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LANZAROTE CONVENTION

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

FOCUSED QUESTIONNAIRE

Protecting children affected by the refugee crisis
from sexual exploitation and sexual abuse

SPAIN

(SICAR.cat Programme
Catalan section of *Adoratrices*)

Replies registered by the Secretariat on 15 November 2016

Introduction by the organisation

The SICAR.CAT programme is part of the activity of the Catalan section of *Adoratrices*, an international religious group with presence in 23 countries. The programme is aimed at promoting the rights of human trafficking victims; particularly those trafficked for the purpose of sexual exploitation. According to our mission, we directly assist victims of trafficking of human beings (THB) in order to cover their needs during their rehabilitation and integration personal process. Thus, our organisation is in a good position to gather reliable and privileged information regarding the situation of victims of THB in Catalonia and Spain.

Since 2010, our organisation has observed an increasing number of minor victims of THB. In 2015, 38 children were reported to be victims of THB in the region of Catalonia, including potential victims and victims duly identified by police authorities. The vast majority of these victims were trafficked for the purpose of sexual exploitation. During this period, several systemic failures have been detected and communicated to the Catalan and Spanish ombudspersons. We are concerned these failures would turn into a rise of cases of sexual exploitation of children in the current context of the refugee crisis.

For this reason, we would like to complement the State's replies to the questionnaire set by the Lanzarote Committee. The information provided is mainly focused on the aforementioned systemic failures. Thus, some questions regarding internal functioning of the national institutions and collection of data have not been answered.

Our organization wishes the Committee takes into account the following information when adopting the final report and recommendations to the State Parties on the protection of children affected by the refugee crisis from sexual exploitation and sexual abuse.

DATA (Lanzarote Convention, Chapter III)

- 1) How many migrant and asylum-seeking children (accompanied and unaccompanied)¹ are in your country as a result of the refugee crisis?
 - a) Please provide estimates, if exact data is not available, for the period between 1 July 2015 and 30 June 2016,² and specify how many of these children are victims or presumed victims of sexual exploitation and sexual abuse;

Our organisation has been observing an increasing number of minor victims of THB during the past few years. In 2015, 38 child victims of THB were reported in the region of Catalonia, including potential victims and victims duly identified by the police authorities.

Unfortunately, there is few official data accessible for us regarding the presence of migrant and asylum-seeking children in Spanish territory. The official data available refers to applicants for international protection on one side and unaccompanied minors

¹ Please provide the definition of accompanied/unaccompanied children in your country and, if available, provide separate figures for accompanied and unaccompanied children. If such data is not available, please provide data on migrant and asylum-seeking children.

² If figures for this period are not available, please provide the most recent annual data.

on the other side. Therefore, it excludes other migrant and asylum-seeking children – both accompanied and unaccompanied - that were not granted duly registered due to detection and identification failures, which will be specified in the following questions. For the same reason, there is scarce detection and collection of specific data of presumed victims of sexual exploitation.

- b) Describe how the victims of sexual exploitation and sexual abuse were identified or describe the challenges faced to identify them. Specify whether a distinction is made between victims of sexual exploitation/abuse prior to the entry on your territory (Group 1) and after entry (Group 2) and provide data/estimates of the two groups of victims. Please also explain how the age is determined in case of doubt;

Identification of victims of sexual exploitation prior to the entry

Our replies are focused on arrivals or entry by air since our organisation has regular presence at the airports but not at other entry spots (for example, Ceuta and Melilla fences, coasts or ports).

a. Accompanied minors

Regarding the identification of victims among accompanied minors, our organisation has observed arrivals of children accompanied by their alleged relatives. In some cases, their entry to territory is denied because of the false documentation they are carrying. However, it seems there is no specific mechanism to confirm the (family) bond between the child and the adult accompanying him or her. To the contrary, police officers tend to focus on the irregularity of the entry, not detecting potential situations of trafficking of children for the purpose of sexual exploitation.

From our point of view, the lack of a specific protocol to assure a real and secure relationship between children and the accompanying adult may be used as an advantage by trafficking networks, if it is not already being used to introduce victims of THB for sexual exploitation to Spanish territory.

b. Unaccompanied minors

Once an unaccompanied minor is detected at Spanish borders (including airports), he or she will put in charge of the Public Prosecutor's office for his/her age to be assessed by several medical tests according to Framework Protocol on unaccompanied minors (2014). If he/she is proved a minor, the child will be put under the legal guardianship of the competent public authority. The aforementioned protocol is also implemented when the child is an asylum-seeker or may be a victim of THB for the purpose of sexual exploitation. The content of this protocol does not include any specific provisions regarding the needs of child asylum-seekers and victims of sexual exploitation. More information about problematic situation will be provided in the following paragraphs.

If the child is proved to be an adult, he/she will return to the airport. Any procedure to claim for asylum or to deny his/her entry is to be continued. However, the age assessment procedure presents various problems in terms of accuracy and reliability of its results. Therefore, we can observe frequent cases of denial of entry or removal in which the child is being treated as an adult. Obviously, these procedures do not take

into account the best interest of the child principle and the child's vulnerability to a potential situation of sexual exploitation since he/she is considered to be an adult by public authorities.

c. General challenges for identification

In general, several systemic failures in identification of victims of THB for the purpose of sexual exploitation arriving by air have been detected:

a) In 2014, the Civil Guard created a special anti-trafficking unit (UCRIF) which is responsible for identification of victims of THB, including those trafficked for the purpose of sexual exploitation. However, UCRIF does not have direct and permanent presence at the airports or any other national borders. Their intervention depends on a previous communication by border guards. Therefore, the first-line detection of victims of sexual exploitation does not depend on specially trained officers but "ordinary" border officers. In any case, UCRIF is unlikely to intervene before the age assessment procedure has taken place, which has many negative consequences for minor victims of sexual exploitation (more information will be provided in the following questions).

b) Specialised training provided to border guards may not be sufficient since it has not turned into a higher number of identified victims of sexual exploitation. This specialised training is basically focused on the questionnaire that is to be asked to the potential victim. Therefore, police officers at the airports expect the potential victim to give detailed information of his/her situation without taking into consideration he/she might not be aware of his/her victim status. From our point of view, border police officers should be trained to detect indicators of trafficking for sexual exploitation and not to rely on the information provided by the potential victim – specially, if he/she is a child – or other adults, if he/she is accompanied.

c) Generally speaking, there is not sufficient presence of specialised non governmental organisations which could collaborate in detection of potential victims of sexual exploitation at the airports. In the case of El Prat-Barcelona airport, our organisation may be requested to intervene along with UCRIF when a victim of trafficking is detected. However, detection still relies on border guards who are responsible for warning UCRIF officers. As pointed out above, border police officers are not sufficiently trained in observing indicators of trafficking for sexual exploitation. Thus, they do not always request UCRIF's intervention and therefore, the intervention of any specialised NGO. In our opinion, a more permanent and direct presence of specialised police officers and NGO's professionals at all airports is absolutely needed. This intervention should cover asylum procedures and procedures of denial of the entry in which a potential child is involved (even if the age assessment procedure has proved him/her to be over 18 years old).

Identification of victims of sexual exploitation after entry

According to 35.3 of Organic Act 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration, any unaccompanied minor must be provided with accommodation within the child protection services. The competent public institution must be appointed for his or her legal guardianship. In Catalonia, the institution responsible for this is the General Directorate for Childhood and Adolescence (DGAIA,

for its acronym in Catalan). Nevertheless, the Framework Protocol on unaccompanied minors provides that, in case of doubt, his/her age is to be assessed by various medical examinations. In practice, this protocol results in the child undergoing the age assessment procedure before being provided with immediate attention to his/her needs.

As pointed out above, the protocol also applies to potential asylum-seekers, victims of THB and victims of sexual exploitation but does not include any specific provisions to detect their situation and cover their needs. If the child is proved to be less than 18 years old, he/she will enter into the competent regional protection system. Then, their detection and identification as victims of sexual exploitation or victims of THB for that purpose will depend on social workers or educators working at child protection services. In most of the cases, these professionals are not trained on THB or sexual exploitation. Therefore, many victims are not being detected until they get in touch with a specialised NGO somehow. Obviously, those children who are never assisted by a specialised NGO are unlikely to be detected and identified as victims of sexual exploitation during their childhood/adolescence.

After some complaints to the Catalan ombudsperson, our organisation and the Catalan General Directorate for Childhood and Adolescence are currently working on a specific protocol and short-period facilities for these children/teenagers. We expect this collaboration will raise the detection of victims of sexual exploitation or trafficking for that purpose amongst unaccompanied minors. However, this protocol will exclude those children that never enter into the child protection system since they are considered to be adults according to the age assessment procedure.

Determination of the age in case of doubt: the age assessment procedure

As mentioned above, Organic Act 4/2000 and the Framework Protocol on unaccompanied minors provide that, in case of doubt, a child's age must be assessed by several medical examinations. In theory, the whole procedure consists on the aforementioned examinations and an individual interview conducted by the competent Public Prosecutor. The Public Prosecutor's Office is responsible for the whole procedure and the determination of the age in the light of the results.

Among others, the age assessment procedure is considered to be problematic for the following reasons:

- Various health institutions have stated that the results of the procedure are not sufficiently concluding and accurate. To the contrary, these medical examinations present a significant margin of error³. Thus, it is likely that some children are considered to be over 18 years old and excluded from the child protection system due to the lack of accuracy of this age assessment procedure. In some cases, these children/teenagers end

³ GARAMENDI GONZÁLEZ, Pedro M.; BAÑON GONZÁLEZ, Rafael; PUJOL ROBINAT, Amadeo; AGUADO BUSTOS, Fernando F.; LANDA TABUYO, María Irene; PRIETO CARRERO, José Luis y SERRULLA RECH, Fernando, *Recommendations on the methods for assessing the forensic age of unaccompanied foreign minors. Good practice Consensus Document by the Legal Medicine Institutes of SPAIN (2010)*, Revista Española de Medicina Legal. 2011; 37(1): páginas 22-29: (accessed by November 14th 2016).

up in detention centers for adult migrants or are removed to their countries of origin without an individual assessment of their situation.

In addition, these medical examinations are considered to be highly intrusive and harmful for the child's psychological integrity. In some cases, the age assessment procedure may be repeated several times during the child's stay in Spanish territory.

- Even though Organic Act 4/2000 establishes the age assessment procedure for those cases in which the age of the child cannot be determined with certainty, the procedure is being carried out systematically by the Public Prosecutor's offices. Children carrying an official passport or being capable to obtain it also undergo the aforementioned medical examinations. The Spanish Supreme Court has prohibited implementing the age assessment procedure indiscriminately⁴ but it is still being applied this way so far.

- Thirdly, some bad practices regarding the implementation of the age assessment procedure have been detected. In general, the procedure is not carried out with sufficient guarantees and according to the best interest of the child principle. Frequently, there is no presence of an interpreter to obtain an informed consent by the child. In addition, the procedure or the results are often not duly notified to a lawyer or a specialised NGO that could assist the child.

- c) Indicate also how the data collected is used to offer a coordinated response between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children;

See answers above.

- d) Identify the institution(s) responsible for the collection of above data.

PREVENTION (Lanzarote Convention, Chapter II)

- 2) What are the specific measures taken to prevent that children affected by the refugee crisis fall victims of sexual exploitation and sexual abuse?
 - a) Highlight in particular the measures (e.g. awareness raising material, specialised training, screening of professionals, etc.) which have proven to be effective;
 - b) Underline any lessons learnt from specific challenges (e.g. in raising awareness on sexual violence amidst other urgent priorities, etc.) that had to be faced to improve prevention.

According to Spain's replies to the questionnaire, our organisation would like to point out that there has been few awareness raising activities despite the Police Action Plan against Trafficking of Human Beings. Specialised training for police officers is generally provided to those investigating trafficking offences. However, other law enforcement officers may be excluded and therefore, are not sufficiently prepared to observe indicators of sexual exploitation in the front-line (for example, border guards, coast guards and staff at the Migration Centres). In conclusion, this prevention training is not significantly raising the detection of victims of sexual exploitation or victims of THB for that purpose amongst migrant and refugee children.

⁴ Supreme Court's judgment num. 452/2014. September 24th 2014.

PROTECTION (Lanzarote Convention, Chapter IV)

- 3) Has a coordinated child protection approach been put in place to cater for the specific needs of migrant and asylum-seeking children victims of sexual exploitation and/or sexual abuse?
 - a) Describe the measures taken to address the situation and cater for the children's specific needs (multiple traumas, language/cultural differences, etc.), including with respect to guardianship/placement;
 - b) Indicate also what measures have been taken to protect the children concerned from further exploitation/abuse and to assist the victims in seeking redress (please highlight any differences between Groups 1 and 2 of children as outlined above);

Once an unaccompanied minor is detected and his/her age has been determined, he/she will be put under the legal guardianship of the competent public authority. From then, the protection system and services are responsible for their accommodation and other needs. As mentioned above, the Framework Protocol on unaccompanied minors does not provide for any specific actions to cover the particular needs of asylum-seekers, victims of sexual exploitation and victims of THB for that purpose. To the contrary, these children are not granted any specific attention and they are treated like any other unaccompanied minor without taking into account the particular needs in terms of psychological treatment, legal assistance, etc. Once again, we would like to highlight the low number of detection of victims of sexual exploitation amongst migrant and refugee children and the lack of a specialised training for professionals in the child protection services.

Our organisation is aware that this is not a particular problem of the Catalan General Directorate for Childhood and Adolescence (DGAIA) but is similar to the rest of regional protection services. We also would like to remind the Committee that our organisation is closely working with DGAIA in the elaboration of specific protocols on victims of human trafficking for sexual exploitation and asylum-seekers in Catalonia. In addition, some specific facilities for these minors are currently being studied by DGAIA. Even though these protocols have not yet been implemented, we expect this collaboration to improve the situation for child victims of sexual exploitation and THB for that purpose.

COOPERATION (Lanzarote Convention, Chapter IX)

- 4) Provide examples of successful cooperation with other Parties to the Lanzarote Convention for the purpose of:
 - a) Preventing and combating sexual exploitation and sexual abuse of children affected by the refugee crisis;
 - b) Protecting and providing assistance to victims;
 - c) Investigations or proceedings concerning the offences established in accordance with the Lanzarote Convention.

From our point of view, the available mechanisms of cooperation between State Parties are exclusively focused on prosecuting perpetrators of THB and/or sexual exploitation.

However, these mechanisms are not equally available and effective to provide assistance to victims of the offences.

Recently, we have been confronting situations of second generation victims: some of the victims of THB assisted by our organisation have provided detailed information of sexual exploitation of their own daughters, sisters or cousins in other State Parties. Two different situations can be observed: 1) Victims that have already been trafficked but are not in a situation of exploitation since their journey has not finished and 2) Victim that have been trafficked and are already being exploited in other State Parties.

Regarding situation 2, we have observed that police cooperation mechanisms appear to be poorly effective to give an urgent response. In fact, we were recommended to travel to the State Party concerned and directly report the situation of sexual exploitation to their national police authorities. Obviously, it is urgent to develop a faster mechanism of cooperation in order to report and tackle sexual exploitation in other countries when reliable information can be provided.

Concerning situation 1, our organisation has observed that mechanisms of police cooperation are not equally prepared to locate the victims and therefore, prevent sexual exploitation and/or provide them with the assistance needed (even if accurate information about the victim can be provided). It is absolutely urgent to design and develop a mechanism to do so. In our opinion, a shared database concerning unaccompanied minor or potential victims of sexual exploitation would help to prevent these situations and protect the victim when they are detected by first-line authorities.

ANY OTHER ADDITIONAL INFORMATION

- 5) Please provide any other additional information which may be useful to identify areas for targeted cooperation aimed at ensuring that children affected by the refugee crisis are effectively protected from sexual exploitation and sexual abuse and in guaranteeing their human dignity and physical and psychological integrity.

A harmonised register of unaccompanied minors is absolutely needed to combat trafficked and sexual exploitation of children affected by the refugee crisis. National authorities and other actors must be able to check whether an unaccompanied minor has already been assisted by child protection services in other State Parties. In our opinion, this mechanism could help to locate disappeared children from national protection systems and detect repeated and transnational situations of sexual exploitation.