

## General overview questionnaire on the implementation of the Lanzarote Convention- highlights of the replies submitted by Fundación ANAR, Spain, member of Missing Children Europe

### **Question 1: Definition of “child”**

(a) Affirmative.

(b) Protection and assistance if age of victim is uncertain: such measures exist only for non-documented foreign persons, whose age cannot be established with certainty.

(c) Age of sexual consent: 13 years. As a follow up to suggestions made by the United Nations Committee on the Rights of the Child, the Government is now preparing an amendment to the Penal Code in order to raise the age to 16 years.

### **Question 2: Non-discrimination**

No discrimination in the measures adopted to protect the rights of the victims.

### **Question 3: Overview of the implementation**

(a) The current Penal Code reflects amendments made over the last years to transpose the EU Framework Decision 2004/68/JAI. A new reform is under way to transpose Directive 2011/93/EU. A new Statute of Crime Victims is under preparation in order to transpose Directive 2011/29/EU.

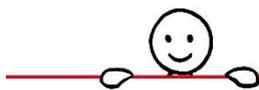
(b) Reference is made to the III d Action Plan against Sexual Exploitation of Children and Adolescents 2010-2013. The hope is expressed that a new follow up Action Plan will be approved in the near future.

(c) Recommendations and concrete measures to warrant the protection of the rights of the children in criminal proceedings, especially to protect child victims or witnesses have been issued. Day to day practice however does not adequately reflect these recommendations and measures.

Reference is made to a report published by Save the Children in November 2012 on the subject of “Childhood and Justice, a question of rights” which underlines that contacts with the judges and courts often result in a very negative experience for the child. The report refers to the lack of adequate premises to conduct the interview of the child, as well as to the lack of technological equipment and facilities to avoid confrontation of the child with the aggressor or the presence or attendance of unknown adults.

The new Statute of Crime Victims provides a number of measures addressing this problem.





Reference is also made to a recent Royal Decree-Law (Real Decreto-Ley) 3/2013 of 22 February 2013 providing for access to free immediate legal assistance for minors and persons who are psychologically impaired who are victim of abuse or ill treatment.

#### **Question 4: Child participation**

No State initiatives are known encouraging participation of children in the development of laws, policies and enforcement programmes relating to the fight against sexual abuse and exploitation of children.

#### **Question 5: Specialised bodies /mechanisms**

(a) The “Observatorios de la Infancia” (Childhood Observatories) are public institutions in charge of defending and promoting the rights of children. They are not independent but linked to either the General Administration, or the corresponding Autonomous or Local administrations.

(b) The collection of data on sexual exploitation of children is one of the objectives of the National State Plan on Childhood and Adolescence 2013-2016.

(c) No information is available on the subject.

#### **Question 6: National or local coordination, cooperation and partnerships**

(a) The Central Childhood Observatory, linked to the Ministry of Health, Social Services and Equality on 22 November 2007 approved a “Basic Protocol for intervention against ill treatment of children“ which includes the protection of the sexual integrity of the child.

It focuses on a reduction of the phenomenon of secondary victimisation during the intervention of the competent agencies by coordinating their intervention. It also establishes minimum standards for attention regarding child victims irrespective of gender, race, impairment, social condition or location.

The objective is to ensure a coordination between the agencies competent for the five areas of intervention: education, health, policy, social assistance and judicial.

#### **Question 7: International cooperation**

Unknown

#### **Question 8: Education, awareness raising and training**

Reference to the III d Action Plan against Sexual exploitation of Childhood and Adolescence 2010-2013.





Fundación ANAR leaves it to the Spanish State to inform the Committee whether the measures provided for in the Action Plan have indeed been implemented.

#### **Question 9: Recruitment and screening**

No information available on any legislative measure taken.

With regard to the 116 000 hotline service run by us, Fundación ANAR requires a criminal record certificate for any contractual or voluntary staff member.

Although the Penal Code contains a provision on disqualification it is almost never applied by Spanish courts.

#### **Question 10: Preventive intervention programmes**

No information available.

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

Reference to a “Code of conduct” for the tourist industry operators, in the III d Action Plan mentioned above.

#### **Question 12: Effectiveness of preventive measures and programmes**

No information available.

#### **Question 13: Reporting suspicion of sexual exploitation or sexual abuse**

The only exceptions to the obligation to report relate to members of the bar (abogados, procuradores) as well as to priests regarding information obtained under the secret of confession.

#### **Question 14: Helplines**

Reference to 4 helplines offered by Fundación ANAR:

- The ANAR national helpline for children and adolescents
- The ANAR national helpline for adults and families who need assistance in their relations with minors
- The ANAR email service
- The ANAR 116 000 hotline for missing children.





Fundación ANAR also runs the 116 111 helpline in 12 Autonomous Communities and 2 Autonomous Cities (Ceuta and Melilla).

As a consequence the service is not really harmonised at national level, which is contrary to the principle of the best interest of the child.

#### **Question 15: Assistance to victims**

Reference to specialised groups for assistance to minors who are victims of sexual abuse or exploitation and their families. Such groups exist within National Police, the Guardia Civil and the Autonomous Police services.

Reference to the above mentioned Royal Decree-Law 3/2013 establishing the right to free legal assistance for children and mentally impaired victims of abuse or ill treatment.

#### **Question 16: Criminal law offences**

Information on the amendments to the Penal Code currently under discussion for the transposition of Directive 2011/93/EU, with inclusion of the blocking of access to sites offering child abuse images which, under the directive, is optional.

Information on the extended jurisdiction clauses.

#### **Question 17: Corporate liability**

Corporate liability was introduced in the Penal code in 2010.

#### **Question 18: Sanctions and measures**

#### **Question 19: Jurisdiction**

#### **Question 20: Aggravating circumstances**

#### **Question 21: Measures of protection for the child victim**

Fundación ANAR refers to the information to be submitted by the Spanish State.

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

(a) See question 3 under c).



(b) The Public Prosecutor's office has to pursue the protection of the interests of the victims. Its decision whether or not to proceed with the investigations and indict presumed aggressors will be totally independent from the initial or subsequent position taken by the victim.

(c) In the case where a minor is victim of sexual abuse or exploitation the statute of limitation determines that the prescription term starts from the age of majority or, if the victim died before that age, from the date of death of the victim.

(d) Reference to the future Statute of Victims of Crime.

(e) There is no possibility for groups, foundations, associations or governmental or non-governmental associations assisting and/or supporting victims to participate in legal proceedings as a (third) party.

(f) and (g) This information is not available to Fundación ANAR.

### **Question 23: Child friendly interviewing and proceedings**

Reference to the above mentioned Save the Children public report of September 2012 underlining:

- The delays encountered and the cases of provisional stay of proceedings which ultimately result in an absence of efficiency
- The situation of insufficient rights of defence for the child victims due to the co-existence of insufficiently coordinated civil and criminal proceedings
- The situations of secondary victimisation encountered during the proceedings as a result of the use of inefficient and inadequate techniques and practices of insufficiently specialised professionals.
- The lack of protection of young children
- The absence of assessment and supervision mechanisms as regards the activity of the legal professionals involved.