty**. The probability of risk of poverty for a household with the average characteristics without dependent children and with Spanish nationality is 17%. If this same household (with the same average characteristics) is non-EU, the probability rises to 41%. The probability of risk of poverty for a household with the average characteristics with dependent children and with Spanish nationality is 14%. If this same household (with the same average characteristics) is non-EU, the probability rises to 48%. The Immigration Law limits the right of the population in an irregular administrative situation "to basic social services and benefits". This definition excludes the benefits of Social Welfare and refers to benefits granted at regional and municipal level. This excludes benefits arising from the person's employment situation, both contributory and assistance: unemployment, retirement and pension rights, or for dependent sons or daughters.

Access to housing. In Spain, by law, the right to housing is only recognized to documented foreigners. There are also additional requirements such as several years of residence to receive rent or mortgage benefits. This does not mean that families cannot access a rental contract or financing to buy a house, but in practice they face to documentation requirements that restrict this possibility. Irregularity for example, represents an obstacle even to be able to open an account in a bank, excluding the population in an irregular situation from all the procedures for which a direct debit of expenses or a guarantee is needed. Not to mention that social services often need a bank account to pay the basic benefits or income to which these people may be entitled. The result is that these families are often forced to share a home with other individuals and families. Sharing housing is also a strategy to alleviate the economic difficulties and job insecurity they suffer. In the case of adolescents who have been protected by the administration, but have not accessed a residence permit, their irregularity in many protection systems is sufficient reason to be excluded from access to post-guardianship places to support emancipation, even if they have been tutored. When they turn 18, they must leave the guardianship system without having any alternative housing or support from that same protection system that should have gotten them the papers while they were under their guardianship.

Access to education. Undocumented families are excluded from numerous aids for the **education** of their children, such as scholarships, discounts to buy schoolbooks or aid for nursery, for example. Due to irregularity, these people are doomed to unstable and precarious jobs that often prevent them from having something as basic as a computer or internet connection. The administrative status of these children conditions their way of interacting with the rest of their class, since they are excluded from activities such as school trips. On the other hand, children and adolescents who arrive alone in Spain find profound deficiencies in accessing education in juvenile centers, an obstacle that the Ombudsman frequently describes and denounces in his reports. In other cases, age-determination tests

bring a considerable number of minors into the adult circuit, thus excluding them from their right to education.

Access to health. Spain was for many years a benchmark in the universality of its health model. Until RD 16/2012 that limited free health services for undocumented migrants to emergency care. The majority of autonomous communities, with governments of all political persuasions, exercised their competences in health to continue guaranteeing the universality of this right. RD 16/2012 was finally repealed in June 2018. Children and pregnant women were never formally affected by this regulatory back-and-forth. The law explicitly protected them even between 2012 and 2018. Nevertheless, before, during and after that period, migrant families with dependent children have had to face numerous arbitrariness and practical difficulties in accessing their right to health. During the first five years after the entry into force of the RD, the Network of Denunciation and Resistance against the RD (REDER) documented at least 146 cases of pregnant women and 243 cases of minors rejected by the system. As pointed out by the NGO Médicos del Mundo, the disparity of criteria of the health systems in the autonomous communities did not always guarantee access to the health card, protection against a medical bill that can have catastrophic financial consequences or the continuous monitoring of minor patients in an irregular administrative situation and their pharmacological treatments. Sometimes, fear of accessing health systems for fear of revealing their situation to the police authorities de facto distances children from primary and specialized health centers. The impact of irregularity on mental health is one of the most difficult aspects for health and protection systems to identify, but one that will leave a deeper footprint. The fear, anxiety and trauma that children experience directly and perceive in adults will define their opportunities in life in a way that is difficult to understand.

Access to the right to protection and justice. As in the case of health and education, children's effective **access to the right to protection and justice** does not always reflect the text of the law. Fear of deportation, lack of knowledge of the language and absence of personal networks can obstruct their protection in matters of extraordinary relevance: domestic violence, physical and mental abuse, and even exploitation and trafficking. One of the most obvious conflicts has to do with the difficulties in filing a complaint with the authorities

Access to leisure activity: In addition to the fear and discrimination suffered by families and undocumented children, which condemn them to a life of daily restrictions, there are also the difficulties that exist **to travel and enjoy their free time**. The impossibility of carrying out all the activities enjoyed by their peers is for children a source of great frustration and feeling of exclusion. Their administrative situation may prevent their registration in municipal sports federations or leagues, their participation in end-of-year trips or the full use of socialization with their peers. The restriction of movement responds to the fear of being detected by the Spanish border authorities or the country of destination. Children in an irregular situation in Spain cannot visit their countries of origin or that of their parents. They cannot visit their uncles or grandparents. They grow up without the possibility of a physical bond with their relatives. Children in an irregular situation in Spain cannot visit their countries of origin or that of their parents. They cannot visit their uncles or grandparents. They grow up without the possibility of a physical bond with their relatives.¹

Access to training and labour: the recent reform of regulation on foreigners law concerning unaccompanied children has led to the incorporation into the labor market of many of these people who have received the documentation. In the first four months of the implementation of the reform, i.e. as of 31 March, the number of minors and former in care young people with work had already doubled. Specifically, as of March 31 there are 4,599 registered in the Social Welfare system, compared to just over 2,700 before the reform.

2. Please share examples of national and regional solutions to legalize the stay for migrants in irregular situations and indicate whether your country has adopted

¹ Save the Children España, 2021, *Crecer sin papeles en España*.



any bilateral, sub-regional, regional, international mechanisms, agreements, frameworks or programs, including in the context of labor migration;

- The Ministry of Inclusion, Social Welfare and Migration published an instruction² in which it establishes that the best interests of the child, as well as their particular circumstances, must be taken into account when issuing the residence permit to the parents of minors nationals of another State who are in Spain.
- Immigration Law establishes that unaccompanied children are considered regular when they are supervised by a Public Administration or, by virtue of a judicial decision, by any other entity. At the request of the guardianship body and once it has been established that it is impossible to return to his or her family or to the country of origin, the minor shall be granted a residence permit, the effects of which will be retroactive to the time when the minor has been placed at the disposal of the child protection services.
- The reform of the Immigration Regulation allows unaccompanied minors who reach the age of majority without having obtained a residence permit to apply for it when they meet the requirements. In this way, its supervening irregularity is avoided. It also stipulates that the work permit shall have the same duration as the residence permit.
- For the renewal of the residence and work permit, the old regulation required proof of income equivalent to four times the minimum income. After the reform, it is sufficient to obtain an income equivalent to the minimum income, which can come from both work and subsidies. This allows unaccompanied minors over the age of 16 access to the labour market.
- The reform of the Immigration Law has benefited a large number of minors and young people under public guardianship. Six months after the reform, with data to May 29, the new legal framework has meant the granting of authorizations to more than 9,300 people, 3,504 minors and 5,817 young people former in care, which means that in this short period it has reached more than 60% of the people who were expected to reach with this regulatory change. Another 1,200 files are being processed and will be resolved soon, at which time 70% of these potential beneficiaries would be reached.
- Unaccompanied children who are documented on their 18th birthday receive a six-month extension of the permit they had as a child. They will also have access to the ‘minimum vital income’) and be allowed to work regularly as of 16 years old, which facilitates their access to a residence permit on other grounds.
- Some Autonomous Communities guarantee access to a minimum income also for migrants in an irregular administrative situation. This is the case of Euskadi³, Comunitat Valenciana⁴ and Canary Islands⁵.

² Instrucciones DGM 8/2020 sobre la residencia en España de los progenitores, nacionales de terceros países, de menores ciudadanos de la Unión, incluidos españoles (https://extranjeros.inclusion.gob.es/ficheros/normativa/nacional/instrucciones_sgje/documentos/2020/instruccion_progenitores_de_menores_ciudadanos_UE_y_nacionales.pdf)

³ Ley 18/2008 de 23 de diciembre (BOPV N° 250/2008), para la Garantía de Ingresos y para la Inclusión Social en la redacción dada por la Ley 4/2011 de 24 de Noviembre (BOPV N° 233/2011) de modificación de la Ley para la Garantía de Ingresos y para la Inclusión Social (https://www.lanbide.euskadi.eus/contenidos/informacion/rgi_normativa/es_def/adjuntos/Ley%2018-2008.pdf)

⁴ Ley 19/2017, de 20 de diciembre, de la Generalitat, de renta valenciana de inclusión (https://dogv.gva.es/datos/2017/12/22/pdf/2017_11918.pdf)

⁵ Ley 1/2007, de 17 de enero, por la que se regula la Prestación Canaria de Inserción (<http://www.gobiernodecanarias.org/boc/2007/017/001.html>)



3. Please share examples of promising practices, including ad-hoc programs and permanent regularization mechanisms that your country or region has adopted to promote a human rights-based approach to migration.

- There are clear criteria to assess the presence of the different types of "arraigo", which is permit for irregular population who lives in Spain on the grounds of their social, work, family and formative inclusion. Proof of these "arraigos" makes it possible to obtain a work or residence permit.
- Deportation of pregnant women is suspended when it can pose a risk to the pregnancy or the health of the mother.
- All unaccompanied children under public guardianship are considered regular under Spanish Foreigners Law
- Under Spanish foreigners all children under 16 years old have right to education
- Spanish courts recently published landmark case law that positively reinforces children's right to birth registration and to a nationality, including for migrant children born en route. In October 2021, a first instance court held that, to respect the child's right to be registered as soon as possible after birth, Spanish authorities should register the child's birth if the child was born abroad and not registered in another country. In May 2022, in a case where the child was born en route and their birth was never registered, another court recalled the principle of the best interests of the child and found a violation of the child's fundamental rights, declaring that the child held Spanish nationality.

4. Kindly highlight any contribution of migrants, including migrant workers to the economy and society of the host communities;

Regularization aimed specifically at the households of undocumented migrants with dependent children would substantially reduce their fiscal cost to society and eliminate many of the extraordinary administrative, economic and educational obstacles to social integration. The naturalization of their administrative situation would open an escape route to the social vulnerability that threatens to condition the lives of an entire generation of citizens of foreign origin. Demography is essential for sustaining the benefit system and economic growth, but in Spain factors such as the low birth rate and the ageing of the population threaten the maintenance of the current system. The contributions of the migrant population to the welfare system allow the sustainability of essential public services for the whole society such as health, education, the pension system or economic benefits.⁶

Irregularity of immigrant workers means for the Spanish public coffers an average annual cost of 2,000 euros per immigrant. This average presents notable differences according to the profiles of irregular immigrants: from a cost of 460 euros per year for younger men, to 3,288 euros for women between 30 and 55 years old. The existence of dependent children is the determinant of this difference. What change would regularization entail? Once the estimated contributions in terms of direct taxes (IRPF) and social contributions are incorporated into the calculation, the net tax contribution of immigrants in an irregular situation increases above 3,250 euros. Again, there are important variations according to the different profiles: from the 2,441 euros of contribution of younger women (many of them working in the care economy) to almost 5,000 euros of men between 25 and 35 years working in manufacturing or construction sectors. In four of the six profiles analyzed, regularization would allow immigrants to contribute well above what they receive from public budgets. In two of them, the contributions would neutralize the costs for the State.

⁶ Save the Children España, 2019, Contando los pasos. Por una política migratoria responsable y con mirada de infancia.



