

Protection of Children against Sexual Abuse in the Circle of Trust: Legal Frameworks (Lanzarote Convention Monitoring Questionnaire)

Fields marked with * are mandatory.

Introduction

1. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (hereinafter “the Lanzarote Convention” or “the Convention”), which entered into force in July 2010, requires criminalisation of all forms of child sexual abuse. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

2. The Committee of the Parties to the Convention (also known as the “Lanzarote Committee”), established to monitor whether Parties effectively implement the Convention (Article 1 § 2), decided that:

“1. The monitoring of the implementation of the Convention in the Parties shall be based on a procedure divided by rounds, each round concerning a theme decided by the Lanzarote Committee or any other approach deemed appropriate by the Lanzarote Committee within the scope of the Convention.

2. The Lanzarote Committee will determine the length of each monitoring round in the light of the themes selected and the provisions of the Convention to be monitored.

3. The monitoring round will be initiated by addressing a questionnaire on the implementation of the relevant provisions of the Convention with respect to the selected theme. The Parties shall respond to the questionnaire within the time-limit set by the Lanzarote Committee.”[1]

The notion of the circle of trust

3. In January 2018, the Lanzarote Committee concluded its first monitoring round “Protection of children against sexual abuse in the circle of trust”. The notion of “circle of trust” includes members of the extended family, persons having care-taking functions or exercising control over the child, and any other persons with whom the child has relations, including his/her peers.[2]

The previous and current monitoring rounds on the circle of trust

4. The two implementation reports adopted as a result of the first monitoring round evaluated the frameworks and strategies put in place by the 26 States Parties to the Lanzarote Convention which had ratified it by the time the monitoring round was launched[3]. Since then, the Convention has been ratified by 22 other Parties,[4] and numerous changes have taken place in the subject area due to the development of international standards and national reforms. Furthermore, a child’s circle of trust remains the environment

where the vast majority of sexual abuse occurs.[5] The Committee therefore decided to come back to the subject matter of the first monitoring round in 2023, to both take stock of the situation in the 22 Parties that had not been examined in the first round and to evaluate the follow-up given to the Committee's recommendations by the 26 Parties that had.

5. All of the current 48 Parties will be monitored at the same time to create a momentum around specific aspects of the monitoring theme. To ensure a more accurate reflection of the situation in the Parties and a speedier publication of intermediary results, the monitoring round will be divided into several parts and conducted on the basis of information submitted by the Parties and other stakeholders in response to questionnaires specific for each part.

Involvement of civil society and other relevant stakeholders in the monitoring round

6. In accordance with paragraph 4 of Rule 26 of the Lanzarote Committee's Rules of Procedure, the Secretariat shall seek the views of the representatives of civil society and any other bodies involved in preventing and combating sexual exploitation and sexual abuse of children on the implementation of the Convention by Parties, in particular by asking them to comment on the replies to this questionnaire or by any other means (e.g. by offering the observers and participants in the Lanzarote Committee to submit any relevant information they may have with regard to any Party to the Convention by replying directly to some or all of the questions of this questionnaire). These comments and replies will be transmitted by the Secretariat to the Party(ies) concerned and made public.

Type of questions and elements to be borne in mind when replying

7. Each of the questionnaires of this monitoring round will contain questions derived from the Committee's first monitoring round recommendations and findings, as well as a few new questions based on the Committee's adopted texts and international standards that have emerged in the meantime, including the case-law of the European Court of Human Rights, to gather information for capacity-building purposes. The first part of the monitoring round will assess the legal framework and related procedures with respect to sexual abuse of children in the circle of trust ("Legal frameworks").

8. This specific first questionnaire was adopted by the Lanzarote Committee on 2 June 2023. It is recalled that, in accordance with Rule 26 of the Lanzarote Committee's Rules of Procedure:

"...2. The Secretariat shall address such questionnaires to the Parties through the member in the Lanzarote Committee representing the Party to be monitored, who will act as "contact person".

3. Parties shall submit their replies in one of the official languages of the Council of Europe to the secretariat within the time limit set by the Lanzarote Committee. The replies shall be detailed, answer all questions and contain all relevant reference texts. The replies shall be made public.

5. The Secretariat may request additional information if it appears that the replies are not exhaustive or unclear. Where warranted, with the consent of the Party(ies) concerned and within the limits of budgetary appropriations, the Bureau of the Lanzarote Committee may decide to carry out a visit in the Party(ies) concerned to clarify the situation."

9. In addition, Parties are kindly requested to:

- answer the questions with regard to central, regional and local levels to the extent possible. Federal States may, in respect of their sovereign entities, answer the questions in a summarised way;
- provide, whenever questions/answers refer to it, the relevant text (or a summary) of legislation or other regulations in English or French;

- answer the questions from a gender equality perspective, i.e. specifying, where relevant, whether and how measures for victims and/or offenders take into account gender-specific requirements.

10. The term “national legal framework” used in the questionnaire includes not only laws but also all forms of regulations (decrees, resolutions, administrative directions, instructions, and any other decisions creating legal consequences for more than one individual) and higher courts’ directive rulings.

11. The questions asked concern the legal frameworks pertaining to both online and offline forms of activity. Should your national legal framework distinguish between them, please provide details.

12. As indicated above, some of the questions are included for capacity-building purposes. Therefore, nothing in the wording of these questions should be taken as an indication of a preferred state of affairs or course of action.

13. The questionnaire uses a colour-coded system to help you differentiate questions based on the Lanzarote Committee’s 1st monitoring report’s “invite” recommendations (in blue) and “urge”/ “consider” recommendations (in red). The questions based on the European Court of Human Rights’ case law and the Committee’s adopted texts are coloured red. The questions included for capacity-building purposes are coloured blue.

14. Some of the questions are addressed only to specific Parties found to be not in compliance with a particular requirement of the Convention in the first monitoring round, or to those Parties and to the 22 Parties which had not been evaluated during the first monitoring round. All other questions are meant to be replied to by all Parties.

[1] Rule 24 of the Lanzarote Committee’s [Rules of Procedure](#)

[2] See [1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework”](#), p. 12. Examples of the different categories of persons may be found in paragraphs 123-125 of the [Explanatory Report to the Lanzarote Convention](#)

[3] Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, France, Greece, Iceland, Italy, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Portugal, Romania, San Marino, Serbia, Spain, Türkiye and Ukraine

[4] Andorra, Armenia, Azerbaijan, Cyprus, Czech Republic, Estonia, Georgia, Germany, Hungary, Ireland, Latvia, Liechtenstein, Monaco, Norway, Poland, the Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, Tunisia, United Kingdom

[5] See the [Explanatory Report to the Lanzarote Convention](#), paras. 48 and 123-125

IDENTIFICATION OF THE RESPONDER

* Name of the Party responding or concerned by your response

Spain

* Name of the contact person/coordinator

* Email address of the contact person/coordinator

KEY NOTIONS Question 1. Does your national legal framework:

a. **have a reference to “abuse of a recognised position of trust, authority or influence” as a separate sexual offence against children?**^[6] If yes, please provide a copy of the relevant provision(s).

[6] 1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework” adopted by the Lanzarote Committee on 4 December 15, Recommendation 3.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (1.a Yes)

When the perpetrator holds that position ,it is considered as a specific aggravating circumstance in each type of crime:Sexual assaults on minors under sixteen years of age, -Sexual harassment ,Prostitution, sexual exploitation and corruption of minors, Recruitment and use of minors in exhibitionist or pornographic shows, or for the production of any kind of pornographic material.

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + Belgium and Luxembourg] establish a separate offence of sexual abuse of children by someone in a recognised position of trust, authority or influence instead of considering the fact that the perpetrator holds that position just as an “aggravating circumstance”?**^[7] If yes, please indicate the specific legal provision.

[7] *Ibid.*, Recommendation 2

- Yes
 No

If appropriate, please provide more information (1.b No)

When the perpetrator holds that position ,it is considered as a specific aggravating circumstance in each type of crime:Sexual assaults on minors under sixteen years of age, -Sexual harassment ,Prostitution, sexual exploitation and corruption of minors, Recruitment and use of minors in exhibitionist or pornographic shows, or for the production of any kind of pornographic material.

Here you can upload any file(s) in support of your answer

c. list specific categories of adults in contact with children automatically qualifying as holding this position?[8]

[8] *Ibid*, Recommendation 4. Examples: members of the extended family (including new partners), persons having caretaking functions (including trainers of any kind) or exercising control over the child professionally or on a voluntary basis (including persons who look after children in their leisure-time) and any other person trusted by the child (including other children).

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (1.c Yes)

1- Sexual assaults on minors under sixteen years of age:(article 181-aggravating circumstance)
-When the victim is or has been a partner of the perpetrator, even without cohabitation.
-When the victim is or has been a partner of the perpetrator, even without cohabitation.
- When, for the commission of the crime, the person responsible has taken advantage of a situation or relationship of cohabitation or kinship or a relationship of superiority with respect to the victim.
2-Sexual harassment (article 184, aggravating circumstance)
-If the person guilty of sexual harassment has committed the act taking advantage of a situation of superiority in the workplace, teaching or hierarchical position, or over a person subject to his guardianship or custody, or with the express or tacit announcement of causing the victim a harm related to the legitimate expectations that the victim may have within the scope of the aforementioned relationship,
-if the perpetrator of sexual harassment has committed it in centers for the protection or reform of minors, internment centers for foreigners, or any other detention, custody or reception center, including temporary stay centers, or any other center of detention, custody or reception, including temporary stay centers,
3-Crimes related to prostitution, sexual exploitation and corruption of minors.
-3.1 Prostitution (article 188 as aggravating circumstance)
-When, for the commission of the crime, the perpetrator has taken advantage of a situation of cohabitation or a relationship of superiority or kinship, being an ascendant, or sibling, by nature or adoption, or related, with the victim.
- When, for the commission of the crime, the perpetrator has taken advantage of his status as an authority, agent thereof or public official.
3.2 Recruitment and use of minors in exhibitionist or pornographic shows, or for the production of any kind of pornographic material(Article 189, as a aggravating circumstance)
-When the person responsible is an ascendant, guardian, curator, tutor, teacher or any other person in charge, de facto, even temporarily, or de jure, of the minor or disabled person in need of special protection, or is any person who lives with him or her or any other person who has acted in abuse of his or her recognized position of trust or authority.
-Responsibility by omission(Article 189 ,2, as a separate offense)
Whoever has under his authority, guardianship, custody or foster care a minor and who, knowing of his state of prostitution or corruption, does not do what is possible to prevent his continuation in such state, or does not go to the competent authority for the same purpose if he lacks the means for the custody of the minor...

Here you can upload any file(s) in support of your answer

d. define the notion of “circle of trust”?^[9]

^[9] *Ibid*

- Yes
 No

If appropriate, please provide more information (1.d No)

There is no legal definition as such, but the various types of criminal offenses include situations in which such a relationship of trust is established. See 1 c

Here you can upload any file(s) in support of your answer

VICTIMS' AGE Question 2. Does your national legal framework:

a. **[for 22 Parties + Italy, Portugal, San Marino, and Türkiye]** provide that every child up to 18 years of age is protected against the criminal offence of sexual abuse by someone in a recognised position of trust, authority or influence?^[10] Please refer to the specific legal provisions.

^[10] *Ibid.*, Recommendation 6

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (2.a Yes)

1.-sexual assault, victim over 16 years of age (article 180, aggravating circumstance)

-When the victim is or has been a wife or a woman who is or has been bound by a similar relationship of affectivity, even without cohabitation.

- When, for the execution of the crime, the person responsible has taken advantage of a situation or relationship of cohabitation or kinship or a relationship of superiority with respect to the victim.

2-Sexual harassment (article 184, aggravating circumstance)

If the person guilty of sexual harassment has committed the act taking advantage of a situation of superiority in the workplace, teaching or hierarchical position, or over a person subject to his guardianship or custody, or with the express or tacit announcement of causing the victim a harm related to the legitimate expectations that the victim may have within the scope of the aforementioned relationship,

-if the perpetrator of sexual harassment has committed it in centers for the protection or reform of minors, internment centers for foreigners, or any other detention, custody or reception center, including temporary stay centers, or any other center of detention, custody or reception, including temporary stay centers,

3-Crimes related to prostitution and sexual exploitation and corruption of minors.(up to 18 years old)

-3.1 Prostitution (article 188 as aggravating circumstance)

-When, for the commission of the crime, the perpetrator has taken advantage of a situation of cohabitation or a relationship of superiority or kinship, being an ascendant, or sibling, by nature or adoption, or related, with the victim.

- When, for the commission of the crime, the perpetrator has taken advantage of his status as an authority, agent thereof or public official.

3.2 Recruitment and use of minors in exhibitionist or pornographic shows, or for the production of any kind of pornographic material(Article 189, as a aggravating circumstance)

-When the person responsible is an ascendant, guardian, curator, tutor, teacher or any other person in charge, de facto, even temporarily, or de jure, of the minor or disabled person in need of special protection, or is any person who lives with him or her or any other person who has acted in abuse of his or her recognized position of trust or authority.

-Responsibility by omission(Article 189 ,2, as an separate offense)

Whoever has under his authority, guardianship, custody or foster care a minor and who, knowing of his state of prostitution or corruption, does not do what is possible to prevent his continuation in such state, or does not go to the competent authority for the same purpose if he lacks the means for the custody of the minor...

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + North Macedonia and Ukraine]** indicate that the child's legal age for engaging in sexual activities is not relevant in the case of child sexual abuse by someone in a recognised position of trust, authority or influence?^[1] Please provide details.

[1] *Ibid.*, Recommendation 5

- Yes
 No

If appropriate, please provide more information (2.b No)

No, it is not relevant. We distinguish between sexual crimes committed against minor under sixteen a minors over sixteen until eighteen, but in both cases being part of the circle of trust is consider as a aggravating circumstance.

In addition, there is a legal presumption of lack of consent in any sexual activity (regardless of the age of the victim): article 178 : Acts of sexual content that are carried out using violence, intimidation or abuse of a situation of superiority or vulnerability of the victim are considered to be sexual aggression.

Here you can upload any file(s) in support of your answer

SCOPE OF OFFENCE Question 3. Does your national legal framework criminalise sexual abuse of children:

a. **where the offender abuses a recognised position of influence?** [12] Please refer to the specific legal provisions.

[12] *Ibid.*, Recommendation 1

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (3.a Yes)

it is considered as an aggravating circumstance foreseen in each type of crime relating to minors.

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + Belgium] where the victim is below 18 and emancipated through marriage, and the perpetrator is the victim's spouse or marital partner?**[13] Please refer to the specific legal provisions.

[13] *Ibid.*, Recommendation 7

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (3.b Yes)

In order to be emancipated and be able to marry, the minor must be at least 16 years old.
1.-sexual assault, victim over 16 years of age (article 180, aggravating circumstance)
-When the victim is or has been a wife or a woman who is or has been bound by a similar relationship of affectivity, even without cohabitation.
- When, for the execution of the crime, the person responsible has taken advantage of a situation or relationship of cohabitation or kinship or a relationship of superiority with respect to the victim.

Here you can upload any file(s) in support of your answer

c. **[for 22 Parties + the Republic of Moldova] where no coercion, force or threat is used by the perpetrator holding the position of trust, authority or influence?**^[14] Please refer to the specific legal provisions.

[14] *Ibid.*, Recommendation 8

Yes

No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (3.c Yes)

the criminalization of sexual assault (over 16 years of age) is based on the absence of freely expressed consent. Article 178 Criminal code
Sexual assaults on minors under sixteen years of age, It is a criminal offense to engage in sexual acts with a minor under the age of sixteen. If the perpetrator holds the position of trust, authority or influence, the penalty is subject to aggravation. In addition, if the act also involves the use of violence or intimidation, another new aggravating circumstance is applied. (article 181,2 and 178, 2)

Here you can upload any file(s) in support of your answer

SCOPE OF OFFENCE Question 4. Does your national legal framework:

a. **criminalise sexual abuse of children for acts other than sexual intercourse and equivalent actions?**^[15]

Please specify which other acts are covered and whether violation of a child's "sexual integrity" specifically is criminalised.

[15] *Ibid.*, Recommendation 9

Yes

No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (4.a Yes)

-Article 182. Whoever, for sexual purposes, causes a minor under sixteen years of age to witness acts of a sexual nature, even if the perpetrator does not participate in said acts.

-Article 183,1. Whoever, through the Internet, telephone or any other information and communication technology, contacts a minor under sixteen years of age and proposes to arrange a meeting with him/her in order to commit any of the offenses described in Articles 181 and 189, provided that such proposal is accompanied by material acts aimed at approaching him/her. Article 181 (performance of acts of a sexual nature), Article 189 (recruitment or use of minors in pornographic shows, or for the elaboration of child pornography, offering, display and sale of this material.)

-Article 183, 2. Whoever, through the Internet, telephone or any other information and communication technology, contacts a minor under sixteen years of age and performs acts aimed at duping the minor to provide him with pornographic material or shows him pornographic images in which a minor is depicted or appears.

-Article 184-sexual harassment. .Aggravating circumstances include taking advantage of a situation of labor, teaching or hierarchical superiority, or over a person subject to its custody or guardianship or committing the act in centers for the protection or reform of minors, internment centers for foreigners, or any other detention, custody or shelter center, or when the victim is in a situation of special vulnerability due to his or her age.

-Article 185 .Whoever executes or causes another person to execute acts of obscene exhibition before minors

-Article 186. Whoever, by any direct means, sells, disseminates or exhibits pornographic material to minors

-Articles 187 to 189. Criminal offences related to prostitution and sexual exploitation and corruption of minors.

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + Bulgaria] ensure equal sanctions for sexual abuse committed within a heterosexual and homosexual sexual activity?**^[16] Please refer to the specific legal provisions.

[16] *Ibid.*, Recommendation 11

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (4.b Yes)

There is no such distinction.
Sexual assault is defined as any act that infringes on the sexual freedom of another person without their consent.(Article 178)

Here you can upload any file(s) in support of your answer

c. **[for 22 Parties + Albania and the Republic of Moldova] make any distinct reference to “homosexual activities” in the description of criminal offences involving sexual abuse and sexual exploitation of children?**^[17] Please refer to the specific legal provisions.

[17] *Ibid.*, Recommendation 12

- Yes
- No

If appropriate, please provide more information (4.c No)

Here you can upload any file(s) in support of your answer

EX OFFICIO PROSECUTION Question 5. Does your national legal framework:

- a. **contain a requirement to investigate and prosecute sexual abuse and exploitation of children by someone in a recognised position of trust, authority or influence without a complaint from the victim or his /her legal representative?** [18] Please refer to the specific legal provisions.

[18] *Ibid.*, Recommendation 57

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (5.a Yes)

Article 191 Prosecution of criminal offences of sexual assault, or sexual harassment., if the victim is a minor, the report by the Public Prosecutor shall suffice.

In the other crimes in which the victim is a minor, the judge acts ex officio, once the possible commission of the crime is known.

Here you can upload any file(s) in support of your answer

- b. **contain a requirement to continue the proceedings even if the victim has withdrawn his/her complaint /statements?**[19] Please refer to the specific legal provision(s).

[19] *Ibid*

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (5.b Yes)

article 191,2 .in crimes of sexual assault or sexual harassment , forgiveness by the victim or legal representative does not extinguish the criminal action or the criminal liability.

Here you can upload any file(s) in support of your answer

c. **[for Portugal]** in case of a sexual act committed by an adult in respect of a child aged 14-16 years old which does not result in the child's death or suicide, require the child victim to lodge a complaint as a prerequisite for investigation and prosecution?^[20]

[20] *Ibid.*, Recommendation 56

- Yes
 No

Here you can upload any file(s) in support of your answer

MEASURES IN RESPECT OF CHILDREN WHO SEXUALLY OFFEND AND CHILDREN DISPLAYING RISKY AND HARMFUL SEXUAL BEHAVIOUR

Question 6. Does your national legal framework:

a. provide for non-criminal measures in respect of the children below the age of criminal responsibility who commit acts of sexual abuse towards other children?^[21]Please provide details.

[21] Inspired by *X and Others v. Bulgaria* (no. 22457/16), 2 February 2021 and *A.P. v. the Republic of Moldova* (no. 41086/12), 26 October 2021

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (6.a Yes)

Cases are referred to the regional child protection services, which are in charge of offering these children and their families programs adapted to their different behaviors and needs.

Here you can upload any file(s) in support of your answer

b. differentiate between adults and children above the age of criminal responsibility in the application of sanctions for offences involving sexual abuse of children?^[22] Please refer to the specific legal provision(s) and specify the age of criminal responsibility in your legislation.

[22] Question included for capacity-building purposes

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (6.b Yes)

. In cases of adults (people over eighteen years old) are penalized according to the criminal law, whereas minors (from fourteen to eighteen years old) are sanctioned according to their special law (criminal responsibility of minor Act).

Here you can upload any file(s) in support of your answer

CHILD VICTIMS' RIGHT TO PROTECTION AND PARENTAL RIGHTS

Question 7. Does your national legal framework:

a. provide for the possibility for child protection professionals to conduct exploratory interviews of a child without informing in advance the parents/legal guardians in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?^[23] Please provide details.

[23] 1st Implementation Report "Protection of Children against Sexual Abuse in the Circle of Trust: The Framework", Recommendation 26

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.a Yes)

Professionals should immediately report the suspicion of sexual abuse to the competent authority and, if the facts could constitute a crime, to the Security Forces and Corps, the Public Prosecutor's Office or the judicial authority, without prejudice to providing the immediate care that the victim may require. Organic Law 8/2021, of June 4, 21, on the comprehensive protection of children and adolescents against violence. Article 16. Therefore, the law does not provide for the possibility of conducting interviews, given the immediate obligation to inform the police and/or the public prosecutor's office of the suspicion of the existence of a crime.

In criminal proceeding: The minor is always represented, no matter if he or she is under special representation, guardians or parental authority, by the prosecutor.

Moreover, the Prosecutor will request from the Judge or Court the designation of a legal defender of the victim, to represent her in the investigation and in the criminal proceedings", when it assesses that the legal representatives of the minor victim or with judicially modified capacity have a conflict of interest with the victim, whether or not derived from the investigated act, which does not allow for trusting in an adequate management of their interests in the investigation or in the criminal proceeding". (article 26, 2 .Law 4/2015, of April 27, on the Statute of the victim of crime.)

Here you can upload any file(s) in support of your answer

b. provide for the possibility for child protection professionals to conduct exploratory interviews of a child without acquiring the parents/legal guardians' prior consent in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?^[24] Please provide details.

[24] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.b Yes)

Professionals should immediately report the suspicion of sexual abuse to the competent authority and, if the facts could constitute a crime, to the Security Forces and Corps, the Public Prosecutor's Office or the judicial authority, without prejudice to providing the immediate care that the victim may require. Organic Law 8/2021, of June 4, 21, on the comprehensive protection of children and adolescents against violence. Article 16. In criminal proceedings: minor is always represented, no matter if he or she is under special representation, guardians or parental authority, by the prosecutor. Moreover, the Prosecutor will request from the Judge or Court the designation of a legal defender of the victim, to represent her in the investigation and in the criminal proceedings", when it assesses that the legal representatives of the minor victim or with judicially modified capacity have a conflict of interest with the victim, whether or not derived from the investigated act, which does not allow for trusting in an adequate management of their interests in the investigation or in the criminal proceeding". (article 26, 2 .Law 4/2015, of April 27, on the Statute of the victim of crime.)

Here you can upload any file(s) in support of your answer

c. allow for the removal of the suspected perpetrator from the family environment in case of reasonable suspicion of sexual abuse of a child living in the same environment together with the suspect?^[25] Please provide details.

[25] This question results from the Committee's reasoning that "before resorting to the removal of the victim, the removal of the perpetrator should be preferred" (page 28 of the 1st implementation report).

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.c Yes)

Yes, it does. During the criminal procedure and after the criminal procedure.

Article 544 bis Criminal Procedure Law:

the Judge or Court may, in a reasoned manner and when it is strictly necessary for the protection of the victim, impose a precautionary prohibition on the accused to reside or go to a certain place, or to approach or communicate with certain persons.

In addition, the use of telematic devices for the control of compliance may be agreed upon by means of a reasoned resolution.

Article 544 ter. Protection order for victims of domestic violence, It will be adopted taking into account the need for comprehensive and immediate protection of the victim (whether a minor or not) and, where appropriate, of the persons subject to their parental authority, guardianship, conservatorship, guardianship, custody or foster care. the protection order will include the precautionary measures of criminal and / or civil order.

-The measures of civil nature could consist of the form in which the parental authority, foster care, guardianship, curatorship or de facto guardianship will be exercised, attribution of the use and enjoyment of the family home, to determine the regime of guardianship and custody, suspension or maintenance of the regime of visits, communication and stay with the minors or disabled persons in need of special protection, the regime of food provision, as well as any disposition that is considered opportune in order to remove them from a danger or to avoid prejudices to them.

-When a protection order is issued with measures of criminal content and there are well-founded indications that the minor sons and daughters have witnessed, suffered or lived with family violence for the alleged commission of a crime against life, physical or moral integrity, sexual liberty, freedom or security, the judicial authority, ex officio or at the request of a party, will suspend the visiting regime, stay, relationship or communication of the accused with respect to the minors who depend on him. However, at the request of a party, the judicial authority may not grant the suspension by means of a decision based on the best interests of the minor and after evaluation of the situation of the paternal-filial relationship.

Article 192 Penal Code.

- Penalty of mandatory imposition-for crimes of sexual assault(in which the victim is a minor), prostitution and sexual exploitation and corruption of minors.

The penalty of deprivation of parental authority or special disqualification for the exercise of parental rights, guardianship, conservatorship, guardianship or foster care, for a period of four to ten years.

Here you can upload any file(s) in support of your answer

d. **consider the removal of the child victim from the family environment as a last resort procedure? Is that procedure clearly defined, and does it set out conditions for and duration of the removal?**^[26] Please provide details.

[26] *Ibid.*, Recommendation 27

- Yes
 No

If appropriate, please provide more information (7.d No)

It is not necessarily considered as a last resort, and definitely can be use automatically if the minor's superior interest requires that.

-With respect to the provisional measures adopted, they will be in force as long as the situation of risk for the minor remains. These measures may be appealed.

-deprivation of rights imposed by judgment: Article 40 Penal Code "The penalty of deprivation of the right to reside in or go to certain places shall have a duration of up to 10 years. The prohibition of approaching or communicating with the victim or his or her family members or other persons shall be for a period of one month to 10 years."

Article 192 Penal Code.

- Penalty of mandatory imposition-for crimes of sexual assault(in which the victim is a minor), prostitution and sexual exploitation and corruption of minors.

The penalty of deprivation of parental authority or special disqualification for the exercise of parental rights, guardianship, conservatorship, guardianship or foster care, for a period of four to ten years.

Here you can upload any file(s) in support of your answer

e. [ensure that the different agencies involved in the coordination and collaboration concerning child sexual abuse are allowed to share personal information as appropriate?](#)^[27] Please provide details.

[27] *Ibid.*, Recommendation 25

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.e Yes)

Police, judges and prosecutor have mechanisms to collaborate with each other.

collaborative efforts are the responsibility of all public administrations.Organic Law 10/2022 of 6 September on the comprehensive guarantee of sexual freedom.

Article 44 :The competent public administrations shall use all available means, including the most advanced techniques, to guarantee the effectiveness of the investigations carried out by the Security Forces and Corps in order to verify and accredit the facts that may constitute sexual violence, always preserving the integrity and privacy of the victims.NO ESTOY SEGURA DE METERLO

Here you can upload any file(s) in support of your answer

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 8. Does your national legal framework clearly distinguish:

- cases of suspension of parental rights as a provisional measure to protect the child before a court decision on the conviction of the concerned parent is taken, and

- cases of withdrawal of parental rights once the court has convicted the said parent?^[28] Please provide details.

[28] *Ibid.*, Recommendation 32

- Yes
- No

Please provide information in support of your answer, if possible by referring to specific legal provisions and their exact wording (8 Yes)

The Spanish legal system distinguishes between cases of suspension of the guardianship and custody regime before a conviction has been handed down against one of the parents, from cases in which there is a deprivation of parental authority due to the issuance of a guilty verdict. (Articles 92.7 and 8 of the Civil Code, 544.7 ter of the Criminal Procedure Law and 192.3 of the Penal Code).

In this sense, joint custody is not applicable when either of the parents is involved in a criminal process initiated for attempting to attack the life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the other spouse or children who live with both. Nor will it proceed when the judge notices the existence of well-founded indications of domestic or gender violence.

Exceptionally, the Judge, at the request of one of the parties, with a report from the Public Prosecutor's Office, may agree on shared custody and custody on the basis that only in this sense is the best interest of the minor adequately protected.

In turn, when a protection order is issued with measures of criminal content and there are well-founded indications that the minor sons and daughters have witnessed, suffered or experienced episodes of physical or sexual violence, the judicial authority, ex officio or at request, it will suspend the visitation regime, stay, relationship or communication of the accused with respect to the minors who depend on him. However, at the request of a party, the judicial authority may not agree to the suspension through a resolution motivated by the best interests of the minor and after evaluating the situation of the parent-child relationship.

Likewise, for cases in which one of the parents has already been sentenced for having committed crimes of a sexual nature against minors, the penalty of deprivation of parental right is mandatory, in addition to other penalties already imposed.

Yes, the Spanish legal system distinguishes between cases of suspension of the guardianship and custody regime before a conviction has been handed down against one of the parents, from cases in which there is a deprivation of parental authority due to the issuance of a guilty verdict. (Articles 92.7 and 8 of the Civil Code, 544.7 ter of the Criminal Procedure Law and 192.3 of the Penal Code).

In this sense, joint custody is not applicable when either of the parents is involved in a criminal process initiated for attempting to attack the life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the other spouse or children who live with both. Nor will it proceed when the judge notices the existence of well-founded indications of domestic or gender violence.

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In turn, when a protection order is issued with measures of criminal content and there are well-founded indications that the minor sons and daughters have witnessed, suffered or experienced episodes of physical or sexual violence, the judicial authority, ex officio or at request, it will suspend the visitation regime, stay, relationship or communication of the accused with respect to the minors who depend on him. However, at the request of a party, the judicial authority may not agree to the suspension through a resolution motivated by the best interests of the minor and after evaluating the situation of the parent-child relationship.

Likewise, for cases in which one of the parents has already been sentenced for having committed crimes of a sexual nature against minors, the penalty of deprivation of parental right is mandatory, in addition to other penalties already imposed.

Here you can upload any file(s) in support of your answer

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 9. Does your national legal framework provide for:

a. [automatic suspension of parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of own child are pending](#)?^[29] Please provide details.

[29] Question included for capacity-building purposes, i.e. to map whether there are Parties that have a particular legal framework in such cases.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (9.a Yes)

The Spanish legal system provides for the possibility of automatic suspension of the custody regime, visits, relationship or stay of someone who has committed sexual crimes against their own children, as well as automatic loss of parental authority in cases of conviction.

In this sense, joint custody is not applicable when either of the parents is involved in a criminal process initiated for attempting to attack the life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the other spouse or children who live with both. Nor will it proceed when the judge notices the existence of well-founded indications of domestic or gender violence.

Exceptionally, the Judge, at the request of one of the parties, with a report from the Public Prosecutor's Office, may agree on shared custody and custody on the basis that only in this sense is the best interest of the minor adequately protected.

In turn, when a protection order is issued with measures of criminal content and there are well-founded indications that the minor sons and daughters have witnessed, suffered or experienced episodes of physical or sexual violence, the judicial authority, ex officio or at request, it will suspend the visitation regime, stay, relationship or communication of the accused with respect to the minors who depend on him. However, at the request of a party, the judicial authority may not agree to the suspension through a resolution motivated by the best interests of the minor and after evaluating the situation of the parent-child relationship.

Likewise, for cases in which one of the parents has already been sentenced for having committed crimes of a sexual nature against minors, the penalty of deprivation of parental right is mandatory, in addition to other penalties already imposed.

Here you can upload any file(s) in support of your answer

b. [automatic withdrawal of parental rights of parents convicted of sexual abuse of own child?](#)^[30] Please provide details.

[30] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (9.b Yes)

The Spanish legal system provides for the possibility of automatic suspension of the custody regime, visits, relationship or stay of someone who has committed sexual crimes against their own children, as well as automatic loss of parental authority in cases of conviction.

In this sense, joint custody is not applicable when either of the parents is involved in a criminal process initiated for attempting to attack the life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the other spouse or children who live with both. Nor will it proceed when the judge notices the existence of well-founded indications of domestic or gender violence.

Exceptionally, the Judge, at the request of one of the parties, with a report from the Public Prosecutor's Office, may agree on shared custody and custody on the basis that only in this sense is the best interest of the minor adequately protected.

In turn, when a protection order is issued with measures of criminal content and there are well-founded indications that the minor sons and daughters have witnessed, suffered or experienced episodes of physical or sexual violence, the judicial authority, ex officio or at request, it will suspend the visitation regime, stay, relationship or communication of the accused with respect to the minors who depend on him. However, at the request of a party, the judicial authority may not agree to the suspension through a resolution motivated by the best interests of the minor and after evaluating the situation of the parent-child relationship.

Likewise, for cases in which one of the parents has already been sentenced for having committed crimes of a sexual nature against minors, the penalty of deprivation of parental right is mandatory, in addition to other penalties already imposed.

Here you can upload any file(s) in support of your answer

GUARANTEES OF PROTECTION FOR PERSONS REPORTING SUSPECTED OFFENCES Question 10.

How does your national legal framework ensure that any person reporting in good faith suspected sexual abuse and sexual exploitation of a child, including a person bound by professional confidentiality rules, does not get prosecuted or punished by judicial proceedings for defamation, libel or similar offences?^[31]

[31] Based on *Yuppala v. Finland* (no. 18620/03), 2 December 2008 and *M.P. v. Finland* (no. 36487/12), 15 December 2016. Partly based on Article 12 of the Lanzarote Convention.

In Spain, it is an inexcusable duty that anyone who is aware of the commission of a crime immediately proceed to report it to the authorities. In this sense, our legal system is based on the presumption of legitimacy of the complaint, without prejudice or conditioning the subsequent result of the lawsuit.

The general rule is established in Organic act 8/2021, of June 4, on the comprehensive protection of children and adolescents against violence: Article 20. Protection and security.

“1. The public administrations, within the scope of their competencies, shall establish the appropriate mechanisms to guarantee the confidentiality, protection and safety of persons who have brought situations of violence against children and adolescents to the attention of the authorities. 2. Educational, leisure and free time centers, as well as establishments in which minors habitually reside, shall adopt all necessary measures to guarantee the protection and safety of children and adolescents who report a situation of violence. 3. The judicial authority, ex officio or at the request of a party, may agree on the protection measures provided for in the specific regulations applicable to witness protection, when it deems it necessary in view of the risk or danger arising from the formulation of a complaint in accordance with the preceding articles”

It is true that, in order to level and protect people against possible spurious claims, the procedural law grants, to the person against whom the procedure has been freely dismissed (not in the event that it was provisional) the possibility of filing a complaint for the crime of slander against whom he originally denounced him. However, this possibility is only limited to cases in which the case has been intervened as a private accusation, but not for cases in which the reported facts have simply been brought to the attention of the authorities. This distinction is because, in Spain, unlike other legal systems, it is possible that the victim of the crime can present an accusation independently of the position adopted by the Public Prosecutor's Office.

Likewise, and along with the possibility of denouncing a mendacious complainant for the crime of slander, the crime of false reporting is also included in our penal code, although for this it is necessary that a final judgment has been previously issued.

Finally, with regard to civil order, it is consolidated doctrine of the Spanish Supreme Court that the mere filing of a criminal complaint does not constitute an act of imputation harmful to honor, and much less when its action has a minimum of support and respects the rules of procedural good faith (SSC 262/2016 of April 20).

For all these reasons, we can affirm that in Spain there are optimal protection mechanisms for all those people who report in good faith.

Here you can upload any file(s) in support of your answer

ASSISTANCE TO THIRD PARTIES Question 11.

What kind of legislative or other measures does your national legal framework have in place to ensure that persons close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care?^[32]

[32] 1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework”, Recommendation 30

Since 1995, Spain has had a specific statute aimed at providing assistance and help to victims of sexual crimes.

In this way, a system of public aid is established for the benefit of direct and indirect victims of intentional and violent crimes, committed in Spain, resulting in death, serious bodily injury, or serious damage to physical health or mental and victims of sexual violence .

Recently, the aforementioned norm has been subject to reform by act 10/2022 of sexual integrity, which has established, among other changes that the start of the calculation of the statute of limitations begins not from the commission of the crime, but from the moment that the conviction has been handed down.

In addition, several articles has been reformed in order to extend the scope and measures to help victims and their families (Fifth final provision. Modification of act 35/1995, of December 11, on aid and assistance to victims of violent crimes and crimes against sexual freedom).

In this sense, Those who, at the time the crime was committed, are Spanish or nationals of another Member State of the European Union or those who, not being such, habitually reside in Spain, are nationals of another State that recognizes aid similar to those of the European Union, may access this aid. Spaniards in their territory.

Likewise, women nationals of any other State who are in Spain may access aid, regardless of their administrative situation, when the affected person is a victim of sexual violence in the sense of the Organic Law of the comprehensive guarantee of sexual freedom including victims of homicide subsequent to a crime against sexual freedom, or victims of gender violence in the terms provided for in Organic act 1/2004, of December 28, on comprehensive protection measures against Gender Violence.

The status of victim of gender violence or sexual violence must be proven by any of the following means of proof:

- a) Through the conviction.
- b) Through the judicial resolution that has agreed as a precautionary measure to protect the victim, the prohibition of approach or the provisional detention of the accused.
- c) In the manner established in article 23 of Organic act 1/2004, of December 28 or in article 36 of the Organic Law of comprehensive guarantee of sexual freedom.

In the case of death as a result of the violence suffered, the provisions of the previous paragraphs will be required with respect to the beneficiaries as indirect victims, regardless of the nationality or habitual residence of the deceased victim.

2. Persons who suffer serious bodily injuries or serious damage to their physical or mental health as a direct consequence of the crime, including victims of vicarious violence, provided for in article 1.4, may access this aid as direct victims. of Organic act 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence, when your minor family member or close friend dies as a result of the crime (article 6).

At the same time, Provisional aid may be granted before a final judicial resolution is issued that puts an end to the criminal process, provided that the precarious economic situation in which the victim or his beneficiaries have been left is proven.

Regulations will determine the criteria by virtue of which the financial situation of the crime victim will be considered precarious, for the purposes of being able to access the granting of provisional aid.

In cases in which the victim of the crime is considered a victim of sexual violence or gender violence, in the terms provided for in article 2.1 of this law, provisional aid may be granted regardless of the economic situation of the victim or of its beneficiaries.

"3. The request for provisional aid must contain, in addition to the points referred to in article 66.1 of Law 39 /2015, of October 1, on Common Administrative Procedure of Public Administrations, the following data:

- a) The classification of injuries or damages to health, as well as damages to victims of sexual violence, carried out by the body and through the procedure determined by regulation.
- b) Documentary accreditation of the death, if applicable, and of the status of beneficiary as an indirect victim.
- c) Report from the Public Prosecutor's Office indicating the existence of reasonable evidence to assume that the death, injuries or damage have been caused by an act that is a violent, intentional crime or against sexual freedom.

4. The provisional aid may not exceed 80 percent of the maximum amount of aid established by this law for cases of death, serious bodily injury, serious damage to health or damage due to crimes against sexual freedom, as appropriate. (Article 10).

Here you can upload any file(s) in support of your answer

ASSISTANCE TO THIRD PARTIES Question 12.

When determining the support required to the victim and the persons close to him or her, how does your national legal framework ensure that the child's disclosure does not worsen his or her situation and that of the other non-offending members of the family?^[33]

[33] *Ibid.*, Recommendation 31

In Spain, protection measures only have afflictive effects exclusively with respect to the alleged criminal, without this having to cause any type of damage to the rest of the family members linked to the victim or the aggressor.

Here you can upload any file(s) in support of your answer

MONITORING OF OFFENDERS Question 13. Does your national legal framework provide for:

a. **a mechanism to monitor or supervise persons convicted of child sexual abuse and, specifically, persons convicted of child sexual abuse while holding a recognised position of trust, authority or influence?**^[34] Please provide details.

[34] *Ibid.*, Recommendation 33

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.a Yes)

The Spanish legal system provides for a plurality of mechanisms to monitor or supervise people punished for the commission of crimes against sexual freedom perpetrated against minors, whether or not those are part of the minor's circle of trust. (Articles 48, 57, 106 and 192 of the Penal Code).

Among them, we can distinguish the punishments of removal from compliance after the prison sentences imposed on the convicted person, which prevent the aggressor from approaching the victim wherever he is, at his home, at his place of work and at any other place. Prohibition of approach that can be controlled with telematics bracelets. At the same time, the prohibition on the prisoner communicating with the victim by any means of communication or computer or telematics means, written, verbal or visual contact, is also mandatory.

Moreover, there is a legal limitation for access to the third degree of imprisonment (less severe enforcement regime) Article 36,2 of the penal code: "when the duration of the prison sentence imposed is longer than five years and it is a case of sexual assault against a minor under 16 years of age, the convicted person may not be classified in the third grade of penitentiary treatment until half of the sentence has been served."

Likewise, after compliance with the prison, removal and communication sentences, and the imposition of a period of supervised freedom of the convicted person is mandatory, which can reach up to ten years, by virtue of which the convicted person will not be able to approach or communicate with the victim, under penalty of breach of sentence.

Here you can upload any file(s) in support of your answer

b. **sharing with other countries data concerning persons convicted of child sexual abuse?**^[35] Please provide details.

[35] Based on Article 38 of the Lanzarote Convention.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.b Yes)

The Royal Decree 1110/2015, of December 11, which regulates the Central Registry of Sex Offenders, provides measure to share sharing with other countries data concerning persons convicted of child sexual

abuse.

In this sense, article 9, 5 establishes that: "at the request of foreign judicial or police authorities that require it in the framework of a judicial or police investigation, or crime prevention, the person in charge of the Registry will communicate the information contained therein, without the consent of the interested party, in the forms and cases determined by Community regulations and international treaties on judicial assistance in criminal matters signed by Spain."

Here you can upload any file(s) in support of your answer

MEASURES IN RESPECT OF PROFESSIONALS AND LEGAL PERSONS Question 14. Does your national legal framework:

a. **allow for the immediate removal or suspension of a professional or volunteer working with children suspected of sexually abusing a child?**^[36] Please provide details.

[36] Based on Article 27§3(b) of the Lanzarote Convention.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.a Yes)

Our legal system provides for the possibility of suspension and, where appropriate, termination of the employment relationship for disciplinary reasons, such as the opening of a disciplinary file due to signs of criminal activity. (Articles 93 to 98 of the Public Official Statute).

At the same time, both in public administrations and in collaborating entities there are action protocols aimed at preventing and proceeding with this type of case, reinforcing the cases in which it is appropriate to agree on the provisional suspension or the extension of functions.

Organic act 8/2021, on the comprehensive protection of children and adolescents against violence, establishes that "It will be a requirement for the access and exercise of any professions, trades and activities involving regular contact with minors, not to have been convicted by final judgment for any crime against sexual freedom, as well as for any crime of trafficking in human beings as defined in the Penal Code. For this purpose, whoever seeks access to such professions, trades or activities must prove this circumstance by providing a negative certification from the Central Registry of sex offenders" (Article 57).

Here you can upload any file(s) in support of your answer

b. **ensure that professionals working in the public, private or voluntary sectors failing to report offences of child sexual abuse occurring in "out-of-home care"**^[37] **settings are held liable?**^[38] Please provide details.

[37] In accordance with the Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse adopted at its 25th meeting (15-18 October 2019), “out-of-home care” represents all settings in which children can be placed out of their home for care (see point b of the Declaration).

[38] Based on the Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse, point 6.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.b Yes)

Yes, in Spain it is an inescapable duty to inform the authorities of the existence of crimes of which there is evidence. Therefore, failure to comply with this duty may give rise to the opening of a disciplinary procedure that entails the provisional suspension and subsequent termination of the employment relationship.

Here you can upload any file(s) in support of your answer

c. **ensure that legal persons failing to protect children in their care from sexual abuse are held liable?**^[39]
Please provide details.

[39] *Ibid.*, see point 7.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.c Yes)

Currently our penal code provides for the assumption of criminal responsibility of the legal persons in cases of crimes related to prostitution or child pornography. In the rest of crimes of a sexual nature, an express responsibility of the legal person is not regulated yet.

Here you can upload any file(s) in support of your answer

SPECIAL REPRESENTATIVES Question 15. How does your national legal framework ensure that special representatives and guardians ad litem who are appointed to avoid a conflict of interest between the holders of parental authority and the child victim:

a. **receive appropriate training and legal knowledge to ensure and safeguard the best interests of the child victim during criminal investigations and proceedings?**^[40]

[40] 1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework”, Recommendation 35

Yes, it is an obligation on the part of public administrations to offer training courses on assistance to minors in cases of crimes of sexual violence. Therefore, whether as a personal guardian is appointed by the judicial authority or whether it is the public entity that exercises the guardianship and representation of the minor, all of them have had to receive training in assistance to minors.

In addition, the Organic act 8/21, on the comprehensive protection of children and adolescents against violence, establishes that “The Bar Associations, when they require specialization courses for the exercise of the public defender's office, shall ensure specific training in the rights of children and adolescents, with special attention to the Convention on the Rights of the Child and its general observations, and shall receive, in any case, specialized training in the area of violence against children and adolescents” (Article 14).

Here you can upload any file(s) in support of your answer

b. [avoid combining the functions of a lawyer and guardian ad litem in one person?](#)^[41]

[41] Ibid., Recommendation 36

Yes, those functions are separated generally in Spain.

Here you can upload any file(s) in support of your answer

c. [are provided free of charge for the child victim?](#)^[42]

[42] Ibid., Recommendation 37

Yes, depending on the economic capacity of the minor, they can establish aid to cover the fee of the guardians. Likewise, in most cases guarding functions are carried out by public entities and therefore paid for by the public treasury.

Article 5 of the Act 1/1996, on free legal assistance establishes that “Regardless of the existence of resources for litigation, the right to free legal aid is recognized and will be provided immediately to victims of gender violence, terrorism and human trafficking in those processes that are linked to, derive from or are a consequence of their status as victims, as well as to minors and persons with disabilities in need of special protection when they are victims of crimes of homicide, injuries of articles 149 and 150, in the crime of habitual abuse provided for in article 173. 2, in crimes against freedom, crimes against sexual freedom and indemnity and crimes of trafficking in human beings”.

Here you can upload any file(s) in support of your answer

SPECIAL REPRESENTATIVES Question 16. [for 22 Parties + Malta]

a. Do you appoint a special representative or guardian ad litem when there is a conflict of interest between the holders of parental authority and a child?^[43] Please provide details.

[43] *Ibid.*, Recommendation 34

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (16.a Yes)

Article 163 of the Spanish Civil Code establishes that whenever in any matter the parents have an interest opposite to that of their non-emancipated children, they will be appointed a defender to represent them in court and outside of it. This appointment will also be made when the parents have an interest opposite to that of the emancipated minor child whose capacity they must complete.

In this sense, article 235 of the Spanish Civil Code establishes that judicial defender for the minor will be appointed in the following cases: 1. when in any matter there is a conflict of interest between minors and their legal representatives, except in cases where the law provides another way to resolve it. 2. When, for any reason, the guardian does not perform his duties, until the determining cause ceases or another person is appointed. 3. When the emancipated minor requires the capacity complement provided for in articles 247 and 248 and those who are responsible for providing it cannot do so or there is a conflict of interest with them.

In addition, in cases that the minor is helpless or his parents have lost all their parental rights, a guarding, who can be a person or a public institution, will be appoint in order to protect the superior interest of the minor. Likewise, the public prosecutor must be a mandatory party in all the judicial procedure involving the minors, in order to protect their superior interest.

Here you can upload any file(s) in support of your answer

b. Is this person allowed to be present throughout the criminal proceedings?^[44] Please provide details.

[44] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (16.b Yes)

Yes, in the case of the guardians, they can be present throughout the criminal proceedings and, even, press charges against the person who has harm the minor.

Here you can upload any file(s) in support of your answer

SUPPORT FOR CHILD VICTIMS IN INVESTIGATIVE AND JUDICIAL PROCEEDINGS Question 17. In investigative and judicial proceedings how does your national legal framework ensure that:

- a. [protection measures are available to all children irrespective of their age](#)?^[45] Please provide details.

[45] *Ibid.*, Recommendation 38

Article 26.1 of the Law 4/2015, of 27 April, on the Statute of the Victim of Crime "Protection measures for minors, persons with disabilities in need of special protection and victims of sexual violence.

In the case of minor victims, victims with disabilities in need of special protection and victims of sexual violence, in addition to the measures provided for in the previous article, in accordance with the provisions of the Criminal Procedure Act, the measures necessary to prevent or limit, as far as possible, the development of the investigation or the holding of the trial from becoming a new source of harm for the victim of the crime shall be adopted. In particular, the following shall apply:

- (a) Statements received during the investigation phase shall be recorded by audiovisual means and may be reproduced at trial in the cases and under the conditions determined by the Criminal Procedure Code.
(b) The statement may be received through experts.

- The purpose of Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence (hereinafter, LOPIVI) is to guarantee the fundamental rights of children and adolescents to their physical, psychological and moral integrity against any form of violence, ensuring the free development of their personality and establishing comprehensive protection measures in all areas in which they develop their lives.

The LOPIVI has introduced an important novelty for the protection of minors under fourteen years of age so that they do not have to testify more than once throughout the different procedural phases, establishing the imperative nature of pre-constituted evidence in Article 449 ter LECRIM. In this sense, it is established that when a person under fourteen years of age or a person with a disability in need of special protection must testify as a victim or witness in criminal proceedings involving the investigation of a serious crime, the judicial authority will agree, in all cases, to hear the minor as pre-constituted evidence, with all the guarantees of the taking of evidence in the oral trial.

The hearing of the minor is carried out by forensic psychologists from the Institutes of Legal Medicine and Forensic Sciences or from the technical teams attached to the Courts and Tribunals of Justice.

In the event that the person under investigation is present at the hearing of the minor, his or her visual confrontation with the minor shall be avoided, using, if necessary, any technical means. The statement of persons over fourteen and under eighteen years of age may also be made with the guarantees of pre-constituted evidence by decision of the judicial authority agreed by means of a reasoned decision when, in view of the circumstances of the case and the seriousness of the offence committed, it is an appropriate measure in the best interests of the minor. It is therefore a measure applicable to all minors.

- Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom (LOGILS, hereinafter), which aims at the comprehensively protect women and children who have been victims of sexual violence. In the case of minors, they have the right to specialised care services adapted and to their

needs, which will provide them with psychological, educational and legal assistance.

Here you can upload any file(s) in support of your answer

b. [specificities of sexual abuse committed in respect of a child by someone in a recognised position of trust, authority or influence are taken into account in the measures and procedures applied during criminal investigations and proceedings in order not to aggravate the trauma experienced by the child?](#)^[46] Please provide details.

[46] *Ibid.*, Recommendation 39

Yes, the specificities of sexual abuse of a child by someone in a position of trust, authority or influence are taken into account in the adoption of measures.

Law 8/2021 of 2 June, reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity, in the interests of the safety and well-being of minor sons and daughters, has amended Article 94 of the Civil Code in relation to paternal-filial measures in the following cases:

- No visiting or stay regime shall be established with respect to the parent involved in criminal proceedings for threatening the life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the other spouse or their children; and when the judicial authority notes that there are well-founded indications of domestic or gender-based violence, except in the best interests of the minor.

- No visiting arrangements shall be established with respect to the parent in provisional detention or by final judgement, agreed in criminal proceedings for crimes against the life, physical integrity, liberty, moral integrity or sexual liberty and indemnity of the other spouse, parent or their minor children.

Likewise, the Criminal Code and the Procedural Procedure Act have been modified through Organic Law 8 /2021, of 4 June, on the comprehensive protection of children and adolescents against violence (hereinafter, LOPIVI) and Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom (hereinafter, LOGILS), introducing, among other measures, the following, in order to provide greater protection for children and adolescents who are victims of violence:

- Extension of the calculation of the statute of limitations for attempted murder, serious injury, habitual abuse, crimes against sexual freedom and crimes of trafficking in human beings, when the victim is a person under eighteen years of age.

To this end, Article 132 of the Criminal Code has been modified, which now establishes that the statute of limitations period will be counted from the date on which the victim reaches the age of thirty-five, and if the victim dies before reaching that age, from the date of death.

The imposition of the penalty of deprivation of parental authority is mandatory for those convicted of homicide or murder when the victim is a son or daughter of the perpetrator, with respect to other children, if there are any, or when the victim and the perpetrator of the crimes of homicide or murder have minor children in common (Article 140 bis of the Criminal Code introduced in its Title I "Homicide and its forms").

The LOGILS has introduced the following measures:

- The person responsible for the commission of any offence against sexual freedom whose victim is a minor

shall be punished, in addition to the corresponding prison sentence, with the penalty of deprivation of parental authority or special disqualification from exercising the rights of parental authority, curatorship, guardianship or foster care.

Likewise, the judicial authority may also impose a penalty of special disqualification from any profession, trade or activity, whether paid or unpaid, that involves regular and direct contact with minors.

- The person responsible for the offence of sexual harassment committed in a centre for the protection or reform of minors shall be sentenced, in addition to the corresponding prison sentence, to special disqualification from the exercise of the profession, trade or activity. If the person criminally responsible is a public official, he shall be sentenced to absolute disqualification.

It should be noted that Organic Law 4/2023 of 27 April has recently been passed, amending Organic Law 10/1995 of 23 November on the Criminal Code, in crimes against sexual freedom, the Criminal Procedure Act and Organic Law 5/2000 of 12 January, which regulates the criminal responsibility of minors. This Organic Law 4/2023 has introduced novelties in order to reinforce the protection of children and adolescents, among others, the following: the attenuated penal type cannot be applied to sexual aggressions against minors under sixteen years of age when the victim's capacity has been annulled; the penalties for aggravated crimes of carnal access to minors under sixteen years of age are recovered; the aggravating circumstance of prevalence is extended to any person linked to the victim by a family relationship; the penalty will be greater when several aggravating circumstances concur. This extension of the aggravating circumstance of prevalence is intended to protect the whole circle of trust of minors, adapting Spanish legislation to the Lanzarote Convention.

Here you can upload any file(s) in support of your answer

c. **a child who is a presumed victim of sexual abuse is supported by a professional trained to safeguard children's psychological well-being?**^[47] Please provide details.

[47] Based on *N.Ç. v. Türkiye* (no. 40591/11), 9 February 2021

The statement of minors is made with the procedural guarantees of the pre-constituted evidence regulated in article 449 ter LECRIM. The hearing of the minor will be carried out by an expert in psychology with training in childhood and adolescence in order to safeguard the emotional well-being of the minor.

The new regulation of pre-constituted evidence introduced by Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence (hereinafter, LOPIVI) is regulated in article 449 ter of the LECRIM. The aim of this law is to reduce secondary victimisation and preserve the quality of the testimony which, due to the passage of time, may be contaminated.

Likewise, in order to safeguard the psychological well-being of minors who are victims of sexual violence, Article 156 of the Civil Code establishes in relation to psychological assistance to minors that "When a minor child requires psychological assistance, the consent of both parents shall not be necessary, if a conviction has been handed down or criminal proceedings have been initiated against one of the parents for an offence against the life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the common minor children, or for an offence against the other parent, the consent of the latter shall be sufficient for the psychological care and assistance of the minor children, the former having to be informed beforehand.

The above shall also apply, even if no prior complaint has been filed, when the woman is receiving assistance in a specialised gender violence service, provided that a report issued by said service accredits said situation. If the assistance is to be provided to children over the age of sixteen, the express consent of the latter shall be required in all cases".

Here you can upload any file(s) in support of your answer

SUPPORT FOR CHILD VICTIMS IN INVESTIGATIVE AND JUDICIAL PROCEEDINGS Question 18.

Since the adoption of the 1st implementation report in the 1st monitoring round in 2015, has your national legal framework been amended to ensure that the justice system accommodates more fully the specificities attached to the participation of children as victims in proceedings and not solely as perpetrators of criminal offences?^[48] Please provide details.

[48] 1st Implementation Report "Protection of Children against Sexual Abuse in the Circle of Trust: The Framework", Recommendation 40

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (18 Yes)

The protection of minors is a priority obligation for Spain, recognised in Article 39 of the Spanish Constitution.

The Spanish legal system has incorporated important advances in the defence of the rights of minors, as well as in their protection against violence, in compliance with binding international treaties, such as the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 and ratified by Spain in 1990, together with its optional protocols and the General Comments of the Committee on the Rights of the Child.

Likewise, the Council of Europe has generated important normative advances in the protection of child victims of violence through the Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the Convention on Combating Trafficking in Human Beings or the Convention on Cybercrime (Budapest Convention), etc.

These international and European requirements have been taken up and translated into the following regulations:

- 1) Criminal Procedure Act,
- 2) Criminal Code, Civil Code,
- 3) General Penitentiary Organic Law,
- 4) Organic Law on the Judiciary, Organic Law on the Legal Protection of Minors, 5) Organic Law on Measures for the Protection of Minors, 6) Organic Law on the Protection of Minors,
- (5) Organic Law on Comprehensive Protection Measures against Gender Violence,

- 6) Law on Free Legal Aid,
- 7) Law regulating the Statute of the Victims of Crime.
- (8) Organic Law regulating the criminal liability of minors,
- 9) Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence,
- 10) Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom.
- 11) Organic Law 4/2023, of 27 April, for the modification of Organic Law 1071995, of 23 November, of the Criminal Code, in crimes against sexual freedom, the Criminal Procedure Law and Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors.
- 12) etc.,.

Here you can upload any file(s) in support of your answer

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1995_de_23_de_noviembre_del_Codigo_penal_en_los_delitos_contra_la_libertad_sexual.pdf
d615bbe2-57fb-43be-9cd7-7a1387b420d1/LOGILS.pdf
be94f167-3f07-4a21-a70c-5e387de10740/LOPIVI.pdf

INVESTIGATION Question 19. In the investigation phase:

In 2023 the Steering Committee for the Rights of the Child (CDENF) circulated a questionnaire in the framework of its mapping study of the implementation and development of Barnahus model in Europe. Should your authorities have responded to this questionnaire, you may reiterate those replies and complete as need be.

- a. are interviews of child victims arranged in a child-friendly setting separate from the usual premises where investigations and interviews are conducted (such as police, hospital or court premises), and are such settings provided throughout your territory?^[49] Please provide details.

[49] *Ibid.*, Recommendation 41

- Yes
 No

If appropriate, please provide more information (19.a No)

The Spanish Government, through the Ministry of Social Rights and Agenda 2030, completed the questionnaire to study the implementation and development of the barnahus model in Europe.

Spain is organised territorially as a State of Autonomous Communities, which led the MDSA2030 to send the CDENF a questionnaire completed individually by each of the 17 Autonomous Communities and the two autonomous cities of Ceuta and Melilla, since they have assumed competence in the field of child protection, which determines that there is a different degree of implementation of the barnahus model depending on each region.

Currently, in Spain, there is a barnahus or children's home in Tarragona that offers comprehensive care for minors who are victims of sexual violence under one roof. In this children's home, the statement of minors who are victims of sexual violence is taken in a friendly environment with all the guarantees of pre-constituted evidence, without the need for the minor to travel to police or judicial premises.

In the rest of Spain, statements are made in court, preferably in a gessel camera and in friendly rooms, avoiding physical contact between the minor and the person responsible for the offence, using technical means.

In criminal proceedings, in order to prevent minors from having to testify more than once, the judicial authority may agree by means of a reasoned judicial decision that the statement of the minor should be made in the investigation phase with all the legal and procedural guarantees of plenary evidence so that he /she does not testify again in the oral trial, where the audiovisual recording of the statement will be played in order to introduce it in the oral trial.

In order to protect persons under fourteen years of age so that they do not have to testify more than once during the different procedural phases, pre-constituted evidence is imperatively established in Article 449 ter LECRIM. In this sense, it is established that when a person under fourteen years of age or a person with a disability in need of special protection must testify as a victim or witness in criminal proceedings involving the investigation of a serious crime, the judicial authority will agree, in all cases, to hear the minor as pre-constituted evidence, with all the guarantees of the taking of evidence in the oral trial.

The hearing of the minor shall be carried out by forensic psychologists from the Institutes of Legal Medicine and Forensic Sciences or from the technical teams attached to the Courts and Tribunals of Justice.

In the event that the person under investigation is present at the hearing of the minor, visual confrontation with the minor shall be avoided, using, if necessary, any technical means.

The statement of persons over fourteen and under eighteen years of age may also be made with the guarantees of pre-constituted evidence by decision of the judicial authority agreed by means of a reasoned decision when, in view of the circumstances of the case and the seriousness of the offence committed, it is an appropriate measure in the best interests of the minor. It is therefore a measure applicable to all minors.

Finally, it should be noted that, in relation to the recommendations of the CRC on the Barnahus model, Spain is immersed in the study and implementation of this model of comprehensive care for children under one roof, through a joint project of the European Union and the Council of Europe on "Strengthening child-friendly justice through effective cooperation and coordination between different Barnahus services in the regions of Spain".

This project is implemented by the Council of Europe in close collaboration with the Ministry of Social Rights and Agenda 2030, during the period 06/07/2022-05/07/2024. It has an advisory group composed of representatives from different ministries and other institutions.

Its objective is to ensure that all child victims of violence, including child sexual abuse and exploitation, benefit from access to friendly justice and strengthened child protection services in Spain and its Autonomous Communities, through the implementation of the Barnahus model. It aims, following a diagnostic study of the current model of care and assistance to child and adolescent victims of sexual violence: 1) To improve the legislative and public policy framework to introduce the Barnahus model in the Autonomous Communities, and 2) To strengthen the capacities of relevant professionals.

This project is closely linked to the implementation of Organic Law 10/2022, of 6 September, on the Comprehensive Guarantee of Sexual Freedom, which establishes the bases for the implementation in Spain of the Barnahus model, placing the child victim of sexual violence at the centre of the intervention, which requires the joint and coordinated participation, in a specific place adapted to their needs, of all the professionals involved in the care and judicial itinerary.

Here you can upload any file(s) in support of your answer

b. [are all staff responsible for interviewing child victims required to undergo suitable qualifying training?](#)^[50]
Please provide details.

[50] *Ibid.*, Recommendation 42

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.b Yes)

The hearing of the minor will be carried out by forensic psychology professionals from the Institutes of Legal Medicine and Forensic Sciences or from the technical teams attached to the Courts and Tribunals of Justice, with the procedural guarantees of pre-constituted evidence set out in article 449 ter LECRIM to avoid the minor having to testify again in the act of the oral trial, without prejudice to the reproduction of the audiovisual recording of the minor's statement and that the professional expert who intervened in the interview be summoned to the trial to guarantee the principle of contradiction, to whom the parties may ask questions.

Article 5 of the LOPIVI generally requires public administrations, within the scope of their respective competences, to guarantee specialised, initial and continuous training in the fundamental rights of children and adolescents for professionals who have regular contact with minors. Such training shall include at least the following:

- a) Education in the prevention and early detection of all forms of violence referred to in this law.
- b) Actions to be taken once signs of violence have been detected.
- c) Specific training in safety and safe and responsible use of the Internet, including issues relating to intensive use and the generation of behavioural disorders.
- d) The proper treatment of children and adolescents.
- e) The identification of risk factors and increased exposure and vulnerability to violence.
- f) Mechanisms to avoid secondary victimisation.
- g) The impact of gender roles and stereotypes on the violence suffered by children and adolescents.

And, in particular, in relation to the right of underage victims to be heard, Article 11 of the LOPIVI establishes the obligation of the public authorities (State and Autonomous Communities) to ensure the adequate preparation and specialisation of the professionals involved in the interview to guarantee that the testimony of underage victims is obtained with rigour, tact and respect. Furthermore, special attention will be paid to professional training, methodologies and the adaptation of the environment for listening to victims at an early age.

Finally, in the context of sexual violence, the Organic Law 10/2022, of 6 September, on the comprehensive

guarantee of sexual freedom (hereinafter, LOGILS) dedicates its Title III to training, and in particular, Article 29 to specialised training in the forensic field.

The above-mentioned LOGILS is attached

Here you can upload any file(s) in support of your answer

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c. [does your national legal framework require that interviews with child victims are conducted as soon as possible after the offence, that their duration and number are limited, and that in their organisation account is taken of the child's age and attention span?](#)^[51] Please provide details.

[51] *Ibid.*, Recommendation 43

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.c Yes)

The statement of the minor victim of the offence shall be made as soon as possible with the guarantees of pre-constituted evidence, in order to avoid repeating it, reducing the number of times, to just once, and only exceptionally, it may be repeated by means of a reasoned judicial decision at the request of the party. This is in accordance with article 449 ter LECRIM.

Article 25 of the Statute of the Victim of Crime (hereinafter, EVD), lists, in general terms, the protection measures for all victims of crime:

During the investigation phase:

- a) That their statements are taken in specially designed or adapted facilities.
- b) That statements are taken by or with the assistance of professionals who have received special training to reduce or limit harm to the victim, as well as a gender perspective.
- c) That all the statements of the same victim are taken by the same person, unless this could significantly prejudice the development of the process or the statement must be taken directly by a judge or prosecutor.
- d) That the taking of the statement, in the case of any of the victims of gender-based or domestic violence or sexual violence and victims of trafficking for the purpose of sexual exploitation, is carried out by a person who, in addition to meeting the requirements set out in letter b) of this section, is of the same sex as the victim, when the victim so requests, unless this could significantly prejudice the course of the proceedings or the statement must be taken directly by a judge or prosecutor.

During the trial phase, the following measures for the protection of victims may be adopted, in accordance with the provisions of the Criminal Procedure Act:

- (a) Measures to avoid visual contact between the victim and the alleged perpetrator, including during the taking of evidence, for which purpose communication technology may be used.
- (b) Measures to ensure that the victim can be heard without being present in the courtroom, through the use of appropriate communication technologies.

c) Measures to avoid asking questions relating to the victim's private life that have no relevance to the criminal act being prosecuted, unless the judge or court exceptionally considers that they should be answered in order to properly assess the facts or the credibility of the victim's statement.

d) Holding of the oral hearing without the presence of the public.

Article 26 of the EVD provides for protection measures for minors, disabled persons in need of special protection and victims of sexual violence. In the case of minor victims, victims with disabilities in need of special protection and victims of sexual violence, in addition to the measures provided for in the previous article, in accordance with the provisions of the Criminal Procedure Act, the necessary measures shall be adopted to prevent or limit, as far as possible, the development of the investigation or the holding of the trial from becoming a new source of harm for the victim of the crime. In particular, the following shall apply: a) Statements received during the investigation phase shall be recorded by audiovisual means and may be reproduced at the trial in the cases and under the conditions determined by the Criminal Procedure Act. b) The statement may be received through expert persons.

In the context of sexual violence, Organic Law 1072022 of 6 September on the comprehensive guarantee of sexual freedom (hereinafter, LOGILS) in article 48 in relation to forensic practice requires that it be accessible and specialised in order to ensure the quality of the intervention and no secondary victimisation, especially in cases of underage victims. They are also required to have specialised training.

Here you can upload any file(s) in support of your answer

d. **[for Serbia] how do you ensure that child victims of sexual abuse by someone in a recognised position of trust, authority or influence are not repeatedly interviewed during the proceedings?**^[52]

[52] *Ibid.*, Recommendation 54

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e. **where it is indispensable to interview the child victim more than once, does your national legal framework require that the interviews should, if possible and where appropriate, be conducted by the same person and under the same material conditions as the first?**^[53] Please provide details.

[53] *Ibid.*, Recommendation 44

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.e Yes)

In the exceptional case of interviewing the minor more than once, it will be the same psychology professional who initially interviewed him/her and with the same procedural guarantees required for the first hearing in accordance with article 449 ter of the Criminal Procedure Act which regulates pre-constituted evidence.

And adopting all the protection measures set out in articles 25 and 26 of the Crime Victims' Statute Law:

During the investigation phase:

- a) That statements are received in specially designed or adapted premises for this purpose.
- b) That their statements are taken by or with the help of professionals who have received special training to reduce or limit harm to the victim, as well as in gender perspective.
- c) That all the statements of the same victim are taken by the same person, unless this could significantly prejudice the development of the process or the statement must be taken directly by a judge or prosecutor.
- d) That the taking of the statement, in the case of any of the victims of gender-based or domestic violence or sexual violence and victims of trafficking for the purpose of sexual exploitation, be carried out by a person who, in addition to meeting the requirements set out in letter b) of this section, is of the same sex as the victim, when the victim so requests, unless this could significantly prejudice the development of the process or the statement must be taken directly by a judge or prosecutor.

During the trial phase, the following measures for the protection of victims may be adopted, in accordance with the provisions of the Criminal Procedure Act:

- (a) Measures to prevent visual contact between the victim and the alleged perpetrator, including during the taking of evidence, for which purpose communication technology may be used.
- (b) Measures to ensure that the victim can be heard without being present in the courtroom, through the use of appropriate communication technologies.
- c) Measures to avoid asking questions relating to the victim's private life that have no relevance to the criminal act being prosecuted, unless the judge or court exceptionally considers that they should be answered in order to properly assess the facts or the credibility of the victim's statement.
- d) Holding of the oral hearing without the presence of the public.

Here you can upload any file(s) in support of your answer

f. [does your national legal framework offer criminal defence the possibility to contest a child's disclosure during the interview through questions, thus obviating the need for the child to be present in the court room during the proceedings?](#)^[54] Please provide details.

[54] *Ibid.*, Recommendation 45

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.f Yes)

The defence and other parties will submit to the judicial authority a series of questions prior to the statement, which, if they are relevant to the assessment of the judicial authority, will be submitted to the psychology professional who, as an expert, is the one who intervenes directly in the interview. Once the hearing of the minor has concluded, the parties and therefore also the defence may formulate clarifications to the answers offered by the minor, all in the terms provided for in articles 449 bis and 449 ter of the LECRIM.

Here you can upload any file(s) in support of your answer

JUDICIAL PROCEEDINGS Question 20. In the judicial proceedings:

In 2023 the Steering Committee for the Rights of the Child (CDENF) circulated a questionnaire in the framework of its mapping study of the implementation and development of Barnahus model in Europe. Should your authorities have responded to this questionnaire, you may reiterate those replies and complete as need be.

a. **is systematic use of video equipment made in order to record interviews of child victims or enable him or her to testify remotely during the proceedings?**^[55] Please provide details.

[55] *Ibid.*, Recommendation 46

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.a Yes)

The use of recording media for interviews with witnesses is mandatory in general, and with special intensity, in cases of minor victims. Likewise, it is possible, for a variety of reasons, for minor victims to testify remotely. (Articles 449 bis and 449 ter of the Procedural Procedure Law).

Here you can upload any file(s) in support of your answer

b. **does your national legal framework make an exception in the requirement to be physically present at court hearings for child victims of sexual abuse, including when they are giving evidence?**^[56] Please provide details.

[56] *Ibid.*, Recommendation 59

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.b Yes)

In general, minors under fourteen years of age are exempt from being physically present at court hearing, as long as their statement has been previously made with all the guarantees and duly recorded. Only when the parties request it and the court understands that the request is duly justified, may it be agreed that the minor under fourteen years of age physically give his testimony at court hearing.

Here you can upload any file(s) in support of your answer

c. [is there any difference in the scope of the application of this requirement based on the child's age?](#)^[57]

Please provide details.

[57] *Ibid.*, Recommendation 60

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.c Yes)

Yes, under fourteen years old, non-attendance is mandatory and over fourteen, non-attendance is recommended.

Here you can upload any file(s) in support of your answer

d. [are video recordings of interviews of child victims regarded as admissible evidence?](#)^[58] Please provide details.

[58] *Ibid.*, Recommendation 47

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.d Yes)

Yes, this is expressly established by the law of criminal procedure. (Articles 449 bis, 449 ter and 703 bis of the Criminal Procedure Law).

Here you can upload any file(s) in support of your answer

e. [what measures do you take to guard against any further contact between a child victim of sexual abuse by someone in a recognised position of trust, authority or influence and a presumed offender during the](#)

[59] *Ibid.*, Recommendation 48

As a precautionary measure, restraining orders and prohibition of communication are established and during the hearing, the minor is either exempt from physically attending or can testify electronically.

In this sense, article 26 of the victim's statute establishes that:

"1. In the case of minor victims, victims with disabilities in need of special protection and victims of sexual violence, in addition to the measures provided for in the previous article, the measures will be adopted, in accordance with the provisions of the Criminal Procedure Law. measures that are necessary to prevent or limit, to the extent possible, the development of the investigation or the holding of the trial from becoming a new source of harm for the victim of the crime. In particular, the following will be applicable:

a) The statements received during the investigation phase will be recorded by audiovisual means and may be reproduced at trial in the cases and conditions determined by the Criminal Procedure Law.

b) The declaration may be received through expert persons.

2. The Prosecutor will request from the Judge or Court the appointment of a judicial defender of the victim, to represent him or her in the investigation and in the criminal process, in the following cases:

a) When it is assessed that the legal representatives of the victim who is a minor or with judicially modified capacity have a conflict of interest with her, whether or not derived from the fact under investigation, which does not allow confidence in adequate management of her interests in the investigation or in the criminal process.

b) When the conflict of interest referred to in letter a) of this section exists with one of the parents and the other is not in a position to adequately exercise their functions of representation and assistance of the minor victim or with judicially modified capacity. .

c) When the victim who is a minor or has judicially modified capacity is not accompanied or is separated from those who exercise parental authority or guardianship positions.

3. When there are doubts about the age of the victim and it cannot be determined with certainty, it will be presumed that he or she is a minor, for the purposes of the provisions of this Law"

Here you can upload any file(s) in support of your answer

f. [does your national legal framework allow taking the child's testimony without the presumed offender being present?](#)^[60] Please provide details.

[60] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.f Yes)

As long as the alleged offender's lawyer is present.

Here you can upload any file(s) in support of your answer

g. [how do you ensure that face-to-face confrontation with the defendant during the proceedings does not take place?](#)^[61]

[61] *Ibid*

Article 50 of the act 8/2021 of comprehensive protection for children and adolescents against violence establishes that:

“Members of the Security Forces and Bodies will act in accordance with the protocols for police action with minors, as well as any other applicable protocols. In this sense, the state, regional and local Security Forces and Bodies will have the necessary protocols for prevention, awareness, early detection, investigation and intervention in situations of violence against children and adolescents, in order to ensure correct and appropriate intervention in such cases.

In any case, they will proceed according to the following criteria:

- a) All provisional protection measures that are appropriate to the situation of the minor will be adopted immediately.
- b) Only procedures will be carried out with the intervention of the minor that are strictly necessary. As a general rule, the minor's statement will be made on a single occasion and, always, through specifically trained professionals.
- c) All essential procedures that involve the intervention of the minor will be carried out without delay, once it has been verified that he or she is willing to undergo said interventions.
- d) Any type of direct or indirect contact in police stations between the person investigated and the child or adolescent will be prevented.
- e) Minors, who request it, will be allowed to file a complaint on their own and without the need to be accompanied by an adult.
- f) The child or adolescent will be informed without delay of his or her right to free legal assistance and, if he or she so wishes, the competent Bar Association will be required to immediately appoint a lawyer for the specific duty for his or her appearance in court. police units.
- g) Good treatment will be given to the child or adolescent, with language and manners adapted to their age, degree of maturity and other personal circumstances.
- h) Ensure that the child or adolescent is at all times in the company of a person he or she trusts, freely designated by him or her, in a safe environment, unless there is a risk that said person could act against the

of their best interest, which must be recorded through an official statement.

Here you can upload any file(s) in support of your answer

h. [what measures do you take to prevent violation of the child victims' right to privacy by the media through disclosure or publication of personal information or data?](#)^[62]

[62] *Ibid.*, Recommendation 49

Article 681 of the Criminal Procedure Law establishes that the Judge or Court may agree, ex officio or at the request of any of the parties, after hearing them, that all or any of the acts or sessions of the trial be held behind closed doors. These measures can be established for reasons of security or public order, the adequate protection of the fundamental rights of those involved or the respect due to the victim or their family.

In any case, the disclosure or publication of information relating to the identity of minor victims, as well as data that may facilitate their identification directly or indirectly, or of those personal circumstances that have been assessed to resolve your protection needs is prohibited, as well as the obtaining, disclosure or publication of images of you or your family members.

Here you can upload any file(s) in support of your answer

i. [does your national legal framework provide for free legal aid to child victims of sexual abuse by someone in a recognised position of trust, authority or influence under the same or more lenient conditions as that available to adults?](#)^[63] Please provide details.

[63] *Ibid.*, Recommendation 50

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.i Yes)

Yes, article 2 of the act of free legal assistance establishes that: "Regardless of the existence of resources to litigate, the right to free legal assistance is recognized, which will be provided immediately, to victims of gender violence, terrorism and trafficking in human beings in those processes that are linked, derive or are a consequence of their status as victims, as well as minors and people with disabilities in need of special protection when they are victims of crimes of homicide, injuries of articles 149 and 150, in the crime of habitual abuse provided for. in article 173.2, in crimes against freedom, in crimes against sexual freedom and indemnity and in crimes of human trafficking".

Here you can upload any file(s) in support of your answer

j. [does your national legal framework grant to child victims of sexual abuse by someone in a recognised position of trust, authority or influence the right to be represented in their own name by a lawyer trained in the relevant matters?](#)^[64] Please provide details.

[64] *Ibid.*, Recommendation 51

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.j Yes)

Even, article 50 of the act 8/2021 of comprehensive protection for children and adolescents against violence establishes that minors, who request it, will be allowed to file a complaint on their own and without the need to be accompanied by an adult.

Here you can upload any file(s) in support of your answer

k. [what assistance, if any, do you provide to child victims of sexual abuse by someone in a recognised position of trust, authority or influence, once a criminal justice decision has been taken?](#)^[65]

[65] *Ibid.*, Recommendation 52

The assistance and protection measures in favor of the minor during the processing of the procedure continue once it has ended.

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