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LANZAROTE CONVENTION

Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

Replies to the general overview questionnaire

SPAIN

Replies registered by the Secretariat on 25 March 2014

Revised replies registered by the Secretariat on 23 November 2015

GENERAL FRAMEWORK

Question 1: Definition of “child”

- a. Does the notion of “child” under your internal law correspond to that set out in **Article 3, letter (a)**, i.e. “any person under the age of 18 years”?

Article 315 of the Civil Code in line with article 12 of the Constitution¹ provides that legal age begins upon turning 18. Similarly, the Organic Act 1/1996 on the Legal Protection of Minors applies to all children (defined as persons below 18 years of age) living on Spanish territory.

- b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with **Article 11, para. 2**?

Article 26 of the Statute of Crime Victim Act provides that presumption of minority will apply in the event of uncertainty about the age of the victim.

Furthermore, article 12 of the Organic Act 1/1996 on the Legal Protection of Minors, amended by Act 26/2015, sets out the presumption of minority in these terms:

“In case of uncertainty about the legal age of a person, they will be considered a minor for the purpose of the Act whilst determining their age. To that end, the Public Prosecutor will hand down a proportionality judgement to adequately weigh up the reasons why the passport or the equivalent identity document presented, where appropriate, is not reliable. Medical tests conducted to determine the age of minors will be subjected to the principle of urgency and will require prior informed consent of the affected individual; they will respect their dignity and will not endanger their health; they cannot be applied indiscriminately, especially if they are invasive”.

As regards foreigners, article 35.3 of Organic Act 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration states that: “In the event that the State Security Forces locate an undocumented foreigner for whom it cannot be firmly established that they are a minor, they will give them, by way of social services trained in the protection of minors, the immediate attention they need, in accordance with the established legislation on the legal protection of minors. They will immediately alert the Public Prosecutor’s Office, who will provide age assessment, for which appropriate health institutions will conduct any necessary tests with priority.”

Royal Decree 557/2011, which established a new regulation implementing Organic Act 4/2000, sets forth the obligation to put under the guardianship of the protection services unaccompanied foreigners located by the State Security Forces for whom it cannot be determined with certainty if they are a minor. The Public Prosecutor’s Office will be alerted about the incident too.

The December 2010 enactment of the Criminal Code reform, approved by Organic Act 5/2010 of June 22nd, refers to the detection of a foreign person who is carrying a passport or other identity document that declares she/he is underage, but in which the authenticity or ownership of the document is uncertain. The administrative measures provided for in article 35 of Organic Act 4/2000 cannot be applied in these cases because there is evidence that the person concerned has committed a criminal offence. Consequently, it is the judicial authority, within the framework of the criminal procedure, who orders the necessary exams to determine whether or not the alleged perpetrator is a minor or if they have committed a crime.

¹ “Spaniards come legally of age at eighteen years”.

- c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

July 2015 enactment of the Criminal Code reform, approved by Organic Act 1/2015, has risen the age of sexual consent to sixteen. Article 183 of the Criminal Code reads now as follows:

“Whoever engages in acts of sexual nature with a child under the age of sixteen years shall be convicted of sexual abuse of the child, with a sentence of imprisonment from two to six years”.

Question 2: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in **Article 2**, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify. If not, please justify.

The Spanish Constitution enshrines the principle of non-discrimination in section 14 and this same principle is re-stated in several other laws. In particular, the Organic Act 1/1996 on the Legal Protection of Minors, which in article 3 establishes that each child has the right not to be subject to any discrimination by reason of origin, nationality, race, sex, religion, language or culture, opinion or any other personal, family or social circumstances.

Article 2 of the above Act includes a number of general criteria to interpret and apply as appropriate the best interest of the child, one of them being the principle of non-discrimination by reason of identity, culture, religion, convictions, sexual orientation, sexual identity, language or any other grounds, including disability.

Question 3: Overview of the implementation

Please indicate (without entering into details):

- a. the main legislative or other measures to ensure that children are protected against sexual exploitation and sexual abuse in accordance with the Convention;

1. Legal framework

The reform of the Criminal Code, the adoption of the Statute of Crime Victim Act and the reform of legislation on child and adolescent protection are the three pillars of the reform implemented in 2015.

The reform of the Criminal Code raises the age of sexual consent to sixteen and improves criminal treatment of offences against sexual exploitation. Moreover, the conduct of causing a child under the age of sixteen to witness acts of sexual nature or sexual abuses on third persons is defined as a new separate offence. Special attention is drawn to the punishment of acts related to child pornography too.

The Statute of Crime Victim Act has been designed to achieve a double aim: to be a general list of procedural and extra-procedural rights for all victims of crime in line with European regulations, and to provide a global response to victims of crime from a legal and social perspective. It is intended to redress the damage within the framework of the process and to avoid or mitigate the traumatic effects caused and those that may arise during the course of criminal proceedings.

It is based on a comprehensive and uniform concept of victim beyond the procedural perspective: any form of offence is considered and victim's family is also included. As regards children, the best interest of the child is a guiding principle of the criminal proceedings.

Finally, the Ministry of Justice and the Ministry of Health, Social Services and Equality has updated legislation on child and adolescent protection with two laws: Organic Act 8/2015 and Act 26/2015. The Spanish Civil Code, the Civil Procedural Act and Organic Act 1/1996 on the Legal Protection of Minors have been amended at the same time.

The most important aspect of Organic Act 8/2015 is the development of the concept “best interest of the child” (general principle, substantive law and procedural rule) and the right to be heard in compliance with the Lanzarote Convention. As for Act 26/2015, it reinforces the protection of children from any form of violence and creates the national register of sexual offenders.

2. Action plans

The Council of Ministers adopted the National Strategic Plan for Childhood and Adolescence 2013-2016 in April 2013. It includes some measures to prevent child sexual abuse and exploitation:

- Developing research lines for the investigation of child sexual abuse and any form of violence against children in the circle of trust.
- Using data on child mistreatment and its different types obtained from RUMI (unified register of child abuse).
- Establishing homogenous criteria to determine situations of risk through common intervention protocols for minors and families.

3. Other measures to prevent and combat sexual exploitation of children

The General Directorate of Services for Family and Children (Ministry of Health, Social Services and Equality) has provided on-line courses for social workers for the last two years. Their objective is to improve detection and assistance to victims of child trafficking for the purpose of sexual exploitation in the protection services of the Autonomous Regions.

Moreover, the Ministry of Health, Social Services and Equality funds care programmes developed by NGOs. The funding of programmes aimed at the prevention and care of sexual abuse of children amounted to 1,093,017.38 € in 2013. The Ministry also cooperates with the European Union project “Development of common guidelines and procedures on identification of victims of trafficking”: ISEC “Euro Traf Guid”.

ECPAT (FAPMI) and Save the Children have carried out many awareness-raising campaigns to prevent sexual exploitation. Save the Children has recently published a report entitled “Sexual violence against boys and girls. Abuse and sexual exploitation of children”, a guide for professionals involved in the protection, assistance and care of child victims.

ECPAT (FAPMI) is responsible for the development of the “One in five” campaign in Spain with the financial support of the Ministry of Health, Social Services and Equality.

On another point, Spanish State Secretary for Security (Ministry for Home Affairs) takes part, through the law enforcement authorities, in several institutional (Spanish Observatory on Children) and/or private initiatives against sexual exploitation of children, such as an agreement between the General Directorate of Guardia Civil and “Protégeles” organisation on the fight against sexual exploitation in communication technologies

- b. whether your country has adopted a national strategy and/or Action Plan to combat sexual exploitation and sexual abuse of children. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

The Third Plan of Action against the Sexual Exploitation of Children and Adolescents (2010-2013) was approved by the Spanish Observatory on Children in December 2010. The Ministry of Health, Social Services and Equality has coordinated its implementation and the Observatory is currently assessing it.

<http://www.observatoriodelainfancia.msssi.gob.es/productos/pdf/IIIPlanContraExplotacion.pdf>

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This Plan remains faithful to the objectives of previous Plans: the prevention and care of sexual abuse and the restoration of victims' rights. It was based on the Recommendations and Observations of the United Nations' Committee on the Rights of the Child and the conclusions of the three World Congresses against the Sexual Exploitation of Children.

The most important aspects of the Plan are the following:

- Public awareness campaigns through educational programmes aimed at parents.
- Inclusion of education on sexual exploitation of children in the curricula of university degrees and training cycles.
- Promotion of treatment programmes for adolescent sexual abusers.
- Dissemination of helplines and web sites for children and adolescents.
- Control over leisure offers and advertising showing sexual exploitation of children.

In addition, the Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation, agreed by the Council of Ministers on 12 December 2008, incorporated recommendations and concrete actions for child victims. The Social Forum against Trafficking and the Working Group on Childhood monitored the Plan that is being assessed at present. The adoption of the Framework Protocol for the Protection of Victims of Trafficking in October 2011 was an important step.

Finally, the Ministry for Home Affairs created a Police Anti-trafficking Brigade in 2013 and launched an awareness-raising campaign, which provides a free telephone number and e-mail to report or provide relevant information. It also gives many guidelines to children and parents under hashtag #crecerseguros (grow up safe) that protects them against internet offences.

- c. whether your country has any guidelines to ensure a child-friendly implementation of the laws, measures and strategies referred to in letters (a) and (b) above. If so, please specify. With regard to judicial proceedings, please specify whether the Council of Europe Guidelines on Child-friendly Justice were taken as inspiration for your guidelines.

The Ministry of Justice has started setting up child-friendly courtrooms in Murcia within the framework of Council of Europe Guidelines on Child-Friendly Justice. The experiences of NGO such as "ADIMA" and "Márgenes y Vínculos" have also been taken as inspiration.

Moreover, Spain ratified in June 2013 the Optional Protocol to the Convention on the Rights of the Child. Every child shall be able to file a complaint against any violation of his/her rights and the case shall be examined by a Committee of Experts once it comes into force (as from 14 April 2014).

As regards helplines for children, "ANAR" Foundation has been managing a 24-hour free domestic helpline since 1994 with the support of the Ministry of Health, Social Services and Equality. The Foundation manages now the Harmonized European Number 116111, which received 1.871 calls in 2013.

With respect to the dissemination of children's rights, a large number of awareness-raising campaigns about the Convention on the Rights of the Child are launched in the media, internet and social networks. They target the general population and children at schools, hospitals and health centres. Additionally, the Universal Children's Day is celebrated with many events promoted by public administrations and NGO.

Lastly, the Second National Strategic Plan for Childhood and Adolescence has a child-friendly version called "The adventure of PENIA". This is the link:

<http://plataformadeinfancia.org/publicaciones/documento/penia-plan-estrategico-nacional-de-infancia-adolescencia-version-amigable>

<http://plataformadeinfancia.org/publicaciones/documento/reinventando-penia>

<http://plataformadeinfancia.org/node/3678>

Here are some links to web pages of law enforcement authorities related to children's rights and sexual abuse:

<http://www.pjuegosolicia.es//index.php>

<http://www.guardiacivil.es/es/servicios/violenciadegeneroyabusoamenores/abusosexualmenores/index.html>

Question 4: Child participation

- a. Please indicate what steps have been taken to encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children (**Article 9, para. 1**);
- b. In particular, please indicate whether, and if so, how child victim's views, needs and concerns have been taken into account in determining the legislative or other measures to assist victims (**Article 14, para. 1**).

Save the Children conducted a survey to children during the process of evaluation and follow-up of the Third Plan of Action against the Sexual Exploitation of Children and Adolescents. Most important conclusions were as follows:

- 50% neither knew nor understood concepts such as "human rights, children's rights, dignity, freedom, forced labour".
- 70% had heard little or nothing about sexual abuse and sexual exploitation of children.
- They thought that there was a need to inform about sexual abuse and its prevention through the media and conferences at high schools.
- They felt that society should know about available care resources and filing of complaints.
- They thought that the victim's opinion should be taken into account throughout the whole process.

On another point, "Vicky Bernadet" Foundation has shown considerable commitment to combat sexual abuse. The information below is a summary of the Foundation activities developed with the financial support of the Ministry of Health, Social Services and Equality.

1. Project: What happens to my mate?

This is a prevention/protection programme on sexual abuse of children, aimed at adolescents that are excluded or at risk of social exclusion, or in protection centres.

2. Documentary film: "What happens to my mate?"

Awareness-raising material prepared by young participants in the prevention workshop by the same title.

3. Workshops at High Schools: "BY TALKING WE CAN PREVENT SEXUAL ABUSE OF CHILDREN"

Group activity addressed to adolescents so that they lose the fear of talking about risk situations and know what to do against sexual abuse.

4. "Poisonous words"

A novel about sexual abuse is read and analysed with the author and a psychologist of the Foundation.

5. Story-telling

"Air curtains" is a tale for children aged 5 to 10 about children's rights and self-protection against situations of risk.

The following table shows 2010-2012 data on the implementation of the aforementioned activities regarding children and adolescents:

ACTIVITIES	2010	2011	2012
Project: What happens to my mate?	66 adolescents	126 adolescents	47 adolescents (first quarter)
Documentary film: "What happens to my mate?"		100 copies distributed	
Workshops "By talking..."		275 students	125 students (first quarter)
"Poisonous words"		180 students	23 students (first quarter)
Story-telling		294	42

Question 5: Specialised bodies/mechanisms

- a. Please indicate the independent institution(s) (national or local) in charge of promoting and protecting the rights of the child. Please specify its/their responsibilities and indicate how resources are secured for it/them (**Article 10, para. 2, letter (a)**);

The following authorities have powers in the area of promotion and protection of children's rights:

- Ministry of Health, Social Services and Equality, through the General Directorate of Services for Family and Children.
- Autonomous Regions.
- Local entities.
- Public Prosecution Service.

Furthermore, article 10.2 of the Organic Act 1/1996 on the Legal Protection of Minors, amended by Act 8/2015, stipulates that the minor can lodge a complaint with the Ombudsman so as to defend and guarantee his rights. A Deputy Ombudsman is in charge of children matters exclusively. His aim is to give them access to adequate mechanisms to meet their needs and to ensure the confidentiality as well.

Some Autonomous Regions have created similar institutions for the defence of citizens' rights that also follow up the observance of children's rights. Andalusia stands up for the creation of the Children's Ombudsman.

- b. Which legislative or other measures have been taken to set up or designate mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection? (**Article 10, para. 2, letter (b)**);

The working group on child abuse of the Spanish Observatory on Children published in 2001 a manual entitled "Child abuse. Detection, notification and recording of cases", which has served as a basis for the detection and action protocols of the Autonomous Regions. The manual included a tool, the notification sheet, to elaborate statistics on child abuse.

The Ministry of Health, Social Services and Equality in cooperation with the Autonomous Regions started setting up an on-line database for the notification of child abuse cases (RUMI) in June 2008. All protection services have access to it at present.

RUMI (unified register of child abuse) provides global data related to the following factors: age, sex, type of abuse, origin of notification, nationality of the victim and degree of abuse. 2012 data are the following:

NOTIFICATIONS BY SEX AND TYPE OF ABUSE

TYPE OF ABUSE	Female	Male	Total
SEXUAL ABUSE	340	148	488
EMOTIONAL	1.424	1.564	2.988
PHYSICAL	1.060	989	2.049
NEGLECT	3.124	3.898	7.022
	5.948	6.599	12.547

The successive Plans of Action against the Sexual Exploitation of Children and Adolescents have always devoted a specific section to statistical information based on information from the Ministry for Home Affairs.

The following table provides data on the number of complaints about offences against sexual freedom on minors:

	2008	2009	2010	2011	2012
Female	3.011	2.781	2.673	2.566	2.582
Male	801	678	648	607	608
Total	3.812	3.459	3.322	3.177	3.190

On another point, the Ministry of Justice, in collaboration with the Ministry of Health, Social Services and Equality and the civil society, has addressed the collection of best practices in two aspects: the fight against child violence and the fight against child sexual abuse.

- c. Which legislative or other measures have been taken to organise the collection and storage of data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention? What is the national authority in charge of the collection and storage of such data? (**Article 37, para. 1**).

A comprehensive legal structure regulating the database for identifiers obtained from DNA was established by Organic Act 10/2007 within the framework of the Organic Act 15/1999 on the Protection of Personal Data. However, law enforcement authorities already managed DNA databases prior to the above-mentioned law coming into force for the purposes of criminal investigations and comparison of samples relating to missing persons. These databases, together with the database created by the National Institute of Toxicology and Forensic Science, feed into the national police database created in October 2007, which comes under the State Secretary for Security of the Ministry for Home Affairs.

Question 6: National or local coordination, cooperation and partnerships

- a. Please describe how coordination on a national or local level is ensured between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children. In particular, please provide information on existing or planned coordination between the education sector, the health sector, the social services and the law enforcement and judicial authorities (**Article 10, para. 1**);

The Ministry of Health, Social Services and Equality coordinates three interregional forums and the Spanish Observatory on Children brings together representatives of national, regional and local public administrations and civil society as well.

The Working Groups are a key tool for the functioning of the Observatory. The group on child abuse is very active, as explained above. There are two more working groups coordinated by other Ministries: the group on internet and children (Ministry of Industry, Energy and Tourism) and the group on child legislation, composed by representatives of the Ministry of Justice and the Ministry of Health, Social Services and Equality.

- b. Is cooperation with a view to better preventing and combating sexual exploitation and sexual abuse of children encouraged between the competent state authorities, civil societies and the private sector (**Article 10, para. 3**)? If so, please specify how;

See answer above.

- c. Are partnerships or other forms of cooperation between the competent authorities promoted with particular regard to the recipients of intervention programmes and measures for persons subject to criminal proceedings or convicted of any of the offences established in accordance with the Lanzarote Convention (**Article 15, para. 2 and Article 16**)?

Question 7: International cooperation

Has your country integrated prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states (**Article 38, para. 4**)? Please give examples.

The Spanish Agency for International Development Cooperation (AECID) is the main management body for Spanish cooperation that combats poverty and works for sustainable human development. Its Charter states that the agency was created to foster full development, conceived as a fundamental human right, with the fight against poverty as part of the process for building this right. To this end, the Agency follows the guidelines of the 4th Master Plan, in accordance with the international agenda of the Millennium Development Goals and with a focus on three crosscutting axes: gender perspective, environmental quality and respect for cultural diversity. The Plan and the Strategy for Children that is being elaborated address the issue of the prevention and the fight against sexual exploitation and sexual abuse of children.

On another point, the Ministry of Justice and the Ministry for Home Affairs in collaboration with the Agency organised a workshop in Guatemala in 2014, where experts from 14 countries signed the Decalogue of action guidelines against sexual exploitation of children.

Question 8: Education, awareness raising and training

a. Which legislative or other measures have been taken to:

- Ensure that children, during primary and secondary education receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacities? (**Article 6, Explanatory Report, paras. 59-62**). Please also specify whether this information includes the risks of the use of new information and communication technologies (**Article 6, Explanatory Report, para. 63**);

The Master Plan for the Improvement of Coexistence and Safety at schools and their environments was launched in 2006 by the Ministry for Home Affairs and the Ministry of Education, Culture and Sport. It was meant to respond, in a coordinated and effective way, to issues related to the safety of children and youngsters at school and its environment, strengthening police cooperation with educational authorities and reinforcing the knowledge and reliance in the police.

The Master Plan for the school year 2013-2014 remains faithful to the original aim and promotes preventive measures against internet dangers. This Master Plan also incorporates dissemination of the contents of the Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography. A new website has been launched in 2015 to improve coexistence at schools: <http://www.mecd.gob.es/r/convivencia-escolar>.

Moreover, the Ministry of Health, Social Services and Equality has signed a collaboration agreement with the Spanish Data Protection Agency to train children on privacy and data protection on the internet. It has also launched a training programme on ICT safety addressed to parents, tutors and teachers.

On another point, some secondary schools have created students teams that act as mediators and guides to fight against “bullying”. Besides, some NGO such as “Márgenes y Vínculos” and “ADIMA” develop prevention programmes through networking activities that involve children, parents and professionals in regular contact with children.

- Encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities? (**Article 5, para. 1**);

See answer above.

- ensure that persons, referred to while replying to the bullet point above, have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility of reporting suspicions of a child being the victim of such acts? (**Article 5, para. 2**).

Law enforcement authorities receive specialised training at different levels according to their duties:

1. The first level refers to officers’ training programmes that address legal and procedural aspects and action criteria as well. Online courses are also provided to improve knowledge.
2. The second level regards Judicial Police candidates that receive further training in legal, procedural, scientific and operational matters. To work as judicial officers, they

have to complete their training at the Centre for Judicial Studies of the Ministry of Justice.

3. The third level is intended for experts in assisting women and child victims. The training is developed by the Judicial Police and is intended to acquire an in-depth knowledge of legislation and action protocols. Experts of public administrations and NGO take part in this level.
 4. The last level aims to keeping experts updated on legal and procedural matters.
- b. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of sexual exploitation and sexual abuse of children? Please describe the material used for the campaign/programme and its dissemination. If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details (**Article 8, para. 1**);

1. The campaign “Don’t Look Away!”

It is developed by ECPAT Spain and the Sustainable Development Foundation (FUNDESOS), in collaboration with SESI (Brazilian Industrial Social Services), the Government of Brazil and the European Union. It aims to minimize the risk of increasing the commercial sexual exploitation of children and adolescents in 2014 FIFA World Cup. ECPAT France coordinates this campaign that is being implemented in 16 countries.

Resources and materials

Web platforms:

Campaign’s Official Web: <http://mundialdefutbol2014.fundesos.org>

Information Section on the Campaign in ECPAT Spain web: <http://www.ecpat-spain.org/programas.asp?sec=11>

Audiovisual materials:

Spot TV: <http://mundialdefutbol2014.fundesos.org/videos>

Printing materials:

Information panels: <http://mundialdefutbol2014.fundesos.org/carteles>

Comic: <http://mundialdefutbol2014.fundesos.org/comic>

2. Prevention of sexual violence against children and adolescents in Spain: The Council of Europe campaign to stop sexual violence against children and ECPAT framework of action against the child commercial sexual exploitation in Spain.

The development of the “One in five” campaign hinges on two themes:

- Replacing the concept of “sexual abuse” by “sexual violence” against children, more comprehensive and real.
- Changing attitude towards prevention, which has next objectives: promotion of detection and notification; promotion of primary and secondary prevention; establishment of a context of no-tolerance violence against children, especially sexual violence; support of policy-makers.

FAPMI-ECPAT Spain has developed the following programmes, inter alia:

- “Justice and Childhood” programme, in collaboration with the Ministry of Justice, to elaborate and promote recommendations and good practices on minor’s assistance within the judicial field. Actually, it is a forum to bring together all the relevant stakeholders.

- Training programme to prevent and intervene in child abuse.
- Biannual Congress of Abused Children “My well-being is your responsibility”.
- Prevention of Child Commercial Sexual Exploitation Programme (ESCNNA) that includes the promotion of The Code.

This is the access to the 2012 report:

http://www.fapmi.es/imagenes/subsecciones1/1DE5_2012_MEM%20FINAL_RES%20EJEC_00_Maq.pdf

Moreover, FAPMI-ECPAT Spain has elaborated the first study on good practices and experiences for the prevention and care of sexual violence against children. It collects 143 good practices at state, regional and local level, promoted by public administrations and/or the civil society.

- c. Which legislative or other measures have been taken to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention? If so, please provide details (**Article 8, para. 2, Explanatory Report, para. 66**).

Article 189 of the Criminal Code, amended by Organic Act 1/2015, prohibits the dissemination of pornographic materials in these terms:

“A sentence of imprisonment from one to five years shall be handed down to:

[...]

b) Whoever produces, sells, distributes offers or facilitates the production, sale, diffusion or display by any means child pornography or pornography involving incapacitated persons in need of special protection, or possesses such material for such purposes, even though the material is of foreign or unknown origin.

[...]

8. Judges and Courts will order any provisions to withdraw websites or internet applications containing or disseminating child pornography or pornography involving incapacitated persons in need of special protection or, where appropriate, to block access by internet users in the Spanish territory.

These measures may be agreed on a precautionary basis on request from the Public Prosecutor.”

Question 9: Recruitment and screening

- a. Which legislative or other measures have been taken to ensure that the conditions for accessing those professions, whose exercise implies regular contact with children, ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children? (**Article 5, para. 3**). Please specify to which professions such measures apply. Please also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country;

Article 13 of the Organic Act 1/1996 on the Legal Protection of Minors, amended by Act 26/2015, regulates citizens’ obligations, being one of them the following:

“Candidates to access and practice of any profession, office and activity that implies regular contact with children, are required to prove that they have not been convicted by final judgement of an offence against sexual freedom and indemnity, including sexual assault, sexual abuse, sexual harassment, exhibitionism a sexual provocation, prostitution, sexual exploitation and corruption of children, and trafficking. To this end, they must provide a

negative certificate by the national register of sexual offenders.” The register will include the offenders’ identity and information about their DNA genetic profile.

- b. Does the screening of candidates apply to voluntary activities (**Explanatory Report, para. 57**)?

Article 8 of Law 45/2015 on Volunteering stipulates that candidates to voluntary work, whose exercise implies regular contact with children, are required to prove that they have not been convicted by final judgement of an offence against sexual freedom and indemnity, trafficking and sexual exploitation of children. To this end, they must provide a negative certificate by criminal record.

Question 10: Preventive intervention programmes or measures

- a. Which legislative or other measures have been taken to ensure that persons who fear that they may commit any of the offences established in accordance with the Convention, have access to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? Please specify under which conditions, if required (**Article 7, Explanatory Report, para. 64**);

There is a programme that should be emphasised: the therapeutic and social intervention programme aimed at minors who perpetrate acts of physical, psychological and/or sexual violence, developed by “Márgenes y Vínculos” Foundation with the financial support of the Ministry of Health, Social Services and Equality. It is intended to help minors to overcome psychological and/or family difficulties. It is implemented in the Autonomous Regions of Andalusia and Extremadura.

Another example of good practice financed by the Ministry of Health, Social Services and Equality is the Intervention Centre in Sexual Abuse on Children (CIASI). CIASI is a specialized care centre for underage victims of sexual abuse living in the Autonomous Region of Madrid, their families and underage sexual offenders. Intervention has a multidisciplinary approach and is coordinated with health, social, police, legal and educational services.

- b. Which legislative or other measures have been taken to ensure that persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention, may have access to effective intervention programmes or measures? Please specify under which conditions, if required (**Articles 15 to 17**). Please indicate in particular:
- who has access to these programmes and measures (convicts, persons subject to criminal proceedings, recidivists, young offenders, persons who have not committed a crime yet?);
 - how the appropriate programme or measure is determined for each person;
 - whether there are specific programmes for young offenders;
 - whether persons have a right to refuse the proposed programme/measures?

The main programmes to be highlighted are the following:

- Programme for sexual offenders (convicts or on remand) developed by the Directorate General of Prisons of the Ministry for Home Affairs. Intervention follows a protocol with different levels: an expert team interviews the offender on entry, determines the appropriate programme and follows it up. Programmes are voluntary, though the refusal to participate has a negative impact.
- Educational and therapeutic programme for juvenile sexual offenders of the Agency of the Autonomous Region of Madrid for the re-education and reinsertion of offending minors. It provides individual intervention and special care for minors under the age of 18 who have been reported or convicted of sexual assault.

Question 11: Participation of the private sector, the media and civil society

What steps have been taken to encourage:

- a. the private sector (in particular the information and communication technology sector, the tourism and travel industry, the banking and finance sectors) to participate in the elaboration and implementation of policies, programmes or other initiatives to prevent sexual exploitation and sexual abuse of children? Please indicate which private sectors are concerned and explain how participation takes place. Please also provide information concerning any relevant code of conduct or enterprise charter aimed at protecting children from sexual exploitation and sexual abuse (**Article 9, para. 2, Explanatory Report, paras. 68-73**);

General State Administration and NGO have set up working groups aimed at preventing, detecting and reporting internet offences. Here are some links:

http://www.inteco.es/pressRoom/Prensa/Actualidad_INTECO/SID_2014

http://menores.osi.es/sites/default/files/Guia_lucha_ciberacoso_menores_osi.pdf

<http://www.protegeles.com/>

Furthermore, 12 companies and organisations of the tourism industry have already signed the Code of Conduct against the commercial sexual exploitation of minors.

- b. the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children (**Article 9, para. 3, Explanatory Report, para. 74**);

The “Vicky Bernadet” Foundation has appeared in 30 mass media per year on average with a viewer share around 733.000 people. The communication strategy has proved to be fundamental: 44% of the demands have heard about the Foundation through the media. The number of appearances over the last three years is the following:

- 2010: 20 appearances
- 2011: 23 appearances
- 2012: 4 appearances

- c. the financing, including, where appropriate by the creation of funds, of the projects and programmes carried out by civil society aimed at preventing and protecting children from sexual exploitation and sexual abuse (**Article 9, para. 4, Explanatory Report, para. 75**). May the proceeds of crime be used to finance the above mentioned projects and programmes? Please provide details (**Article 27, para. 5, Explanatory Report, para. 193**).

See answer to Q3.

Question 12: Effectiveness of preventive measures and programmes

- a. Please specify whether an assessment of the effectiveness and impact of the preventive measures and programmes described in replies to questions 4, 10 and 11 is regularly carried out;
- b. Please provide examples of the good practices in preventing sexual exploitation and sexual abuse of children.

See answer to Q4.

**PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN VICTIMS
OF SEXUAL EXPLOITATION AND SEXUAL ABUSE**

Question 13: Reporting suspicion of sexual exploitation or sexual abuse

- a. Are professionals working in contact with children bound by confidentiality rules? Do these rules constitute an obstacle for reporting to the services responsible for child protection any situation where they have reasonable ground for believing that a child is a victim of sexual exploitation or sexual abuse? Please indicate the criteria or guidelines which allow for the waiving of confidentiality rules (**Article 12, para. 1, Explanatory report, para. 89**);

The Criminal Procedure Act provides for the obligation to report the facts to the Judge and Public Prosecutor when witnessing the perpetration of an offence. The offender's relatives are exempted from this rule. As for the professionals who know about the case by means of their profession or duty, the same rule applies except for lawyers and legal representatives.

In addition, article 13 of the Organic Act 1/1996 on the Legal Protection of Minors, amended by Act 26/2015, reads as follows:

1. "Any person or authority and especially those who detect a situation of mistreatment, a risk or a suspected situation of abandonment of the minor by means of their profession or duty, shall report it to the nearest officers or authority without prejudice to bring immediate assistance to the child as required.
{...}
 3. The authorities and persons who know about the case by means of their profession or duty shall act with due confidentiality.
Unnecessary interferences in the minor's life shall be avoided.
 4. Any person who hears about a fact that could constitute an offence against sexual freedom and indemnity, trafficking and child exploitation, through any source of information, is required to report it to the Public Prosecutor without prejudice to procedural criminal law.
{...}"
- b. Are there any rules encouraging any person who knows about or suspects, in good faith, sexual exploitation and sexual abuse of children to report the facts to the competent authorities? If so, please specify under which conditions and to which authorities (**Article 12, para. 2, Explanatory Report, para. 91**). Please provide examples of good practice.

See answer above.

Question 14: Helplines

Which legislative or other measures have been taken to encourage and support the setting up of information services, such as telephone or internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity? (**Article 13, Explanatory Report, para. 92**).

See answer to Q3.

Question 15: Assistance to victims

- a. Please indicate which types of assistance described in **Article 14** are provided to victims of sexual exploitation and sexual abuse of children. (**Explanatory Report paras. 93-100**) Please specify:
- how the assistance is adapted to the victims' age and maturity;

- how due account is taken of the child's views, needs and concerns;
- if the assistance (in particular emergency psychological care) is also provided to the victims' close relatives and persons responsible for their care.

Vicky Bernadet Foundation has an extensive experience in the field of assistance to child victims of sexual abuse in Catalonia.

<http://www.fbernadet.org/es/es>

The objectives of the Foundation are the prevention of sexual abuse on children, the detection of cases of sexual abuse in the circle of trust and the assistance to child victims. The following is a summary of the activities carried out by the Foundation.

1. Caixa Proinfancia

It is a care centre for minors and their relatives (mainly mothers), which provides social, psychological and legal assistance.

2010-2011: 11 children and their families received therapy 2011-2012: 15 children and their families received therapy
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2. Assistance to child victims of sexual abuse under social services

There has been a significant increase in assistance to child victims. Some of them started to receive therapy in 2010 and have not finished yet.

2010: 43 children under psychological therapy for child sexual abuse 2011: 65 children under therapy 2012: 40 children under therapy
--

3. Treatment programmes for adolescent abusers and exchange of good practices

7 children who had committed child sexual abuse have received therapy since 2010.

2010: 2 abusers under therapy 2011: 2 abusers under therapy 2012: 3 abusers under therapy

4. Assistance to victims of child trafficking and sexual exploitation

Professionals adopt an interdisciplinary approach to provide assistance and professional advice.

2010: 199 victims of sexual abuse in their childhood were provided psychological care, 43 of whom initiated therapy when they were children. 54 persons asked for legal advice. 2011: psychological care: 249 persons (65 children); legal advice: 41 persons. 2012: psychological care: 128 persons (still on therapy), 40 are children. Legal advice: 9 persons.
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b. Please specify if and to what extent internal law provides for the possibility of removing (**Article 14, para. 3, Explanatory Report, para. 99**):

- the alleged perpetrator, when the parent or persons caring for the child are involved in his or her sexual exploitation or sexual abuse;
- the victim from his or her family environment when parents or persons caring for the child are involved in his or her sexual exploitation or sexual abuse.

Article 189 of the Criminal Code, amended by Organic Act 1/2015, reads as follows:

{...}

7. "The Public Prosecutor shall promote the pertinent actions in order to deprive whoever commits any conduct described in the preceding Section (sexual exploitation of children and child pornography) of his parental rights, guardianship, safekeeping or family foster care, as appropriate."

Besides, article 192 of the Criminal Code, amended by Organic Act 1/2015, states:

{...}

2. "The ascendants, tutors, carers, minders, teachers or any other person in charge de facto or de jure of the minor or incapacitated person, who acted as principals or accomplices of commit the offences included in this Title, shall be punished with the relevant punishment, in its upper half.
This rule shall not be applied when the circumstance it contains is specifically included in the definition of the offence concerned.
3. The Judge or Court of Law may also hand down a reasoned punishment of special barring from the exercise of parental rights, guardianship, care, safekeeping, public employment and office or practice of the profession or trade for the term of six months to six years, or permanent deprivation of parental rights. Those convicted of the offences of sexual abuse and assault on children under the age of sixteen years or prostitution, sexual exploitation and corruption of minors shall be punished with special barring from any paid or unpaid profession or trade involving direct contact with minors" {...} (the term depends on whether or not they have been previously imposed a punishment of imprisonment)

The Civil Code also protects children's physical and psychological integrity in the family context and establishes that parental authority shall be exercised always for the benefit of the children, according to their personality, and respecting their physical and psychological integrity.

Besides, it empowers the Judge to order any provisions to remove the minor from danger or to prevent any damages to him, including temporary deprivation of parental rights or suspension of parental access.

In addition, when a Judge has knowledge of a felony committed against a child, he can adopt the protective measures regulated in the Criminal Procedure Act, i.e. removing the offender, prohibiting communication with the child and preventive detention if there are serious grounds to believe that the offender would strike at child's life or physical integrity.

Finally, the Prosecution Service Organic Statute assigns to the Prosecution Service different duties, which include, inter alia, the following:

- To bring proceedings, urging the judicial authority to adopt any interim measures deemed appropriate and to conduct enquiries to clarify the facts.
- To participate in civil proceedings as provided by law when the public interest is compromised or when minors or disabled persons are involved.
- To fulfil its duties respecting the criminal liability of minors as laid down in specific legislation, aiming at all times to secure the best interests of the child.

c. If internal law does provide for this:

- are the conditions and duration of such removal to be determined in accordance with the best interests of the child?

Article 2 of the Organic Act 1/1996 on the Legal Protection of Minors, amended by Organic Act 8/2015, provides that all public and private actions concerning minors have to assess and consider primarily their best interest. As regards measures adopted by public and private authorities, courts and legislative bodies, the best interest of the child will prevail

over any other legitimate interest.

Moreover, article 23 of the Statute of Crime Victim Act states that minors' protection measures adopted throughout criminal proceedings will take into account their personal circumstances, immediate needs, age, genre, disability and maturity, and will fully respect their physical, mental and moral integrity.

- are social programmes and multidisciplinary structures in place to provide the necessary support for victims, their close relatives and for any person responsible for their care? (**Article 11, Explanatory Report, paras. 87-88**).

See Q15a

- d. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (**Article 38, para. 2, Explanatory Report, paras. 258-259**).

Article 17 of the Statute of Crime Victim Act grants the victims residing in Spain the right to file a complaint before the Spanish authorities for offences perpetrated in the territory of other EU member states.

See Q19 too

PROSECUTION OF PERPETRATORS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE OF CHILDREN
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Question 16: Criminal law offences

- a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law;

Spanish legislation criminalises all behaviours identified by the Convention (articles 183, 183 bis, 183 ter, 188, 189). The 2010 review of the Criminal Code added Chapter II bis to Title VIII, on sexual abuse and assault on children under the age of thirteen years, which extended the scope of the crime of child pornography, introduced the crime of sexual cyber-harassment ("grooming") and increased the penalties for these crimes to up to 15 years of imprisonment.

The 2015 review of the Criminal Code has risen the legal age for sexual activities (see 1c) and introduced new offences (see below). Besides, provisions that criminalise child prostitution and child pornography have been also modified to include these behaviours: having recourse to child prostitution (two to six years of imprisonment), attending pornographic shows in which minors participate (six months to two years of imprisonment) and procuring child pornography for oneself.

- b. Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify;
- c. Please highlight whether there are any other offences not included in the box below incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included;

The offence of trafficking in human beings was introduced in the Spanish Criminal Code by Organic Act 5/2010 through the new Title VII bis in order to protect the human dignity and freedom of victims of trafficking. Article 177 bis of the Criminal Code, amended by Organic Act 1/2015, defines this offence as "the use of violence, intimidation, deceit, abuse of power

or of a position of need or vulnerability of a national or foreign victim or delivery or reception of payments or benefits to obtain the consent of the person controlling the victim in order to recruit, transport, transfer, harbour, receive or house such a victim in Spanish territory, from Spain, in transit or bound for Spain, for any of the following purposes: forced work or services, slavery or practices similar to slavery, servitude or begging; **sexual exploitation, including pornography**; exploitation for criminal activity, removal of organs and celebration of forced marriages”.

The 2015 reform has introduced a new offence in article 183 bis:

“A sentence of imprisonment from six months to two years will be handed down to whoever causes a child under the age of sixteen to participate in sexual behaviour for sexual purposes or makes him witness acts of sexual nature, even if the author does not take part in them.

If the child is coerced into witness sexual abuses, a sentence of imprisonment from one to three years will be imposed”.

Moreover, a new article has been added to regulate “grooming” in the sense of the document recently adopted by the Lanzarote Committee:

“183 ter.

Whoever uses the Internet, the telephone or any other information and communication technology to contact a person under the age of sixteen years and perpetrates acts aimed at deceiving him to obtain pornographic material or shows him pornographic images representing the minor or in which the minors appears, shall be punished with the penalty of six months to two years imprisonment”.

- d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

Offences of sexual abuse, prostitution, pornography and trafficking of human beings carry a tougher punishment when the victim is under the age of sixteen.

Sexual Abuse (Article 18)

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where
 - use is made of coercion, force or threats;
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

Child Prostitution (Article 19)

1. Recruiting a child into prostitution or causing a child to participate in prostitution;
2. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
3. Having recourse to child prostitution.

Child Pornography (Article 20)

1. Producing child pornography;
2. Offering or making available child pornography;
3. Distributing or transmitting child pornography;
4. Procuring child pornography for oneself or for another person;
5. Possessing child pornography;
6. Knowingly obtaining access, through information and communication technologies, to child pornography.

Participation of a Child in Pornographic Performances (Article 21)

1. Recruiting a child into participating in pornographic performances or causing a child to participate in such performances
2. Coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes
3. Knowingly attending pornographic performances involving the participation of children.

Corruption of Children (Article 22)

The intentional causing, for sexual purposes, of a child who has not reached the internal legal age for sexual activities, to witness sexual abuse or sexual activities, even without having to participate.

Solicitation of Children for Sexual Purposes (“grooming”) (Article 23)

The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age for sexual activities as established by internal law, for the purpose of committing sexual abuse or producing child pornography, where this proposal has been followed by material acts leading to such a meeting.

Aiding or abetting and attempt (Article 24)

1. Intentionally aiding or abetting the commission of any of the above offences.
2. The attempt to commit any of the above offences.

Question 17: Corporate liability

Does your system provide that a legal person may be held liable for an offence established in accordance with **Article 26**? Please specify under which conditions.

Article 189 bis of the Criminal Code sets forth the responsibility of legal persons for the offences of prostitution, sexual exploitation and corruption of minors as follows:

"When, pursuant to the terms established in article 31 bis, a legal person is responsible for the offences included in this Chapter, it shall have the following penalties imposed thereon:

- a) Fine from three to five times the profit obtained, if the offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;
- b) Fine of two to four times the profit obtained, if the offence committed by a natural person has a punishment of imprisonment foreseen exceeding two years not included in the preceding Section.
- c) Fine of two to three times the profit obtained, in the rest of the cases..."

According to article 116.3, the criminal accountability of a legal person shall involve its civil liability jointly and severally with the natural persons who are found guilty on the same acts.

On another point, article 31 bis, amended by Organic Act 1/2015, sets out corporate liability in these terms:

"In the circumstances provided for in this Code, legal entities shall be criminally liable:

- a) For offences committed in their name or on their behalf, and for their direct or indirect benefit, by their legal representatives or any person, acting either individually or as a part of an organ of the legal person, who is authorised to take decisions in the name of the legal entity or exercise powers of organisation and control within it.
- b) For offences committed, in the course of their business and on their behalf and for their direct or indirect benefit, by those who, being subject to the authority of the individuals referred to in the preceding paragraph, may have committed the acts on account of a serious breach of the duty to monitor, supervise and control their activity, given the specific circumstances of the case."

Question 18: Sanctions and measures

- a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (**Article 27, Explanatory Report, paras. 182-193**);

As regards natural persons held liable the offences included in the box, the following sanctions laid down in the Criminal Code will apply:

- Sexual abuse on children under sixteen is punishable by a sentence of imprisonment from two to six years (article 183). If it takes place by means of violence or intimidation, the penalty is more severe: five to ten years imprisonment. When it involves penetration, it will be punished with imprisonment of eight to twelve years (twelve to fifteen years where use is made of violence or intimidation). Engaging in acts of sexual nature with a person over the age of sixteen and under the age of eighteen involve a sentence of imprisonment from one to two years.
- Child prostitution carries a term of imprisonment from one to five years and a fine of twelve to twenty-four months (article 188). When the victim is under sixteen years old, imprisonment between four and eight years is imposed. The use of coercion is punishable by a sentence of imprisonment from four to six years that is increased when the victim is under the age of sixteen (from five to ten years).
- Child pornography and participation of a child in pornographic performances are punishable by a sentence of imprisonment from one to five years imprisonment (article 189). The offender who procures himself or possesses pornographic material for his own use shall be handed down a penalty from three months to a year of imprisonment or a fine of six months to two years.
- Solicitation of children for sexual purposes ("grooming") is punishable by one to three years imprisonment or a fine of twelve to twenty-four months (183 bis). The penalties shall be imposed in the upper half when the approach is obtained by coercion, intimidation or deceit.
- Aiding or abetting carries out a sentence to a lower degree of punishment to that set by Law for the principals of the same offence (article 63). This rule will not be applicable in cases in which attempt and complicity are especially punishable by Law.
- Attempt will have a punishment imposed that is lower by one or two degrees to that set by Law for the consummated crime, to the extent deemed appropriate, in view of the danger inherent to the attempt and to the degree and execution achieved (article 62).

Those sentenced to imprisonment for one or more offences shall also be subject to a probation measure to be carried out after the sentence of imprisonment is served. The duration of such measure shall be five to ten years, if any of the offences is serious, and from one to five years, if one or more less serious offences are involved. In the case of a single less serious offence committed by a first time offender, the Court of Law may order the probation measure based on the lower danger of the convict.

With reference to legal persons responsible for the abovementioned offences, they will be imposed a fine (article 189 bis). Other measures referred to in article 27 of the Convention may be adopted:

“Article 189 bis

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-sections b) to g) of Section 7 of Article 33”, which are listed below:

- dissolution of the legal person;
 - suspension of its activities for a maximum of five years;
 - closure of premises and buildings for a maximum of five years;
 - temporary (up to 15 years) or permanent prohibition to carry out future activities having allowed the commission of a crime, facilitated or enabled the covering up of the crime;
 - barring from obtaining public funding and subsidies, contracting with the public sector and enjoying tax or social security contributions benefits and incentives for a maximum of 15 years;
 - judicial control in order to safeguard the rights of workers and creditors for the estimated time required that shall not exceed five years.
- b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (**Article 29, Explanatory Report, paras. 203-208**).

Sentencing for offences of child prostitution, child pornography and corruption of minors shall be equivalent to sentences by Spanish Judges or Courts of Law for the purposes of applying the aggravating circumstance of recidivism (article 190 of the Criminal Code).

Question 19: Jurisdiction

With regard to the offences referred to in question 16, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (**Article 25, Explanatory Report, paras. 165-176**).

In accordance with article 23.4.k of the Spanish Judiciary Act, the Spanish jurisdiction is competent in criminal proceedings arising from offences and misdemeanours perpetrated in the Spanish territory or in Spanish aircraft or ships notwithstanding the provisions of international treaties to which Spain may be party to.

It will also hear those cases which are considered to be a crime under Spanish law in spite of having been perpetrated outside the Spanish territory provided that the material offenders are Spanish or foreign individuals who acquired the Spanish nationality after having perpetrated the offence and the following circumstances concur:

- a) The crime as such is punishable in the country where it was perpetrated except if such requirement is waived by virtue of an international treaty or a resolution of an International Agency to which Spain belongs.
- b) The aggrieved party or the Public Prosecutor has filed a complaint before the Spanish Courts.
- c) The perpetrator has not been absolved, pardoned or convicted abroad, and if convicted he has not served time abroad. If part of his conviction has been served abroad it will be taken into account in order to adjust the remainder of his sentence.
The Spanish Criminal Courts are competent to hear any offences perpetrated by Spanish or foreign nationals outside the Spanish territory which may be considered according to the Spanish Criminal Code as: (...)

- k) Offences against freedom and sexual indemnity of minors when the following circumstances occur:

1. The proceeding is directed against a Spanish national or a foreign national who usually resides in Spain.
2. The proceeding is directed against a legal person, a company, an organisation, groups or any other entities or groups of persons that have their official seat or registered office in Spain.
3. The victim had Spanish citizenship or habitual residence in Spain when the offence was perpetrated.

Question 20: Aggravating Circumstances

Please indicate which of the circumstances referred to in **Article 28**, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (**Explanatory Report, paras. 194-202**).

Circumstances provided for in article 28 of the Convention are considered aggravating circumstances by the Spanish Criminal Code.

Question 21: Measures of protection for the child victim

- a. Please describe the measures taken to inform child victims of their rights, the services at their disposal, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role as well as the outcome of their cases (**Article 31, para. 1, letter (a) and para. 2**). Please also indicate what is done to provide all relevant information in a manner adapted to the child's age and maturity and in a language that he/she may understand;

Article 5 of the Statute of Crime Victim Act affords victims the right to information as described above since the first contact with the competent authorities. Information must be provided without unnecessary delay, according to personal circumstances, the nature of the offence and the damages suffered.

Besides, article 4 of the same law grants the victim the right to understand and be understood in any action, which means that all oral or written communications with the victim will be made in a manner adapted to personal circumstances and particularly minors.

Public prosecutors must inform the victims of their rights, means of assistance, the course of proceedings and the final decision according to Instruction 8/2005 of the Public Prosecution Office.

Child victims' legal representatives, carers and guardians are informed about their rights, the stages of the proceeding and the services at their disposal from the very beginning. Besides, some Autonomous Regions have elaborated guides to make it easier for children to understand legal terms and legal proceeding.

- b. Please also indicate which measures have been taken to enable the child victim to be heard, to supply evidence and to choose the means of having his/her views, needs and concerns presented, directly or through an intermediary, and considered (**Article 31, para. 1, letter (c)**);

Article 9 of the Organic Act 1/1996 on the Legal Protection of Minors, amended by Organic Act 8/2015, sets forth the minor's right to be heard, without discrimination on grounds of age, disability or any other circumstance, in the family context or in any administrative, legal or mediation proceedings he is involved in and that leads to a decision concerning his personal, familiar or social sphere. Minor's opinions have to be considered according to his age and maturity. To this end, the minor has to be informed in a manner adapted to

circumstances and in an understandable language.

Minor's appearances before the Court, directly or through a representative, are preferential. They must be properly made, according to his situation and maturity and protecting his privacy. The minor may be supported by qualified professionals or experts if necessary. When the minor requests to be heard, reasoned denial of hearing, based on the best interest of the child, has to be notified to him and the Prosecution Service as well.

- c. What kind of support services are provided to child victims and their families so that their rights and interests are duly presented and taken into account? (**Article 31, para. 1, letter (d)**);

Article 10 of the Statute of Crime Victim Act guarantees the victim and his family free and confidential access to public support services. Child victims are provided with medical and psychological attention to protect their dignity and moral and physical integrity from the start. They may be supported by interpreters, if necessary. Professionals will address their special needs for such time as may be required.

- d. Please describe the measures taken to protect the privacy, the identity and the image of child victims (**Article 31, para. 1, letter (e)**);

The right to victim's privacy is enshrined in the Statute of Crime Victim Act (articles 19 and 22) and binds all those who participate in the criminal proceedings. Child victims are granted the right not to be identified too. Article 23 stipulates that protection measures will be determined on an individual assessment that will take special attention to child victims.

Police officers' attention is personalised, respectful and preferential. In order to protect child victim's privacy and image and to avoid disclosure of personal data, police officers' intervention takes place where the child feels at ease (a neutral place or even at home).

- e. Please describe the measures taken to provide the safety of the child victims and witnesses and their families from intimidation, retaliation and repeat victimisation (**Article 31, para. 1, letter (f)**);

When filing a police report, legal representatives, carers and guardians can request a protection order to assure a physical divide between the victim and the aggressor. Pursuant to Act 27/2003 on protection order for domestic violence victims, the protection order is a judicial decision, which enshrines a comprehensive protection statute of the victims of domestic violence through the adoption of interim civil and criminal measures and social assistance measures as well. The protection order is sent to the coordination points of the Autonomous Regions.

On another point, article 19 of the Statute of Crime Victim Act states that all those involved in the criminal proceedings will take the necessary measures to guarantee the safety of victims and their families. The Public Prosecutor will particularly ensure this right regarding child victims.

- f. Please specify whether the victim and his/her family are informed when the person prosecuted or convicted is released temporarily or definitely from detention or custody. Please indicate who delivers this information and how (**Article 31, para. 1, letter (b)**);

Article 7 of the Statute of Crime Victim Act provides the victim the right to be informed about the convict's release provided that he has previously made the request.

- g. Please also indicate what measures have been taken to ensure that contact between victims and perpetrators, within court and law enforcement agency premises, is avoided. Please specify under which conditions the competent authorities may authorise such contact in the best interests of the child or when the investigations or proceedings require such contact (**Article 31, para. 1, letter (g)**);

Article 20 of the Statute of Crime Victim Act provides that the premises in which the criminal proceeding takes place will be designed to avoid contact between victims and their families and the perpetrator.

The Judge may order a child's statement to be videotaped, according to the Criminal Procedure Act. There are other measures to avoid contact between victims and perpetrators: statements by videoconference and child-friendly courtrooms setting up.

- h. Please specify under which conditions child victims of the offences established according to the Convention have access to legal aid provided free of charge (**Article 31, para. 3**).

Article 2 of the Act on Legal Aid, amended by Act 42/2015, reads as follows:

"Regardless of whether or not they have the means to litigate, the right to legal aid is granted and must immediately be given to victims of gender-based violence, terrorism and human trafficking in those processes that are linked to, stem from or occur as a result of their status as victims, as well to minors and mentally handicapped individuals when they are the victims of abuse or mistreatment..."

Question 22: Investigations and criminal measures to protect the child victim

- a. What protective approach towards victims has been adopted to ensure that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate? (**Article 30, para. 2, Explanatory Report, paras. 211-215**);

Article 21 of the Statute of Crime Victim Act sets up many protection measures throughout criminal investigation: limited statements without unjustified delay by victims that may be accompanied by their legal representative and, where appropriate, a person of their choice.

Moreover, article 26 of the same Law stipulates that all necessary measures will be taken so as not to aggravate the child's trauma, e.g. videotaped interviews, interviews in premises designed or adapted for that purpose that are carried out by trained professionals and the same person if possible.

- b. Which legislative or other measures have been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement? (**Article 32, Explanatory Report, para. 230**);

The opening of investigations or prosecution of offences established in accordance with the Convention does not depend on the victim's report, according to article 191 of the Criminal Code:

1. "Prosecution of felonies of sexual assault, harassment or abuse, shall require this to be reported by the victim, his legal representative or a suit to be filed by the Public Prosecutor, who shall act in line with the lawful interests concerned. When the victim is a minor, incapacitated or handicapped person, the report by the Public Prosecutor shall suffice.
2. In these felonies, forgiveness by the victim or legal representative does not extinguish the criminal action or the criminal liability."

Furthermore, proceedings will continue whenever a minor is concerned, under article 105 of the Criminal Procedure Act (modified by Organic Act 1/2015):

1. "Public Prosecutors have the obligation to exercise the penal actions deemed appropriate, pursuant to the provisions of the Law, whether or not there is an individual accuser {...}

2. Public Prosecutors can report offences actionable at the request of the aggrieved person being a minor, incapacitated person in need of special protection or helpless.

The absence of report will not avoid preliminary investigations to be conducted.”

- c. Which legislative or other measures have been taken to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with **Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b**, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question? (**Article 33, Explanatory Report, paras. 231-232**);

Article 131 of the Criminal Code lays down next prescription terms for felonies:

- Twenty years, when the maximum punishment set for the offence is imprisonment of fifteen or more years.
- Fifteen, when the maximum punishment set by Law is barring for more than ten years, or imprisonment for more than ten and less than fifteen years.
- Ten, when the maximum punishment set by Law is imprisonment or barring for more than five years and does not exceed ten.

When a minor is a victim of offences against his sexual indemnity, the terms shall be calculated from the day on which he has come of age, and if he were to die before coming of age, as of the date of his death (article 132).

- d. Please clarify whether your judicial authorities may appoint a special representative for the victim who may be party, where the holders of parental responsibility are precluded from representing the child in proceedings related to sexual exploitation or sexual abuse of children as a result of a conflict of interest between them and the victim. Please specify who may be appointed as a representative and what are his/her tasks (**Article 31, para. 4**). Please also describe under which conditions it is possible;

According to article 26 of the Statute of Crime Victim Act, the Public Prosecutor will request the Judge to appoint a special representative for the child in case of conflict of interest with his legal representatives or parents.

Furthermore, article 10 of Organic Act 1/1996 on the Legal Protection of Minor grants the minor the right to require the appointment of a defender to take legal and administrative actions.

On another point, the Civil Code (article 163) provides a rule that may be applied to the mentioned case:

“Whenever, in any affair, the father’s and mother’s interest should be opposed to that of their non-emancipated children, the latter shall be appointed a defender who shall represent them in the court and out of court. This appointment shall also take place when the parents’ interest is opposed to that of the underage emancipated child whose capacity they are required to supplement.

If the conflict of interest should exist in respect of one of the parents, the other shall be entitled to represent the minor or supplement his capacity by operation of Law and without the need for a specific appointment.”

- e. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to participate in legal proceedings (for example, as third parties) (**Article 31, para. 5**). Please specify under which conditions, if so required;

The Spanish criminal system considers sexual offences as private offences that are only pursuable at the petition of the plaintiff (public prosecutor participates when the victim is a minor).

NGOs participate in legal proceedings in various ways. For example, some NGO' offices are used as child-friendly courtrooms to take videotaped statements².

- f. Please describe under which circumstances the use of covert operations is allowed in relation to the investigation of the offences established in accordance with the Convention (**Article 30, para. 5**);

Article 282 bis of the Criminal Procedure Act, amended by Organic Act 13/2015, allows the use of covert operations in the investigation of felonies related to prostitution, sexual exploitation and corruption of minors (articles 187 to 189 of the Criminal Code). Judicial police officers are authorised by the Judge to act with an assumed identity in closed channels of communication. They may also be authorised to take pictures and record conversations in planned meetings between the officer and the person under investigation, even if they take place indoors.

- g. Please also describe what techniques have been developed for examining material containing pornographic images of children (**Article 30, para. 5**).

Law enforcement bodies use INTERPOL databases of images containing child sexual abuse (ICSE, DB, Expert Group on Identification of Victims and Offenders), as well as the tools provided by this application, in order to identify images obtained in operations against this type of offences and to communicate the identification of a victim to other countries.

It should also be mentioned that work is being done in co-operation with other bodies such as INTECO (Spanish National Institute for Communication Technologies) on the development of applications that include image analysis (ASASEC Projects and EVIDENCE DETECTOR).

Question 23: Child friendly interviewing and proceedings

- a. Please describe how interviews (**Article 35**) with child victims are carried out, indicating in particular whether:
- they take place without unjustified delay after the facts have been reported to the competent authorities;
 - they take place, where necessary, in premises designed or adapted for this purpose;
 - they are carried out by professionals trained for this purpose;
 - the same persons are, if possible and where appropriate, conducting all interviews with the child;
 - the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of proceedings;
 - the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

See Q22a

Law enforcement bodies' actions concerning minors are governed by the State Secretary Instruction 11/2007, of 12th September, which adopts the "Police Conduct Protocol with minors". This instrument was elaborated according to national and international legislation, in particular, Organic Act 5/2000 on Criminal Liability of Minors. It aims to establish action criteria for all law enforcement bodies by systematically compiling the different procedural stages involving police intervention with minors, not only in the field of protection but also in

² Some NGOs such as "Márgenes y Vínculos" and "ADIMA" played a very important role concerning child-friendly justice. The latter has created teams of investigation of sexual abuses.

the area of intervention for reasons of administrative or criminal offences.

The abovementioned instruction is based on the best interests of the child, through the principle of minimum intervention, especially regarding non-serious or violent offences, and the principle of opportunity, to prevent police action from causing more harm than benefit.

Specifically, interviews with minors are carried out in specialised co-operation with S.A.F. (Family Attention Service) or EMUME (Woman and Child Teams) groups, and minors are accompanied by their parents, unless case circumstances recommend otherwise, in which case the Public Prosecutor's Office shall be present. In any case, the Minors' Prosecutor shall be informed and he will determine the conditions under which the interview shall be carried out (as soon as possible, in adapted facilities, trying to prevent declarations from being recurrent).

Law enforcement bodies deal with issues related with minors victims of serious offences in a comprehensive manner according to the following rules:

- Involving all units dealing with citizens' assistance and safety and creating specialised units.
- Providing victims with an appropriate personalised and specific treatment.
- Taking into account any aggression they may suffer in any field (family, work, social environment, school)
- Acting regardless of the age of the victim or his/her situation of vulnerability.
- Diverting victims' assistance to specific public or private protection institutions.
- Implementing protection measures whenever necessary.
- Investigating criminal facts resulting from the use of violence.

This way, territorial units (police stations and posts) deal directly with victims by receiving reports, providing any assistance they may need and guarantying their security, while putting into practice the judicial measures included in the protection orders. Thus the whole staff of citizens' safety units is directly involved in this relevant mission.

In addition to the activity of territorial units, technical departments have been set up, where agents specialized in the attention and protection of specially vulnerable victims (EMUMES and SAF) guarantee that serious cases are specifically dealt with and provide territorial units with support and advice.

- b. Please also specify whether all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and whether these videotaped interviews may be accepted as evidence during the court proceedings;

Article 25 of the Statute of Crime Victim Act provides for several protection measures throughout trial stage, among them the use of communication technologies to avoid contact with the accused (even during the taking of evidence) and to hear the victim in the courtroom without being present.

Besides, article 26 of the same law states that child statements during criminal investigations will be videotaped and reproduced in trial according to the Criminal Procedure Act.

The Criminal Procedure Act establishes that contact with the accused has to be avoided in interviews with a child witness using any technical means. As for interviews with a child victim, videotaping is optional. Anyway, both videotaped interviews may be accepted as evidence.

c. The recording of minors' exploration can be carried out by police services with the authorization of the person(s) holding the parental custody or, alternatively, the public prosecutor or the judicial authority. However, it is up to the investigating judge to accept it as evidence.

- d. Please describe under which conditions the judge may order the hearing to take place without the presence of the public and the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies? (**Article 36**).

Article 25 of the Statute of Crime Victim Act stipulates that the judge may order the hearing to take place without the presence of the public according to the Criminal Procedure Act.

The Criminal Procedure Act sets forth that the Judge may order the hearing to take place without the presence of the public for reasons of morality, public order or consideration of the offended or his family.

Furthermore, Act 35/1995 on aid and assistance for victims of violent crime and sexual offences entitles the public prosecutor to request the hearing to take place without the presence of the public.

As regards videoconference, article 731.bis of the Criminal Procedure Act states that the court, ex officio or ex-parte, may agree on appearance by videoconference to protect the party, especially if he is a minor, or for public order reasons.

Lastly, article 229(3) of the Judiciary Act establishes that statements, interviews, evidence, confrontation of witnesses, questioning, reports, ratification of expert opinions and proceedings can be conducted by videoconference, but this must be in the presence of the judge or court and in the presence of or with the intervention of, where appropriate, the parties. It can take the form of public proceedings, apart from exceptional cases. The restrictions on the type of evidence that can be obtained by videoconference concern fundamental rights or minors.