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Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Comments of Spain on the recommendations and observations addressed to it in connection with the Subcommittee visit undertaken from 15 to 26 October 2017*, **

[Date received: 24 May 2023]

* The present document is being issued without formal editing.

** On 24 May 2023, the State party requested the Subcommittee to publish its comments, in accordance with article 16 (2) of the Optional Protocol.

Contents

I. Introduction

1. The Subcommittee visited Spain from 15 to 26 October 2017.

2. On 15 March 2018, the Subcommittee transmitted to Spain its report on the visit and requested a response to the recommendations made therein within six months.

3. Spain thanks the Subcommittee for its report, which it considers to be balanced and timely. It has responded to specific recommendations and considers that, with these replies, it has provided answers to practically all of the Subcommittee's recommendations and observations.

4. The replies provided by Spain are set out in the paragraphs below.

II. Replies of Spain to the recommendations made by the Subcommittee on Prevention of Torture

A. Reply to the recommendation contained in paragraph 17 of the report of the Subcommittee (CAT/OP/ESP/1)

5. Torture and other degrading treatment committed by authorities or public officials are criminalized in articles 174 (basic offence) and 175 (mitigated offence) of the Spanish Criminal Code.

6. Torture is established as a separate offence in article 174, in accordance with the standards set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, ratified by Spain on 21 October 1987.

7. The structure of the offence comprises the following elements:

(a) The material element: A behaviour or act that is characterized by physical or mental suffering, suppression of or reduction of an individual's powers of cognition, discernment or decision-making, or that in any other way infringes on an individual's psychological integrity;

(b) The identification of the perpetrator: An authority or public official who has abused his or her position, taking advantage of the victim's state of dependence or subjection;

(c) The teleological element: The offence of torture is committed only when the purpose is to obtain information or a confession from any person or to punish a person for an act that he or she has committed or is suspected of having committed.

8. This teleological element has been broadened under the current Criminal Code to criminalize, in addition to so-called investigative torture, vindictive torture or torture as a punishment for something the victim has done or is suspected to have done. The purpose of this broadening is to criminalize cases in which an authority or public official acts in retaliation for the victim's previous conduct. The perpetrator does not need to achieve his or her purpose for the offence to have been committed; rather, that purpose constitutes a volitional element that, together with wilful intent, must be present in the perpetrator's actions.

9. It is also established in the definition of torture in article 174 of the current Criminal Code that different acts shall be punished differently, with penalties that are commensurate with the seriousness of the offence, indicating only as guidance that subjecting a person to "conditions or procedures that, owing to their nature, duration or other circumstance" have the aforementioned effects may constitute torture. The applicable penalties range from 1 to 6 years' imprisonment, depending on the seriousness of the offence, in addition to the penalty of general disqualification.

10. The establishment of a mitigated offence in article 175, which is applicable in cases that do not meet all the criteria set out in article 174, does not imply any laxity in how such offences are treated. On the contrary, the purpose of this provision is to make it such that any infringement of a person's psychological integrity by an authority or public official that does

not meet the requirements set out in article 174 is still deemed to be a serious offence and is punishable under article 175, with prison sentences of between 6 months and 4 years, in addition to the accessory penalty of specific disqualification.

11. The applicable criminal provisions vary if, in addition to the infringement of psychological integrity, the offence results in injury or harm to the life, physical integrity, sexual freedom or property of the victim or of a third party. In accordance with the rule of concurrence established in article 177 of the Criminal Code, those acts carry a separate penalty corresponding to the particular offences committed. Separate punishment is possible because such acts constitute separate criminal offences of a different legal nature.

B. Reply to the recommendation contained in paragraph 19 of the report of the Subcommittee

12. The criminal provisions governing incommunicado detention, as amended by Organic Act No. 13/2015 of 5 October amending the Criminal Procedure Act to strengthen procedural safeguards and regulate technological investigative methods, do not allow for the application, in ordinary circumstances, of incommunicado detention, which is regulated and cannot be imposed on a discretionary basis. It is a precautionary measure that may be imposed only on persons suspected of being members or associates of armed gangs, terrorists or rebels (Criminal Procedure Act, art. 384 bis) in order to safeguard the investigation when there is a risk that evidence may be destroyed, that other persons involved in the acts under investigation may evade justice or that the legal rights of the victim of the offence may be violated.

13. Incommunicado detention therefore may not be imposed de facto or on an exceptional basis owing to the seriousness of the acts under investigation. Legal and constitutional safeguards are provided for the individual concerned. The Spanish legal system does not resort to emergency legislation, which entails the wholesale suspension of fundamental rights for all citizens over a period of time, but instead has set up a special regime for specific cases, provided for under ordinary law, with an established objective, namely to prevent new offences from being committed or an offence's consequences from being exacerbated, under the strict supervision of the judiciary and the Public Prosecution Service, restricting the individual's procedural and material rights as little as possible and with additional specific safeguards.

14. Incommunicado detention may exceptionally be justified only in the following circumstances, which must be stated in a reasoned decision:

(a) Where there is an urgent need to avert serious adverse consequences in terms of the life, liberty or physical integrity of a person; or

(b) When there is an urgent need for immediate action by the investigating authorities in order to avoid seriously compromising criminal proceedings.

15. Unlike the rules in effect prior to the aforementioned amendments of 2015, under which the fundamental rights of detainees were necessarily suspended during incommunicado detention, the amended legislation makes the suspension of each of these rights optional by incorporating the word "may". This allows for a more tailored approach based on the particular circumstances of a case.

16. The aforementioned amendments thus provide that the court may decide:

(a) To assign the detainee a court-appointed lawyer (so as to ensure that police proceedings are not undermined as a result of communication between terrorist elements by means of a lawyer assisting one of them);

(b) Not to allow the detainee to meet with his or her lawyer in private;

(c) Not to allow the detainee to communicate with all or any of the persons whom he or she would ordinarily be entitled to contact, with the exception of the judicial authorities, the Public Prosecution Service and the forensic doctor;

(d) Not to give the detainee access to records of proceedings;

(e) Not to give the detainee's lawyer access to records of proceedings, including the police report (in accordance with article 7 (4) of Directive No. 2012/13 on the right to information in criminal proceedings).

17. The maximum duration of incommunicado detention provided for under the previous law has been maintained, namely five days, with the possibility of an extension for another five days in cases involving terrorist offences. However, it should be noted that the establishment of a maximum period of detention does not imply that this period needs to be exhausted. As stated above, the duration of the detention must be limited to the amount of time strictly necessary to promptly carry out the investigative steps required to avoid the anticipated risks.

18. The changes made to the provisions regulating incommunicado detention by Organic Act No. 13/2015 amending the Criminal Procedure Act reflect the application of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. For that reason, the new system of incommunicado detention must comply with article 47 of the Charter of Fundamental Rights of the European Union, subject to the provisions of article 51 of the same Charter.

19. Lastly, regarding the Spanish constitutional framework, specifically as it relates to terrorist offences, article 55 (2) of the Constitution provides that: "An organic law may determine the manner and the circumstances in which, on an individual basis and with the necessary participation of the courts and proper parliamentary control, the rights recognized in articles 17 (2) and 18 (2) and (3), may be suspended as regards specific persons in connection with investigations of the activities of armed gangs or terrorist groups."

20. Both the ordinary courts and the Constitutional Court, the highest body responsible for ensuring respect for and compliance with human rights in Spain, have ruled that the Spanish incommunicado detention system meets the requirements of the international conventions signed by Spain, in view of the strict safeguards provided by Spanish legislation in this area (which are higher than European standards). Moreover, several European countries in the same geographical area have a similar system of incommunicado detention (France, Germany, United Kingdom etc.).

21. Incommunicado detention is applied only rarely in practice; in recent years, there has been a clear downward trend in the number of cases in which incommunicado detention has been imposed, and incommunicado detainees have only ever represented a very small percentage of the total number of detainees. Likewise, it should be noted that, for the third consecutive year (2015, 2016 and 2017), there has been no record of any complaint filed for torture in incommunicado detention.

22. The paragraphs below relate to the concern expressed by the Subcommittee that the State has not implemented all of the reforms it mentioned during the universal periodic review, such as the audio and video recording of persons held in incommunicado detention in police stations, the organization of a visit every eight hours by a forensic doctor and a doctor appointed by the national preventive mechanism and the removal of the possibility of applying incommunicado detention to adolescents between the ages of 16 and 18 years.

23. The custody of incommunicado detainees in police facilities, like that of all other detainees, requires the completion of an entry in the corresponding register of detainees, which is regulated by two instructions issued by the State Secretariat for Security, namely No. 12/2009 (register of detainees and custody) and No. 7/2005 (register of minor detainees), which set forth the appropriate procedure for filling in both registers. Both instructions are known to and complied with by all members of the State law enforcement agencies. These instructions are supplemented by another, Instruction No. 13/2014 of the State Secretariat for Security, which recalls the obligatory nature of compliance with the rules governing official registers.

24. In relation to the "custody sheets" used in the register of detainees and custody to document every step in the chain of custody of each detainee throughout his or her time at

the police facility, subparagraph (m) of Instruction No. 7 provides that: “Any relevant information that has not been assigned specific space on the sheet, such as, for example, whether the detainee has been held incommunicado, must be recorded in the Other Observations section.” Consequently, instances of incommunicado detention of detainees in police custody are always duly recorded.

25. With regard to the need for incommunicado detainees to be provided with medical assistance every eight hours, under article 520 bis (3) of the Criminal Procedure Act, the judge may at any time during the detention request information and assess the detainee’s situation, either personally or by delegating that task. Article 527 (3) also now provides that, in the event that the right to communicate with a third party has been restricted, the detainee must receive a medical examination at least twice every 24 hours, or more frequently if a doctor deems it necessary. Since the frequency of such examinations is ultimately at the discretion of the doctor, incommunicado detainees may receive medical assistance from a forensic doctor every eight hours or even more often.

26. Complaints about incommunicado detention in this regard tend to relate to the fact that incommunicado detainees cannot freely choose their doctor; however, it should be noted that non-incommunicado detainees are not able to do so either. Article 523 of the Criminal Procedure Act provides that detainees may be visited by, inter alios, “a doctor”, whenever they wish. Neither the aforementioned Directive 2013/48/EU nor Directive 2012/13/EU on the right to information in criminal proceedings recognize the right of detainees to choose their doctor; the latter merely provides that persons who are arrested or detained have the right of access to “urgent medical assistance” (art. 4 (2) (c)).

27. Notwithstanding the above, additional medical supervision has been introduced across the judicial system for detainees held in connection with terrorist offences, who are entitled to be examined by a doctor of their choosing, if they so request, jointly with the forensic doctor, who visits the detainee every eight hours or whenever necessary. Both doctors prepare a report, and both reports are submitted to the judge who will take the detainee’s statement.

28. Lastly, with regard to the continued application of incommunicado detention to adolescents between the ages of 16 and 18 years, it is expressly provided in the amended article 509 (4) of the Criminal Procedure Act that incommunicado detention may not be applied to persons under 16 years of age. Article 17 (4) of Organic Act No. 5/2000 of 12 January on the Criminal Responsibility of Minors allows for the application, where appropriate, of article 520 bis of the Criminal Procedure Act in respect of minors, but only in cases where the minor is suspected of being a member or associate of an armed gang, terrorists or rebels, in accordance with the provisions of article 384 bis of the Criminal Procedure Act; in such circumstances, the juvenile judge is competent to make the decisions provided for in article 520 bis.

29. Article 5 (4) of the aforementioned Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, read in conjunction with paragraphs 2 and 3 of the same article, specifically relates to the rights of minors in detention and the possible limitation of those rights, indicating that a minor is any person under 18 years of age and that in the event of temporary derogations from the application of such rights, States must ensure that “an authority responsible for the protection or welfare of children is informed without undue delay of the deprivation of liberty of the child”.

30. Article 17 (1) of the Criminal Procedure Act provides that the Public Prosecution Service must immediately be notified when a minor is arrested and must be informed of his or her place of custody. Instruction No. 12/2007 of the State Secretariat for Security on the conduct required of members of the State law enforcement agencies in order to guarantee the rights of persons detained or in police custody provides that: “If the reason for the detention is an accusation of a terrorism offence... the Judge may be requested to order that the detention of the minor be made incommunicado and extended in accordance with the provisions of the Criminal Procedure Act, provided that the Prosecutor for Minors of the National High Court has been duly informed.”

31. Article 4 (9) (2) of Instruction No. 11/2007 of the State Secretariat for Security adopting the police protocol for dealing with minors provides that: “Requests for the extension of the period of detention or the incommunicado detention of a detained minor who is a member of an armed gang or associated with terrorist or rebel individuals must be sent, in a timely manner, to the Central Juvenile Judge by the Juvenile Justice Division of the Prosecutor’s Office attached to the National High Court.”

32. It is thus clear that the Public Prosecution Service exercises oversight over the actions of the State law enforcement agencies in relation to the incommunicado detention of minors and that the Spanish legal system complies with European Union Directive 2013/48/EU on temporary derogations from the rights of detained minors.

33. As stated above, incommunicado detention is rarely used in practice, even less so with regard to minors. The Attorney General’s Office issued Circular No. 1/2007 urging prosecutors, as a general rule, not to request the incommunicado detention of minors under article 17 (4) of Organic Act No. 5/2000 of 12 January on the Criminal Responsibility of Minors.

C. Reply to the recommendation contained in paragraph 35 of the report of the Subcommittee

34. The primary Spanish laws regulating the detention, treatment and custody of detainees are the following:

(a) Organic Act No. 10/1995 approving the Criminal Code, articles 174 to 177 of which define offences of torture committed by public officials;

(b) Organic Act No. 2/1986 on the law enforcement agencies, which contains basic principles on the conduct of police officers;

(c) Instruction No. 12/2015, issued by the State Secretariat for Security, approving the rules for the treatment of detainees in custody by the State law enforcement agencies;

(d) Instruction No. 12/2007, issued by the State Secretariat for Security, on the conduct required of State law enforcement agents to uphold the rights of persons in detention or police custody;

(e) Instruction No. 1/2017, issued by the State Secretariat for Security, on the rules to be followed by police when working with minors.

35. State law enforcement agents are required to act in line with the legislation in force and, therefore, with the legislative and regulatory provisions developed to enforce that legislation and regulate the procedures governing certain formalities, in particular those involving the individual rights recognized in the Constitution.

36. Instruction No. 12/2007, issued by the State Secretariat for Security, on the conduct required of State law enforcement agents to uphold the rights of persons in detention or police custody, warrants special mention. This instrument contains the following guidelines concerning the two matters on which the Subcommittee focused in its report:

- Clause 7 stipulates that the use of force in detention should be an exceptional measure applicable only when unavoidable in circumstances that could pose a serious risk to public security or a reasonably serious risk to an agent’s life or physical integrity or that of third parties. In such cases, agents must act in accordance with the principles of appropriateness, consistency and proportionality and in a manner that causes the least possible harm. Clause 7 expressly establishes that violence of any kind cannot be justified when detainees have been immobilized, regardless of their behaviour.
- With regard to the immobilization of detainees and the use of handcuffs, Clause 9 stipulates that agents must be aware at all times that immobilization using any method of restraint may hinder the physical capabilities of detainees, and therefore the period of use must be appropriate, avoiding unnecessary suffering, notwithstanding the need to fulfil the purpose of immobilization (such as preventing detainees from fleeing, directing aggression at others or injuring themselves).

37. The provisions of Instruction No. 12/2007 and the procedural regulations and laws underpinning it have been fully incorporated into training courses for agents recently admitted to or promoted within the State law enforcement agencies, as well as into continuing professional development programmes.

38. With regard to the Subcommittee's call for the necessary steps to be taken to ensure that complaints of torture or ill-treatment are investigated in an efficient, thorough and transparent manner, it should be noted that the Spanish Government always investigates every complaint of alleged offences of torture or ill-treatment filed by persons who consider themselves to be victims of such offences and, to the extent possible in accordance with its capacities, accepts and implements recommendations made at the national, European and international levels in that regard.

39. Once they have been referred to the competent prosecutor's offices and courts of investigation, complaints are investigated by the State law enforcement agencies under the guidance of the heads of those courts and in line with the instructions that they may issue at any given time. The complaints are handled with the safeguards and discretion required in the investigation of the criminal conduct in question and in accordance with international instruments that have been incorporated into Spanish law and the domestic legislation developed with the intention of tackling such complaints. Complaints are dealt with as quickly and efficiently as possible, in line with the recommendations contained in 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 and approved and ratified by Spain in June 2006.

40. Any conduct by law enforcement officers that may be of a criminal nature owing to the alleged use of torture or ill-treatment, and which is thus considered unacceptable, is immediately investigated. Disciplinary proceedings are opened by units specializing in the investigation of internal affairs and decisions on disciplinary action.

41. In cases brought in relation to the offences of torture and ill-treatment, the Constitutional Court and the Supreme Court require more robust arguments than in other circumstances given that such conduct is strictly prohibited and such cases involve the violation of fundamental principles. Effective legal protection regarding complaints of such offences entails guaranteeing the right of the affected party to a sufficient and effective investigation; the State therefore has the corresponding duty to carry out that investigation. The investigation should continue for as long as there are reasonable suspicions that an offence has been committed and it is likely that those suspicions can be clarified.

42. In this regard, it is worth noting that in its recent jurisprudence (judgments No. 130/2016 of 18 July and No. 39/2017 of 24 April), the Constitutional Court has upheld applications for *amparo* filed by persons claiming to have been subjected to torture and has stated that investigations into such complaints must be sufficiently broad. As indicated in judgment No. 130/2016, this constitutional doctrine is consistent with the case law of the European Court of Human Rights, which emphasizes the need to apply a strengthened model of investigation when dealing with allegations of torture and ill-treatment at the hands of State law enforcement agents. The Constitutional Court agrees that a more thorough approach must be adopted to conduct an effective investigation when the complainant is being held in incommunicado detention. In such cases, the authorities should make greater efforts to ascertain the facts of the complaint.

43. These bodies have followed the doctrine established by the European Court of Human Rights, based on article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment, as does article 15 of the Spanish Constitution, and establishes the positive obligation of member States to ensure an "effective official investigation" into credible allegations from those who claim to have been subjected to such abuse. This procedure must include all legally permissible formalities to allow the facts to come to light and the officials involved to be identified.

44. The offence of torture and ill-treatment is therefore addressed, in both a substantive and procedural sense, through a robust protection framework that protects the victims of such offences by way of guarantees that are much stricter than those contained in the frameworks in place for other offences.

45. Regarding the call for those responsible for acts of torture and ill-treatment to be prosecuted and punished in a manner that is commensurate with the severity of the offences concerned, article 174 of the Criminal Code (on basic offences) provides for severe penalties for the offence of torture, including prison sentences of up to 6 years and general disqualification for a period of up to 12 years. In addition, penalties commensurate with the negative outcomes of an offence (harm or damage to the life, physical integrity, sexual liberty or property of the victim or a third party) are handed down in accordance with the provisions of article 177 (on aggravated offences). Punishments handed down therefore vary in accordance with the act in question.

46. The Spanish legislative framework also provides for mitigated offences, a type of offence introduced in article 175 of the Criminal Code that applies when an offence does not meet all requirements of article 174. Penalties for this type of offence range from 6 months to 4 years of deprivation of liberty, taking into account the seriousness of the offence, and can also include the penalty of disqualification in special cases.

47. Spanish legislation therefore closely follows the criteria set out by the European Court of Human Rights for the establishment of a graduated scale of offences, in which torture corresponds to the most serious offence, inhuman treatment is an intermediate-level offence and degrading treatment is a lesser offence.

48. With regard to the recommendation echoing that of the Committee against Torture, in which the Subcommittee urges the State party to combat impunity by having an independent mechanism carry out prompt, impartial and thorough investigations into all allegations of torture and ill-treatment by law enforcement officials, it should be noted that, during judicial investigations, when a judge orders State law enforcement agents who have been assigned to criminal investigation police functions to conduct appropriate enquiries, those agents follow only the instructions issued by that judge regarding that matter and do not have to report on them to their superiors. To ensure greater effectiveness and the ultimate success of the process, the judge usually assigns the investigation to criminal investigation police experts belonging to a different police force to the one to which the person under investigation for allegations of torture or ill-treatment belongs.

49. For internal and administrative matters, police forces have their own specialized units for the investigation of internal affairs and the referral of disciplinary obligations. There is also an ad hoc administrative body, the Inspectorate for Security Personnel and Services, within the State Secretariat for Security, that is fully independent of both police forces that comprise the State law enforcement agencies (the National Police and the Civil Guard). It has broad powers and has the necessary means to investigate cases of alleged irregular conduct of which it becomes aware. It has been assigned the mission of "ensuring that the State law enforcement agencies comply with national and international standards relating to torture and other cruel, inhuman or degrading treatment or punishment".

50. Similarly, the Ombudsman's Office, in its capacity as national preventive mechanism in Spain, has the competence to carry out inspections of all places of deprivation of liberty and to submit any observations that it deems relevant to the competent authorities on matters that it believes require improvement in the interest of ensuring that the rights of detainees can be upheld as effectively as possible. The conclusions of these visits are reflected in an annual report submitted to the General Courts and the Subcommittee, which is based in Geneva.

51. This institution has full autonomy according to the law, meaning that it is not dependent on or subordinate to any other body and therefore does not receive instructions from any authority. Furthermore, the Ombudsman and his or her deputies enjoy immunity in the performance of activities carried out in the exercise of their roles. They may therefore not be arrested or detained except when apprehended in flagrante delicto and enjoy special privileges, meaning that they would be tried before the Criminal Division of the Supreme Court. To ensure his or her impartiality and full commitment, the Ombudsman shall not have any other job or role or take part in political campaigning during his or her mandate.

52. In June 2013, the advisory board of the national preventive mechanism was established as a technical and legal cooperation body to support the mechanism's activities. It is formed of the Ombudsman, two vice-chairs and a maximum of 10 other members, three of whom are designated by various professional organizations, such as the General Council

of Spanish Lawyers, two of whom belong to institutions with which the Ombudsman has signed cooperation agreements, and five of whom must be appointed after a decision has been made following a call for nominations from individuals or organizations and associations representing civil society. The advisory board meets twice a year and can, among other powers, suggest locations for visits and propose improvements to the mechanism's working methods. Its members can also take part in visits conducted by the mechanism.

53. However, the existence of a mechanism conducting an "independent investigation" would not only call into question the functioning of the judiciary but could also result in investigative functions being assigned to a different body outside the judiciary, which would be difficult to reconcile with the mission of the judicial bodies. It could also affect the capacity and functioning of the State law enforcement agencies.

54. The Attorney General's Office is making efforts to disseminate the doctrine of the European Court of Human Rights to ensure that prosecutors can adapt their criteria to align with the parameters set by the Court on the matter through:

(a) The routine inclusion of judgments handed down by the Court in the Gazette of Judicial Decisions of the Public Prosecution Service;

(b) The inclusion of presentations on the Court's case law in training activities on the protection of human rights;

(c) The provision, in 2017, of two courses that specifically focused on the dissemination of the doctrine of the Court and the need for prosecutors to take that doctrine into consideration in their day-to-day work.

D. Reply to the recommendation contained in paragraph 37 of the report of the Subcommittee

55. The Government's reply to the recommendation contained in paragraph 35 also partially responds to this recommendation.

56. Persons who file complaints of torture are protected under Spanish criminal and procedural legislation. Court proceedings must meet all the guarantees set out in the Criminal Procedure Act. The protection measures laid down in Act No. 4/2015 of 27 April on the status of victims of crime may also be applied. Pursuant to article 19 of that Act, "authorities and officials responsible for investigating and prosecuting offences and sentencing the perpetrators shall take the measures necessary, in accordance with the provisions of the Criminal Procedure Act, to safeguard the lives of victims and their family members, their physical and psychological integrity, freedom and safety, and their sexual freedom and inviolability, as well as to appropriately protect their privacy and dignity, particularly when they make a statement or are required to testify in court, and to prevent the risk of secondary or repeated victimization".

57. With regard to the recommendation that Spain should gather statistical data, disaggregated by, inter alia, sex, nationality and prison regime, on complaints concerning torture, ill-treatment and unlawful use of force on the part of the police and on the related investigations, prosecutions, trials (specifying the offence) and criminal or disciplinary sanctions, it should be noted that all complaints of torture and ill-treatment reported throughout the country are logged in the crime statistics system of the National Police. The competent units of the National Police carry out the necessary follow-up with regard to investigations, their outcomes, any resulting trials and prosecutions and any disciplinary measures and penalties handed down.

58. The National Human Rights Plan computer program was rolled out in 2010 and allows up-to-date data to be collected on police activities that may involve police overreach or the infringement of the rights of people in police custody.

59. The Ombudsman, as the national preventive mechanism, has rolled out an initiative involving the development of a secure website containing data on all police stations and facilities that could be used as places of deprivation of liberty, such as regional, provincial and district stations and any other dedicated units or stations. Data are collected from

communications submitted by these police stations via a questionnaire sent by the Office of the Ombudsman over a secure Internet connection within a collaborative working environment shared with those in charge of places of deprivation of liberty.

60. This questionnaire contains various questions relating to the number of persons detained and the places where they are detained, as well as questions on, inter alia, the Register of Detainees, video surveillance, health care, telephone or intercom systems, potential incidents that may occur during arrest or in custody and the number of cells available. The purpose of this exercise is to closely examine relevant factors regarding the rights of detainees.

61. The Strategic Planning and Coordination Unit has been working with the Ombudsman, and on 19 July 2018 sent a written response through the Technical Office of the Directorate General of Police containing the data required by the Ombudsman for the development of an up-to-date database of all facilities of the National Police where people may be deprived of liberty.

62. With regard to the Civil Guard, the Directorate's operations management systems systematically store all this information to ensure that these data are kept together and may be recovered for statistical purposes with a high level of granularity.

63. With regard to the lack of safeguards and the recommendation that Spain should adopt measures to ensure that all persons deprived of their liberty are effectively afforded all safeguards from the time they are taken into custody, in accordance with international rules and standards, the National Judicial Police Coordinating Commission (a body whose membership includes representatives of the Ministry of the Interior, the Ministry of Justice, the General Council of the Judiciary and the Attorney General's Office, and a representative from each of the autonomous communities), which is legally obliged to protect people and property and maintain public order, approved the contents of the Handbook on Standards for Judicial Police Proceedings in a meeting held on 3 April 2017.

64. The Handbook, which was published through a General Order in the Official Gazette of the Law Enforcement Agencies to ensure its dissemination and frequent use among security officials, contains a dedicated section on the rights of detainees that pays special attention to the issues raised by the Committee (clear information for detainees on their rights, a report on their rights and the right to retain written information).

65. The chapter of the Handbook concerning safeguards of the rights of detainees establishes that detainees are permitted to retain a written declaration of their rights throughout their detention in a manner that is compatible with their physical safety while they remain in police custody. In cases where retaining the written declaration of rights is not compatible with their physical safety, it will be made available for their use while they are in detention, along with their personal effects.

66. Pursuant to article 520 of the Criminal Procedure Act, at the point of arrest, police officers must verbally inform detainees of their rights, the charges against them and the reasons for their arrest. Once they arrive at a police station, detainees are again informed of their rights and the charges against them, which should also be set out in writing.

67. Under the Criminal Procedure Act, detainees are permitted to retain the written declaration of their rights throughout their detention in a manner that is compatible with their physical safety while they remain in police custody. In cases where retaining the written declaration of rights is not compatible with their physical safety, it will be made available for their use while they are in detention, along with their personal effects.

E. Reply to the recommendation contained in paragraph 39 of the report of the Subcommittee

68. Circular No. 9/2011 of 16 November on criteria for the specialized unit of the Public Prosecution Service on the rehabilitation of minors, issued by the Attorney General's Office, covers issues relating to the implementation of measures with respect to juvenile offenders. The following conclusions on the protection of their rights are worthy of note.

69. A prosecutor is entitled to file an appeal against disciplinary measures handed down to a minor, even if the minor concerned does not do so (conclusion 1).

70. The punishment of separating a minor from the group must be applied in consideration of the exceptional nature of such a measure, given its nature, and the criterion of "serious and repeated impact" on the usual harmonious coexistence of the centre should be interpreted in a restrictive manner (conclusion 2).

71. Prosecutors are to oversee individualized programmes for the application of the measure of therapeutic custody, which should contain a treatment schedule for any disorders identified in line with social and health care guidelines and, where appropriate, monitoring activities to ensure adequate oversight (conclusion 3).

72. The provisions on the handing down of multiple measures and application of amendments to such measures contained in Organic Act No. 5/2000 of 12 January on the criminal responsibility of minors must be automatically applied in all cases. If the Juvenile Court does not automatically apply the provisions on multiple measures, prosecutors must request an express declaration to that end and should also lodge appeals where appropriate (conclusion 4).

73. When visiting centres in their jurisdiction, prosecutors must provide all detainees with the opportunity to meet with them, regardless of whether the detainee has a legal procedural relationship with the court with which the prosecutor is affiliated (conclusion 5).

74. Visits shall be conducted at an appropriate frequency, taking into account the number of centres and the number of detainees under the jurisdiction of the Juvenile Court and the respective public prosecutor's office. It is advisable that each centre should be visited no more than once every two months, in line with the criteria set out in circulars on visits to penitentiaries. In any case, all places of detention (whether closed, semi-open, open or therapeutic) should be visited at least twice a year by prosecutors affiliated with the juvenile justice division of the relevant provincial prosecutor's office (conclusion 6).

75. In the case of juvenile detainees suffering from drug dependence or mental illness, it is necessary to check whether they are receiving adequate assistance and treatment, regardless of the type of centre in which they are detained and notwithstanding any amendments that may need to be made to the measures handed down to ensure that those measures continue to uphold the best interest of the child (conclusion 7).

76. When proposals or recommendations are formulated in the scope of article 44 (2) (h) of Organic Act No. 5/2000, the representative of the corresponding juvenile justice division shall submit them to the Juvenile Coordination Unit of the Attorney General's Office, which will determine whether they should be extended to all autonomous communities (conclusion 8).

77. If, while carrying out inspection activities, prosecutors become aware of deficiencies that should be corrected, they should be reported to the competent authorities of the respective autonomous community. If, despite notifying the authorities, these deficiencies are not corrected in a reasonable time frame depending on the circumstances of the case in question, the juvenile justice division should, through the lead prosecutor, inform the chief prosecutor of the autonomous community and the prosecutor responsible for coordination (conclusion 10).

78. There are no time limits for interviews between juvenile detainees and their lawyers set out in legislation or regulations, meaning that prosecutors, as guarantors of the rights of minors under article 6 of Organic Act No. 5/2000, should, as a general rule, support complaints that may be made in that regard (article 44 (2) (f) of Organic Act No. 5/2000) (conclusion 11).

79. The Attorney General's Office also issued Circular No. 3/2013 of 13 March, on criteria for the application of therapeutic detention measures in the juvenile justice system, to uphold the rights of minors committing serious offences under the influence of mental illness. The purpose of this instrument was to provide the maximum guarantees for the implementation of therapeutic detention measures, which should be applied in consideration

of the best interest of the minor and grounded in therapeutic, not punitive, motives with the aim of supporting their recovery.

80. Similarly, Circular No. 1/2014 of 5 December, on multiple measures, was issued by the Attorney General's Office to provide guidance to prosecutors on cases in which multiple measures may be handed down to minors. It takes the approach that such occurrences must be addressed on the understanding that the penal system should support the offender's social rehabilitation, and in line with the principle of proportionality and the prohibition of inhuman or degrading punishment or treatment, with the purpose of avoiding situations in which the handing down of multiple measures could lead to a disproportionate outcome or, in extreme circumstances, to an inhuman punishment that could render social rehabilitation impossible.

81. The Attorney General's Office also issued Circular No. 2/2016 of 24 June, on the admission of minors with behavioural problems to specific protection centres, motivated by the need to ensure the maximum guarantees in such cases. It covers the duration of detention as well as the rights of minors, requires judicial authorization for admission to such centres and establishes a rigorous approach to their inspection by the Public Prosecution Service.

82. Circular No. 3/2018, on the right to information on investigations in criminal proceedings, was recently issued and includes criteria for the interpretation of the rights of individuals under investigation in situations of detention and incommunicado detention, including the following:

(a) Conclusion 5. "Prosecutors shall at all times ensure that detainees [...] are provided with the necessary information and access to elements of proceedings that they may need to mount a challenge regarding the legality of their detention [...]";

(b) Conclusion 10. "Prosecutors shall ensure that, in all judicial investigations, the individual under investigation is provided with access to all contents of the proceedings (notwithstanding the exceptions provided for in law.)";

(c) Conclusion 13. "In cases in which the proceedings have been declared to be secret, prosecutors shall also ensure that the individual deprived of liberty is provided with access to the elements of the proceedings that are essential for them to mount a challenge regarding their deprivation of liberty prior to the hearing provided for in article 505 of the Criminal Procedure Act [...].";

(d) Conclusion 14. "Prosecutors shall ensure, in accordance with the provisions of article 527 (1) of the Criminal Procedure Act, the fulfilment of the right of detainees or prisoners held incommunicado to obtain access, by themselves or through their lawyer, to the elements of the proceedings that are essential for them to mount a challenge regarding the legality of their detention".

F. Reply to the recommendation contained in paragraph 44 of the report of the Subcommittee

83. The essence of the right to a defence encompasses the assistance of a lawyer of one's own choosing or, failing that, a court-appointed lawyer, with whom the detainee can communicate and meet in private whenever he or she chooses from the time an accusation of a punishable act is made (both before and after making a statement). The lawyer should always be present when the detainee makes a statement. Spain recognizes the right of access to a lawyer within the first three hours immediately following the deprivation of liberty.

84. Public defenders are professionals who have been adequately trained for the role. They are required to have practised for more than three years and to hold a diploma from the relevant course at the School of Legal Practice or an equivalent course approved by the Bar Associations. The recent amendments to Act No. 1/1996 of 10 January on legal aid by Acts No. 42/2015 of 5 October and No. 2/2017 of 21 June have a particular impact on the training of public defenders and on the quality of the assistance they provide in order to guarantee the constitutional right to a defence.

85. The professional associations are responsible for establishing systems to ensure the objective and equitable distribution of shifts and of the procedures for designating

court-appointed lawyers. In order to ensure the defence of detainees when they are first detained and throughout the conduct of the early stages of criminal investigation proceedings, there is an on-call system to ensure that detainees have access to legal assistance and a defence at any time. Assistance is provided until the completion of the proceedings in the relevant court and, if applicable, during the enforcement of the sentence.

G. Reply to the recommendation contained in paragraph 46 of the report of the Subcommittee

86. The General Council of the Judiciary offers specific training related to the subject matter of these recommendations. Currently, the effective prevention and investigation of torture and other cruel, inhuman and degrading treatment or punishment is part of the mandatory initial training for those joining the judicial profession. For this purpose, experts from the Ombudsman, as the national preventive mechanism, are available.

87. The content is also taught in continuing education courses. The possibility of broadening the training to be provided is currently under consideration for 2019. The Attorney General's Office has continued to improve staff training on sentence administration, including for prosecutors specializing in that area, by introducing a range of training activities in its 2017–2018 training plan. These activities, which will continue in the next training plan, are as follows:

(a) In the initial training course for individuals who have been successful in the competitive examination, as part of preparatory professional training for the performance of their duties:

(i) Specific training has been provided on sentence enforcement in the module on procedural and criminal practice;

(ii) Several very practical sessions have been developed on sentence enforcement in the module on trials;

(iii) More in-depth training has been provided on sentence enforcement for juveniles and foreign nationals;

(iv) A specific module on sentence administration has been created;

(v) The area has been included in the work experience period that prosecutors spend in different Prosecutor's Offices;

(b) As part of the continuous training plan, training activities have been developed for the following purposes:

(i) In order to provide practical training to non-specialist prosecutors, a seminar was held on sentence enforcement;

(ii) With the aim of deepening specialization and coordinating activities around Spain, a conference was held for specialists in sentence administration, the conclusions of which, once approved by the Attorney General's Office, will be disseminated to all members of the Public Prosecution Service for mandatory implementation.

H. Reply to the recommendation contained in paragraph 48 of the report of the Subcommittee

88. With regard to the recommendation made to Spain to take the necessary structural measures to resolve the issues identified in the national police stations visited by the Subcommittee, the Heritage and Architecture Unit in the Economic and Technical Division of the Central Logistics and Innovation Office reports that comprehensive repairs were carried out at the El Retiro police station in Madrid on 15 May 2018. The video surveillance system is now fully operational, and the lighting and ventilation systems are working correctly.

89. At Málaga District West police station, the Heritage and Architecture Unit reports that although the video surveillance system is now fully operational, the lighting and ventilation systems remain inadequate. However, it should be noted that Málaga District West is one of the national police stations that will benefit from the refurbishment works planned for 2018. A plan has been drawn up that includes, inter alia, the upgrading of detention areas to the standards set out in Instruction No. 11/2015, issued by the State Secretariat for Security, approving the technical specifications for the design and construction of detention areas.

90. With regard to the Puente de Vallecas police station in Madrid, the Unit reports that although there is no video surveillance system, the lighting and ventilation systems are working correctly. The cells are not in bad condition but are in need of renovation.

91. With regard to the Centro police station in Madrid, the Unit reports that it had not been upgraded since November 2014 and is currently undergoing comprehensive repair works, including in the cells. Although there is no video surveillance system, the lighting and ventilation systems are working correctly.

92. With regard to Melilla police station, the Unit reports that the video surveillance system is fully operational and the lighting and ventilation systems are working correctly.

93. With regard to the Beni Enzar border post in Melilla, the Unit reports that the cells are only used at times of peak demand when there is insufficient space at the main police station. The video surveillance system is fully operational, and the lighting and ventilation systems are working correctly.

94. With regard to the police station at Adolfo Suárez Madrid-Barajas Airport (Terminal 1), the Unit reports that the locks are old, the lighting and ventilation systems are working correctly and the video surveillance system is fully operational.

95. Lastly, with regard to the police station at Adolfo Suárez Madrid-Barajas Airport (Terminal 4), the Unit reports that the facilities are new. The video surveillance system is fully operational, and the lighting and ventilation systems are working correctly.

96. More broadly, it should be noted that the Economic and Technical Division of the Central Logistics and Innovation Office drafted a Master Plan for the period 2013–2023 to upgrade police infrastructure. A series of measures are set out in an appendix to the Plan, with a view to improving detention and custody areas through, inter alia, the installation of intercom, call bell or mechanical opening systems, to bring those areas into line with the standards established in Instruction No. 11/2015, issued by the State Secretariat for Security, approving the technical specifications for the design and construction of detention areas. These improvements are currently being carried out gradually, in accordance with the available funding. The total cost for upgrading all cells in national police stations is estimated to be approximately €6 million.

97. It should also be remembered that, as set out in the Strategic Plan for the National Police for the period 2017–2021, one of the Division's priorities is the consolidation of the Master Plan, which involves ensuring that buildings housing police infrastructure adhere to the current technical regulations, within the existing budgetary availability.

98. In some cases, that initiative notwithstanding, custody areas are located in buildings with architectural or design features that are already obsolete or in rooms or spaces that are intended for other uses, making it difficult to ensure natural light and adequate ventilation in the holding cells.

99. It should also be remembered that, for security reasons, the distribution of rooms in buildings must take into account these criteria as a priority, and it must therefore be ensured that cells are located in the most appropriate areas. This would require complete renovation or remodelling of the facilities, subject to the availability of the budget allocated for this purpose.

100. The Subcommittee recommended that Spain should adopt measures to ensure that all persons deprived of their liberty are effectively afforded all safeguards from the time they are taken into custody, in accordance with international rules and standards (point 39).

101. The National Judicial Police Coordinating Commission, at its working session on 3 April 2017, approved the content of the Handbook on Standards for Judicial Police Proceedings.

102. The Handbook contains a special section on informing detainees of their rights, which emphasizes the points made by the Subcommittee (clear information to detainees on their rights, a record of information of rights and the right to keep written information).

103. The chapter of the Handbook concerning safeguards of the rights of detainees states that:

> (I) Detainees are permitted to retain the written declaration of their rights throughout their detention in a manner that is compatible with their physical safety while they remain in police custody. In cases where retaining the written declaration of rights is not compatible with their physical safety, it will be made available for their use while they are in detention, along with their personal effects.

104. Pursuant to article 520 of the Criminal Procedure Act, at the point of arrest, police officers verbally inform detainees of their rights, the charges against them and the reasons for their arrest. Once they arrive at a police station, detainees are again informed of their rights and the charges against them, which should also be set out in writing.

105. Under the aforementioned article of the Criminal Procedure Act, detainees are permitted to retain the written declaration of their rights throughout their detention in a manner that is compatible with their physical safety while they remain in police custody. In cases where retaining the written declaration of rights is not compatible with their physical safety, it will be made available for their use while they are in detention, along with their personal effects.

106. Clause 3, on the rights of detainees, of the aforementioned Instruction No. 12/2007 of the State Secretariat for Security, states the following:

> 1. Once an arrest has been made,[1] detainees shall be immediately informed, in a language and manner they can understand, of their rights as set out in article 520 (2) of the Criminal Procedure Act, of the charges against them and of the reasons for their deprivation of liberty.
>
> Currently, these details are documented in the logbook and telephone records that are kept in all police stations, as stipulated in Instruction No. 12/2007 of the State Secretariat for Security.
>
> 5.- (...) Any telephone calls to a lawyer or to the Bar Association and any related information (such as the Association's unavailability or failure to respond) shall be logged.
>
> The document informing detainees of their rights, which forms part of the police proceedings, contains specific fields for such details, which are recorded in the computer system of the relevant police force.

I. Reply to the recommendation contained in paragraph 50 of the report of the Subcommittee

107. One of the responsibilities assigned to the Directorate General of the Police in Spain is the provision of adequate food to all persons who are detained in police stations.

108. To that end, in dossier No. 001/16/CO/05, a contract has been prepared for the provision, preparation and daily distribution of meals for persons detained in police facilities, divided into four regions encompassing the Autonomous Communities in which the National Police operates, for the period from 1 January 2016 to 31 December 2018. The contract for

[1] A body comprising the Ministry of the Interior, the Ministry of Justice, the General Council of the Judiciary, the Attorney General's Office and a representative of each of the Autonomous Communities with statutory competence for the protection of persons and property and for maintaining public order.

all four regions has been awarded to the company ALBI S.A. (tax number A-28861326) in the amount of €3,465,000.

109. With respect to the content and quality of the food supplied, the details of which are set forth in the technical specifications governing the award of the contract, the food must be healthy and meet three criteria, namely variety, balance and sufficient quantity. The food portions must meet the nutritional recommendations established by international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), with a daily calorie intake of no less than 2,220 Kcal, distributed over breakfast, lunch and dinner.

110. In accordance with the specifications, apart from the general provisions, special diets can be provided in circumstances in which the standard meals are not suitable, such as drug or alcohol dependency and medical conditions. A diet for coeliacs (persons with gluten intolerance) can also be provided, ensuring a minimum intake of calories, protein, carbohydrate and fat.

111. It should be noted that another of the responsibilities assigned to the Directorate General of the Police is the provision of adequate and sufficient food to all foreign nationals who, having failed to comply with one or more elements of the Aliens Act, are detained for a maximum of 60 days in police facilities around the country.

112. To that end, in dossier No. 005/17/CO/05, a contract has been prepared for the provision, preparation and daily distribution of meals for persons detained in migrant holding centres. The contract has been awarded to the company ALBI S.A. (tax number A-28861326) in the amount of €8,951,250 from the date the contract was signed, on 25 September 2017, until 31 December 2019, with the possibility of a 12-month extension.

113. As is set out in the relevant technical specifications, the food provided to holding centres must include the following elements:

- Breakfast: coffee (with or without milk); milk; hot chocolate; cocoa, etc. Pastries. Madeleines. Toast. Cookies (10 units).
- Lunch: a first course of soup, salad or vegetables (either plain or seasoned), pasta, eggs or similar. A second course of meat or fish dishes or similar. A dessert: fresh or tinned fruit, flan, cakes, sweets, pastries or similar.
- Dinner: similar to lunch.

114. As set out in the specifications, and in accordance with the recommendations established by FAO, the daily diet supplied provides the following: Calories (2,500); Protein (70 grams); Vitamins (A – 5000 IU 1.6 mg; C – 60 mg). In addition, 500 ml of water should be provided with each meal (breakfast, lunch and dinner).

115. Lastly, it should be noted that, in accordance with the provisions of Instruction No. 12/2009, issued by the State Secretariat for Security, regulating the Register of Detainees, any incident relating to food or drink is recorded in the column labelled “Incidents and changes in the chain of custody” in the “Chain of custody and incidents” table on the back of the Detainee Custody Record.

116. In line with the above, it should also be noted that, in accordance with the provisions of Instruction No. 12/2015, issued by the State Secretariat for Security, approving the protocol for custody areas managed by the State law enforcement agencies, detainees are provided with adequate food depending on the length of time they are held in the cells and any personal circumstances, for example, medical or religious requirements. Generally, they are provided with three meals a day, according to the following schedule:

- Breakfast: between 7 a.m. and 9 a.m.
- Lunch: between 1 p.m. and 3 p.m.
- Dinner: between 9 p.m. and 11 p.m.

J. Reply to the recommendation contained in paragraph 54 of the report of the Subcommittee

117. Health care in the migrant holding centres is provided by personnel from outside the Directorate General of the Police. The annual contracts, extendable for one year, have been awarded to the company Clínica Madrid, which provides the basic health-care services detailed in the relevant annex of the tender specifications governing the contract. If a medical practitioner considers that the detainee should be examined by a specialist, he or she is referred to an appropriate hospital.

118. With regard to detainees in police custody, medical assistance is also guaranteed under Act No. 14/1986 of 25 April 1986 on general health. If required, detainees are transferred to hospitals managed by the National Social Security Institute, where they receive the medical assistance they need. It should be noted that, in urgent or life-threatening cases only, detainees in police custody receive care from doctors or nurses employed by the Directorate General of the Police in areas where such practitioners are available.

119. Under the Spanish legal system, health care for all detainees, whether or not they are being held incommunicado, is provided by forensic doctors, who are medical professionals with many years of experience in investigating causes of death or injury in accordance with the recommendations issued by all the international bodies responsible for upholding the rights of detainees.

120. In Spain, forensic doctors who provide services to the judiciary are selected through a public competitive examination that assesses merit, ability and technical and legal knowledge. Judges and administrative authorities cannot choose which forensic doctor will attend to a specific detainee; the task falls to whichever doctor has previously been assigned to the relevant court. It should be noted that, in their professional activities, forensic doctors must comply fully with the professional ethical principles expected of medical practitioners and must not be given instructions by judges or government authorities.

K. Reply to the recommendation contained in paragraph 58 of the report of the Subcommittee

121. The provision of health-care services is regulated by articles 4 (1), 7 (4) and 14 and the fourth additional provision of Royal Decree-Law No. 162/2014 of 14 January, which approved the operating regulations and internal rules for migrant holding centres, pursuant to Organic Act No. 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain.

122. In accordance with the regulations, vacancies for doctors at migrant holding centres were announced by the Directorate General of the Police in a resolution of the State Secretariat for Security, dated 16 September 2016, which was published in the Official Gazette on 21 September 2016. However, only the vacancy at the Madrid (Aluche) holding centre was filled.

123. Therefore, in order to guarantee full health-care provision, including check-ups, for foreign nationals detained in migrant holding centres around the country, a public procurement process was launched for a comprehensive service. The tender, as contained in dossier No. 001/17/EX/05, was awarded to the company Clínica Madrid, S.A. in the amount of €879,000. The contract was signed on 13 November 2017 for 12 months, with the possibility of a 12-month extension.

124. In line with the technical specifications governing the contract, health-care services are provided by doctors and nurses working in shifts seven days per week in the largest centres in Madrid, Valencia and Barcelona, as well as in the centres in Murcia, Algeciras and Tarifa, and five days per week in the centres in Las Palmas, Tenerife and Fuerteventura. The basic service includes an initial medical examination on arrival, ongoing care during a detainee’s stay and a check-up on departure. Specialized medical care is also available if required.

125. With regard to medical care for persons who, inter alia, have committed a criminal offence and are being held in police stations or other National Police facilities awaiting a court appearance, it should be noted that, given the short period of time they remain in police custody, namely a maximum of 72 hours, the geographical location of police stations in large towns or urban areas with sufficient emergency and specialized medical provision means that medical care falls to the Social Security services (061) or similar services, depending on the Autonomous Community where the facility is located. Personnel from those services attend the relevant police station at the request of detainees or police officers responsible for the cells.

126. The authorities do not, therefore, foresee a need for the provision of a regular health-care service for detainees.

127. Lastly, it should be noted that specialized medical care is guaranteed under Act No. 14/1986 of 25 April 1986 on general health, Royal Legislative Decree No. 1/1994 of 20 June 1994, approving the revised text of the General Social Security Act, and Decree No. 2065/1974 of 30 May 1974, specifying the content of the right to medical care under the General Social Security System. Article 98 (1) of Decree No. 2065/1974 states that the System's purpose is to "provide medical and pharmaceutical services aimed at preserving or restoring the health of its beneficiaries". Those services consist of preventive measures and health services, including primary and specialized care, as well as pharmaceutical and other additional services. The services are provided to all foreign nationals on an equal footing with Spanish nationals, pursuant to article 12-i of the Aliens Act.

L. Reply to the recommendation contained in paragraph 70 of the report of the Subcommittee

128. In order to achieve the widest possible dissemination of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) among psychiatrists, all relevant administrations will put in place the necessary mechanisms to ensure that health professionals are aware of and apply it.

M. Reply to the recommendation contained in paragraph 71 of the report of the Subcommittee

129. The necessary measures will be taken to ensure compliance with rule 109 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). To that end, the necessary coordination mechanisms will be established among all the relevant actors.

N. Reply to the recommendation contained in paragraph 84 of the report of the Subcommittee

130. Royal Decree No. 162/2014 of 14 March, approving the operating regulations and internal rules for migrant holding centres, sets out the system of judicial guarantees and oversight for holding centres with the aim of preventing torture or ill-treatment in the centres.

131. Deprivation of liberty in a migrant holding centre is an exceptional measure that is precautionary in nature. The decision to place a migrant in a holding centre must always be made with the agreement of the competent judge, and migrants must be detained for the minimum time necessary to fulfil the objective of the detention. Detention placements are subject to judicial oversight for the entirety of their duration, and the foreign nationals concerned remain at the disposal of the judge or court that ordered the detention. The relevant judge or court is also responsible for resolving any incidents that occur during the detention period.

132. In addition, it is worth highlighting the importance of the role of the judge in overseeing the detention of foreign nationals in holding centres, since the judge's function is

to ensure that the detainees' rights are respected during the period that they are subject to the precautionary measure of detention. The due process judge hears any complaints and claims made by detainees regarding their basic rights and may visit them if he or she becomes aware of any serious violations or believes it would be otherwise useful.

133. Investigating judges are responsible for monitoring detention placements, thereby guaranteeing the rights of the detainees. Investigating judges are the highest authority for the oversight of the conduct of police officers in the performance of their security duties at the centres and act as a safeguard thanks to their independence and impartiality.

134. It is also worth highlighting the role of the Public Prosecution Service in this area, given that its functions, as set out in its Organic Statute, adopted in Act No. 50/1981 of 30 December 1981, include the power to visit any type of detention facilities, prisons or holding centres, to examine detainees' files and gather any information it deems appropriate in order to ensure the suitability and proportionality of a detention placement.

135. In addition to the judicial and prosecutorial oversight guarantees already described, the Spanish regulatory framework provides for a series of additional oversight mechanisms and guarantees to safeguard the rights of detained foreign nationals. Detainees are thus guaranteed the right to contact non-governmental, national and international organizations for the protection of migrants, and representatives of such organizations have the right to visit the centres. Detainees also have the right to a legal guidance service aimed at providing detainees with confidential advice. A number of collaboration agreements have been signed with different Bar Associations.

136. Pursuant to article 50 of Royal Decree No. 162/2014 of 14 March, the National Police has established its own oversight and inspection mechanisms. Units of the National Police can, independently of the judicial authorities, conduct inspections of the centres and their staff. The Staff and Services Inspection Unit of the State Secretariat for Security also conducts oversight and inspection activities at migrant holding centres.

137. These activities currently take place on an ad hoc basis in the daily operation of the centres. They take the form of both ongoing jurisdictional oversight and inspections by the administrative bodies themselves and the visits and recommendations subsequently made by national bodies (especially the Ombudsman, as the national preventive mechanism) and international bodies such as the Council of Europe and, in particular, the Commissioner for Human Rights thereof, as part of the international commitments of Spain.

138. Apart from the foregoing considerations, it should be pointed out that complaints of alleged ill-treatment made against police officers in migrant holding centres are investigated by the judicial authority according to the principles of independence, legality and impartiality. In such investigations, officials make use of any procedures deemed necessary and take appropriate measures to provide assistance and protection to detainees who complain that their fundamental rights have been violated. The scope of the measures must be authorized by the Ministry of Justice and the Attorney General's Office.

139. With regard to complaints of excessive use of force by law enforcement agents, it is emphasized that when inmates instigate a violent incident, the police always respond in a consistent and timely manner using force proportionate to that used by the inmate. The police officer in charge always prepares a written account of such incidents and the measures taken to deal with them and submits it to the relevant judicial authority with oversight of the migrant holding centres.

140. The holding centres are not prison facilities and are legally established and regulated. There are sufficient mechanisms in place to guarantee the rights and freedoms of foreign nationals. The centres are subject to judicial oversight at all times and operate within the framework of the guarantees established in Spanish and European Union regulations (Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals).

O. Reply to the recommendation contained in paragraph 85 of the report of the Subcommittee

141. The Office for Asylum and Refugees conducts an individualized assessment of all applications for international protection, taking into account all the risk factors facing the applicants. The time required to assess each file varies from case to case. Nevertheless, every effort is being made to process applications for international protection, which, as a general rule, are dealt with in a timely manner and in accordance with the usual parameters, guaranteeing the rights of all applicants, particularly the most vulnerable groups, under Spanish and European legislation.

142. The Office for Asylum and Refugees has a team of interpreters who support the assessment process, facilitate communication with applicants and inform them of their rights and obligations and the procedures they need to follow.

143. Chapter III of Organic Act No. 4/2000 on the rights and freedoms of foreign nationals in Spain guarantees the right of foreign nationals to effective judicial protection. Foreign nationals have the right to legal assistance, which is provided free of charge for individuals who do not have sufficient financial resources; to the assistance of an interpreter, if they do not understand or speak the official languages used; and to lodge an appeal against administrative acts and decisions that they consider to be detrimental to them.

144. Along the same lines, Royal Decree No. 162/2014 of 14 March, approving the operating regulations and internal rules for migrant holding centres, sets out a series of guarantees for foreign nationals placed in the centres. These guarantees apply from the time of arrival and throughout the period of detention and include the right to be given information about their situation in a language they understand, as well as about any judicial and administrative decisions affecting them.

145. Foreign nationals held in the centres are guaranteed the rights recognized by the legal system without limitations other than those derived from their placement in the centres, as well as the right to be assisted by a lawyer, provided ex officio if necessary, and an interpreter if they do not understand or speak Spanish.

146. In view of the Subcommittee's comments regarding nationals of Algeria and Morocco, no discriminatory treatment of any kind is permitted in the way placements are managed. The return of nationals of Algeria and Morocco is delayed partly because of the large numbers of such persons who try to enter Spain irregularly and partly because of the limitations set out in the readmission agreements signed with Algeria and Morocco, which place restrictions on the number of returnees and the manner in which they can be returned.

147. Lastly, the Subcommittee is reminded that these delays are often the result of the detainees' lack of cooperation in obtaining their travel documents.

P. Reply to the recommendation contained in paragraph 88 of the report of the Subcommittee

148. The provisions of Directive 2008/115/EC of 16 December 2008 on common standards and procedures in member States for returning illegally staying third-country nationals (better known as the Return Directive) governing detention conditions establish that detention should take place in specialized detention facilities; however, where this is not possible, member States may resort to prison accommodation, although third-country nationals must be kept separated from ordinary prisoners.

149. The building that houses the migrant holding centre in Algeciras was previously used as a prison. It is currently not a prison; it is being used as a public facility whose architectural design provides decent living conditions for foreign nationals being held in preventive or precautionary detention while awaiting expulsion, return or refoulement. Its operation is regulated by Royal Decree No. 162/2014 of 14 March.

150. With regard to the freedom of movement of detainees, article 62 bis of Organic Act No. 4/2000 on the rights and freedoms of foreign nationals in Spain guarantees detainees "the

exercise of the rights recognized by the legal system without any limitations other than those placed on their freedom of movement". Placement in a holding centre therefore implies that detainees' movements are limited by the centre's internal rules and the general instructions issued by the management to ensure order and peaceful coexistence. These limitations do not prevent detainees from spending time outdoors, engaging in leisure activities or resting in their rooms.

151. The centres have a furnished living room with a television set. Daily newspapers, books, board games and other recreational items are available to allow participation in activities and access to the media and information.

152. With regard to the recommendation to install systems to ensure that rooms and units can be unlocked automatically, the authorities are in agreement, and such systems have been put in place in several centres. For the centre in Algeciras, a request has been submitted to the Economic and Technical Division of the Central Logistics and Innovation Office.

153. On 14 June 2018, the Division's Heritage and Architecture Unit reported that, during the course of the current year, a plan will be drawn up for the installation of an electronic opening system for bedroom doors and the division of sleeping areas into bedrooms with capacity for four people and adjoining bathrooms.

154. With respect to the Madrid (Aluche) and Valencia centres, the Unit reports that in both facilities, the video surveillance systems are fully operational and the lighting and ventilation systems are working correctly.

155. At the centre in Aluche, during the past two years, a number of new projects and developments have been implemented in terms of facilities, and protocols have been put in place to improve the communal living experience. These include the provision of toilets in all rooms, authorization for detainees to use mobile telephones, the removal of partitions in visiting rooms and the option for detainees to meet with the director of the centre upon request. In addition to the social assistance agreement with the Red Cross signed by the Ministry of the Interior, approximately 20 non-governmental organizations have been granted permission to visit detainees. The Conference of Bishops of the Spanish Catholic Church, the Islamic Centre of Spain and the Federation of Evangelical Religious Organizations also provide their services to persons of their respective faiths who are being held at the centres.

156. In addition, the personal safety plan for the centres has been adapted and updated; an automatic unlocking system has been installed on all doors; and police first response teams, evacuation teams and first aid teams have been set up. The centre also has a health-care protocol that ensures the provision of medical services from 8 a.m. to 10 p.m. and referrals to public health services for specialized care.

157. Lastly, no information can be shared regarding the temporary reception centre for migrants in Melilla because it is under the responsibility of the Ministry of Employment, Migration and Social Security (formerly the Ministry of Employment and Social Security), rather than that of the Directorate General of the Police.

Q. Reply to the recommendation contained in paragraph 91 of the report of the Subcommittee

158. Article 17 (3) (b) of Act No. 12/2009 of 30 October 2009 regulating the right to asylum and subsidiary protection establishes the right of persons applying for international protection to be informed of their rights and obligations during the processing of their application. Article 18 (1) (b) recognizes applicants' right to legal assistance and the assistance of an interpreter.

159. Prior to the submission of an application, the Office for Asylum and Refugees informs the applicant for international protection of his or her rights and obligations during the application process. This information includes the right to free legal assistance.

160. While the information provided to applicants constitutes a procedural guarantee, it does not replace the information and individual clarification provided by interpreters on a

case-by-case basis. The authorities therefore consider that the need for tailored information is being met.

161. With regard to the fact that the detention of migrants should be an exceptional measure that is used only when necessary, reasonable and proportionate in a specific case and that it should be applied only for the shortest period of time possible and for a legitimate purpose, it is necessary to point out, first of all, that foreign nationals who enter the national territory illegally must be subject to a return procedure. This may require their placement in detention, in which case they are afforded all the rights of a detainee, in particular those established in article 17 (3) of the Spanish Constitution and those deriving from Organic Act No. 4/2000, Royal Decree No. 557/2011 and article 520 of the Criminal Procedure Act.

162. Detention must not last longer than the time strictly necessary for the management of the administrative return procedure, which is used only in specific cases where it is justified, such as when there is a well-founded suspicion that a person poses a danger to public safety, is a flight risk or might not cooperate with an expulsion order. In all cases, detention must not last more than 72 hours; if a return cannot be carried out within that time frame, a detention request is submitted to the judicial authority. It should not be forgotten that a high percentage of the persons detained in migrant holding centres have a police record or have spent time in prison, which in many cases makes the application of the precautionary measure of deprivation of liberty in a holding centre unavoidable in order to prevent any possibility of escape.

163. The period of detention in the holding centre will continue for the time required for the processing of the case and must never exceed 60 days. Depending on the circumstances of each case, judicial decisions authorizing detention may establish a maximum period of detention that is less than 60 days.

164. Nevertheless, it should be remembered that the maximum period set out in Spanish legislation for the precautionary measure of deprivation of liberty of a foreign national in a migrant holding centre is much shorter than in neighbouring countries. Under European legislation, namely the aforementioned Return Directive, when the procedure for the removal of a third-country national is lengthy, member States may extend the initial period of detention for a further period not exceeding 12 months, meaning that the detention may continue for a maximum of 18 months.

165. Chapter III of Organic Act No. 4/2000 guarantees the right of foreign nationals to effective judicial protection. Foreign nationals have the right to legal assistance, which is provided free of charge for individuals who do not have sufficient financial resources; to the assistance of an interpreter, if they do not understand or speak the official languages used; and to lodge an appeal against administrative acts and decisions that go against them.

166. The Criminal Procedure Act, as fundamental subsidiary legislation that applies to all detention, guarantees that persons detained in application of the Aliens Act are afforded, inter alia, the right to be examined by a doctor and the right to inform a family member or other person of their choosing and the relevant consular office of their detention and the location where they are being held.

167. With regard to the recommendation that migrants must, from the outset of their detention, be provided with access to medical assistance and to all the necessary procedural guarantees to allow them to defend their rights, such as access to legal assistance, information on their status and the ability to communicate with their families and consular officials, as well as to take the necessary steps to ensure that migrants are not held in police cells and that they have access to a shower and other personal hygiene facilities, it should be recalled that article 32 of Royal Decree-Law No. 162/2014 of 14 January, approving the operating regulations and internal rules for migrant holding centres, regulates the provision, on arrival, and subsequent replacement of certain items such as basic personal hygiene kits, towels and bed linen. Detainees who do not have clothes or footwear will be provided with the necessary items.

168. In 2017 and 2018, the Clothing Service in the Economic and Technical Division of the Central Logistics and Innovation Office of the Directorate General of the Police provided the Madrid (Aluche) holding centre and, to a lesser extent, the Barcelona, Valencia, Murcia

and Tarifa centres with sandals and sports shoes, white short-sleeved T-shirts, sweatpants, kits containing personal hygiene items and a change of clothes for men, underwear for men and women, white socks, kits containing personal hygiene items and a change of clothes for women, raincoats and sweatshirts.

169. The Central Logistics and Innovation Office reports that the necessary measures have been taken to enable international calls to be made from the telephone lines installed in the National Police facilities with detention and custody areas. In November 2016, the Telecommunications Unit of the Economic and Technical Division provided instructions to the provincial telecommunications offices to ensure that the corresponding modifications were made to the relevant equipment. Assistance could be sought from the central service if local offices were unable to make the necessary changes. After dealing with many requests from associated bodies in connection with this matter, in May 2017, all the necessary steps had finally been completed to ensure that all National Police units that had requested technical assistance in activating the service were operational.

170. The authorities consider that the rights of detained foreign nationals are protected by a framework that is aligned with relevant international standards and is set out in domestic legislation and international instruments ratified by Spain and incorporated into the domestic legal system.

R. Reply to the recommendation contained in paragraph 93 of the report of the Subcommittee

171. In accordance with the provisions of article 3 of the Convention against Torture, the actions of the law enforcement agencies are subject to the rule of law at all times. Any person intercepted at or near the border must be taken to the appropriate National Police station as soon as possible so that they can be identified and, if necessary, returned.

172. In this regard, article 72 of the Treaty on the Functioning of the European Union states that Title V of the Treaty, entitled "Area of Freedom, Security and Justice", on the management of policies on border controls, asylum and immigration, "shall not affect the exercise of the responsibilities incumbent upon member States with regard to the maintenance of law and order and the safeguarding of internal security".

173. The control of the external borders of the Union is based on the principle of solidarity among the member States, a principle with which Spain would not be in compliance if it afforded people the right to illegally bypass border controls. Such action would amount to a violation that could seriously jeopardize the security of the Schengen area and could give rise to a migration crisis with catastrophic consequences for the protection of human rights.

174. With regard to the fact that on-the-spot expulsions run counter to the principle of non-refoulement under article 3 of the Convention against Torture, it should be noted that the European Commission (European Union) considers that the migration policy applied by Spain in Ceuta and Melilla, including the refusal of entry at the borders and fences of both Autonomous Cities, described as "on-the-spot expulsions", is compatible with its Return Directive. This was stated in a parliamentary answer issued on 20 January 2016 by the European Commissioner for Home Affairs, Dimitris Avramopoulos.

175. The Commission states that it has "analysed the compatibility of the special procedure for Ceuta and Melilla with its Return Directive" and "more especially, with the requirements listed in article 4 (b) of the Directive". The Commission refers, in particular, to the stipulation that member States must respect "the principle of non-refoulement" with regard to third-country nationals.

176. Having analysed the two texts, the Commission came to the conclusion that the safeguards contained in the "special procedure for Ceuta and Melilla" as regards international protection and the possibility to apply for international protection at the regular border crossing points are of critical importance. The European Commissioner for Home Affairs added, in his parliamentary answer, that "in addition, the recent establishment at the borders in Ceuta and Melilla of offices where third-country nationals can lodge their request for

asylum is considered by the Commission as a positive development in ensuring the respect of the principle of non-refoulement".

177. Lastly, it should be noted that the European Court of Human Rights will review the condemnation of Spain for the "on-the-spot expulsions" of migrants at the Melilla border fence. Five judges at the Strasbourg-based Court have examined the appeal brought by the Government of Spain against the judgment issued against it in October 2015 for the summary and immediate return of a young man from Mali and another from Côte d'Ivoire who jumped the fence at Melilla on 13 August 2014 and who were subsequently intercepted by the Civil Guard and handed over to the auxiliary forces in Morocco. The judges decided to admit the appeal on 29 January 2018 and refer the case to the Grand Chamber to review all the pertinent circumstances and issue a judgment on it.

S. Reply to the recommendation contained in paragraph 94 of the report of the Subcommittee

178. In such cases, all police action must comply with the provisions of article 23 (2) of Regulation No. 557/2011 of 20 April, approving the regulations of Organic Act No. 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration, and which must be applied to persons attempting to enter the country illegally, including those intercepted at or near the border. The procedure consists of their transfer, by the State law enforcement agency with responsibility for coastlines and borders that intercepted them, to the relevant National Police station without delay so that they may be identified and, where appropriate, returned.

179. Under the Organic Act No. 2/86 on Law Enforcement Agencies, the National Police is competent to investigate cases that may lead to a return, under either the expulsion procedure or the refoulement procedure. All returns must be conducted in accordance with the provisions of Organic Act No. 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration, and its implementing regulations, approved by Royal Decree No. 557/2011 of 20 April.

180. The Office for Asylum and Refugees provides potential applicants for international protection with all the necessary means to comply with the provisions of article 21 of Act No. 12/2009 of 30 October 2009 regulating the right to asylum and subsidiary protection, which governs applications for international protection filed at border posts. The article sets out the conditions under which a foreign national who does not meet the necessary requirements to enter Spanish territory may file an application for international protection at a border post.

181. In any of the procedures described above, applicants must be afforded the legal guarantees set out in Chapter III of Organic Act No. 4/2000, and their fundamental rights must be respected to the fullest extent. Foreign nationals have the right to legal assistance, which is provided free of charge for individuals who do not have sufficient financial resources; to the assistance of an interpreter, if they do not understand or speak the official languages used; and to lodge an appeal against administrative acts and decisions that go against them.

182. All return procedures are carried out in compliance with international human rights and international protection standards to which Spain is a party. In this regard, article 58 (4) of Organic Act No. 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration establishes that once an application for international protection is submitted, a return may not be conducted unless and until the application has been processed or is not accepted for processing, as applicable. If an application for international protection is accepted for processing, the applicant is given authorization to enter the country and provisional permission to remain.

183. Unaccompanied minors who are intercepted at or near the border are not subject to forced return procedures, such as expulsion or refoulement. Spanish regulations set out a framework of guarantees and respect for the principle of the best interest of the minor.

184. The framework protocol on procedures applying to the treatment of unaccompanied minors establishes that the minor will be taken into the care of the relevant child protection service, which will be responsible for providing any immediate assistance required, in accordance with the provisions of the legislation on the legal protection of minors, and immediately informing the Public Prosecution Service, which is responsible for creating a file for the minor.

185. The State Administration submits a request to the diplomatic representation of the minor's country of origin for a report on his or her family circumstances before making a decision on whether to initiate a procedure to repatriate him or her. Once agreement has been reached to initiate such a procedure, after hearing the minor if he or she has sufficient judgment and receiving a report from the child protection services and the Public Prosecution Office, the State Administration decides whether it is appropriate to return the minor to his or her country of origin or to a country where he or she has relatives or, failing that, to allow him or her to remain in Spain. In accordance with the principle of the best interests of the minor, repatriation to the country of origin is carried out either through family reunification or by placing the minor in the care of the child protection services, if the conditions are appropriate.

186. In relation to victims of trafficking, when it is considered that there are reasonable grounds to believe that a foreign national in an irregular situation has been a victim of trafficking in persons, a period of recovery and reflection is granted. During that period, administrative procedures for return (expulsion or refoulement) will not be initiated. If such a procedure has already been initiated, it is suspended or, if applicable, the enforcement of any expulsion or refoulement already approved is halted while the victim is identified, in accordance with the provisions of article 59 bis of Organic Act No. 4/2000.

187. The social integration of trafficked persons is governed by Organic Act No. 2/2009, in application of the provisions of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, and of the obligations arising from the ratification and entry into force in Spain of the Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe Convention No. 197), concluded at Warsaw on 16 May 2005.

188. The regulations require the suspension of any expulsion proceedings that have been initiated if elements emerge to indicate that a person is a victim of trafficking. Similarly, such proceedings should not be initiated. In addition, article 59 bis establishes a series of measures aimed at guaranteeing victims' access to assistance and protection resources, the details of which are set out in the implementing regulations of the Act.

189. Act No. 12/2009 of 30 October 2009 regulating the right to asylum and subsidiary protection also guarantees the non-refoulement of victims of trafficking who apply for international protection. Article 5 of the Act recognizes the same right for persons seeking international protection. Article 46 sets out the parameters for providing such persons with the relevant support.

190. Persons at the centres have access at all times to non-governmental organizations, some of which specialize in identifying individuals who are particularly vulnerable, such as victims of trafficking in persons.

191. Victims of human trafficking are extremely vulnerable. The temporary migrant reception centres house both men and women, which could mean that traffickers and exploiters are able to control or exploit women. Staff at the reception centres have been involved in identifying possible cases of trafficking in order to prevent recruitment for sexual exploitation and to identify potential victims as early as possible. To this end, in 2013 a protocol was to detect and take action on potential cases of human trafficking for the purposes of sexual exploitation that arise in migration centres. When a case is identified, it is reported to the authorities so that a decision can be made regarding the victim's relocation to a shelter that can meet their needs.

192. With regard to the protection of children and adolescents, the following protocols are in place to identify and take action on situations of human trafficking:

- Framework protocol on procedures applying to the treatment of unaccompanied minors, signed on 22 July 2014 by the Minister of Justice, the Minister of Employment and Social Security, the Minister of Health, the Minister of Social Services and Equality, the Attorney General, the State Secretary for Security in the Ministry of the Interior and the Undersecretary of the Ministry of Foreign Affairs and Cooperation and published in the Official Gazette on 16 October 2014. The Protocol establishes the guidelines for coordinating identification and age-determination processes and referral to child protection services and governing the proper functioning of the Register of Unaccompanied Foreign Minors, with a focus on upholding the best interests of the child and regulates, inter alia, aspects related to the protection of foreign minors who are potential victims of trafficking.
- Annex to the Framework protocol for the protection of victims of trafficking, concerning action to be taken to identify and provide support to child victims of human trafficking. Approved by the Childhood Observatory (Directorate General of Family and Children's Services in collaboration with the Special Government Office on Gender-based Violence) on 1 December 2017, it is in the process of being incorporated as an annex to the Framework protocol. The purpose of the protocol is to guarantee the provision of specialized support for child victims of trafficking in persons, rather than leaving them in centres for minors where specialized support relating to trafficking is not available.

193. In short, foreign nationals intercepted at or near the border and against whom refoulement proceedings are in place are entitled to have their case processed in a manner that respects the guarantees set out in general legislation, especially with regard to challenging evidence, being heard and receiving well-reasoned decisions.

T. Reply to the recommendation contained in paragraph 95 of the report of the Subcommittee

194. Spain considers that in temporary reception facilities, dignified and appropriate treatment must be guaranteed for women and children, who have specific needs, and in particular for victims of trafficking who are caring for children or persons with disabilities.

U. Reply to the recommendation contained in paragraph 98 of the report of the Subcommittee

195. Spain wishes to demonstrate the highest degree of commitment to the fight against all forms of discrimination, hatred and intolerance, especially when they target the sexual orientation or gender identity of highly vulnerable persons, such as applicants for international protection. In that connection, the Government will study the adoption of relevant measures to improve the conditions of lesbian, gay, bisexual, transgender and intersex asylum-seekers in temporary migrant reception centres. Similarly, the department intends to strengthen the training provided on sexual diversity for employees working at the centres and the staff involved in the international protection process in its entirety.

196. All applications for international protection submitted in Spain are subject to individualized review by the Office for Asylum and Refugees, with all the guarantees set out in Act No. 12/2009 of 30 October 2009 regulating the right to asylum and subsidiary protection.

197. With regard to suitable provision for lesbian, gay, bisexual, transgender and intersex asylum-seekers, the Act establishes the provision of differentiated support for applicants who require it on account of their sex or a particular vulnerability.

V. Reply to the recommendation contained in paragraph 101 of the report of the Subcommittee

198. The Criminal Code establishes that the minimum age of responsibility thereunder is 18 years. Organic Act No. 5/2000 of 12 January on the criminal responsibility of minors is applied in cases involving minors under 18 years of age and over 14 years. The Act establishes 14 years as the minimum age of criminal responsibility for the commission of felonies and misdemeanours defined in the Criminal Code or special criminal laws. This age limit is in line with international standards and texts on juvenile justice and is consistent with the average age in other countries in the region (Germany and Austria also set the minimum age limit at 14 years). The Act, as a regulatory text, is fully integrated into the Spanish legal system. It remains fully valid almost 18 years after its entry into force and strikes a balance that is reasonably satisfactory and useful for the purposes and spirit pursued in its articles.

199. According to the 2017 Report of the Office of the Prosecutor for Minors, in 2016, there were 9,496 proceedings in which the accused was below the age of 14 years. This figure is a significant increase over the figures for 2015 (8,048) and 2014 (7,734).

200. The criminal sanctions set out in Organic Act No. 5/2000 of 12 January 2000 are not penalties; they are "measures" that are much less burdensome than penalties and are aimed at the recovery and re-education of the minor. Detention in a closed facility (not a prison) is reserved for more dangerous cases involving particularly serious offences, mostly notably those cases characterized by violence, intimidation or danger to others. Placements in such facilities must always occur in a climate of personal safety for all staff and the juvenile offenders themselves. This makes it essential that the conditions of detention are suitable for the normal psychological development of the minors.

201. Organic Act No. 5/2000 of 12 January 2000 guarantees the application of such measures in accordance with the Act and attributes to a specialized judicial body, namely the Juvenile Court, the competence to hear cases and adopt the measures provided for by the Act that they deem to be the most appropriate in each case. Act No. 50/1981 of 30 December 1981, which regulates the Organic Statute of the Public Prosecution Service, also provides for the participation of the Public Prosecution Service. As stipulated in article 13 of the Organic Statute and article 6 of Organic Act No. 5/2000 of 12 January 2000, the Public Prosecution Service must ensure that it acts in the best interests of the minor, observes all procedural guarantees and upholds the rights recognized in law. The purpose of the legislation is not simply to punish, but rather to re-educate juvenile offenders, encourage good development and prevent them committing further offences in the future.

202. Article 7 of Organic Act No. 5/2000 of 12 January 2000 specifically defines the measures that may be imposed on minors and establishes the general rules for determining which measures should be used. The enforcement of the measures must comply with the principles set forth in article 6 of the Organic Act:

(a) The best interest of the minor over and above any other competing interest;

(b) Respect for the unhindered development of the minor's character;

(c) Information on the rights to which they are entitled at every stage and the support necessary to exercise those rights;

(d) The implementation of primarily educational programmes that foster a sense of responsibility and respect for the rights and freedoms of others;

(e) All actions should be appropriate to the age, character and personal and social circumstances of the minors;

(f) Prioritization of actions within the child's own family and social environment, provided that it is not detrimental to his or her best interests. In enforcing the measures, the standard community resources will be prioritized;

(g) Parents, guardians or legal representatives are encouraged to be involved in the enforcement of the measures;

(h) Decisions affecting the minor should be made using an interdisciplinary approach;

(i) When taking action, the principles of confidentiality and suitable discretion must be applied, and there should be no unnecessary interference in the private lives of minors or their families.

(j) Actions should be coordinated and there should be collaboration with other agencies working with minors and young people, whether in the same or different administrative regions, especially with agencies specializing in education and health:

(k) The Public Prosecution Service is involved throughout the proceedings, from the taking of the statement to the imposition of the sentence, and follows the development of cases;

(l) The level of criminal responsibility varies according to age, with different sanctions applied to those aged 14 or 15 years and those aged 16 or 17 years. In other words, the sentence for the same offence is not the same at the age of 14 years as at the age of 17 years because a minor's degree of maturity and understanding changes with age;

(m) Enforcement of such measures is the responsibility of the Autonomous Communities, ensuring that minors will always serve their sentence in their place of residence to avoid uprooting families;

(n) Judges can demonstrate flexibility in sentencing since there is a wide margin of discretion in choosing which measures to impose and for how long. In addition, depending on the minor's development, the judge may suspend the measure imposed or replace it with a less burdensome one as a reward for making positive changes;

(o) Special emphasis is placed on repairing harm and reconciling with the victims of criminal offences.

203. Minors are entitled to the same rights and freedoms recognized for everyone in the Constitution, international treaties ratified by Spain and the legal system as a whole, with the exception of any rights expressly limited by law, the sentence or the measures imposed. The authorities therefore consider that the legislation in place is in line with the international standards on juvenile justice.

W. Reply to the recommendation contained in paragraph 104 of the report of the Subcommittee

204. The disciplinary regime in juvenile detention centres, which is applied while maintaining respect for the dignity of minors at all times, is intended to contribute to a sense of security and orderly coexistence in the centres and to foster responsibility and the capacity for self-control in the juvenile detainees, pursuant to article 59 (1) of the regulations partially implementing Organic Act No. 5/2000.

205. Article 60 (1) of Organic Act No. 5/2000 establishes that the principles of the Act also apply. With the principle of the best interest of the minor in mind, the main purpose of administrative sanctions is to achieve an educational outcome, in addition to restoring coexistence or security.

206. The principles of subsidiarity and opportunity of juvenile criminal law must be applied, especially in instances of more serious sanctions such as separation from the group. Sanctions must therefore be applied only when they are essential for maintaining orderly coexistence. In each specific case, the need for the imposition of the sanction must be assessed, and alternative methods must be sought that avoid punishment; equally, in each case the appropriateness of the sanction must be weighed, and alternative methods should be prioritized, such as, inter alia, tailored educational interventions, mediation of a conflict between two minors or the repair of any damage caused.

207. The sanction of separation from the group is only imposed in specific cases when a minor repeatedly disturbs the everyday life of the centre in a serious manner or when he or she displays overt aggression or violence.

208. When that disciplinary sanction has to be instituted, it is customary to apply article 82, on the reduction, suspension and removal of sanctions, once the minor ceases to engage in the behaviours described above.

209. With regard to successive applications of the sanction of separation, it should be recalled that, pursuant to Royal Decree No. 1774/2004, separation from the group must not last beyond seven days or for more than five weekends.

210. With regard to the suggestion that the name of the official who reported the offending act should be recorded, we disagree on this point. Personal data protection safeguards apply, and the juvenile courts have oversight of the detailed and meticulous configuration of the disciplinary regime, with all accompanying guarantees, at all times. It is true that in the Autonomous Communities and Cities there are different practices regarding this issue: in some places, pursuant to the provisions of Royal Decree No. 1774/2004, the names of the requesting official and the director of the centre are communicated to the minor at the outset of proceedings, while in other places such information is provided regarding the various officials involved throughout the disciplinary proceedings.

X. Reply to the recommendation contained in paragraph 106 of the report of the Subcommittee

211. Spain has at all times supported the work of the European Union to adapt the common European asylum system to the new reality of asylum in Europe. These regulatory changes at the European level have given rise to deep reflection regarding national regulations and, in particular, regarding the asylum system itself. The Government therefore plans to make efforts to introduce the necessary changes to the national asylum regulations to bring them into line with the new European framework.