

GLOBAL **NEXTGEN** INDEX

Protecting the liberty of our next generation, today.

End Child Detention Scorecard

SPAIN

Published August 2018 using information compiled between November 2017 – January 2018, based on the most up-to-date reports and analysis available.



FINAL SCORE

62

Spain has laws in place that prevent the detention of most children. However, the government continues to detain children with their parents (if requested by the parents) rather than allowing parents to be released in order to care for their children in the community.

	Spain	Possible
Treaties	18	20
National laws	7	10
Processing	10	26
Placement	9	12
Rights	11	20
Oversight	7	12
Sub Total	62	100
Points off	-8	-15
Bonus points	+8	+15

Treaties 18/20

Spain has ratified five of the six Conventions and Protocols that assist in the protection of children in the context of migration.

Recommendation: The Government of Spain is encouraged to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

National laws 7/10

Article 62.4 of Law 4/2000 on Rights and Freedoms of Foreigners in Spain and their Social Integration prohibits the detention of children who are not accompanied by their guardians, subject to age assessments. Law 12/2009 on the regulation of asylum and subsidiary protection also enables children seeking international protection to be exempt from immigration detention. For those children who travel with guardians or family members, and an exception exists to allow parents who are detained to request that their children be allowed to remain with them in the place of detention.

Recommendation: The Government of Spain is commended for its law prohibiting the detention of unaccompanied children. Further, the government is encouraged to implement the law in alignment with the child's right to family unity, and with respect for international standards and obligations.

Processing 10/26

In policy, Spain has established a number of the key regulations for processing migrant children in the community including best interest determinations, documentation, guardianship, and legal advice. However, there are significant concerns regarding the gap between policy and implementation. Additionally, outdated age assessment techniques are concerning, as well as the absence of systematic case management for children.

Recommendation: The Government of Spain is commended for establishing policy to support the processing of migrant children in the community. Further, the government is strongly encouraged to improve the precise implementation of these policies, to update age assessment techniques in line with international guidelines, to introduce case management support, and to ensure legal and translation services are fully available.

Placement 9/12

Spain has a variety of placement options that enable children, whether unaccompanied or with their families, to live in the community while awaiting case resolution.

Recommendation: The Government of Spain is commended for their commitment to uphold the rights of children through the use of community placement options. Further, the government is strongly encouraged to provide greater investment in the size and capacity of its reception and support system.

Rights 11/20

All people in Spain have the right to housing under law, however some migrant populations are not accessing this right - particularly children living on the street, and who have not been identified. Additionally, social assistance is the responsibility of each Autonomous Community government. Social assistance is provided for under state regulation, but as seen with housing, there are obstacles to accessing this support in practice. For instance, children without proper documentation cannot access education. This lack of documentation also inhibits access to health care, and the right to work.

Recommendation: The Government of Spain is commended for its progress towards upholding the rights of migrant children. The government is encouraged to extend its commitment to these rights, particularly education and health care, to enable parents to seek employment, and to establish firewall legislation to ensure social welfare services are not impeded by migration control activities.

Oversight 7/12

All detention decisions are made by a judicial authority, and regular monitoring of places of detention is undertaken by independent bodies. Detention statistics are available on an annual basis but not disaggregated by population.

Recommendation: The Government of Spain is encouraged to improve its score by providing disaggregated data about immigration detention populations on a monthly basis.

Points off -8/-15

There are no official statistics indicating the number of children held in immigration detention; however, an NGO has reported that 51 minors were detained in 2016. The average length of detention of all detainees is estimated to be 30 days. Family unity and liberty is a fundamental child right.

Recommendation: The Government of Spain is encouraged to improve its reporting in order to ensure that the law prohibiting child detention is being implemented.

Bonus points +8/+15

Spain has a strong foundational law prohibiting child detention, but this commitment has not been extended to parents, which would bring it in alignment with international standards and legal obligations. The government could strengthen its political commitment with clearer leadership on this issue in regional and international forums.

Recommendation: The Government of Spain is encouraged to implement international standards and legal obligations, and assure the right of children to family unity outside of a detention facility.



This scorecard has been assessed by the Spain NextGen Index Committee:

- Save the Children
- Pueblos Unidos

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:
media@endchilddetention.org

Additional Resources & Information

Treaties & National Laws

- European Union Agency for Fundamental Rights: [European Legal and Policy Framework on Immigration Detention of Children, 2017](#)
- [Spain Immigration Act, 2009](#)
 - Detention of Children and Parents: Article 7.3, 62
- [Spanish Constitution](#)
 - International and National Law: Article 96

Directives & Services

- [Spain Law on Free Legal Aid, 1996](#)
 - Support for Foreigners: Article 2
- [Spain Law Regulating Asylum Rights and Subsidiary Protections, 2009](#)
 - Child Applicants for International Protection

Community Integration & Support

- [Spain Law on Childhood and Adolescent Protection, 2015](#)
 - Best Interest Determinations
- [Spain Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration, 2000](#)
 - Child Detention: Article 62

Infrastructure & Oversight

- Jesuit Migrant Service: [Immigration Detention Centre \(CIE\) Report, 2016](#)