



**Convention on the Rights
of Persons with Disabilities**

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**Committee on the Rights of Persons
with Disabilities**

**Implementation of the Convention on the
Rights of Persons with Disabilities**

**Initial reports submitted by States parties
in accordance with article 35 of the Convention**

Spain* **

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** Annexes can be consulted in the files of the Secretariat.

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I. Introduction

1. The treatment of disability had already developed into a social model in Spanish law before the Convention on the Rights of Persons with Disabilities came into force on 3 May 2008. Article 9 of the Constitution guarantees the freedom and equality of citizens and of the groups to which they belong in political, economic, social and cultural life, while article 14 enshrines the principle of equality before the law and prohibits all forms of discrimination based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

2. The evolutionary trend actually began with the adoption of the important Act No. 13/1982 of 7 April 1982 on social integration of the handicapped (LISMI), culminating in the adoption of Act No. 51/2003 of 2 December 2003 on equality of opportunity, non-discrimination and universal accessibility for persons with disabilities (LIONDAU) and its enabling regulations.

3. However, adjustment and amendment of a number of provisions in the different branches of law will be required in order to permit formal incorporation of the Convention into the domestic legal system. This task is in course of execution at present; by decision of the Council of Ministers of 10 July 2009 an inter-ministerial working group was established to analyse the legislation in force and issue a report within six months containing conclusions on desirable amendments.

4. Although the existence of advanced legislation introducing measures designed to guarantee equality of opportunity in the exercise of the rights of persons with disabilities is important, its existence is not sufficient to guarantee its implementation. Intervention strategies, specific policies targeting specific social groups, action plans and programmes to ensure that persons with disabilities can enjoy the whole range of human rights - civil, social, economic and cultural – are required.

5. The importance of disability policies is reflected in the statistical data, which reveal that 3.85 million persons in Spain (59.8 per cent of them women) are affected by some degree of disability and that 19.94 per cent of households are affected. Disability rates by age group are slightly higher among males up to age 44. The opposite is the case among males aged 45 and over; the difference between the two groups increases with advancing age. Of the persons concerned, 67.2 per cent have restricted ability to move around or move objects, 55.3 per cent have problems with the performance of domestic tasks and 48.4 per cent have difficulties with personal care and hygiene.

II. General provisions of the Convention (articles 1 to 4)

6. Since the adoption of the 1978 Constitution the entire range of human rights and fundamental freedoms, the protection and full and equal enjoyment of which the Convention is designed to ensure for persons with disabilities, has been enshrined in the Spanish legal system (article 10 of the Constitution). In particular, the protection of the rights of persons with disabilities established by law has necessitated the development of supervisory mechanisms and the imposition of sanctions, to ensure implementation of the principles laid down in the law.

7. To that end a Permanent Specialized Office (OPE) has been established within the National Council on Disability. This is a specialized body for the evaluation, analysis and study of complaints submitted and consultations sought by persons with disabilities who consider that they have been the subject of discrimination. An arbitration system has been established with responsibility for the extrajudicial handling of complaints and claims relating to equality of opportunity, non-discrimination and accessibility in cases of

disability, provided that these do not entail the creation of rights. The members were appointed on 2 December 2008.

8. Under Act No. 49/2007, which establishes a category of offences and penalties relating to equality of opportunity, non-discrimination and universal accessibility, an Offences and Penalties Unit has been established. The Act lays down administrative penalties for breaches of the rights of persons with disabilities in cases of direct or indirect discrimination, harassment, failure to comply with access requirements or make reasonable accommodation and non-compliance with legally established affirmative action measures.

9. Article 2 of the Convention (ratified by Spain on 2 December 2007) contains definitions of a number of terms, such as "discrimination on the basis of disability", "reasonable accommodation" and "universal design". These definitions are incorporated in their essence in LIONDAU, but the latter will have to be amended and expanded to take account of the fact that the Convention defines "persons with disabilities" as including persons with long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (article 1). The preamble to the text also provides information on this subject, stating that disability is an evolving concept and results from the interaction between persons with impairments and attitudinal and environmental barriers. From this definition it may be inferred that the Convention adopts the social model of disability, including the persons mentioned but without excluding others who may be protected by national legislation. The definition is thus a minimum definition which will evolve with social and scientific change.

10. The Convention also defines "discrimination on the basis of disability" as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (article 2).

11. The prohibition is in fact directed at discrimination on the basis of disability, with the emphasis laid on the fact of discrimination rather than on the capacities of the individual concerned. It may therefore be inferred that discrimination on the basis of disability may exist where the victim does not in fact have any disability; the prohibition thus embraces discrimination by association.

12. Generally speaking, the principles underlying Spanish legislation on persons with disabilities are the same as those contained in article 3 of the Convention. However, as will be seen in different parts of this report, amendments have been made in a number of Acts and royal decrees in order to enunciate more clearly the general principles of the Convention.

13. Article 4 of the Convention lists a number of "general obligations" which States parties accept on ratification. Some of these obligations are of a policy nature. In this sense the entry into force of LIONDAU and the entire development policy set out in it, of which part has already been adopted and part is still under discussion, offer a representative illustration of Spain's acceptance of and compliance with the commitments entered into. But this article also implies responsibility for achieving the realization of full enjoyment of their rights by persons with disabilities. To that end measures are being taken in other areas; these include the work of the State Personal Autonomy and Technical Aids Reference Centre (CEAPAT), a technology centre established under the authority of the Ministry of Health and Social Policy with the task of contributing to the realization of the rights of persons with disabilities and older persons by promoting full accessibility, assistive products and technologies and designs conceived with everyone in mind.

14. Another general commitment accepted under article 4 is that of providing accessible information concerning mobility aids, devices, assistive technologies, services, etc., for

persons with disabilities. For that purpose the ONCE Foundation, acting in cooperation with the Madrid Social Welfare Fund, has created a website (www.guiadis.es) to provide information for persons with disabilities and their families on the different resources (services, centres, benefits and aids) available in the different walks of life; it receives a State subsidy through the Progress Plan of the Ministry of Industry, Tourism and Trade. The various search options will serve to identify resources, study their contents and obtain knowledge of the conditions of access and guidance on the procedures and formalities required to benefit from each resource. The information is provided in Spain's four official languages. There is also a portal (www.discapnet.es) established by the ONCE Foundation, in cooperation with the European Social Fund (ESF), which contains all information of interest to persons with disabilities and their families. On a number of occasions it has been held up as an example of good practice at European level.

III. Specific rights

A. Article 5: Equality and non-discrimination

15. In the sphere of disability, full compliance with this article is ensured by the 1978 Constitution and LIONDAU mentioned earlier. Chapter II of the latter is devoted to equality of opportunity; specifically, it defines infringements of the right to equality of opportunity (as defined in article 1) and specifies two types of measure which the public authorities must take to guarantee that right, namely anti-discrimination and affirmative action measures. In addition, article 10 of LIONDAU requires the Government to regulate the basic conditions to govern accessibility and non-discrimination in a number of spheres and areas. However, in view of the entry into force of the Convention, steps are being taken to revise existing legislation; there is already a proposal to amend articles 10 and 18 of the General Health Act No. 14/1986 to include a mention of disability as one of the grounds on which no person may be discriminated against.

16. The entry into force of LIONDAU and its enabling regulations, together with the mechanisms for supervision and the imposition of penalties, is a basis for the achievement and guaranteeing of equality and non-discrimination. In addition, it offers the system effective safeguards against discrimination of any kind. The establishment of specific regulations and action plans and programmes in the different areas is the responsibility of the ministerial departments concerned, which will in any case have to adapt to the new standards.

B. Article 6: Women with disabilities

17. Article 8 of LIONDAU draws attention to the need for measures on behalf of persons with disabilities who are objectively subject to higher levels of discrimination or enjoy less equality of opportunity, such as women. With that in mind, on 1 December 2006 the Government adopted a First Plan of Action for Women with Disabilities, which establishes a strategy and methodology for correcting the inequalities between men and women with disabilities. The Third Plan of Action (for *persons* with disabilities) incorporates the principles and measures of the earlier plan with the aim of addressing disability along gender-analysis lines.

18. Mention should also be made of other measures currently being introduced, such as the presentation on 26 January 2010 of the "Guide on non-discriminatory use of language vis-à-vis persons with disabilities" drawn up by the Institute for the Elderly and Social Services (IMSERSO), through the agency of the Gender Unit in the Centre for the Rehabilitation of Physically Disabled Persons (CRMF) in Salamanca, with the aim of

proposing uniform standards for the use of non-sexist language in dealings with women with disabilities.

19. In the field of labour, Royal Decree-Law No. 1/1995 of 24 March 1995, approving the consolidated text of the Act on the status of workers, establishes the principle of equality of treatment and non-discrimination in labour relations covered by that law (for example, articles 41.2(c), 16.2 and 17.1). It states that, in accordance with the Act No. 51/2003 of 2 December 2003 on equality of opportunity, non-discrimination and universal accessibility for persons with disabilities, all non-nationals are eligible to benefit from the provisions of the Act.

20. Of particular importance was the adoption of the Organization Act No. 3/2007 on effective equality between men and women, which confers a substantial number of rights in the areas of labour, social security and reconciliation of working and family life.

C. Article 7: Children with disabilities

21. The social model adopted in the Convention defines the dual nature of the vulnerability of disabled children: vulnerability as persons with disabilities and vulnerability as children; there may be other causes of vulnerability. Article 23 of the Convention on the Rights of the Child calls for special measures for the protection for disabled children to be taken by States parties. The Organization Act No. 1/1996 of 15 January 1996 on the legal protection of minors reflects a concern with the provision of an adequate legal framework of protection for children deriving from the Convention on the Rights of the Child. Its preamble justified the adoption of the Act, in compliance with the mandate defined in the Constitution, as a guiding principle of social and economic policy, namely that of ensuring the social, economic and legal protection of the family and, within the family, special protection for minors. Article 3 states that minors shall enjoy the rights conferred on them by the Constitution and international treaties without discrimination of any kind based, *inter alia*, on disability or illness. The succeeding articles recognize the right of the child to honour, privacy and individual identity, the right to information and freedom of thought, the right of participation, association and assembly (the unrestricted right to participate in social, cultural and other aspects of life; public authorities are to promote the establishment of machinery for participation; the right to join and promote associations) and the right to freedom of expression and to be heard.

22. On 16 June 2006 the Council of Ministers adopted the National Strategic Plan for Children and Adolescents 2006-2009 (PENIA Plan). This is the first plan to be drawn up in Spain setting out the strategy guidelines underlying policies on children for the guidance of the various public administrations. The Autonomous Communities and the child welfare organizations took part in its preparation, and it was approved by consensus by the Child Observatory in plenary session. The text is in line with the approaches and principles laid down in the Convention on the Rights of the Child and the recommendations of the Committee on the Rights of the Child.

23. The plan requires care and treatment for minors to be provided in a pluridisciplinary manner; there are also a number of references in it to the need to guarantee their rights in a specific manner on account of their dual vulnerability - as minors and as persons with disabilities.

24. Strategic objective 6 is couched in more concrete terms as follows: "to promote care and social action for children and adolescents at risk, in distress or disabled and/or in situations of social exclusion, establishing assessable shared criteria for quality and best practices". A mid-term review of the plan took place in 2007; now that the period it covered has come to an end, a final evaluation is under way and a new strategic plan for the years 2010-2013 is in course of preparation.

25. The Convention on the Rights of Persons with Disabilities adopts a pluridisciplinary approach to the protection of children. It defines the protection of their rights from two standpoints: that of protection of children as such and that of protection of children with disabilities.

26. The pluridisciplinary approach is also present in the Act No. 39/2006 of 14 December 2006 on the promotion of personal autonomy and care of persons in situations of dependency, article 2 of which defines the concepts of autonomy and dependency. That article refers to persons (children) with mental deficiency or illness and requiring support for the maintenance of their personal autonomy. Article 3 specifies the principles governing the Act; these include its public and universal nature, the comprehensive and integrated nature of policies concerning care for persons in situations of dependency and the multidisciplinary nature of the care to be provided to such persons.

27. Consequently equality of opportunity (the primary consideration in the protection of the best interests of the child) and the right of effective participation in all matters concerning it are principles and rights enshrined in Spanish legislation as regards both implementation of the Convention on the Rights of the Child, which Spain has ratified, and the provisions of Act No. 1/96 on the legal protection of minors, which gives flesh to these principles and rights.

28. The most recent report submitted by Spain to the Committee on the Rights of the Child (in 2008) describes the progress being made in the provision of care for children with disabilities and their families.

29. During the period covered by the present report considerable progress has been made in legislation and the adoption of measures to recognize and give effect to the rights of persons with disabilities, among whom minors must naturally be included. Particular mention should be made of the Act No. 51/2003 of 2 December 2003 on equality of opportunity, non-discrimination and universal accessibility for persons with disabilities, the First National Accessibility Plan 2004-2012 and the more recent Act of 14 December 2006 on the promotion of the personal autonomy and care of persons in situations of dependency, which includes minors within its scope and in its thirteenth additional provision establishes a special protection scheme for minors under 3 years of age.

30. In addition, concrete activities for the protection and social integration of children with disabilities have been undertaken in a wide range of fields. For instance, the public social security system pays cash benefits to families with children with disabilities, minors and adults over 18 or minors accepted into the system to deal with a situation of need or excessive expenditure (the budget allocation includes non-contributory dependent children's allowances, allowances for dependent children with disabilities, birth grants and grants in respect of multiple births for non-contributory dependent child benefits)

D. Article 8: Awareness-raising

31. A number of measures aimed at fostering awareness in society regarding persons with disabilities have been in place in Spain for some time.

32. Firstly, mention should be made of the First National Accessibility Plan 2004-2010, which is discussed in greater detail in connection with article 9. One of its themes is awareness-raising and training in the fields of accessibility and design for all among the general public, and in particular among entrepreneurs, public officials and professionals who influence the design and management of accessible environments and systems.

33. The awareness-raising strategy is based on information and awareness-development campaigns targeting citizens and enterprises in their dual status as subject - both actively and passively - to the conditions governing accessibility. A second strategic theme of awareness-raising makes the granting of financial support for measures and schemes

relating to accessibility conditional on the taking of dissemination and awareness-raising measures by the institutions receiving it.

34. Secondly, the Third Plan of Action for Persons with Disabilities 2009-2012 has been adopted. Its aim is to promote personal autonomy through recognition of disability as a component of human diversity, and the formulation and implementation of public policies in such a way that persons with disabilities receive the same benefits as other citizens, thus guaranteeing them the exercise and enjoyment of their civil, political and social rights in a society cohesive in its complexity. The plan incorporates the gender perspective with the aim of correcting the inequalities between men and women with disabilities. Other similar plans specifically targeting women with disabilities, and mental health plans, have also been adopted in Spain.

35. The central administration, through its different agencies, is also developing the measures referred to in article 8. Within the Ministry of Health and Social Policy, for instance, the Directorate-General for Sectoral Policies on Disability is conducting a number of dissemination activities, such as the various courses it has organized in cooperation with the National Public Administration Institute (INAP), the School of Public Administration for the Autonomous Community of Leon and Castile and various ministries. The courses are designed to impart knowledge of the social and legal realities experienced by persons with disabilities in Spain and, more specifically, the way that public employees treat persons with disabilities.

36. Particular mention should be made of the coordination existing between the Autonomous Communities and the district and municipal social services in promoting awareness of disability at grassroots level through outreach activities and material and that between social, health and education services to promote awareness among health and education personnel for purposes of early detection of disability (Early Action Programme).

37. Training activities on disability are being conducted by the Institute for the Elderly and Social Services (IMSERSO) and the Royal Foundation for the Disabled. The latter body seeks to promote and improve the prevention of shortcomings in the care given to persons with disabilities, their personal development and the respect accorded to them by society. The Queen Sofia Prizes were established with a similar aim in view, namely to reward activity over a long period in the fields of rehabilitation and integration, deficiency prevention and universal access to municipal services. Other prizes are awarded in Spain to give public recognition to work done in various spheres of activity by individuals and public and private bodies and institutions.

38. A number of guides (such as the Guide on Services and Benefits for the Disabled and the Style Guide on Disability for Media Professionals) have been published; the latter is designed to disseminate knowledge of the terminology used when referring to persons with disabilities and to update it and render it more positive, with a view to achieving standardization, in the light of the rapid changes which have taken place within that group of persons in recent years.

39. The most important routes for dissemination comprise not only the media but also the new technologies; in this area the Internet is an excellent tool. To give one example: 10 years ago the Disability Information Service, a portal containing information on disability, was established; it is a public network operated by the Government and the University of Salamanca (University Institute on Integration into the Community) (INICO). The SerCuidador website (managed by the Spanish Red Cross and IMSERSO) was created to provide information enabling carers to solve problems arising when looking after relatives in a state of dependency. The subjects covered include support and advice for carers, the prevention of dependency through the promotion of healthy habits, the promotion in society of awareness of incapacity and dependency and interaction with and participation of carers. Other awareness-promoting programmes, such as CuidArte, target carers of persons in a state of dependency, encouraging them to participate in socio-therapeutic support groups.

40. The International Day of Persons with Disabilities (3 December) is marked by a number of events designed to promote awareness in public opinion of disability issues and mobilize support for the dignity, rights and well-being of persons with disabilities. A second aim is the promotion of awareness of the gains which would accrue from the integration of persons with disabilities into every aspect of political, social, economic and cultural life.

41. In March of this year, during the Spanish presidency of the European Union, a conference on inclusive education took place; it was extremely useful in that it offered a stimulus for the development of measures and policies needed in this area. In addition, cooperation agreements were signed between the Spanish Committee of Representatives of Persons with Disabilities (CERMI) and the ONCE Foundation, between the Ministry of Defence and the Ministry of Health and with the general councils of the Spanish legal and notarial professions. Lastly, a Justice and Disability Forum was established under the presidency of the General Council of the Judiciary, consisting of representatives of all the legal professions; its aims include awareness-raising and training on disability issues among the professionals concerned.

E. Article 9: Accessibility

42. LIONDAU affirms that accessibility is an essential prerequisite for the exercise of the fundamental rights which benefit persons with disabilities. It therefore provides for regulatory measures in specific fields to ensure basic standards of accessibility and non-discrimination. To that end the following royal decrees have been enacted:

- (a) Royal Decree No. 366/2007 of 16 March 2007 establishing standards of accessibility and non-discrimination in relations between persons with disabilities and the public administration;
- (b) Royal Decree No. 173/2010 of 19 February 2007 amending the Building Code;
- (c) Royal Decree No. 505/2007 of 20 April 2007 adopting basic standards of accessibility and non-discrimination for persons with disabilities as regards access to and use of urbanized public areas and buildings;
- (d) Royal Decree No. 1494/2007 of 12 November 2007 adopting the regulations on basic standards for access by persons with disabilities to the new technologies, products and services relating to the information society and social communication media;
- (e) Royal Decree No. 1544/2007 of 23 November 2007 setting the basic standards for accessibility and non-discrimination in relation to access to and use of transport modes for persons with disabilities. The decree contains measures requiring the necessary steps to be taken, within a precise time frame, to facilitate and guarantee standards of accessibility and non-discrimination in the utilization of the different modes of transport by persons with disabilities.

43. Measures were also taken in 2007 to facilitate access for all blind or visually impaired persons, deaf persons and persons with impaired hearing and persons who are both deaf and blind, as follows:

- (a) The Organization Act No. 9/2007 of 8 October 2007, amending the Organization Act of 19 June 1985 establishing a voting procedure for blind or visually impaired persons (No. 5/1985), enabling them to exercise their right to vote with a guarantee of secrecy;
- (b) The Royal Decree No. 1612/2007 of 7 December 2007 establishing an accessible voting procedure facilitating exercise of the right to vote by visually impaired persons;

(c) The Act No. 27/2007 of 23 October 2007 recognizing the Spanish sign languages and governing support devices for oral communication by deaf persons, persons with impaired hearing and persons who are both deaf and blind.

44. In parallel with these legislative developments the principal implementation instrument of LIONDAU, namely the First Accessibility Plan 2004-2012, was established to foster accessibility over the medium and long term. It is based on a set of general principles - equality of opportunity, independent living, sustainability and participation - which form the support and justification of the measures it contains. It lays down a number of objectives based on these principles and is directed towards achievement of universal accessibility by means of the generalization of design for all and the introduction of certain specific accommodations.

45. With this end in view a technical document on basic standards for accessibility and non-discrimination in access to and the use of urbanized public spaces has been prepared and will shortly be made public under a ministerial order of the Ministry of Housing.

46. In 2006 the Directorate-General for Coordination of Sectoral Policies on Disability commissioned a study on access to the buildings of the different ministries. The accessibility evaluation and analysis was conducted on the basis of the first part of regulation UNE 170001-1 and its DALCO requirements, namely those concerning moving about, apprehension, localization and communication. The analysis permitted identification of cases of non-compliance with that regulation and the regulations on autonomy in force at the time and also the formulation of proposals for corrective measures. The study is divided into five distinct parts: evaluation, proposals, budget estimates, priorities and a stage-by-stage plan. It is being used by ministerial departments to progress towards the ultimate aim of complete accessibility and is extremely useful in that it covers every aspect of the environment: flooring, furniture, sound amplification systems, parking, signposting, etc.

47. In addition, the Royal Decree-Law of 9 April 2010 (No. 6/2010) on measures to stimulate economic recovery and employment introduced a reduction in the rate of personal income tax (IRPF) for economic units with a taxable income of less than €53,007.20 in respect of work done in the place of habitual residence, or in the building in which the place of residence is situated, to facilitate accessibility thereto, the term "accessibility" covering work to improve the dwellings of persons with physical, psychological or sensory disabilities (installation of safe kitchens, illuminated or acoustic signs or signals for persons with sensory disabilities, adaptation of baths or entrances for persons with physical disabilities, etc.).

F. Article 10: Right to life

48. Article 10 of the Constitution affirms the right of persons with disabilities to life on an equal basis with others. Spain scrupulously respects the right to life of persons with disabilities, and there is no legislation in force which might have a contrary implication. Article 15 of the 1978 Constitution states that everyone has the right to life and to physical and moral integrity. Articles 138 ff of the Penal Code, which provide penalties for any person who ends the life of another person, makes no distinction of any kind on grounds of disability. If a homicide is motivated by a victim's disability, this is considered to be an aggravating circumstance designated as such in article 22(4). In the sphere of promotion of fundamental rights, and as a guarantee of enjoyment of the right to life on a basis of equality, article 3 of Act No. 13/1982, on the social integration of the handicapped, states: "The public authorities shall provide all the resources necessary for the exercise of the rights mentioned in article 1: prevention, medical and psychological care, adequate rehabilitation, education, guidance, integration into the workforce and the guarantee of certain minimum economic, legal and social rights and social security shall constitute obligations of the State."

G. Article 11: Situations of risk and humanitarian emergencies

49. The basic legislation on civilian protection (the Civilian Protection Act, the Basic Rules for Self-Protection and the Basic Guidelines) meet the requirements of article 11 of the Convention. The primary aim of the training plans being developed through the agency of the National Civilian Protection School is the training of the personnel of the national civilian protection system; but in addition special training is being developed both for persons with disabilities as constituting a particularly vulnerable group (contributing to their education in a preventive perspective) and for professionals working with persons in this group.

50. Under article 2 of Act No. 2/1985 of 21 January 1985 on civilian protection competence in this area lies with the civil administration of State and, when the seriousness of the situation so requires, the armed forces. At the request of the competent authorities they are empowered to cooperate in civilian protection activities, performing whatever tasks are assigned to them.

51. The Emergency Military Unit (UME) complies at all times with the civilian protection legislation in force and the relevant action protocols established by the competent authorities. Where that legislation provides for specific forms of action to guarantee the safety and protection of persons with disabilities, the UME is required to incorporate them in its own operational action protocols through training, which is imparted mainly at the National Civilian Protection School. In fact, separate courses have been incorporated on subjects such as health, immobilization techniques for the handling and transportation of persons with reduced mobility, aged persons and pregnant women; classification and sorting techniques which take account of these groups, including the special circumstances of mental and sensory impairment; and primary and secondary victim assessment techniques which take into account the possibility that an impairment was present before the disaster caused the injury.

H. Article 12: Equal recognition before the law

52. With regard to paragraphs 1 and 2 of this article, under article 29 of the Civil Code personality is established by the fact of birth provided that the conditions stipulated in article 30 are met, and every individual enjoys legal capacity from the moment of birth. Since persons with disabilities enjoy recognized legal personality and the same legal capacity as others, it may therefore be stated that the legal order is fully in line with article 12, paragraphs 1 and 2, of the Convention.

53. Paragraph 3 requires States parties to take appropriate measures to provide persons with disabilities with the support they may require in exercising their legal capacity. This obligation appears to be met in Spanish legislation by the institutions for the guardianship and protection of persons and property in general or exclusively for that of persons with disabilities. These institutions are governed by Parts IX and X of Book I of the Civil Code, which govern deprivation of capacity (articles 199 to 201), guardianship (articles 215 to 285), curatorship (articles 286 to 293), the Legal Defender and the de facto custodian (articles 303 and 304).

54. Deprivation of capacity is an instrument whereby an individual is deprived totally or partially of his/her capacity to act. It may only be declared by a judgement given on the basis of grounds established in the Act (article 199), namely a physical or mental illness or impairment preventing the individual from managing his/her affairs unaided (article 200). Persistent physical or mental illness by itself is not sufficient grounds for deprivation or restriction of a person's capacity; the determining factor is the presence of the second requirement, namely the fact that that illness prevents the person from managing his/her affairs unaided.

55. The safeguards and measures concerning the exercise of legal capacity mentioned in paragraph 4 of this article are enshrined in Spanish legislation in the following terms:

56. Respect for the rights, will and preferences of the individual is fundamentally reflected in article 200 of the Civil Code, which requires guardians to perform their task in a manner in line with the personalities of their wards and respectful of their physical and psychological integrity.

57. The requirement of absence of conflicts of interest is mentioned in article 244(4), which states that the existence of major conflicts of interest with the incapacitated person is a disqualification for guardianship, while article 247 provides for removal of guardianship where this disqualifying factor arises or the guardian is guilty of misconduct in the performance of his task through failure to discharge the duties pertaining thereto, either through manifest incompetence or when serious and continuing problems of coexistence arise. . Both provisions also apply to curators and legal defenders. Article 299 provides for the appointment of a legal defender to represent and safeguard the interests of the disabled person when a conflict of interest arises between that person and his/her legal representatives or curator. Finally, article 221 prohibits any person discharging a guardianship function from representing the ward when by so doing he or she will intervene in a personal capacity or on behalf of a third person and there is a conflict of interest.

58. There is no express safeguard in current legislation against undue influence. However, that safeguard may be deemed implicit in articles 208 (mentioned earlier) and 216, which require guardianship to be exercised for the benefit of the ward and under the safeguard of the judiciary.

59. As regards proportionality and adaptation to the circumstances of a person with disabilities, article 760 of the Civil Judgements Act No. 1/2007 (LEC), taken in conjunction with articles 267, 289 and 290 of the Civil Code, require the declaration of incapacity to specify the extent and limits thereof, the acts which the person concerned can perform unaided and those requiring the intervention of a guardian or the assistance of a curator.

60. With regard to application of measures for the shortest possible time and their regular review by a competent, independent and impartial authority or judicial body, proceedings concerning legal capacity are regulated by articles 756 to 768 of the LEC. This Act makes provision for subsequent proceedings for the restoration of capacity and amendment to the scope of a declaration of incapacity. Such proceedings may be instituted by the persons empowered to seek the declaration of incapacity. Automatic review of these measures is not envisaged.

61. Lastly, the safeguards must be in proportion to the degree to which the measures ordered affect the person's rights and interests. This principle is implicit in the requirement of proportionality established in the measures described earlier.

62. To achieve full compliance with article 12(4) and better adaptation to the spirit and terminology of the Convention, work is proceeding on the preparation of a draft Act amending Parts IX and X of the Civil Code and Book IV, Part I, chapter II, of the Civil Judgements Act, which regulate proceedings concerning the capacity of individuals, and also introducing minor amendments, principally to adapt the terminology used in the Commercial Code, the Mortgages Act and the Organization Statute of the Public Prosecutor's Office .

63. Paragraph 5 of article 12 requires States parties to take all necessary measures to secure the right of persons with disabilities to own or inherit property and control their own financial affairs on an equal basis with others. The Civil Code contains provisions concerning the capacity to inherit and to make wills which may apply to persons with disabilities; these are described below.

64. Article 744 of the Civil Code states that persons not legally incapacitated may inherit, while article 996 stipulates that, unless the judgement of incapacity on grounds of physical or mental illness or deficiencies provides otherwise, a person under curatorship may, with the assistance of the curator, accept the inheritance, either absolutely or under benefit of inventory.

65. It may therefore be concluded that the Civil Code does not debar either persons with disabilities or persons deprived of legal capacity by judgement from inheriting. However, the acquisition of an inheritance requires acceptance by the heir; but the Code requires full legal capacity for validity of the act of acceptance. It therefore leaves the matter in the hands of the body which pronounced legal incapacity; unless that body states otherwise there is a presumption that it permits the person deprived of capacity to accept the inheritance with the assistance of the curator or, if appropriate, the guardian in his capacity as legal representative of the person concerned and administrator of that person's property (however, under article 271(4) that person is also required to obtain court authorization to accept the inheritance without benefit of inventory or refuse it).

66. Article 662 of the Code permits any person who is not expressly prohibited from doing so by law to make a will, while article 667 debars from making a will any person who "habitually or through accident is not in full possession of his/her judgemental faculties". Finally, article 665 states that where the judgement of incapacity makes no provision regarding the capacity to make a will, and the incapacitated person wishes to make one, the assistance of a notary must be sought to designate two medical practitioners to guarantee the person's capacity and grant recognition and authorization as appropriate.

67. To sum up: not all persons with disabilities or deprived of legal capacity are prohibited from making a will. In cases of persons declared incapable by court judgement, the latter may contain a specific prohibition, or be silent, on the subject, in which case the person concerned will be allowed to make a will under the conditions stipulated in article 665.

68. There is therefore no need to make any amendment of substance in this regard, although it would be desirable to provide for some measure of support for persons deprived of capacity so as to enable them to make a will with assistance. In conclusion, it would once again be desirable to introduce some terminological changes, specifically with regard to the terms "incapacitación" (deprivation of capacity) and also "cabal juicio" (full possession of judgemental faculties), which are excessively open and vague. The relevance of these changes is being studied and evaluated within the framework of the drafting work on the proposed Act mentioned earlier.

69. One important element is the adoption of Act No. 1/2009 of 25 March 2009 amending the Act of 8 June 1957 concerning the civil register with regard to judgements of lack of legal capacity and posts of guardian or administrator of assets. It provides for the creation in the General Civil Register of a single focal point at which all information concerning changes in legal capacity and the constitution and amendment of guardianships will be held. This will solve the problem of dispersal of entries arising from the fact that data concerning any person may be located in several different municipal civil registers. The Act also introduces a commitment to reform the procedure for deprivation of legal capacity - now known as the procedure for the modification of legal capacity - to bring it into line with the Convention.

I. Article 13: Access to justice

70. Article 13 of the Convention requires States parties to ensure access to justice for persons with disabilities, facilitating the discharge of their effective roles as direct or indirect participants, including as witnesses, in all legal proceedings and the preliminary stages thereof. As regards effects on the rights of access to and participation in criminal

proceedings, which are regulated by the Criminal Trials Act (LECrim), the following elements should be mentioned:

1. Capacity to report offences and bring suit

71. Article 259 of LeCrim stipulates that any person witnessing the commission of an offence is under an obligation to inform the judicial authority immediately. However, article 260 exempts prepubescent persons and persons without full use of their reasoning faculties from that obligation. Thus Spanish law contains no provision contrary to the Convention, since any person, including a person with disabilities or deprived of legal capacity, may report an offence, although persons in the latter categories are not obliged to do so. As regards capacity to bring suit, article 270 recognizes the right of all Spanish citizens, whether or not they have suffered prejudice on account of the offence, to bring suit under *actio popularis*, while article 101 stipulates that criminal proceedings are public matters and that all Spanish citizens may initiate them in accordance with the law. However, article 102 provides that certain persons, including persons not in full possession of their civil rights, may not initiate criminal proceedings unless the alleged offence has been committed against their person or property, or the person or property of their spouse, ascendants, descendants, full siblings, siblings born of the same mother or relatives by marriage. Thus persons without legal capacity may not exercise *actio popularis* but may initiate criminal proceedings in respect of offences directly affecting them, bringing a private suit for the purpose. Consequently some qualification might be made to the law concerning the bringing of suit, restricting the lack of capacity to exercise *actio popularis* to cases where the judgement of incapacity so specifies. There are also some misgivings regarding terminology which would require a measure of standardization of language used - "without full use of their reasoning faculties" ("los que no gozasen del pleno uso de su razón") and "not in full enjoyment of their civil rights" ("los que no gozen de la plenitud de sus derechos civiles") and adaptation of the language used to the requirements of the Convention.

2. Access to justice as a defendant

72. In Spanish law certain specific mental disabilities constitute cause for exemption from or diminution of criminal responsibility (Penal Code, articles 201 and 21.1). Thus a person who, on account of some mental anomaly or deterioration, is unable to understand the illicit nature of an offence, or to act in a manner in conformity with that understanding at the time of committing it, is exempt from criminal responsibility. In line with this provision, article 381 of LeCrim provides that if a court observes signs of mental derangement in a defendant it will immediately subject him or her to observation by forensic physicians, while article 382 requires the court to be informed of mental derangement on the part of a defendant. However, apart from possible limitations on the criminal responsibility of specific persons with disabilities, it must be considered whether such persons, once charged, can exercise their rights on an equal basis with others. Articles 118 and 520 of LeCrim regulate respectively the rights of a defendant and those of a defendant in custody, in criminal procedure. The only reference to persons without legal capacity in those provisions is to be found in paragraph 3 of article 520, which states that where the defendant is lacking in legal capacity the authority holding him or her in custody shall notify the persons acting as de facto guardians or curators or, if they cannot be found, the public prosecutor's office, of the detention and the place thereof. It can thus be seen that there is no obstacle of a general nature impeding access to justice for persons with disabilities or deprived of legal capacity; but neither are there any special measures facilitating their access or countering the difficulties they may experience in doing so on account of their disabilities.

73. On the subject of statements by defendants, which is regulated by articles 385 to 409 of the Criminal Trials Act, there is likewise no reference of a general nature to persons

with disabilities save where the defendant is deaf (article 398, which offers the possibility of adapting the manner of making statements or even of providing an interpreter). There are in fact no express limitations impeding persons with disabilities from obtaining access to criminal proceedings; on the other hand, there is little in the way of aids to offset the physical limitations from which the persons concerned may be suffering. It would therefore be desirable to provide support facilities for persons with disabilities which they can use when they need them in order to guarantee the full enjoyment of their rights as defendants in criminal proceedings.

3. Access to criminal proceedings as a witness

74. Statements by witnesses are governed by articles 410 ff of LeCrim, which states that all persons residing in Spanish territory who are not prevented from doing so are obliged to comply with a demand for a statement issued by a court with the appropriate formalities. However, article 417(3) recognizes that "physically or morally incapacitated persons" cannot be obliged to testify. Thus the right of persons with disabilities to testify is recognized, but they are exempt from the legal obligation to do so. In addition, in this area certain arrangements exist designed to assist specified categories of persons with disabilities to exercise their rights on an equal basis with others. For instance, article 418 provides that where a witness is prevented on physical grounds from complying with a court summons, the investigating judge may proceed to the witness's place of residence, while article 442 (and article 711 at the oral hearings stage) provides for a number of measures to enable deaf-mute witnesses to testify adequately. Finally, where a witness expresses a fear of death or physical or mental impairment before the start of the oral hearings, article 448 allows advancement of the obligation to appear again before the court to testify. Thus although some support measures exist for certain categories of persons with disabilities, there should also be a clause concerning support for persons with disabilities generally for purposes of the proper exercise of their rights as witnesses in criminal proceedings. Also, and on the same grounds as previous proposals, terminology, which in this case is deemed inappropriate ("moral incapacities"), needs adaptation.

4. Access to criminal proceedings as an expert

75. Finally, articles 456 ff of LeCrim regulate the question of expert reports. In this area there are no specific provisions concerning persons with disabilities. As in other cases, a general clause might be introduced providing for support for experts suffering from a disability of some kind which might prevent the full exercise of their functions. Another matter with a bearing on equality of access to justice, which is covered by article 13 of the Convention, is that of free legal aid. Article 5 of the Free Legal Aid Act No. 1/1996 extends that right to persons with disabilities (or having a disabled person in their care) when they have to participate in legal proceedings in their own names and interests. Recognition is granted by the Free Legal Aid Board, which takes into account the personal circumstances of the applicant, the number of children or relatives dependent on him/her, state of health, level of financial obligations, costs arising from the filing of the suit and other similar costs and level of income (which, while exceeding the general income limits laid down in the Act, may not exceed four times the minimum inter-occupational wage). For budgetary reasons affecting both the State and the Autonomous Communities with competence in this area, it is impossible to make further progress to the extent of granting this benefit to all persons with disabilities without regard to income level, although aid of this kind is provided in deserving cases. In conclusion, it may be mentioned that the second additional provision to the Free Legal Aid Act grants the right to free legal aid, without any requirement of proof of insufficiency of resources to bring suit, to associations of public utility established to promote and defend the rights of persons with disabilities.

J. Article 14: Liberty and security of the person

76. The conduct of the security forces and agencies towards persons with disabilities deprived of liberty is the same as that shown towards anybody else. In such cases the applicable law is the same; there are no special assumptions regarding the possibility of a disability. Where a person is taken to a police station for purposes of detention the remarks made concerning article 9 on accessibility would apply; the installations should be adapted as far as possible to the circumstances of the detainee.

77. Cooperation has been promoted between associations of persons with disabilities and the different agencies of the judiciary through the participation of CERMI and the ONCE Foundation in the Justice and Disability Forum (presided over by the General Council of the Judiciary) and under the cooperation agreements with the general councils of the notarial and legal professions. Among other things, this cooperation has led to the establishment of free legal guidance services for persons with disabilities in a number of provinces.

K. Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

78. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in December 1984, has been ratified by Spain and entered into force on 26 June 1987. Article 1 of that Convention covers cases of pain or suffering inflicted "for any reason based on discrimination of any kind". The instrument of ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 18 December 2002, was adopted and ratified by Spain in March 2006 and came into force on 22 June of that year. In practice complaints from relatives or members of the public are taken up as matters of urgency (within 48 hours) by the inspectorate; there are also special coordination arrangements with the public prosecutor's office concerning disability. The basic principles of conduct laid down in the Act No. 1/2006 of 13 March 2006 on the security forces and agencies prohibits members of those bodies from engaging in conduct of this kind vis-à-vis any citizen, regardless of condition. Such conduct, if proved, gives rise to the appropriate sanctions laid down in the disciplinary rules of the National Police Corps and the Civil Guards.

L. Freedom from exploitation, violence and abuse

79. Part V ("Abuses and Violence") of the Third Plan of Action for Persons with Disabilities 2009-2012 provides for a number of measures designed to prevent abuses and acts of violence committed against persons with disabilities, particularly minors and women, and to facilitate their detection. The measures include investigations, awareness-raising campaigns, manuals for professional workers and other training activities.

80. The risk of absence of protection of a child with a disability (or, in fact, any other person) is related more closely to the resources available to the child than to specific characteristics and conditions, which are often unchangeable. Children with disabilities are more comprehensively and better protected to the extent that, once shortcomings or insufficiencies of resources (lack of parenting skills, scant resources of social networks, lack of institutional support, etc.) have been identified, the ability to help them to face up to these needs is improved.

81. One of the objectives of the National Strategic Plan for Children and Adolescents 2006-2009 is defined as follows: "To strengthen care and social intervention for children and adolescents at risk, lacking in protection or disabled and/or in situations of social

exclusion, establishing common quality criteria and better practices that lend themselves to evaluation". This objective comprises, for instance, a review of the legislation currently in force with a view to incorporating within it the general principles of the Convention on the Rights of the Child, promotion of investigations to prevent risk situations and lack of protection among children and adolescents in Spain and the development and consolidation of management systems of a high standard in the specialist services for the protection of minors.

82. In pursuance of the above-mentioned National Strategy Plan for Children and Adolescents, the Directorate-General for Social Policy, Families and Children and the Queen Sofia Institute for the Study of Violence have conducted a quantitative survey of "ill-treatment of children within the family in Spain". One of the conclusions of the survey was that a disability was a factor very substantially increasing the risk of ill-treatment. The data revealed in particular that the prevalence of ill-treatment was higher among minors with a physical infirmity or a mental disorder (7.80 per cent) than among children with neither (3.57 per cent).and that the proportion of minors with disabilities suffering from ill-treatment is higher (23.08 per cent) than that of minors without disabilities (3.87 per cent).

83. Since 1991 financing has been provided jointly with the Autonomous Communities for experimental programmes on ill-treated children. These programmes consist of studies and inquiries involving expenditure totalling, up to 2005, slightly over 14 million euros (€). The average number of projects launched yearly was 23; they were conducted in 15 Autonomous Communities and the cities of Ceuta and Melilla. These programmes have permitted (and still permit) monitoring of developments regarding new forms of prevention and intervention in the sphere of ill-treatment of children and the promotion of inquiries which help us to keep informed of the scale of the problem.

84. Another important event (which took place in the Child and Adolescent Observatory) has been the entry into service of the single register of cases of ill-treatment of children. This is a vital tool for appreciation of the scale of the problem and improvement of the management of both preventive and palliative resources. The register is being installed in a number of Autonomous Communities and cities. A computerized application (database) which will facilitate its use and speed up operations has been developed. The first report prepared on the basis of data compiled within the system is expected in 2010.

85. The policy of granting subsidies (based on calls for applications addressed to non-governmental organizations subject to the general scheme or the personal income tax (IRPF) system and concerned with ill-treatment of children and child protection) is also being maintained. Support for and promotion of initiatives by society are considered to be of the utmost importance as a way of ensuring the citizen participation which is so necessary in dealing with problems of this kind.

86. To attain the objective of making recommendations on public policies affecting children the Child Observatory instructed the Working Group on Ill-Treatment of Children to prepare a reference module for the development of protocols on steps to be taken in cases of ill-treatment. This module also follows the recommendation of the Committee on the Rights of the Child that instruments on action ensuring coordination and efficiency in such cases should be prepared. The module is also designed to promote the conclusion of formal agreements on action to facilitate implementation of the rights recognized in the Convention throughout the country. A considerable number of bodies, institutions and agents in society concerned with the defence of the rights of children and the promotion of their welfare took part in the preparation of the protocol, which is thus the outcome of the joint efforts of technicians representing the social services, the departments of justice, health and education and the Secretariat of State for Security. On completion it was submitted to and approved by the Child Observatory in plenary session in December 2007.

87. The final point to be made on this subject is that Spain now has adequate resources and procedures for the needs of prisoners with mental health problems, conducting studies of the needs of this group, preparing protocols on coordination between ordinary prisons and the specialized mental health network and improving access to mental health services for the prison population by means of new technologies such as telemedicine. Subsidies are also granted to programmes working for the social integration and rehabilitation of prison inmates and former inmates with mental disabilities.

M. Article 17: Protecting the integrity of the person

88. Article 17 of the Convention protects the personal integrity of persons with disabilities. More specifically, article 23, subparagraph 1 (c), requires States to ensure that: "Persons with disabilities, including children, retain their fertility on an equal basis with others."

89. Spain's current regulations are based on article 149 of the Penal Code, which provides that any person who causes another to become sterile is punishable. It also contains a special preventive and protective provision, providing for a special penalty if the victim is lacking in capacity: in such cases the perpetrator is debarred from exercising parental authority or acting as a guardian, curator, minder or foster parent. It may thus be concluded that in Spain the State gives equal protection to the fertility of persons with disabilities. Spain respects the right of persons with disabilities to physical and psychological integrity, since it maintains the prohibition of sterilization of persons with disabilities. As regards fertility and assisted reproduction measures, the Act No. 14/2006 of 26 May 2006 on assisted human reproduction techniques does not lay down any special conditions concerning persons with disabilities on the subject of personal requisites for recourse to human reproduction techniques.

90. In addition, article 144 of the Penal Code as amended by Act No. 2/2010 still defines enforced abortion as a serious offence (*delito*); where the victim is a person with a disability, the offence is aggravated.

N. Article 18: Liberty of movement and nationality

91. The security forces and agencies of State confine themselves to applying the existing regulations governing nationality, entering and leaving the country, identity documentation, immigration, etc. At no time do they take account of physical condition, without prejudice, however, to the provision of special treatment for specific persons in specific circumstances, such as pregnant women, minors or persons with disabilities.

O. Article 19: Living independently and being included in the community

92. The model of independent living is one of the principles underpinning LIONDAU, article 2(a) of which defines it as follows: "a situation in which a person with a disability exercises decision-making power over his/her own existence and participates *actively* in the life of the community in accordance with the right to free development of the personality". The fundamental aim of the rules on accessibility set out in LIONDAU (article 9) is to progress towards the realization of the right of persons with disabilities to live independently and be included in the community. LISMI establishes a quota of accessible dwellings for persons with disabilities of 3 per cent of officially protected and social housing projects and housing projects of any other nature constructed, promoted or subsidized by a public administration or any other body forming part of or linked to the public sector. The design of dwellings in this category is to be such as to facilitate access by

persons with reduced mobility, the normal performance of their motor activities and their integration into the nucleus in which they live.

93. As part of the review currently in progress to bring the Spanish legal order into conformity with the guidelines laid down in the Convention, the possibility of increasing this quota is under study. The review also involves consideration of some amendments in the health sphere relating to the principle of independent living, with a view to help ensure that patients with disabilities are able to give consent for medical treatments on their own by providing them with the necessary support facilities. Furthermore, Act No. 39/2006 of 14 December 2006 on the promotion of personal autonomy and care for persons in situations of dependency extends the subjective right of citizenship to include the promotion of personal autonomy and care for persons in situations of dependency, this implying access on an equal basis to the benefits and services provided by law. Article 2 contains definitions of autonomy and the requirements of support for autonomy or personal assistance. The principles underlying the Act include that of promotion of specific conditions to enable persons in situations of dependency to live their lives with the greatest possible degree of autonomy and their maintenance, wherever possible, in the environment in which their daily lives are conducted.

94. The Spanish Government is aware that the persons who know best the needs of persons with disabilities and how to meet them are the persons themselves and their families. It therefore supports, through annual allocations of subsidies, bodies and organizations engaging exclusively and habitually in activities benefiting persons with disabilities. These bodies are of two types: those subject to the general regulations on subsidies and established to conduct activities in support of associations and foundations working nationwide on behalf of persons with disabilities; and those allocated for the execution of programmes of cooperation and voluntary social work, to be financed by the IRPF facility

95. Articles 35 ff of Royal Decree 2006/2008 provide, for purposes of securing the most favourable permissible sources of finance, that dwellings reserved for specially vulnerable groups (including where appropriate groups of persons with disabilities) must have the following features: they must form part of buildings, or groups of buildings, destined entirely and solely for that purpose; the usable space in each dwelling must be not less than 15 and not more than 45 square metres per person but may be increased to 90 square metres to permit family units or groups to live together. Aid may also be provided for surface areas of up to an additional 30 square metres for common services or assistance facilities for persons living in the building. Consideration is also being given to permitting the financing of garage spaces attached to specially protected dwellings of this type.

96. Since 2003 persons with disabilities and their families have had available a new tool for financial protection in cases of disability, namely protected endowment. This is a legal structure, created in Act No. 41/2003 on protection of the property of persons with disabilities, to receive assets and rights sufficient to meet the needs of the most needy. It is of considerable interest for persons with severe physical or sensory disabilities or mental deficiencies. The object of the Act is to permit the designation of certain specific assets (cash, immovable property, rights, securities, etc.) so that, with those assets and the income derived from their management, persons with disabilities can meet their vital ordinary and extraordinary needs. Within this system parents, without having to make a gift (which would be more disadvantageous fiscally) or a sale, or having to wait to transfer the assets by testamentary provision, can set aside certain assets for the satisfaction of the essential needs of the person with a disability. The structure is a kind of endowment, i.e., a patrimony of assets expressly designated for the satisfaction of the basic needs of the person with a disability in whose interest the structure has been constituted. The assets and rights making up the endowment, which has no distinct legal personality, are kept separate from the personal assets of the owner-beneficiary and are subject to a specific administrative regime.

97. The protected endowment scheme is designed for persons with a mental disability of 33 per cent or more and persons with a physical or sensory disability of 65 per cent or more. In cases of persons with mental disabilities there is no requirement of recognition of the disability by a court of law; in principle a certificate issued by the Evaluation and Orientation Teams (Royal Decree 1971/1999) suffices, but a final decision by a court is equally valid. Possession of a certificate testifying to a disability equal to or exceeding 33 per cent (or 65 per cent, according to the type of disability) issued in accordance with the regulations, or a definitive court decision, is sufficient. Provided that the disabled person has sufficient capacity to act (i.e., the ability to form reasonable judgements on the scope and significance of his/her actions and answer for the consequences), he/she may decide on the following matters:

- Whether or not to constitute a protected endowment;
- Whether to be the administrator of the endowment or to appoint another person for the task;
- Whether, in anticipation of a future judicial declaration of incapacity (Civil Code, article 200), to adopt any provision concerning his/her person or property, including the designation of a guardian.

98. Provided that a person with a disability retains sufficient - even though not full - capacity, he/she has the right to make all decisions concerning his/her person or property.

P. Article 20: Personal mobility

99. The right of persons with disabilities to move about freely with the greatest possible independence requires the removal of obstacles, the generalization of accessibility in all its forms and the introduction of affirmative action measures.

100. On this subject reference should be made to the regulations mentioned earlier in connection with article 9, and specifically the Royal Decree No. 505/2007 of 20 April 2007 setting basic standards of accessibility and non-discrimination for persons with disabilities as regards access to and use of urbanized public areas and buildings, and the Royal Decree No.1544/2007 of 23 November 2007 setting basic standards for accessibility and non-discrimination in relation to access to and use of transport modes for persons with disabilities.

101. Spain had already adopted a number of measures designed to improve the personal mobility of persons with disabilities. Act No. 13/1982 of 7 April 1982 on social integration of the handicapped (LISMI) and the Royal Decree No. 383/1984 of 1 February 1984 establishing and regulating the system of social and economic benefits provided for in LISMI, govern the mobility and compensation for transport expenses benefit (SMGT) - a periodic cash benefit designed to cover expenditure on travel away from the usual place of residence incurred by persons who have serious difficulty in using public transport on account of disabilities.

102. Mention may also be made of the catalogue of technical aids produced by the State Personal Autonomy and Technical Aids Reference Centre (CEAPAT) mentioned earlier. Its catalogue of aids is an on-line service compiling information on support technology products (or technical aids) manufactured or distributed in Spain and contact data on the bodies marketing them. It is designed to meet the needs of persons with disabilities and professionals in rehabilitation and social services in Spain and other Spanish-speaking countries for information on support products. Mention should also be made of the work on mobility in other centres under the authority of IMSERSO, such as the Recovery Centres for Persons with Physical Disabilities; these institutions are designed to facilitate the integration into social and working life of persons suffering from congenital or acquired

physical or sensory disabilities which debar them from receiving recovery care in ordinary centres, and have an appropriate mix of facilities and professional staff. Their principal activities include technical assistance in the field of personal mobility, accessibility, technical aids and new technologies applied to permit better integration of persons with disabilities and the development of methodologies and applications of new technologies for persons suffering from serious disabilities in order to enable them to make maximum use of reasonable capacities for recovery of occupational ability.

103. As stated earlier, Royal Decree No. 1544/2007 of 23 November 2007 introduced the measures necessary to ensure accessibility in every mode of transport. These measures not only cover the different types of vehicle but also seek to ensure mobility prior to boarding the vehicle; in other words, they also include the complementary measures needed to facilitate the mobility of persons with disabilities wishing to enter buildings, stations and terminals where they can board vehicles (for example, as regards access to trains they lay down compulsory specifications for the design of stations, approaches, staircases, etc.). These complementary measures facilitate the mobility of persons with disabilities for purposes of access to the different modes of transport. To that end certain cross-cutting provisions, i.e., provisions applicable to all modes of transport in the absence of other specific provisions, have been included in annex IX of the royal decree, paragraph 2 of which reads: "In public transport facilities of such importance that their management so permits, there shall be an assistance service duly trained to assist persons with disabilities in passing through the facilities, obtaining the information they need and with the issue of tickets".

104. The department therefore takes the view that the above-mentioned royal decree complies with the requirement in article 20 to facilitate the personal mobility of persons with disabilities in that it imposes certain additional obligations facilitating entry into buildings in which modes of transport are located.

Q. Article 21: Freedom of expression of opinion, and access to information

105. November 2005 saw the adoption of the Plan for Advance 2006-2010 for the development of the information society and convergence with Europe and among Autonomous Communities and cities. The measures called for in the plan include the adoption of a series of regulatory initiatives designed to remove existing obstacles to the expansion and use of information and communication technologies and guarantee the rights of citizens in the new information society.

106. Royal Decree No. 1994/2007 approved the regulations on the basic conditions governing access by persons with disabilities to the new technologies, products and services with links to the information society and social communication media. It incorporates a requirement to guarantee (rather than to promote) the existence of a sufficient supply of broadband Internet access terminal equipment. The scope of its applicability includes public administrations, telecommunications operators, providers of services to the information society and owners of social communication media providing services under Spanish jurisdiction. The Ministry of Industry, Tourism and Commerce, acting through the National Communication Technologies Institute (INTECO), has launched a number of projects designed to improve access to the digital public services offered by the central government administration and its public agencies. The projects include analysis of and support for the adaptation of public websites, the training of both public- and private-sector professionals involved in the development and updating of those websites, the launching of innovative technological projects designed to develop tools and services facilitating maintenance of the level of accessibility required by law and the promotion of awareness in society of the importance of universal design as a means of guaranteeing non-discriminatory access to the services of the information society.

108. Also through the agency of INTECO, the Ministry of the Presidency maintains an observatory to prepare, for use by the central government and autonomous administrations, indicators and studies accurately reflecting the degree of accessibility of public websites and their evolution over time. The administrations thus have available up-to-date information on levels of accessibility which facilitates the process of continuous improvement.

109. . The Ministry of Industry, Tourism and Commerce, acting through the Secretariat of State for Telecommunications and the Information Society and the Ministry of Health and Social Policy, itself acting through the Directorate-General for Coordination of Sectoral Policies on Disability and the Royal Disability Foundation, promoted the establishment of the National Centre for Accessibility Technologies (CENTAC) on 26 November 2008 by the ONCE Foundation, the Vodafone España Foundation, the Corte Inglés and Telefónica. The principal purpose of this centre is the promotion of social integration by facilitating access to the technologies, services, devices, systems and networks of interactive society in such a way as to foster equality of access to that society by all citizens. This promotion of accessibility and design for all also means that we should not confine our vision to products and services designed to facilitate access by persons with disabilities, but should reach out to all citizens, seeking in doing so to achieve the highest quality, versatility and general usefulness in every innovation or new development.

110. The central administration, for its part, has taken a number of measures, including a guarantee that documents and printed matter destined for citizens will be available in conditions of full accessibility to persons with disabilities; they will be offered on request in alternative formats, using large or expanded fonts or Braille, or staff members will be available to assist with their completion. In addition, simplified versions of the basic information documents in most frequent use are to be produced for persons with mental deficiencies or who are unable to understand written texts (Royal Decree No. 366/2007, which also regulates measures concerning accessibility of the citizens' care offices and measures to ensure accessibility of services for citizens).

111. In 2007, too, Act No. 27/2007, mentioned earlier, was adopted. It provides for recognition of sign languages and regulates support facilities for oral communication with deaf persons, persons with hearing deficiencies and deaf and blind persons - a step which the disabled persons' associations have considered to be particularly important in that it supports freedom of expression and opinion, including the ability to request, receive and furnish information and ideas on terms of equality. This Act also provides for the establishment of two centres under the authority of the Royal Disability Foundation.

112. The regulations to govern the Centre for Linguistic Standardization of the Spanish Sign Language are currently in the final stage of drafting in the Ministry of Health and Social Policy. The Act establishing it defines its purpose as the investigation, promotion and dissemination of the Spanish sign language and ensuring its proper use.

113. The Spanish Subtitling and Audio Description Centre (CESyA) is developing a multidisciplinary project to facilitate access to the audio-visual environment through its subtitling and audiodescription services. Its objectives include the creation and management of a database service containing references to available subtitled and audiodescribed material, coordination of approved investigation and training activities and contributing to standardization, communication and social awareness promotion projects relating to audio-visual accessibility.

114. Mention should also be made in this section of the www.guiadis.es and www.discapnet.es websites referred to at the beginning of the report in the "General provisions" section.

R. Article 22: Respect for privacy

115. The work of the security forces and agencies in this area is in conformity with the regulations applicable to the subject; the confidentiality of data having a bearing on the physical condition of persons forming the subject of any measure is protected at all times.

S. Article 23: Respect for home and the family

116. Disability is a cross-cutting element in social policies on support for the family. In addition to the body of benefits and services of a general nature there are measures designed specifically for families with disabled members, such as rehabilitation and adaptation of their dwellings, protected or communal dwellings, day and night care centres, family respite and support programmes, etc.

117. All these benefits are administered at the autonomous or local level. The State provides technical and financial support from the IRPF facility for non-governmental organizations working in the disability field. This support enjoys priority in the annual budget allocation process, particularly for bodies helping families with disabled members, providing them with information and guidance services; psycho-social support services also qualify for aid.

118. With regard to paragraphs 4 and 5, disability is not listed as grounds for protection on grounds of distress within the meaning of the Organization Act on the legal protection of minors (No. 1/1196), since that Act is concerned with the protection of distressed minors, whereas disability is not of itself a cause of distress.

T. Article 24: Education

1. Preschool, compulsory and non-compulsory non-university education

119. The principles on which the Organization of Education Act is based include: (a) the same quality of education for all pupils, regardless of their condition or circumstances; (b) equity, guaranteeing equality of opportunities, educational inclusion and non-discrimination and serving as an element compensating for personal, cultural, economic and social inequalities, with special emphasis on inequalities arising from disability.

120. Part II of the Act is concerned with groups of pupils requiring educational care differing from the norm because they have a specific need for educational support; it provides the specific resources necessary for the accomplishment of this task with the aim of achieving the complete inclusion and integration of the pupils concerned. The first section of this part is devoted to the educational treatment of "pupils with special educational needs", requiring specific support and care in response to physical, mental or sensory disabilities, or manifesting serious behavioural disorders.

121. The subject matter of this section includes the following:

(a) The identification and assessment of special educational needs are to be undertaken as early as possible by duly qualified persons and in terms fixed by the educational administration concerned, remedial measures to be initiated from the time of identification;

(b) The schooling of pupils with special educational needs deriving from disability will be guaranteed by the educational administrations. It will be governed by the principles of achievement of normality and inclusion and will ensure absence of discrimination and equality of access to and continuation in the education system, enable the pupil to develop his/her personal, intellectual, social and emotional capacities to the

greatest possible extent and attain the objectives of a general nature laid down in the Organization of Education Act;

(c) Schooling in special schools may continue up to the age of 21 years and shall be resorted to only when the needs of the pupil cannot be met by application of the measures allowing for diversity available in ordinary schools;

(d) Pupils will be evaluated at the end of every school year with a view to providing appropriate guidance;

(e) Schools will have an appropriate scholastic organization, and the adaptations and diversifications necessary to enable every pupil to attain the goals fixed will be introduced. Schools will also have available the personnel and material resources needed to provide appropriate care for pupils with educational needs deriving from disabilities;

(f) The educational administrations will be responsible for promoting their schooling, devising programmes to ensure adequacy of schooling, encouraging the continuity of schooling, promoting training opportunities adapted to pupils' specific needs and reserving vocational training places for pupils with disabilities. They will also be responsible for advising parents, securing their participation and promoting teacher training and opportunities for cooperation with other administrations or agencies.

122. In pursuance of the Organization of Education Act, royal decrees have been issued laying down minimum educational content in the three stages of schooling - pre-primary, primary and secondary, thus establishing the basic elements of the syllabi for the teaching of languages, music and the dance and as a step in the general organization of teaching of sports, plastic arts and design.

123. The same royal decrees envisage the provision of care for pupils with special educational needs deriving from disabilities, covering identification, care, curriculum adjustments, evaluation, an additional year of schooling at each stage, promotion, etc. On the basis of these decrees the different education administrations have published regulations establishing and regulating the progression of each subject taught in schools under their authority.

124. In the vocational training sphere, training activities for pupils with special educational needs deriving from disabilities must be developed in centres with accessible space and adapted training facilities. Teaching and evaluation methodologies that ensure accessibility will be used. The centres will be equipped with support and reinforcing tools and instruments to facilitate the evaluation of pupils and their information and guidance, and a percentage of places will be reserved for pupils with disabilities. In addition, young persons with special educational needs deriving from disabilities may register for initial skills training under a system combining theoretical with on-the-job training (an integration system catering for not more than two such pupils in any programme) or in a specific workshop (for young persons with permanent or temporary special educational needs and with a level of personal and social autonomy enabling them to obtain jobs).

2. University education

125. The Act amending the Universities Organization Act (LOMLOU) contains the following provisions concerning the disabled:

- The following provisions exist on bursaries and study aids: "To ensure that no person is excluded from university studies for economic reasons, the Government, the Autonomous Communities and the universities themselves shall implement a policy of bursaries, aids and credits for students. Public universities shall also establish arrangements for partial or total exemption from payment of normal charges for academic services. In all cases special consideration shall be given to persons with dependants, victims of gender violence and persons with disabilities or

in a state of dependency, thus guaranteeing them access to and continuation of university studies;

- On the subject of fees it provides that: "Persons with disabilities shall be entitled to total exemption from payment of fees and normal charges for studies leading to the award of a university degree";
- With regard to specific aid programmes: "The competent public administrations, in coordination with the universities concerned, shall establish specific programmes to enable victims of terrorism and gender violence and persons with disabilities to enjoy personalized aid, support and adjustments in the teaching process;
- On the subject of plans for persons with special needs, the Act provides that: "Within one year from the date of entry into force of this Act, the universities shall, following consultations with the organizations representing the different social sectors concerned, draw up plans to give effect to the mandate given in the 24th additional provision of the Universities Organization Act No. 6/2001 of 21 December 2001 in the terms stated in that Act."

126. The regulations implementing this Act also contain provisions concerning persons with disabilities. The Royal Decree No. 1393/2007 of 29 October 2007 establishing the progression of official university syllabi, stipulates that study programmes should take into account the fact that all occupational activities must be conducted "on a basis of respect for and fostering of human rights and the principles of universal accessibility and design for all in accordance with the tenth final provision of Act No. 51/2003 of 2 December 2003 on equality of opportunities, non-discrimination and universal access for persons with disabilities; these study programmes must where appropriate include teaching relating to those rights and principles."

127. In the area of access to official teaching at first-degree level, "Universities shall have accessible information systems and reception and orientation procedures for newly-admitted students to facilitate their assignment to appropriate study programmes. Where students have specific educational needs deriving from disabilities, those systems and procedures must include adequate support and advisory services, which will assess the possible need for curricular adjustments."

128. As regards admission to official studies at Master's degree level and the procedures and requirements for admission, which should be included in study programmes, the regulation states: "For students with specific educational needs deriving from disabilities, those systems and procedures must include adequate support and advisory services, which will assess the possible need for curricular adjustments, changes of itinerary or alternative studies." A similar provision exists for admission to doctorate-level studies.

129. Royal Decree No. 1313/2007 of 5 October 2007 regulating competitions for admission to university teaching staff, provides that "Universities shall guarantee equality of opportunity for persons with disabilities and shall adopt appropriate measures, in procedures governing competitions, to meet the needs of persons with disabilities."

130. Royal Decree No. 1892/2008 of 14 November 2008, regulating the conditions of access to official university teaching at first-degree level and the procedures for admission to Spanish public universities, contains the following provisions concerning students with a disability of any kind:

"The organizing committees, acting in accordance with the specific regulations governing the admission tests to be prepared by the education administrations in each Autonomous Community, shall decide on appropriate measures to ensure that students suffering from any kind of disability can sit both the general and the specific parts of the tests under due conditions of equality. Specific mention of this possibility shall be made in convocations to tests.

"These measures may consist of adjustments of times, the preparation of special examination models and the provision of the material and human resources, assistance and support and the technical aids the student needs to take the admission test, together with a guarantee of accessibility of information and notification of the procedures and the premises or physical space where the test is to take place;

"In all cases these measures shall be decided on the basis of the adjustments introduced in connection with the baccalaureate; due information shall be given by the appropriate guidance services.

"The examination boards may request reports and assistance from the competent technical agencies of the education administrations and the centres at which students with disabilities have taken the baccalaureate examination."

131. In addition, article 51 of the same royal decree contains the following provision: "Five per cent of available places shall be reserved for students recognized as suffering from a degree of disability equal to or exceeding 33 per cent and those with permanent special education needs arising from personal disabilities who during their previous schooling have required resources and support in order to achieve a normal educational standard."

132. Mention should be made in this section of the European conference on inclusive education held in March 2010 during the Spanish presidency of the European Union.

U. Articles 25 and 26: Health; habilitation and rehabilitation

133. The maximum guarantees offered by Spain in compliance with these articles of the Convention are anchored in the 1978 Constitution, article 43 of which recognizes the right to health and stipulates that the public authorities have responsibility for organizing and fostering public health through preventive measures and provision of the necessary benefits and services. The 1986 General Health Act followed up and developed these constitutional provisions, establishing the substantive principles and criteria forming the basis for the design of the public National Health System, which is universal and free of charge at point of delivery. The Act lists the various health measures being introduced by the public administrations and stipulates that access to health benefits must be provided under conditions of effective equality.

134. The Act on cohesion and quality in the National Health System, which came into force in 2003, reaffirms these principles and adds to the requirement of effective equality an additional series of guarantees concerning benefits, relating primarily to quality and security. It also introduces the benefit of comprehensive health care (comprising promotion, preventive measures, assistance and rehabilitation) ensuring a high standard of quality. It also determines who is entitled to health protection and care and instructs public administrations to orientate the health measures they take so as to include active measures to prevent discrimination against any population group which for cultural, linguistic, religious or social reasons has particular difficulty in obtaining effective access to the health benefits provided by the system.

135. In addition to the guarantees of quality and reference services the Act provides that accessibility to health centres, services and benefits for persons with disabilities is a quality criterion which the system must comply with, and also that newly-constructed health centres must comply with current regulations on promotion of accessibility and the removal of obstacles of all kinds to their implementation. In response, the public health administrations immediately began promoting programmes for the removal of obstructions in health centres and services which, because of age or other factors, might render access difficult for users with mobility or communication problems.

136. To ensure adequate and effective incorporation of all these matters in the National Health System together with a guarantee of equity and access by the population to adequate health care without discrimination of any kind, a catalogue of common services available under the system has been in use since 2006. It contains an exhaustive list of all the preventive, diagnostic, therapeutic, rehabilitation and health promotion and maintenance services available to citizens and to which all users of the system are entitled. The regulatory instrument governing the catalogue is the Royal Decree No. 1030/2006 of 15 September 2006, which also lays down procedures for its updating. It repeals the earlier regulation, dating from 1995, which regulated the content of the catalogue in a more general manner.

137. Thus all persons with disabilities (like the rest of the population) have access to different services, some of which are specifically designed for them. The services include:

1. Catalogue of public health services

138. This comprises:

- (a) Design and implementation of policies for protection against health risks, prevention of diseases, deficiencies and injuries and health promotion;
- (b) Intersectoral and cross-cutting health promotion and education programmes designed to improve lifestyles;
- (c) Intersectoral programmes for protection against health risks and prevention of diseases, deficiencies and injuries;
- (d) Cross-cutting programmes for protection against health risks, prevention of illnesses, deficiencies and injuries and health promotion and education, designed for the different stages in life and the prevention of transmissible and non-transmissible diseases, deficiencies and accidents;
- (e) Prevention and health promotion programmes targeting population groups with special needs and designed to remove or reduce inequalities in the health sphere;
- (f) Plurisectoral programmes for health promotion and the prevention of health risks and problems in the working environment.

2. Catalogue of primary care services

139. Primary care is the initial and basic level of care. It guarantees comprehensive and continuous care throughout the life of the patient, acting as manager of cases and regulator of flows. It comprises health promotion activities, health education, prevention of illness, health assistance, health maintenance and recovery, physical rehabilitation and social work. These include:

- (a) Health care (on request, scheduled and emergency) at the surgery or the patient's home;
- (b) Recommendation or prescription of diagnostic and therapeutic procedures and their execution where appropriate;
- (c) Activities in the areas of prevention, health promotion and family and community care;
- (d) Information and monitoring activities in the field of health protection.

Basic rehabilitation

140. This section of the catalogue comprises educational, prevention and rehabilitation activities which can be conducted within primary care on an outpatient basis on medical advice and in line with the programme of each health service, including assistance in the

home if considered necessary on clinical grounds or for reasons of restricted accessibility. More specifically, these activities include:

- (a) Prevention of the development or progress of musculoskeletal disorders;
- (b) Physiotherapeutic treatment for symptom control and functional improvement in cases of chronic musculoskeletal conditions;
- (c) Recovery from acute but minor musculoskeletal conditions;
- (d) Physiotherapy in cases of neurological disorders;
- (e) Respiratory physiotherapy;
- (f) Health guidance/training for patients or carers as appropriate.

141. Specific care and services for women, children, adolescents, adults, the elderly, risk groups and the chronically sick: this category includes, in addition to the general activities already mentioned, assistance, diagnosis, therapy, rehabilitation, health promotion and education and sickness prevention at primary care level, following the specific care protocols and programmes established for the different age groups, sexes and risk groups. Activities targeting risk groups are conducted both in health centres and in a domestic or community environment within the programmes drawn up by each health service on the basis of the health needs of the population for which they cater.

142. In the context of the subject under consideration mention must be made of the following:

143. As regards child care:

- Assessment of nutritional state and height-weight and psychomotor development;
- General advice on the child's development, harmful habits and healthy lifestyles;
- Health education and prevention of childhood accidents;
- Detection of health problems (with *ab initio* presentation at the different ages) which may benefit from early detection coordinated with specialist care by means of activities designed to ensure early detection of metabolopathies, hypoacusis, displasia of the hip joint, cryptorchidism, strabism, vision problems, puberal development problems, obesity, autism and attention deficiency and hyperactivity disorders, and also identification and monitoring of children with physical and psychological disabilities and chronic diseases;

144. Adolescent care services:

- Anamnesis and advice on habits entailing risks to health, such as the use of tobacco, alcohol and addictive substances, including accident prevention;
- Assessment and advice on diet and body image.

145. Care services for women:

- Post-natal examination during the month immediately following birth to evaluate the state of health of the mother and the newly-born infant.

146. In general terms, care for adults, risk groups and chronically sick persons consists of assessment of the state of health and risk factors, advice on healthy lifestyles, the detection of health problems and assessment of their clinical status, referral of patients for clinical follow-up appropriate to their condition, care and follow-up for persons receiving more than one course of medicine or suffering from more than one illness and the provision of health information and health advice on the illness, and the precise nature of the care required, to the patient or the carer as appropriate.

147. Care for older persons:

- Prevention and promotional activities in the areas of healthy diet and physical exercise, identification of risky behaviour patterns, prevention of falls and other accidents, early detection of cognitive, functional and physical deterioration, and particularly screening for hypoacusis, visual deficiency and urinary incontinence, and advice and follow-up for patients receiving more than one course of medicine or suffering from more than one illness;
- Detection and follow-up for older persons at risk according to age, state of health and social and family situation; assessment of clinical condition, social and family situation and degree of dependency in performance of the acts of day-to-day living, leading to an integrated health-care plan and coordination with the specialized care and social services with the aim of preventing and treating disability and the diseases associated with it.

148. Detection and treatment of gender violence and ill-treatment of persons of all ages, especially minors, older persons and persons with disabilities;

- Detection of risk situations;
- Anamnesis (and where appropriate exploration) directed at the problem in risk situations and a suspicion of ill-treatment;
- Reporting to the competent authorities where the situation so requires, especially in situations of suspicion of gender violence or ill-treatment of minors, older persons or persons with disabilities, and, where appropriate, to the social services;
- Establishment of an intervention plan appropriate to each case.

149. In cases of terminal illness palliative care is offered.

150. Prevention, promotional, advice and support activities are organized for the maintenance of mental health at the different stages of the life cycle.

151. Oral and dental healthcare: for persons with disabilities who are unable without sedative treatment to maintain the degree of self-control necessary to permit adequate attention to their oral and dental health; to give such persons easier access to the services provided by the public health system the regulations provide for placement in an assistive environment where proper care can be ensured.

3. Catalogue of specialist care services

152. Specialist care guarantees continued comprehensive care for patients where the possibilities offered by primary care are insufficient and until the latter can be resumed. It comprises assistance, diagnosis, therapy, rehabilitation, care and health promotion, health education and sickness prevention where the nature of the disorder dictates specialist intervention. It is provided on an outpatient basis where the condition of the patient permits or through external or hospital consultations on a hospital day-care or in-patient basis. Preventive and mental health promotion measures are undertaken in coordination with other agencies, both in the health field and outside it.

153. For purposes of this report, particular mention may be made of the following:

154. Specialist care of a consultation character, comprising assistance, diagnosis, therapy, rehabilitation, care and health promotion, health education and sickness prevention, provided on an ambulatory basis.

155. Specialist medical and surgical assistance provided in hospital on a day-care basis, including assistance, diagnostic, therapeutic and rehabilitation measures for persons requiring continuing specialist care, including major ambulatory surgery which does not

require the patient to stay overnight in hospital. For purposes of this report the following deserve special mention:

(a) Indication, execution and follow-up of the therapeutic and rehabilitative treatment measures and procedures required by the patient, including ambulatory surgery and chemotherapy treatment for oncology patients;

(b) Implants and other orthoprosthesis appliances and renewal where necessary.

156. Hospitalization on an inpatient basis, comprising medical, surgical, obstetric and pediatric care or the performance of diagnostic treatment and procedures for patients needing continuing care requiring inpatient status. Implants and other prosthetic appliances and their renewal, as well as rehabilitation treatment where appropriate, are included under this head.

157. Support for primary care in cases of early discharge from hospital or hospitalization at home includes diagnosis and therapy measures which have to be taken in a coordinated fashion by the primary and specialist care services as a consequence of procedures initiated at specialist levels and which both levels decide can be provided in the home in a manner guaranteeing continuity of post-hospital care in accordance with the specialized programmes drawn up and the mode of organization of each health service.

158. Indication or prescription, and execution where appropriate, of diagnostic and therapeutic procedures concerning infectious and parasitic diseases, neoplasias, endocrinal, nutritional and metabolic diseases and immunity disorders, diseases of the blood and the haematopoietic organs, mental disorders, diseases of the nervous system and the sensory organs, circulatory diseases, diseases of the respiratory and digestive tracts, diseases of the genito-urinary tract, complications in pregnancy, birth and puerperium, diseases of the skin and the subcutaneous layer, diseases of the osteo-myoarticular system and connective tissue, congenital anomalies, diseases originating during the perinatal period, injuries and poisoning. Other services include rehabilitation for patients with reparable functional deficiencies.

159. Rehabilitation of patients with reparable functional deficiencies comprises diagnosis, evaluation, prevention and treatment and aims at facilitating, maintaining or improving patients' achievable functional capacity and independence so as to enable them to return to their habitual environments.

160. Rehabilitation also covers treatment of diseases of the musculoskeletal and nervous systems and the cardiovascular and respiratory tracts by physiotherapy, occupational therapy and logopedia with a direct bearing on a pathological process being treated within the National Health System and technical methods (orthoprosthesis).

4. Catalogue of emergency care services

161. Emergency care is that given to patients whose clinical condition demands immediate treatment. It is provided both inside health centres and away from them, at the patient's home or in situ, 24 hours a day, by a doctor or nurse and with the assistance of other professionals. The service includes reporting to the competent authorities where the situation so requires, especially where there is suspected gender violence or ill-treatment of minors, older persons and persons with disabilities.

5. Catalogue of pharmaceutical benefit services

162. Pharmaceutical benefits include medicines and health products and the full range of measures designed to ensure that patients receive them in a manner in keeping with their clinical needs, in the exact doses corresponding to their individual requirements, for the appropriate period and at the least cost to them and the community.

6. Catalogue of common orthoprosthesis benefit services

163. Orthoprosthesis benefits consist of the use of health products (implantable or non-implantable) designed partially or totally to replace a body structure or modify, correct or facilitate its functioning. They include the elements necessary for improving patients' quality of life and autonomy and consist in concrete terms of surgical implants, external prostheses, wheelchairs, orthoses and special orthoprosthesis.

164. These benefits are provided free of charge by the health services or carry entitlement to financial assistance in cases listed by the competent health authorities and in accordance with their respective regulations. Approval of provision of orthoprosthesis benefits, guaranteeing that the health needs of patients are met, is given by the competent health administration on the basis of the catalogue of products within its competence, which must contain as a minimum the items listed in the common services catalogue of the National Health System.

7. Catalogue of common benefit services with dietetic products

165. Dietetic product benefits comprise the prescription of dietotherapeutic treatment for persons suffering from specific congenital metabolic disorders, as well as enteral nutrition in the home for patients unable to meet their nutritional needs with ordinary foods on account of their clinical condition. Users are not charged for this benefit.

8. Catalogue of common transport services for health purposes

166. Transport for health purposes, which must be available for persons with disabilities, consists of transportation, for purely clinical purposes, of sick persons whose condition renders them unable to travel by ordinary transport facilities.

167. This benefit is provided in accordance with the regulations issued by the competent health authorities.

9. Participation of persons with disabilities

168. All regulations issued concerning the National Health System common services catalogue are transmitted for information to patients' associations, including associations of persons with disabilities. Their participation in the regulation of matters affecting them is thus taken into consideration.

169. Act No. 41/2002 of 14 November 2002, regulating the autonomy of patients and rights and obligations in the area of clinical information and documentation, envisages the total availability of information that is sufficient and adequate to enable persons with disabilities and their families to exercise their right of consent to decisions affecting them.

10. Referral centres, services and units at SNS level

170. Work is also progressing on the designation of referral centres, services and units at SNS level to guarantee equity of access to high-quality, safe and efficient health care for persons with pathological conditions the characteristics of which demand care of a high level of specialization requiring concentration of cases in a small number of centres. Work is also continuing on the establishment of procedural bases for the designation and accreditation of these centres, services and units within the joint planning framework established in pursuance of Act No. 16/2003 of 28 May 2003 on cohesion and quality in the National Health System. In this context the areas under consideration include disabilities such as bone-marrow diseases and infant surgery and orthopaedic treatment.

171. Lastly, mention may be made in this section of Act No. 39/2006 of 14 December 2006 on the promotion of personal autonomy and care of persons in situations of dependency, the 13th additional provision of which specifically regulates the protection of

children under 3 years of age in situations of dependency. It requires the Territorial Council of the System for Autonomy and Care in Cases of Dependency to adopt a comprehensive plan of care for these children, stipulating the measures to be taken by the public administrations, without prejudice to their respective competences, to promote early intervention and the restoration of their capacities.

V. Article 27: Work and employment

1. Existing law

172. Spain has ratified several international treaties seeking to combat discrimination, either of a general nature or targeting the social and labour fields. These include the United Nations Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, the Council of Europe European Convention on Human Rights and the European Social Charter, ILO Conventions Nos. 100, 111, 117 and others concerned with equality and non-discrimination, and also, naturally, the Convention on the Rights of Persons with Disabilities, which it has ratified. In European legislation in force in Spain mention should be made of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, which seeks to combat discrimination based on religion or belief, disability, age or sexual orientation and was transposed into the Spanish legal order by Act No. 62/2003 of 30 December 2003 on fiscal and administrative measures and the social order. The legislation adopted is as follows:

- Act No. 62/2003 of 30 December 2003 on fiscal and administrative measures and the social order (hereinafter referred to as LMFAOS);
- Act on the status of workers, consolidated text approved by the Royal Decree-Law No. 1/1995 of 24 March 1995 (hereinafter referred to as ET);
- Act No. 13/1982 of 7 April 1982 on social integration of the handicapped (hereinafter referred to as LISMI);
- Act on offences and penalties in the social order, consolidated text approved by Royal Decree-Law No. 5/2000 of 4 August 2000 (hereinafter referred to as LISOS);
- Act on labour proceedings, consolidated text approved by the Royal Decree-Law No. 2/1995 of 7 April 1995 (hereinafter referred to as LPL);
- Act No. 39/2006 of 14 December 2006 on the promotion of personal autonomy and care for persons in situations of dependency.

2. Reference framework

173. The Global Action Strategy for the Employment of Persons with Disabilities 2008-2012 (EGAEPD) is the reference framework for the promotion of employment of persons with disabilities in Spain. It was adopted by the Council of Ministers in a decision dated 26 September 2008. Its first plan of action, covering the years 2008-2010, is currently in course of execution. Both texts were prepared with the participation of employers' organizations (the Spanish Confederation of Entrepreneurial Organizations (CEOE) and the Spanish Confederation of Small and Medium-sized Enterprises (CEPYME)), workers' organizations (the General Union of Workers (UGT) and the Workers' Committees (CC:OO)), the organizations representing the disabled (the Spanish Committee of Representatives of Persons with Disabilities (CERMI) and the Autonomous Communities.

3. Impact of the employment programmes and policies for persons with disabilities aimed at achieving full and productive employment in accordance with paragraphs (a) and (g) of article 1 of the Convention

174. Mention may be made of the following:

- Measures to promote recruitment of persons with disabilities: Act No. 13/1982 of 7 April 1982 on social integration of the handicapped (LISMI) states that employment policies benefiting persons with disabilities should be directed towards integrating them into the general labour market under conditions guaranteeing application of the principle of equality of treatment or, failing that, their incorporation into the production system through the specific modality of sheltered employment. The Employment Act No. 56/2003 of 16 December 2003 sets the guarantee of genuine equality of opportunity and non-discrimination in access to employment as priority objectives of employment policy. It assigns responsibility for adopting specific programmes for promotion of the employment of persons who have special difficulty in integrating into the labour market - and particularly persons with disabilities - to the central government and the Autonomous Communities. According to the survey of disability, personal autonomy and situations of dependency (EDAD) conducted by the National Statistical Institute (ENI) in 2008, the activity rate among persons with disabilities was 35.5 per cent (40.3 per cent for men and 31.2 per cent for women). The employment rate for all persons with disabilities was 28.3 per cent (33.4 per cent for men and 23.7 per cent for women). The unemployment rate was 20.3 per cent (17.2 per cent for men and 24.0 per cent for women).
- Sheltered employment: basically, measures promoting the entry of workers with disabilities and experiencing special difficulties are implemented through the Special Employment Centres. These centres are established in the context of employment-generating projects and/or job retention, and the majority of the workers concerned suffer from disabilities. The incentives offered are varied and wide-ranging; they include subsidies paid for each stable job created which may amount to as much as €12,000 where the proportion of workers with disabilities in the centre exceeds 90 per cent. There are also rebates of 100 per cent of employers' social security contributions, wage cost subsidies equivalent to 50 per cent of the minimum inter-occupational wage, subsidies for adaptation of jobs and removal of construction impediments of up to €1,800 per job, subsidies for technical assistance and subsidies to balance the budgets of non-profit-seeking special employment centres and those declared of public utility.
- Labour enclaves: these are a kind of half-way house between the sheltered and general labour markets. Their ultimate purpose is to facilitate the transition of workers with disabilities from sheltered employment to employment in a free environment.

175. The basis of a labour enclave is a contract between a company in the general labour market and a special employment centre. The purpose of the contract is the provision of goods or services directly related to the normal activity of the company and for the performance of which a number of disabled workers from the centre with disability levels equal to or exceeding 33 per cent are temporarily transferred to workplaces in the company. A company engaging a disabled worker from a labour enclave for an indeterminate period may receive a subsidy of up to €7,800 for a full-time indeterminate contract and a grant of up to €900 for adaptation of the job, and also a 100 per cent rebate on the employer's social security contributions. The special employment centres receive subsidies to cover the labour and social security costs deriving from the indeterminate or temporary contract amounting to up to €1,200 per year for each disabled worker engaged:

- **Supported employment.** Supported employment is a programme to integrate persons with disabilities into the general labour system. It comprises a number of measures involving guidance and individual monitoring at the workplace in enterprises in the general labour market, provided by specialist work instructors and aimed at facilitating the adjustment in employment and society of workers with disabilities experiencing special difficulty in entering the labour market. Work is performed in conditions similar to those of other workers in equivalent jobs. The scheme is designed for persons with cerebral palsy, mental illness or recognized mental disability equal to or exceeding 33 per cent and persons with physical or sensory incapacity making for an impairment equal to or exceeding 55 per cent. The subsidies are intended to cover the labour and social security costs incurred through engagement of the work instructors. The amount of subsidy payable depends on the number of workers involved, the type of disability and the degree of impairment; it ranges from €2,500 to €6,600 per year and per disabled worker.

Support units for occupational activity

176. Subsidies are payable to cover the labour and social security costs deriving from the engagement of workers from these support units for an indeterminate period, or on a temporary basis for six months or more. The amount of the subsidy is €1,200 per year for each disabled worker where:

- (a) The worker is suffering from a mental illness or mental disability with a recognized degree of impairment equal to or exceeding 33 per cent;
- (b) The worker is suffering from a physical or sensory disability with a recognized degree of impairment equal to or exceeding 65 per cent.

4. Impact of measures to facilitate the re-employment of persons with disabilities who lose their jobs on account of privatization, retrenchment and economic restructuring in public and private enterprises in accordance with paragraph 1 (e) of the Convention

177. There is no information available on the subject. There are no specific measures for persons with disabilities, although they form a priority group for purposes of implementation of active employment policies.

5. Availability of technical and financial assistance for the provision of reasonable accommodations, including the promotion of cooperatives and new enterprises to foster the entrepreneurial spirit

178. Royal Decree No. 1451/1983, which regulates selective employment and employment promotion measures for workers with disabilities, stipulates, inter alia: "Enterprises engaging workers with impairments on indeterminate contracts may apply for subsidies from the State Employment Public Service. These shall be compatible with the benefits established in earlier articles and destined for the adaptation of jobs, the provision of the personal protection equipment necessary to avoid work accidents among the impaired workers engaged, or the removal of impediments or obstacles that make difficult or impossible for impaired workers to perform their tasks. The need for adaptation or special personal protection measures must be corroborated by a concurring report from the labour and social security inspectorate. If the enterprise does not apply for this aid, workers may do so themselves."

179. A grant is payable in an amount not exceeding € 901.52 or the amount of the investment effected (OM 13.4.94). Similar grants are payable in respect of temporary employment promotion contracts for persons with disabilities or, provided that the duration of the contract is 12 months or more, of practice or training contracts or contracts of indeterminate duration.

6. Measures of affirmative and effective action to promote employment of persons with disabilities in the general labour market

180. The general legislation on training, employment and engagement is applicable to the specific group consisting of workers with disabilities. Consequently these workers may enter into contracts of any of the types regulated by Spanish law.

181. The law also establishes reserved quotas whereby small and medium-sized public and private enterprises employing 50 or more workers are required to ensure that workers with disabilities make up at least 2 per cent of their workforce. Exemptions from this obligation are permitted in exceptional circumstances or where alternative arrangements are in place, such as the conclusion of a commercial or civil contract with a special employment centre or a self-employed worker with a disability, or the creation of a labour enclave established to promote sheltered employment for persons with disabilities and facilitate their transition to ordinary employment.

182. Incentives are also provided to any enterprise or associated cooperative engaging workers with disabilities equal to or exceeding 33 per cent.

183. Contracts may be of indeterminate or temporary duration, full-time or part-time. The incentives offered include subsidies for indeterminate contracts in the form of a lump sum of €3,900 for each indeterminate contract concluded, social security contribution rebates of amounts fixed in the annual employment promotion plan and varying between €3,500 and €6,300 according to the type of contract (indeterminate or temporary), the degree of disability and the sex of the worker, grants of up to €900 for job adaptation, subsidies for the training of disabled workers and company tax rebates.

184. Enterprises offering induction training contracts for workers with disabilities (either formal or on-the-job training, full-time or part-time) are entitled to a 50 per cent reduction of employer social security contributions for the entire period of the contract in addition to the subsidy of up to €900 for job adaptation.

185. There are also a number of financial incentives for the engagement of persons with disabilities, the principal of which are:

(a) A subsidy of € 3,907 (reduced proportionately in the case of a part-time contract) for indeterminate initial contracts or for conversion of a temporary contract (Royal Decree No. 1451/1983);

(b) Rebates on social contributions:

- Indeterminate contracts: from €4,500 to €6,300 per year, according to type and degree of disability, age and sex (Act No. 43/2006);
- Training contracts: 50 per cent of employer social security contributions payable in respect of common contingencies (ET, additional provision No. 2);
- Temporary employment promotion contracts: from €3,500 to €5,300 per year (Act No. 43/2006), according to type and degree of disability, age and sex.

7. Accessibility of persons with disabilities to open employment and to vocational training services, including those for promotion of self-employment

186. Regarding measures to promote self-employment of persons with disabilities, reference should be made to the programme for conversion of unemployment benefit payments into a lump sum, thus enabling unemployed persons with a disability of 33 per cent or more to use up to 100 per cent of their benefit as an investment in their businesses and any remainder for financing social security contributions.

187. Another important measure for promoting the employment of persons with disabilities takes the form of self-employment incentives. The scheme is also open to

worker members of associated labour cooperatives included in the appropriate special scheme in respect of work done for their own account. In this connection, persons with disabilities who join the special social security scheme for self-employed or independent workers for the first time will enjoy a 50 per cent rebate on social security contributions during the five years following the effective date of joining.

188. Act No. 27/2009 of 30 December, in its fifth additional provision, allows independent workers to engage their children over 30 years of age who have disabilities as employees.

8. Existing legal safeguards to protect workers with disabilities from unfair dismissal and forced or compulsory labour under article 27 of the Convention

(a) Unfair dismissal

189. Under the Act on the status of workers (article 55), dismissal of a worker may be categorized as fair, unfair or invalid. It will be considered fair if there is proof of the non-compliance alleged by the employer. Otherwise, or when the dismissal does not comply with the formal requirements laid down by law, it will be considered unfair, and the employer may choose between reinstating the worker (paying the costs of the proceedings) and paying appropriate compensation.

190. However, when the dismissal is based on any of the types of discrimination prohibited by Spanish law, or when a violation of the worker's fundamental rights and public freedoms has been committed, in addition to other elements enumerated in the same article of the Act, the dismissal will be invalid, and the worker will be immediately reinstated and paid any unpaid wages. In other words, if the worker is dismissed in a discriminatory fashion on grounds of disability, the dismissal will always be invalid (as opposed to unfair), and the worker will be entitled, in addition to payment of unpaid wages, to the compensation provided for in LPL, article 181

(b) Forced or compulsory labour

191. In Spanish society today overt discrimination against persons on the grounds of personal, labour or social condition of any kind has been eliminated. In addition, there are mechanisms for combating much more subtle measures which might constitute inequality of treatment or threats to personal freedom and dignity. The 1978 Constitution is an instrument according extremely high standards of protection and guarantee of human rights which allow no place for such things as slavery, servitude or forced or compulsory labour. In addition, Spain has ratified a number of international treaties and agreements on matters relating to slavery or forced labour, in particular the 1930 ILO Convention No. 29 concerning forced or compulsory labour and Convention No. 105 concerning the abolition of forced labour, the European Union Social Charter and the Charter of Fundamental Social Rights for Workers. The Council of Ministers recently authorized the signing of Council of Europe Convention No. 197 on Action against Trafficking in Human Beings, which entered into force on 1 February 2008 and the fundamental objective of which is to prevent and combat all forms of trafficking in human beings, which often comprises sexual exploitation or use of manpower for work or other purposes that threaten democratic society.

9. Measures taken to ensure that persons with disabilities in the State party who have technical or vocational training receive the necessary support for their integration or rehabilitation in the labour market, in accordance with paragraph 1 (k) of the Convention

192. Spanish legislation on employment and induction training contracts (article 11.1 of the Act on the status of workers) contains some specific provisions for cases in which such contracts are concluded with workers with disabilities. Specifically, such contracts may be

entered into during the six years (instead of four years, which is the general rule for other workers) following award of a university degree, or intermediate or higher vocational training diploma or others officially recognized as equivalent, which qualify them to practise a profession. Moreover, in accordance with the second additional provision of the same Act, , businesses that conclude employment and induction training contracts with workers with disabilities have the right to a rebate, during the life of the contract, of 50 to 100 per cent of employers' social security contributions payable in respect of common contingencies, as mentioned in section 5.

193. The Global Action Strategy for the Employment of Persons with Disabilities 2008-2012 in its objective 2, "Promotion of education and training for persons with disabilities in order to foster their employability" specifies among its lines of action, "Establishment of adequate mechanisms for transition from the educational to the employment stages".

W. Article 28: Adequate standard of living and social protection

194. In Spain social protection of persons with disabilities and their families is provided through a set of benefits designed to cover any needs that may arise as a result of a disability or impairment. This protection may be financial or involve social services and is provided by the Social Security System, the National Health System, the Social Services System and the Independence and Dependency Care System. The benefits provided by the Social Security System to persons with disabilities, regulated by the Royal Decree-Law No. 1/1994 of 20 June 1994 approving the consolidated text of the General Social Security Act, are:

- Contributory permanent disability pension;
- Non-contributory invalidity benefit (managed by the Autonomous Communities);
- Widows' and widowers' pensions (the minimum amounts of which are higher if the pensioner had a disability level of 65 per cent or over);
- Orphans' benefit: the minimum guaranteed amount is higher for disabled orphans under 18 years of age with a disability level of 65 per cent or over;
- Family benefits and a cash allowance for each child with a disability;
- Maternity benefit, extended for two weeks if the child has a disability;
- Early retirement: mention should be made of the recent approval of the Royal Decree No. 1851/2009 of 4 December 2009, amending article 161 bis of the General Social Security Act, on early retirement at age 58 for workers with a disability equivalent to 45 per cent or more and displaying specific pathologies, and health care for pensioners.

195. In the **National Health System (SNS)**, which comprises all the health services provided by the national administration and the Autonomous Communities, persons with disabilities have right of access to the entire range of benefits, the purpose of which is to guarantee the basic and common conditions for comprehensive, continuous and adequate care. There is provision for health care under the National Health System: preventive, diagnostic, therapeutic, rehabilitation and health promotion and maintenance services or combinations of services for citizens. The list includes benefits relating to public health, primary care, specialist care, social health care, emergency care, pharmaceutical services, orthoprosthesis, dietetic products and health transport.

196. Mention should also be made of the entitlements still in force and regulated by LISMI and the Royal Decree No. 383/1984 of 1 February 1984 on mobility subsidy and compensation for transport costs and health and pharmaceutical care.

197. Lastly, persons with disabilities also enjoy access to the benefits and services of the System for the Autonomy and Care of Persons in a State of Dependency (SAAD), provided for in Act No. 39/2006 of 14 December 2006 on the promotion of personal autonomy and care of persons in situations of dependency; the system forms part of the social services network of the Autonomous Communities.

198. Regarding access by persons with disabilities to retirement pensions in accordance with paragraph 2(e) of article 28 of the Convention (Adequate standard of living and social protection), it is incumbent on States to take appropriate steps to “ensure equal access by persons with disabilities to retirement benefits and programmes”.

199. In considering the provisions of this article of the Convention attention should be focused on the elements in the Spanish legal system designed to bring about the integration of persons with disabilities into working life, with emphasis on the existing conditions of access to retirement for persons with disabilities. These are to be found in article 161 bis of the Royal Decree-Law No. 1/1994 of 20 June 1994, approving the consolidated text of the General Social Security Act (LGSS), and Royal Decree No. 1539/2003, which develops that instrument. .

200. In former article 161.2 (paragraph 2) of LGSS, as worded by the first additional provision of the Act No. 35/2002 of 12 July 2002, it was established that the normal retirement age, set at 65 years, could be reduced in the case of workers with a level of disability of 65 per cent or over, applying proportionately lower coefficients in a manner to be fixed by regulation.

201. This provision, developed in the Royal Decree No. 139/2003 of 5 December 2003, recognized that the greater effort and difficulty experienced by such workers in the performance of an occupational activity constituted grounds for lowering their retirement age without reduction of their pensions, applying the following coefficients: “0.25 in cases in which the worker has a recognized degree of impairment of 65 per cent or more” and “0.5 if the level is 65 per cent or more” and the person needs the assistance of a third person in order to perform the essential acts of everyday life. The Institute of Older Persons and Social Services or the equivalent body in each Autonomous Community was given responsibility for determining and authenticating the degree of disability.

202. This lowering of the retirement age is not exclusive to employees covered by the general scheme; it will also be applied to workers included in the special schemes for agricultural workers, seafarers and coal miners.

203. As regards calculation of time actually worked, for purposes of application of those coefficients no account is taken of absence from work other than absences on medical grounds in respect of ordinary or occupational disease, accident - work- or non-work-related - suspension of the employment contract for maternity, adoption, care or risk during pregnancy; and absences authorized as qualifying for payment under the relevant labour legislation.

204. Regarding calculation of the retirement pension, the periods of time by which the worker’s retirement age is reduced is treated as contribution periods solely for the purpose of determining the percentage used to calculate the amount of the pension.

205. Subsequently, Act No. 40/2007 of 4 December 2007 concerning social security measures (hereinafter referred to as LMSS) expanded the notion of early retirement in its article 161 bis. The second paragraph of section 1 of that article retains the previous provision but broadens its scope to cover all persons with a level of disability of 45 per cent or more of a type mentioned in a list established by statute and where there is evidence that that disability generally gives rise to an appreciable reduction in life expectancy. The article also amends the terminology in use, replacing the terms “minusválidos “(impaired persons) or “grado de minusvalía” (degree of impairment) by “personas con discapacidad” (persons with disabilities) or “grado de discapacidad” (degree of disability).

206. The Act also places restrictions on the actual retirement age; in no event can a person under age 52 be awarded a retirement pension. However, this minimum is not applicable to workers belonging to the various special schemes which were applying recognized reduction coefficients on the date on which LMSS entered into force.

207. In implementation of these legal provisions the Royal Decree No. 1851/2009 of 4 December 2009 was recently approved, expanding the scope of article 161 bis of the General Social Security Act concerning early retirement for workers with disabilities of a level of 45 per cent or more.

208. The decree applies to self-employed workers, and employees who are members of any social security scheme, who can prove that they have during their working lives actually worked for the equivalent of the minimum period required for entitlement to a retirement pension (15 years) and who are suffering from any of the disabilities listed in the text, provided that during the whole of that period they have suffered from a disability of 45 per cent or more and are in employment or the equivalent thereof.

209. Unlike the Royal Decree No. 1539/2003 of 5 December 2003, which, as seen earlier, stipulates the application of a coefficient of reduction, the 2009 decree establishes a uniform early retirement age of 58 years for all persons falling within its scope. . All other matters (criteria for calculation of time worked, form of authentication of disability and calculation of the retirement pension) are subject to the regulations established in Royal Decree No. 1539/2003.

210. Lastly, Royal Decree No. 1851/2009 recognizes the right of persons with disabilities who are entitled to take early retirement under both decrees may choose the more favourable of the two options offered

211. Mention should be made here of the fifth additional provision of Act No. 27/2009 of 30 December 2009 on emergency measures for the maintenance and promotion of employment and the protection of persons with disabilities, published in the Official Gazette (BOE) of 31 December 2009, amending the tenth additional provision of Act No. 20/2007 of 11 July 2007 on the status of self-employed workers, which deals with the “inclusion of self-employed workers’ families in the social security system”; it adds a second paragraph, which expands the ability of self-employed workers to engage as employees their children over 30 years of age who experience special difficulties in entering the labour market. The actual provision reads as follows:

“Tenth additional provision: Inclusion of relatives of a self-employed worker in the social security system.

Self-employed workers may engage, as employees, their children under 30 years of age even living with them. In such cases the protective measures extended to the family members so engaged shall not include coverage against unemployment.

The same treatment shall be extended to children who, although over 30 years of age, have special difficulties in entering the labour market. Special difficulties shall be deemed to exist when the worker forms part of any of the following groups:

Persons with cerebral palsy, persons with a mental illness or persons with a recognized level of mental disability of or exceeding 33 per cent;

Persons with a recognized physical or sensory impairment of or exceeding 65 per cent.”

212. At the same time, the third final provision of Act No. 26/2009 of 23 December 2009 on the national budget for the year 2010 introduces a new wording of paragraph 179 of the consolidated text of LGSS, as follows: “Orphans whose disability renders them unable to work and who are entitled to an orphan’s pension may, when in receipt of another social security pension for the same disability, opt for one or the other. When the orphan has been

declared unable to work before reaching the age of 18 years, his/her orphan's pension shall be compatible with the permanent disability benefit he/she might receive, from the age of 18 onwards, as a consequence of injuries other than those that gave rise to the orphan's pension or, if applicable, with the retirement pension he/she might receive in connection with the work he/she does as a self-employed worker or as an employee."

213. As for non-contributory benefits, the Spanish social security regulations provide for benefits for children or other dependent minors, if disabled, who receive the same monthly amount of non-contributory benefits as those payable to persons with disabilities generally, with a higher amount for persons with a recognized disability level of or exceeding 65 per cent. Likewise, the financial benefit of €2,500 for children born, adopted or permanently fostered is increased by €1,000 for children with disabilities or when either of the progenitors in the nuclear family is disabled.

X. Article 29: Participation in political and public life

1. Measures adopted to ensure the right to vote for all persons with disabilities, either independently or assisted by a person of their own choice

Article 29 (a) (iii)

214. Regarding article 29 (a) (iii) of the Convention, article 87 of the Organization Act No. 5/1985 of 19 June 1985 on the general electoral system establishes the following:

1. "Electors who cannot read or who, because of a disability, are prevented from choosing the ballot paper or placing it in the envelope and handing it to the Chairperson of the Board may use a person they trust to perform those tasks.

2. However, the Government, after informing the Central Electoral Board, shall establish a voting procedure for blind or visually impaired persons to enable them to exercise their right to vote and which guarantees the confidentiality of their vote."

215. In 2007 article 87.2 was introduced through Organization Act No. 9/2007 of 8 October 2007 amending Organization Act No. 5/1985.

Accessible voting procedure for blind or severely visually impaired persons who are familiar with the Braille reading-writing system

216. This accessible voting procedure is regulated by Royal Decree No. 1612/2007 of 7 December 2007 establishing an accessible voting procedure that facilitates the exercise of the right to vote of persons with visual impairments, and by implementing Order INT/3817/2007 of 21 December 2007.

217. This accessible voting procedure consists in furnishing at the appropriate voting station, for blind or visually impaired electors who have requested it, documentation in Braille together with the standard ballot papers and envelopes. This standard electoral material and the additional material in Braille together make up the "accessible voting kit" that enables blind or severely visually impaired electors to identify the voting choice independently and with full guarantee of secrecy of their ballot.

218. The accessible voting procedure for blind or seriously visually impaired persons, which is additional to that provided for in article 87.1 of Organization Act No. 5/1985, is available in general elections to the national Parliament, the European Parliament, the legislative assemblies of the Autonomous Communities and direct consultations of the electorate, but not in municipal elections.

219. For the general elections to Parliament in 2008 and the European Parliament in 2009, the Ministry of the Interior provided information on the accessible voting procedure through

- An institutional information campaign broadcast on the public communication media (radio and television)
- The web page of the Ministry of the Interior, where information on the accessible voting procedure was available in various accessible formats;
- A free telephone service to receive requests and information on the accessible voting procedure and the candidatures presented.

2. Measures adopted to ensure full accessibility of voting procedures, facilities and materials

Article 29 (a) (i) of the Convention

220. Article 1 of the Royal Decree No. 605/1999 of 16 April 1999, introducing additional regulation of electoral proceedings, stipulates that in any electoral proceeding the premises in which voting takes place must be accessible to persons with mobility problems.

221. Since 2004 all the institutional campaigns of the Ministry of the Interior designed to announce election dates and provide information on the voting procedure and the requirements and arrangements for postal votes, when broadcast on television, bear subtitles and carry images of an interpreter using sign language. The campaigns may be viewed on the website of the Ministry of the Interior.

222. The fifth final provision of Act No. 51/2003 of 2 December 2003 on equality of opportunity, non-discrimination and universal accessibility for persons with disabilities (LIONDAU) empowers the Government to lay down the basic conditions of accessibility and non-discrimination to be complied with in environments and services needed to permit persons with disabilities to participate in public life and electoral proceedings.

223. In pursuance of this legal mandate and other tasks, in 2004 a working group on accessibility to electoral proceedings was set up with the current priority aim of preparing the preliminary draft of the "draft royal decree approving the regulations on the basic conditions of accessibility and non-discrimination to be met in environments, products and services needed to permit persons with disabilities to participate in public life and electoral proceedings."

224. On completion of the draft by the working group, composed of representatives of the Ministry of the Interior (the Directorate-General for Domestic Policy, the Electoral Census Office, the Ministry of Health and Social Policy (Directorate-General for Coordination of Sectoral Policies on Disability), the Post Office, the Spanish Federation of Municipalities and Provinces, the Spanish Committee of Representatives of Persons with Disabilities (CERMI) and ONCE, a start will be made in 2010 on the formal processing of the draft royal decree, which is expected to be in force in time for the 2011 municipal elections.

225. The draft will contain specific provisions making for a higher level of compliance with the requirements established both in article 29 (a) (i) and (ii) of the Convention and, if the political parties follow the recommendations contained in the future royal decree, in article 29 (b) (i) of the Convention as well.

226. Regarding article 29 (a) (ii), in connection with the 2009 elections to the European Parliament, the Ministry of the Interior prepared a protocol of measures for cases in which a voter with a hearing disability requested a sign-language interpreter in order to serve on election day as an electoral officer. The current preliminary draft of the draft royal decree makes provision for the procedure to be followed in the event that a person with a disability appointed as an electoral officer wishes to have a personal assistant.

3. Indicators that measure the full enjoyment by persons with disabilities of the right to participate in public life

227. The following items deserve mention: :

(a) In the 2009 elections to the European Parliament the Ministry of the Interior received 1,321 requests for voting kits for blind and visually impaired persons, and 1,458 kits were manufactured and dispatched to the voting stations via the accessible voting coordinators designated in the Government delegations and sub-delegations.

(b) The Third Plan of Action for Persons with Disabilities 2009-2012 establishes the Government's strategy in the disability field for this legislative term. In objective 1.2 ("Development of instruments for full accessibility of the various electoral proceedings") contained in Area I (Power and participation), it is established that this matter is the responsibility of the Ministry of the Interior, the Autonomous Communities, the local entities and the social organizations.

Y. Article 30. Participation in cultural life, recreation, leisure and sport

228. On 21 December 2009 accessible terrestrial television decoders (TTD) were presented, incorporating a pioneering operational system developed by the Ministry of Industry, Tourism and Commerce through the National Institute of Communication Technologies (INTECO), which allows firms to make any devices they manufacture accessible. Spain has thus become the first country to have accessible TTD decoders.

229. The purpose of this project, which has a budget of €500,000, is to take advantage of the possibilities offered by TTD to guarantee persons with disabilities and older persons access to this medium, thereby offering them an effective alternative so that they can make unimpeded use of TTD.

230. This measure will directly benefit some 100,000 visually impaired persons and their families and will facilitate the use of these devices by the more than 7 million members of the elderly population. It also seeks to stimulate and promote the industry through release of knowledge and the project results for enterprises to adopt and use to create products offering solutions to those groups in a competitive market and guaranteeing compliance with the law.

231. At the same time, each year IMSERSO seeks applications for subsidies for the following tourism and thermal spa activities for persons with disabilities.

232. Nature vacation and tourism activities aimed at facilitating an independent life and ensuring maximum personal and social integration of persons with disabilities through stays in conditions of greater accessibility, facilitating access to the benefits of leisure, culture and nature, as well as rest for families caring for persons with disabilities.

233. Cultural tourism in the context of the European Union, aimed at promoting access by persons with disabilities to the benefits of the culture of other countries of the European Union through cultural trips.

234. Spa treatments, aimed at promoting the quality of life and independence of persons with disabilities, through stays with treatment at spa resorts in order to facilitate access to the benefits of health.

235. In the area of sport, mention should be made of the plan entitled Support for Sport, Objective Paralympics (ADOP), an initiative of the Spanish Paralympic Committee, the Higher Council for Sports and the Ministry of Health and Social Policy, aimed at providing Spanish paralympic athletes with the best possible training conditions and thus ensuring the success of the Spanish team at the Paralympic Games.

236. The ADOP Plan for 2010 includes a programme of direct support for athletes through financial grants to enable them to devote themselves to sport as their main activity. It also includes a High Performance Paralympic (ARPA) programme and a comprehensive training support programme which includes assistance for support personnel, sports equipment, training in high-performance centres, appearance at international competitions with medical service and other facilities.

237. The year 2009 witnessed two important advances in participation in cultural life. the Virtual Accessible Museum Guides (GVAM), which can provide interactive visits for all types of users, including persons with disabilities. It facilitates the design of accessibility resources essential for persons with sensory disabilities, such as subtitles, audio-description, audio-navigation and sign language; while Order /CUL/74/2009 of 29 January 2009, regulating public visits to State-owned museums assigned to and managed by the Ministry of Culture and the National Institute of Scenic Arts and Music, states that entry shall be free from March onwards for persons with disabilities on presentation of the appropriate supporting document, adding that free entry is also available to a companion “provided and where that that person is essential to the visit of the disabled person”.

238. Steps are being taken to provide support to organizations that serve persons with disabilities.

239. Also noteworthy are the measures taken in connection with telecommunications and the information society (measures to promote access to culture and knowledge) being carried out by the Autonomous Communities in this area and by Red.es (accessible cinema).

240. Measures are also being taken in the tourism sector to facilitate accessibility through manuals of good practices and agreements to promote tourism for all.

IV. Specific obligations

A. Article 31: Statistics and data collection

241. The National Statistical Institute (INE) prepares disability surveys in the form of macro-surveys, which are conducted in response to the demand for such information from the public administrations and numerous users, especially non-governmental organizations.

242. These surveys cover a large part of needs for information on the phenomena of disability, dependency, population aging and the state of health of the population living in Spain.

243. Three macro-surveys were conducted in 1986, 1999 and 2008 respectively: the Disabilities, Impairments and Handicaps Survey (EDDM1986), the Disabilities, Impairments and Health Status Survey (EDDS1999) and the Disability, Personal Autonomy and Dependency Situations Survey (EDAD2008).

244. The methodologies of those surveys followed the recommendations of the World Health Organization, in particular its international classifications in force during the year in which each survey was conducted.

245. The findings of the Disability, Personal Autonomy and Dependency Situations Survey (EDAD2008) were presented in early November 2009. Its chief aim was to respond to the demand for information for the use of the System for the Autonomy and Care of Persons in a State of Dependency (SAAD); it provided a statistical database to guide the promotion of personal autonomy and the prevention of dependency situations.

246. The survey was based on the experience gained from the earlier Disabilities, Impairments and Health Status Survey of 1999, adapted to current social and demographic

conditions and imbued with the philosophy of the new International Classification of Functioning, Disability and Health (ICF). It comprised one fundamental innovation: for the first time, the research covered disabilities among persons not living in a family home.

247. The survey was conducted in two stages: the first, EDAD-households (between November 2007 and February 2008), aimed at family homes, polled 96,000 homes and 260,000 persons; the second stage, EDAD-centres (May-July 2008), targeted for the first time centres for older persons and persons with disabilities and psychiatric and geriatric hospitals; 800 centres and 11,000 persons were polled.

248. The survey investigated peoples' subjective perception of their limitations, the cause of those limitations, their degree of severity and the assistance they received. They were asked about their state of health; socio-economic benefits relating to the disability; discrimination on grounds of disability; accessibility; social networks; and a number of sociodemographic characteristics relevant to all persons with disabilities. Questions were also asked about some characteristics of homes and centres.

249. IMSERSO, for its part, manages a State database of persons with disabilities. It collects information on appraisals in the different Autonomous Communities constituting the Spanish State.

B. Article 32: International cooperation

250. Under this article it is important to mention the Master Plan of Spanish Cooperation 2009-2012, which is being drawn up with an approach focusing on rights; among vulnerable groups it specifically highlights the level of access of groups with disabilities to basic services. The process for amending Act No. 23/98 on international cooperation will begin in 2010, when amendments to comply with the Convention can be introduced. The Directorate-General for Sectoral Policies on Disability in the Ministries of Health and Social Policy and the Directorate-General for Evaluation and Planning of Development Policies of the Ministry of Foreign Affairs and Cooperation will work in unison to that end.

251. Apart from cooperation, the Office of Human Rights, which operates from a human rights standpoint, has taken support for implementation of the Convention on the Rights of Persons with Disabilities and its Optional Protocol as one of its priorities; hence the topic has been and will be included in the European Union's discussions on human rights with third parties (Cuba, Colombia, the African Union, China, etc.), as well as in the agendas of meetings of the European Union Working Party on Human Rights (COHOM)

C. Article 33. National implementation and monitoring

252. In order to comply with this article, in 2007 the regulations governing the National Disability Council (now regulated by Royal Decree No. 1855/2009 of 4 December 2009) were amended to designate it as the institutional body responsible for the application and implementation of the Convention, incorporating into its functions that of serving as the focal point in the general administration of State for the promotion, protection and monitoring in Spain of the international legal instruments relating to the human rights of persons with disabilities which been incorporated into domestic law, and, in particular, the United Nations International Convention on the Rights of Persons with Disabilities.

253. At the same time, the Spanish Committee of Representatives of Persons with Disabilities (CERMI) was designated the primary independent civil society organization in this area by decision of the National Disability Council dated 17 September 2009.