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**Regional Conference on “Migration of unaccompanied minors: acting in the best interests of the child”**

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“Life plans” for unaccompanied migrant minors and co-operation between countries of origin, transit and destination

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## **1. Present situation**

While the number of unaccompanied foreign minors arriving in the Autonomous Community of Andalusia has steadily increased since 1995, since the end of April 2005 there has been a sharp upturn as large numbers have started arriving in flimsy fishing boats called “*pateras*”, mainly at the weekend, peaking at an average of about 70 minors per week in June-July. Until recently the arrival of unaccompanied minors in these boats was unusual. They tended to enter Spain by other means. We are not sure of the reasons for this new development, although it is conceivable that the effectiveness of the *Sistema Integral de Vigilancia del Estrecho* (SIVE – the Strait Watch System), which is capable of detecting virtually every boat that crosses the Strait of Gibraltar, leading to the capture and repatriation of almost all adults who make the crossing, has something to do with it.

In the first nine months of this year (1 January - 30 September 2005) 1,398 unaccompanied foreign minors and presumed minors entered protection centres for minors in the Autonomous Community of Andalusia, compared with 685 over the same period in 2004, an increase of 713 minors, or 104%, and even more than in the whole of 2004 (1,035).

The total number of unaccompanied foreign minors these centres attended to during the same period was 1,884, this figure including the 486 minors who were already in the centres on 1 January 2005, in addition to the 1,398 new arrivals. Over the same period in 2004 they attended to 938 unaccompanied foreign minors (261 plus 685), making an increase of 946, or 100% for the same nine-month period from one year to the next.

In the first four months of the year (January-April) 445 new arrivals were registered (compared with 268 over the same period in 2004), while in the following five months (May-September), when the weather conditions were obviously better, there were more than 953 arrivals, more than double the 417 registered during that period the previous year.

Broken down on a monthly basis, in May 2005 there were 127 new arrivals (59 in May 2004); the number peaked in June, with 299 (63 in June 2004); in July it decreased slightly, to 215 (58 in July 2004) and finally, in August there were only 141, less than half the June figure and not much higher than in August 2004 (137). In September there were 171 new arrivals (100 in September 2004). Thus, in the first two summer months –June/July – there were 514 arrivals, but only 312 (202 fewer) in the following two months of August/September

The decrease began in mid-June, coinciding with the meeting of the permanent Spanish-Moroccan Working Group on immigration and minors held in Madrid on 18 July, at which our Autonomous Community was represented by the Minister for Equality and Social Welfare. At the meeting it was agreed to step up border controls and joint patrols to prevent people traffickers from treating minors as merchandise, and together to build and run up to four centres for the protection of minors in Morocco, with a formal offer of assistance from the *Junta* of Andalusia in the form of training and human resources.

## **2. Profile of the minors concerned**

Here we take a look at the current situation in an attempt to ascertain the magnitude of the problem. Most of the information set out in this section is based on what the minors themselves told the intercultural mediators in the centres.

- ? First of all, as we have already said, the massive arrival of minors and presumed minors in boats on the Mediterranean coastline of Andalusia really began in late spring 2005, when the weather conditions improved.

- ? Secondly increasing numbers of these immigrants claim to be minors although they look older. This increases the risk of malfunctions in the centres for the protection of minors, obliging them to cater for adults as well as minors.
- ? The minors are mainly boys between the ages of 14 and 17, from rural areas of Morocco, with little schooling and no knowledge of Spanish. In many cases their mother tongue is Berber. It is quite common that all the minors who arrive together in a “patera” come from the same town or village.
- ? Recently more girls between the ages of 14 and 17 have been arriving, also from Morocco, which is a new development. Many of them say they have come to study.
- ? Many of the youngsters say their families encourage them to make the journey, when the adults have already been, or are afraid of being repatriated and losing the cost of the journey.
- ? Many of them want to stay in the centres and not continue on their migratory journey.
- ? Interestingly, many of them come equipped with mobile phones and large sums of money – up to 100 euros – and as soon as they arrive at the centre – or even before – their families call the centre to see if they have arrived safe and sound.
- ? Also, in many cases, family members already established in Spain immediately go to the centre to pick them up, which proves that they knew they were coming.
- ? *Finally, but perhaps most significantly, with few exceptions, the vast majority of unaccompanied minors now arriving in Andalusia are not children in need of protection under the terms of Section 172 of of the Spanish Civil Code. By their own account these children receive adequate affection and material care from their parents and family members, in keeping with the socio-economic conditions in their places of origin. In general they are not children who have been abandoned, ill-treated or neglected. Their families are not well-off and have little hope of their situation improving. So although when they arrive in Spain they are no longer protected by their families, one might say these minors were the victims of “self-inflicted need”.*

### **3. Possible reasons behind the current situation**

No scientific research or survey has yet been carried out to determine the exact reasons behind the recent changes in the numbers and profiles of unaccompanied foreign minors arriving in Andalusia. What information we do have, however, based mainly on what the minors themselves tell us, points to the following reasons:

- ? The increase in number may be the result of three key factors:
  1. First, the undeniable fact that emigration to EU member states has become the one hope for many young Africans of improving their socio-economic lot, as they see no hope of ever achieving an acceptable standard of living in their regions of origin.
  2. The SIVE surveillance system makes it possible to detect just about every “patera” that reaches our shores. This makes it possible to immediately repatriate the vast majority of the adult immigrants detected. However, the legislation on the protection of minors and the “Aliens Act”, rule out the immediate repatriation of minors, so it is hardly surprising that

those who engage in the despicable crime of human trafficking should change their "client" profile, possibly because of waning demand from adults.

3. The full protection given to minors under our public system may make emigration seem more appealing to minors and their families. Our protection system understandably makes the same resources, measures and programmes available to unaccompanied foreign minors as to Spanish boys and girls: administrative guardianship, residential centres where they receive full affective and material care and attention, training and socio-occupational integration programmes, programmes and resources – such as flats – to help them learn to fend for themselves.

? This also explains the increasing number of people who claim to be minors when their “pateras” are detected and escorted into port, when they are in fact adults and eligible for immediate repatriation. The "minority" principle, which rules out the conducting of medical examinations to determine age, giving the immigrant the benefit of the doubt, is another factor. Thus, when osteometric tests are not carried out immediately to establish age and the person claims to be a minor, he or she is considered as such and not repatriated but handed over to the services responsible for the protection of minors. Not to mention the inaccuracy of osteometry when used to determine age, which tends to place the subject's age within a four-year range (between 17 and 21, for example), or even less accurately (under 18, for example), so that even if such tests were practised on all those claiming to be minors, some adults would still get through the net.

? The other aspects of their profile – boys and girls from Morocco; from rural areas; not living in economic misery; wanting to stay in the centres; from normal, caring families – clearly confirm the conclusion reached earlier: most of the children are not street urchins, or children ill-treated or neglected by their parents. They are minors whose families encourage them to make the journey – possibly unaware of the real risk this entails – in the hope that they will bring a better life for the whole family. For the sake of comparison, they are like the children who were sent to Spain's "orphanages" in the 1950s and 60s because their parents did not have the material means to raise them, but not because they were unwanted or neglected or because no-one had their interests and happiness at heart. Under no circumstances should we lump them together with children who are genuinely in need of protection because of parental incapacity, neglect or failure to provide the necessary moral and material support.

#### **4. Immediate measures taken by the ministry for equality and social welfare of the JUNTA of Andalusia**

To provide immediate care for these minors, the Ministry for Equality and Social Welfare now has a network of 18 centres for the protection of minors in Andalusia, specially equipped to take care of unaccompanied foreign minors; but with only 302 places available in principle, this resource has already reached saturation point. These are not centres reserved exclusively for foreign minors; like other centres they cater for Spanish and foreign minors, but they also have staff (intercultural mediators, cooks, etc.) and technical facilities (special training in work with foreign minors, interculturality, integration, etc.) which add up to a better quality of care for these children.

This lack of capacity has obliged the General Directorate of Children and Families of the Ministry for Equality and Social Welfare to activate the Emergency Plan. The aim is to guarantee the rights of these minors and provide them with care and attention, thereby fulfilling one of the basic principles of the Ministry for Equality and Social Welfare and, by extension, the System for the Protection of Minors, namely that all minors, irrespective of

origin or nationality, have the same rights, guarantees and regard. This Plan, activated exceptionally to deal with the massive influx of minors into a province with insufficient residential resources to cater for them all, basically consists, in opening up the system's remaining residential resources, including those for unaccompanied foreign minors in other provinces of Andalusia, and the other public child protection centres, which are not specially equipped to cater for foreign minors, thereby adding another 11 centres (with 238 places) to the 18 more specialised centres, bringing the total to 29 centres and 540 places.

The Emergency Plan has had to be activated five times to date, and has worked well enough to provide proper care and attention rapidly to all the minors concerned.

##### **5. Measures to be developed to prevent the immigration of unaccompanied foreign minors and to promote their return.**

First of all, it should be remembered that in most cases we are probably not dealing here with children who are neglected, abandoned or ill-treated by their parents. When they reach the shores of Andalusia, they do need protection, but their need is something "brought on and assumed" by the minors themselves and their families, in the hope that they will be taken in and provided for by the child protection system of Andalusia. This is in our opinion a central factor that must be borne in mind when addressing the question of unaccompanied foreign minors in the medium and long term. It may be necessary to change strategy and tend more towards educational and work-oriented approaches rather than assistance.

It must also be remembered that this is not a problem limited solely to Andalusia and Morocco. It is a matter that must of course be addressed jointly by the country of origin of the minors, in this case Morocco, and the other communities affected. But the Spanish Government and, of course, the European Union also have a major role to play.

Having said that, when dealing with any problem of a social nature, the stress must be placed on prevention. In this case prevention means working on the children's social and family environment of origin so that they do not feel obliged to leave their homes and their families in search of a hypothetical brighter future elsewhere. It is generally accepted, and the social sciences all agree on this, that the best conditions for the full and optimum development of children's well-being are found in the family. Accordingly, all child protection systems accept the principle that the protection of children should hinge on preventive measures that make it possible for young boys and girls to grow up and live in their family environment, unless this is against their better interests. This means that co-operation needs to be developed with Morocco to prevent risks in the family and help the families themselves cater for their children's needs. In practical terms, we propose jointly defining and setting in place a map of facilities for the benefit of families in economically depressed parts of Morocco, along the lines of the Family Treatment Facilities in Andalusia, of which there are 111, manned by 375 professionals, in the whole Autonomous Community, which develop technical and economic support measures that deter families from migrating.

However, when the minors are already in Andalusia, under Section 172.5 of the Civil Code every effort must be made to reunite them with their families. In the case of unaccompanied foreign minors, under Section 92.4 of the regulations implementing organic law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, approved by Royal Decree 864/2001, this principle together with the children's best interests hinges on returning them to their country of origin to be reunited with their families, or to be taken into care by the child protection services in the country of origin. We feel it would be useful here for co-operation to focus on opening residential reception centres as part of Morocco's child protection services which, based on criteria embodied in the 20 November 1989 Convention on the Rights of the Child and with economic support but also technical and

logistical assistance from the European, Spanish and Andalusian authorities, would take in minors who were repatriated and help to reunite them with their families safely and promptly.

#### **6. Measures to be developed for unaccompanied foreign minors in Andalusia**

The figures clearly show that Andalusia's network of residential child protection facilities is insufficient to cope with the large and steadily increasing demand. If minors keep arriving at the same rate as in the last few weeks, the system will almost certainly collapse.

To prevent this, in addition to the Emergency Plan of the Ministry for Equality and Social Welfare of the Junta de Andalucía, the following measures should be taken in the Autonomous Community:

- ? The Government authorities should open high-capacity reception centres for minors and presumed minors in the areas where most “pateras” arrive – Almería, Motril, Málaga, Algeciras – to take in newly arrived minors for a maximum two-week initial stay. Implementation of this proposal, which has already been discussed by the Autonomous Community Minister and the National Government Delegate in Andalusia, would facilitate the orderly distribution of unaccompanied foreign minors among the various residential centres in Andalusia's child protection system.
- ? These centres should be equipped with the necessary technical equipment and specialised medical staff to carry out the osteometry tests required to determine the age of the new arrivals, which would help to keep many of those who claim to be minors but are in fact adults out of the child protection circuit.
- ? In any event, it should be clearly established that nobody will be allowed into a protection centre for minors without previously undergoing medical tests to prove that they are minors, unless this is obvious BEYOND A SHADOW OF DOUBT from their physical appearance.
- ? Protocols should also be drawn up for collaboration between the various national law enforcement agencies and the Autonomous Community police in Andalusia for the transfer of minors.

Finally, means of co-operation must be developed to help reunite these minors with their families, in their own best interests, when there is no evidence that they have been abandoned, neglected or mistreated by their families.