



#InformelInfanciaMigrante

## 11. Proposed Protection Models Based on the Rights of Migrant Children

In addition to being a priority, the requirement to fulfill the Convention on Human Rights and the Convention on the Rights of the Child can be seen in all processes and agreements with the country of origin. A profound revision of the protection model in the face of present challenges is therefore imperative to respond appropriately and promptly to current necessities, circumstances, and realities. We must continue pushing towards an integral model of child protection which takes a global focus on every area involving children, without partiality given for motives of nationality or origin, for the adoption of an array of policies, functions, and interventions that together work to guarantee the wellbeing and rights of the child. This protection is of urgent priority in respect to unaccompanied migrant children and adolescents who find themselves vulnerable and abandoned in extremely precarious situations.

Nevertheless, in the current climate, attending to the situation of unaccompanied migrant minors and to the necessary resources to provide for their protection requires a series of crucial reforms and additional measures to see an end to the violations and overall decline of basic rights that affect the migrant children of Andalusia. This regression puts into serious jeopardy the Andalusian commitments to the safety of children, a theme deserving serious consideration as a fundamental pillar of society.

Therefore, we propose:

1. Organization and coordination between all related administrations and agents to facilitate a revision of the current protection system and the adoption of a new integral and global protection model suited to guarantee the rights of unaccompanied migrant children and adolescents.
2. Every policy, decision, and agreement must follow anti-discrimination principles and do what is in the best interest of the child. The health and safety of the child must be prioritized before any other condition, including migratory status.



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**3.** Foresight, planning, coordination, and evaluation of all policies specified to guarantee “lasting responses” focused on the short, medium, and long-term protection of children and their transition into adult life. Improvisation in the face of emergency can no longer be the defining characteristic of the decision-making process.

**4.** Modifications to the age-assessment process:

**4.1.** Replace the current procedure for an administrative one, whose decisions make allowance for appeals. A key piece of this change must include a mechanism to ensure the legal protection of minors to keep them out of harmful working situations caused by a low legal working age.

**4.2.** Guarantee children the right to be heard from the start of the process so they can share what they need. Interpreters should be assigned to minors to communicate the situation in a comprehensible way as well as explain and translate documents created in the process.

**4.3.** Legal counseling and assistance. We believe that the aid of a lawyer is an essential part of the legal process to preserve the interests of the child.

**4.4.** Set regulations that ensure an independent and impartial counsellor/guardian. This role serves to complement the legal assistance and the work of the protection organization that provides this figure, and so must be free of any conflict of interests.

**4.5.** Develop a fixed protocol for age assessment tests that are both multidisciplinary and respectful of human rights. Documentary evidence and psychosocial analysis should be the primary resource for age assessment, restricting medical testing to special cases only.

**4.6.** Evaluation of the results of medical testing through a reference population, which should be obtained through cross-sectional study of the population of the countries of origin of the children.

**4.7.** Refusal to undergo medical testing should not be assumed to mean being of legal age.



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**5.** Revocation of guardianship with respect to the guidelines stated in article 172.5 c.): passing of six months without knowledge of the whereabouts of the child. For those cases in which the location, state, and situation of the foster child are unknown, the following measures should be undertaken:

**5.1.** All involved institutions develop prevention, coordination, and intervention mechanisms aimed to identify and find the missing children and provide them with proper protection.

**5.2.** Programs for children found on the street should provide the necessary resources to care for the children and their needs given their specific circumstances.

**6.** Intervention programs to mitigate conflicts that impact peaceful coexistence in the centers themselves as well as in the wider neighborhoods and cities. Conflict prevention, conflict resolution, and education form the base of these programs in order to construct more open and diverse societies and to confront xenophobia and hate.

**7.** The obligatory implementation of a manual on best practice for the portrayal of migration in the audiovisual public media and the encouragement of adherence to it in private media. The objective stands to avoid furthering of the criminalization of migration and the stigmatization of child migration.

**8.** Increased rate for the processing of declarations of abandonment and authorization of residency, which are both key elements for those over eighteen years of age.

**8.1.** Regulation of the assumption of guardianship and declaration of abandonment considering the specific circumstances of unaccompanied migrant children and adolescents.

**8.1.1.** Automatic recognition of the guardian and the establishment of a window for the formalization of the declaration of abandonment are necessary, and they should be completed the moment in which the child becomes the responsibility of protective services. This window should never exceed three months.

**8.2.** The most favorable interpretation of the rights of the child regarding the deadline for residency processing. That is, it should be interpreted that the period of nine months established by



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Article 196 of the Regulation of Immigrants is a set maximum so that the child can count on a residency permit. Given the justifications of delay resulting from the difficulties in obtaining the child's passport, of which a copy is required, an important note is that the same article states that the copy of the passport may be substituted with a minor's identification card.

**8.3.** Obligation that every child has the proper documentation at the time of reaching legal age. If not done, the child will remain in the care of the administration until the fulfillment of this requirement.

**8.4.** Work and residency authorization for those of legal age. The favored outcome is entrance into the labor market under the same conditions as native young people.

**9.** Modification of the methods behind work and residency authorization upon reaching legal age:

**9.1.** Automatic recognition which guarantees the normalization of their administrative situation, in favor of their inclusion and full development.

**9.1.1.** Until automatic normalization is achieved: the guarantees of legal counselling and work and residency authorizations should be afforded to all young adults of 18 years of age upon their departure from protection centers.

**9.1.2.** Programs dedicated to the social inclusion of young people in positions of exclusion.

**9.2.** The application, in all possible cases, of Article 22 of the Civil Code on the acquisition of citizenship, by virtue of which one year of residency is sufficient for those who "have been legally subject to guardianship, foster care, or custody of a Spanish citizen or institution over two consecutive years."

**10.** Coordination, planning, and funding in the implementation and development of suitable programs for the transition into adulthood: expansion of housing resources, encouragement for continuing education, and to employment to achieve full autonomy and the ability to live independently.



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**11. Evaluation, Adaptation, and Improvement of protection centers<sup>1</sup>.**

**11.1. Primary reception and emergency centers.**

**11.1.1.** Are intended to ensure a primary reception, and, thus, cannot be converted into centers of permanent residence. They focus on different programs with a variety of available resources.

**11.1.2.** Effective supervision of the administration for the realization of the terms, especially when management corresponds to private entities.

**11.1.3.** Specific plans that will result in a multidisciplinary evaluation of the child to determine which basic residential center is best suited for their needs and circumstances. The evaluation should also detect any situation that would permit opportune procedures, such as international protection, in the necessary cases.

**11.1.4.** Guarantee of psychological support, interpretation assistance, mediation, and legal aid from the outset.

**11.2. Basic residential centers.**

**11.2.1.** Inspection of installations and remodeling when necessary. Adjust the number of places to account for number of children currently residing there.

**11.2.2.** Avoid the transfer of children between centers except in the exceptional cases in which the experts involved consider the change beneficial. Once the needs of the situation have been evaluated, the children will be referred to the center which will best fit their circumstances, always looking out for “the best interest of the minor.”

**11.2.3.** Investment in human resources: increase the number of qualified and certified professionals with training in specific programs for the realities of unaccompanied migrant

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<sup>1</sup> In reference to the programs that define the course of action for the protection centers, it is worthwhile to note:

1. Preliminary reception center: those who are destined for the primary reception centers, diagnosis and patient referral of underage persons to distinct alternatives. These programs deal as much with unexpected, emergency situations as planned ones. Beginning in June of 2005, an “Emergency Plan for the Attention of Underage Migrants” considers the emergency centers to be a first response.

2. Basic residential care: deals with general and normalized residential care, which includes the management of diversity from a unifying perspective.



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children and for their rights and guarantees. In this way we will provide the most important tools and training for those who work with the children.

**11.2.4.** Guarantee the permanent presence of at least one interpreter in each center, who affords a means of comprehension, understanding, and communication. It is important to value not only the linguistic, but also the intercultural dimensions in the training/experience of the interpreter.

**11.2.5.** Commit to plans for the incorporation of psychological support which offers specific individualized attention to each child.

**11.2.6.** Improve existing mediation plans. Increase number of professionals.

**11.2.7.** Accessible legal counseling and assistance.

**11.2.8.** Introduce independent and impartial mechanisms to safeguard the rights and guarantees of the child, especially in those situations which may produce a conflict of interest between entities of legal guardianship and the children. These aspects may be addressed by the regulation of the figure of the guardian/advisor, following the model set forth in the Observation #6 of the Committee of the Child or through the figure of a legal defense counsel.

**12.** Value and develop the spread of foster family-based care as a priority measure in the protection of unaccompanied minors as equal to that of native children in guardianship situations.

**13.** Evaluation and elaboration of a unified protocol, from the departments responsible for childhood education and child protection, on the schooling and training of children and adolescents under guardianship. Also, suitable information and training should be provided for the specialists in the education centers which will house this student body with their own special needs.

**13.1.** Creation of a special unit for the protection of childhood migration to effectively coordinate the educational and formative needs of the children traveling without a related adult.

**13.2.** Introduce the necessary resources as well as the outlined personal itineraries and professional grants to guarantee the access to and enjoyment of the right to an education.



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**13.3.** Preliminary evaluation of educational needs for effective curriculum modifications oriented towards the normalized incorporation in the classroom at the level corresponding to the child.

**13.4.** Fortify the temporary classrooms for linguistic adaptation. In each educational center there should be a classroom equipped with both the necessary specialists as well as specific resources.

**13.5.** Design and develop intervention plans, cross cutting the entire educational community in order to prevent and resolve conflicts, situations of exclusion, and/or discrimination.

**13.6.** Reform and adaptation of the Basic Vocational Training to facilitate the access of adolescents under guardianship.

**13.7.** Provision of aid and scholarships for the progress of studies, especially those of mid and upper levels of study.

**14.** Creation of an autonomous, transnational network in which all institutions present during the processes and intervention from the origin, transition, and destination are present with voice and vote, including the representation of minors under guardianship or who were under guardianship.

**15.** It is necessary to work with the Member States of the EU towards the development of coherent, harmonizing, long-term policies which guarantee their part in the protection of the rights of child migrants, establishing the steps and budgets necessary to do so.

**16.** Effective and efficient budgetary donations which allow the realization of intervention programs in the different entities which directly work in these situations for the improvement of the realities and guarantees of the rights of the child migrant.

\*Full report (Spanish): <https://apdha.org/media/informe-infancia-migrante-2019.pdf>