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

REVISED DRAFT

**GENERAL OVERVIEW QUESTIONNAIRE
on the Implementation of the Lanzarote Convention**

Children's Rights Division
Justice and Human Dignity Directorate
www.coe.int/children; www.coe.int/lanzarote

Introduction

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

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

“1. Following ratification, every Party to the Convention shall be required to reply to a questionnaire aimed at providing the Lanzarote Committee with a general overview of the legislation, institutional framework and policies for the implementation of the Convention at the national, regional and local levels.

2. States having signed the Convention shall be invited to reply to the questionnaire referred to in paragraph 1 of this Rule”. (Rule 23 of the Lanzarote Committee’s Rules of Procedure)

3. In accordance with Rule 26 of the Committee’s Rules of Procedure:

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

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

4. The Secretariat also addresses the same questionnaire to representatives of civil society, NGOs and any other bodies involved in preventing and combating sexual exploitation and sexual abuse of children. The latter shall be invited to reply to the questionnaire in one of the official languages of the Council of Europe within-in the same deadline as the Parties. The replies shall be made public if the NGO or other body submitting them so requests.

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

4. The purpose of this general questionnaire is thus to collect information to provide the Lanzarote Committee with an overview of the situation, which will constitute the general framework within which it will assess replies by Parties to the thematic questionnaire for the first monitoring round (see *Rule 24 of the Lanzarote Committee’s Rules of Procedure*).

Preliminary remarks

5. The provisions of the Lanzarote Convention have been grouped under different sections in this questionnaire without automatically following the structure of the Convention. This methodological choice in no way intends to prioritise the various provisions of the Convention: equal importance is in fact attached to all rights and principles therein.

6. Parties will be requested to up-date their replies to this general questionnaire on the implementation of the Lanzarote Convention each time they receive a thematic questionnaire.

Responses to a thematic questionnaire should therefore be interrelated and combined with the responses provided in the context of this questionnaire.

7. Parties are kindly requested to:

- Specify which State body/agency was responsible for collecting the replies to this questionnaire and which State bodies/agencies and, where relevant, NGOs contributed to responding to this questionnaire;
- Answer the questions with regard to central, regional and local levels to the extent possible. Federal States may, in respect of their sovereign entities, answer the questions in a summarized way;
- Whenever questions/answers refer to the legislation or other regulations provide the relevant text (or a summary) in English or French;
- If some of the questions below correspond to questions put to Parties by other bodies of the Council of Europe or other organisations (be they governmental or not), Parties may refer to the answers provided at the time (by providing a link to the relevant replies or by copying the information already provided) and up-date the information where need be.

GENERAL PRINCIPLES AND DEFINITIONS

Questions in this section aim at assessing whether the children's rights approach of the Lanzarote Convention has been effectively implemented.

Question 1: Definition of child

- a. Does the definition of "child" in internal law/case-law correspond to the one in *Article 3, letter (a)* (i.e. "any person under the age of 18 years")? If not, in what way does it differ? Please specify whether there are any plans to modify the definition and, if not, why.
- b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with *Article 11, para. 1*?
- c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify what is the age for legal sexual activities in internal law.

Question 2: Non-discrimination

Do internal legislative or other measures, including policies or strategies, that deal with child sexual abuse or sexual exploitation, make a distinction based on grounds related to a child's sexual orientation or its status related to birth, family relations or other status and associations, including its parent's sexual orientation, state of health, disability or other status? (*Article 2*)

Question 3: Best interests of the child

Is consideration of the best interests of affected children required in legislation, administrative decision-making, and policy and practice concerning the implementation of the Lanzarote Convention? (*Preamble, Article 30 para. 1*) If so, please specify.

Question 4: Child participation

- a. Please indicate what steps have been taken to encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children (*Article 9, para. 1*).

- b. In particular, please indicate whether, and if so, how child victim's views, needs and concerns have been taken into account in determining the legislative or other measures to assist victims (*Article 14, para. 1*).

Question 5: Special protection measures

Please point out what special legal protection exists under your internal law (including case-law if any) in cases of violation of human rights, which would apply to sexual exploitation and sexual abuse of children (for example, constitutional protection, positive obligation of the state, priority examination, etc.) (*Preamble, Article 30 paras. 2 and 3*).

Question 6: Child friendly proceedings

- a. Please point out what legislative or other measures have been taken to ensure that investigations and proceedings concerning sexual abuse and sexual exploitation of children are carried out in the best interests and respecting the rights of the child.
- b. Please also highlight what measures have been taken to ensure that the investigations and proceedings of the offences established in accordance with the Lanzarote Convention are treated as priority and carried out without any unjustified delay. (*Article 30 and Explanatory Report, paras 213-216*).
- c. Please specify what role the Council of Europe Guidelines on Child-Friendly Justice play in this regard and indicate what effect is given to them in internal law.

SPECIALISED LEGISLATION AND COMPREHENSIVE POLICY

Questions in this section aim at providing the Lanzarote Committee with the legal and political framework within which replies to all other questions should be understood.

Question 7: Legal framework

- a. Please list the main legislation concerning prevention of all forms of sexual exploitation and sexual abuse of children and protection of children (*Article 4*). Please specify when it was enacted and last amended.
- b. Please also specify whether the substantive criminal law offences defined by the Lanzarote Convention (*Articles 18-24*) are included in a single Act. If not, please indicate in which Acts each offence is foreseen. If one or several offences are not foreseen, please explain why. Please specify when the Act(s) was/were enacted and last amended.

Question 8: Comprehensive policy

Does your country have a comprehensive national policy and/or a National Action Plan to combat sexual exploitation and sexual abuse of children? If so, please indicate its title, date of adoption and duration, main fields of action and the body/bodies responsible for its implementation.]

SPECIALISED STRUCTURES AND COOPERATION PROCEDURES AND PROGRAMMES

Questions in this section aim to obtain information on the progress achieved and difficulties encountered in establishing the structures and enforcing the procedures identified by the Convention to protect children against sexual exploitation and sexual abuse.

Question 9: Specialised bodies/mechanisms

- a. Please indicate the independent institution(s) (national or local) in charge of promoting and protecting the rights of the child. Please specify its/their responsibilities and indicate how resources are secured for it/them (*Article 10, para. 2, letter a*).
- b. Have legislative or other measures been taken to set up or designate mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection? (*Article 10, para. 2, letter b*).
- c. How has your country organized the collection and storage of data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention? What is the national authority in charge of the collection and storage of such data? (*Article 37, para. 1*)

Question 10: National or local coordination, cooperation and partnerships

- a. Please describe how coordination on a national or local level is ensured between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children. In particular, provide information on existing or planned coordination between the education sector, the health sector, the social services and the law enforcement and judicial authorities (*Article 10, para. 1*).
- b. Is cooperation with a view to better prevent and combat sexual exploitation and sexual abuse of children encouraged between the competent state authorities, civil societies and the private sector (*Article 10, para. 2, letter c*)? If so, please specify how.
- c. Are partnerships or other forms of cooperation between the competent authorities promoted with particular regard to the recipients of intervention programmes and measures of persons suspected or convicted for any of the offences covered by the Lanzarote Convention (*Article 15, para. 2 and Article 16*)

Q11: International cooperation

Has your country integrated prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states (*Article 38, para. 4*)? Please give examples.

PREVENTION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 12: Education, awareness raising and training

- a. Have legislative or other measures been taken to:
 - Ensure that children, during primary and secondary education, including at home or in non-formal educational contexts, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their age and maturity? (*Article 6*) Please also specify whether this information includes the risks of the use of new information and communication technologies.

- Encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities? (*Article 5, para. 1*)
 - Ensure that persons, referred to above, have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility of reporting suspicions of a child being the victim of such acts? (*Article 5, para. 2*)
- b. Have policies or strategies been implemented for the promotion or institution of awareness campaigns for the general public where the focus is directed especially towards the risks and realities of sexual exploitation and sexual abuse of children? Please describe the material used for the campaign/programme and its dissemination. If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details. (*Article 8, para. 1*)
- c. Have any measures been taken to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention? If so, please provide details. (*Article 8 para. 2, Explanatory Report para. 66*)

Question 13: Recruitment and screening

- a. Have legislative or other measures been taken to ensure that the conditions for the accession to those professions, whose exercise implies regular contacts with children, ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children? (*Article 5, para. 3*) If so, please specify to which professions such measures apply to. Please also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country.
- b. Does the screening of candidates apply to voluntary activities (*Explanatory Report, para 57*)?

Question 14: Preventive intervention programmes or measures

Please indicate whether persons who fear that they may commit offences of sexual abuse or sexual exploitation established in accordance with the Convention, have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed (*Article 7, Explanatory Report para.64*)

If so, please:

- Explain who has access to these programmes and measures (convicts, persons subject to criminal proceedings, recidivists, young offenders, persons who have not committed a crime yet?).
- Describe how the appropriate programme or measure is determined for each person.
- Specify whether there are specific programmes for young offenders.
- State whether persons have a right to refuse the proposed programme/measures?

Question 15: Participation of children, the private sector, the media and civil society

Have any steps been taken to encourage participation by children, the private sector, the media and/or civil society in the development and implementation of policies, programmes or other initiatives to prevent sexual exploitation and sexual abuse of children? If so, please specify which and explain how participation takes place. (*Article 9, Explanatory Report, paras. 67-75*)

Question 16: Effectiveness of preventive measures and programmes

- a. Please specify whether an assessment of the effectiveness and impact of the above-mentioned preventive measures and programmes is regularly carried out.
- b. Please provide examples of the good practices in preventing sexual exploitation and sexual abuse of children resulting from the above mentioned assessments.

PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN VICTIMS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 17: Reporting suspicion of sexual exploitation or sexual abuse

- a. Are professionals working in contact with children obliged by confidentiality rules? Do these rules constitute an obstacle for reporting to the services responsible for child protection, or police, or prosecutor any situation where they have reasonable ground for believing that a child is a victim of sexual exploitation or sexual abuse?
- b. Is reporting of sexual exploitation and sexual abuse of children mandatory for professionals in your country or is it left to their discretion? Please provide examples of good practice to encourage persons who know about or suspect, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services.

Question 18: Helplines

Have legislative or other measures been taken to encourage and support the setting up of information services, such as telephone or internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity? (*Article 13, Explanatory Report, para. 92*)

Question 19: Assistance to victims

- a. Please indicate which types of assistance described in Article 14 of the Convention are provided to victims of sexual exploitation and sexual abuse of children. (*Article 14, Explanatory Report paras. 93-100*) Please specify:
 - How the assistance is adapted to the victims' age and maturity;
 - How due account is taken of the child's views, needs and concerns;
 - If the assistance (in particular emergency psychological care) is also provided to the victims' close relatives and persons responsible for their care.
- b. Please specify if and to what extent internal law provides for the possibility of removing (*Article 14, para. 3, Explanatory Report para. 99*):
 - The alleged perpetrator when parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse;
 - The victim from his or her family environment when parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse? If internal law does so provide, are the conditions and duration of such removal to be determined in accordance with the best interests of the child.
- c. If internal law does provide for removal referred to above, are social programmes and multidisciplinary structures in place to provide the necessary support for victims, their close relatives and for any person responsible for their care? (*Article 11, Explanatory Report para. 87-88*)
- d. Have the proceeds of crime been used to create a special fund to finance prevention and assistance programmes for victims of any of the offences established in accordance with the Convention? Please provide details. (*Article 27, para. 5, Explanatory Report para 193*).
- e. Have any legislative or other measures been taken to ensure that victims of an offence established in accordance with the Lanzarote Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence? (*Article 38, para. 2, Explanatory Report, paras 258-259*)

**PROSECUTION OF PERPETRATORS
OF SEXUAL EXPLOITATION AND SEXUAL ABUSE OF CHILDREN**

Question 20: Criminal law offences

- a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law.
- b. Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify.
- c. Please highlight whether there are any other offences not included in the box below incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included.
- d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

Sexual Abuse (Article 18)

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where
 - use is made of coercion, force or threats;
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

Child Prostitution (Article 19)

1. Recruiting a child into prostitution or causing a child to participate in prostitution;
2. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
3. Having recourse to child prostitution.

Child Pornography (Article 20)

1. Producing child pornography;
2. Offering or making available child pornography;
3. Distributing or transmitting child pornography;
4. Procuring child pornography for oneself or for another person;
5. Possessing child pornography;
6. Knowingly obtaining access, through information and communication technologies, to child pornography.

Participation of a Child in Pornographic Performances (Article 21)

1. Recruiting a child into participating in pornographic performances or causing a child to participate in such performances
2. Coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes
3. Knowingly attending pornographic performances involving the participation of children.

Corruption of Children (Article 22)

The intentional causing, for sexual purposes, of a child who has not reached the internal legal age for sexual activities, to witness sexual abuse or sexual activities, even without having to participate.

Solicitation of Children for Sexual Purposes ("grooming") (Article 23)

The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the internal legal age for sexual activities, for the purpose of committing

sexual abuse or producing child pornography, where this proposal has been followed by material acts leading to such a meeting

Aiding or abetting and attempt (Article 24)

1. Intentionally aiding or abetting the commission of any of the above offences.
2. The attempt to commit any of the above offences.

Question 21: Sanctions

- a. Please indicate which sanctions your internal law provides for the criminal offences established in accordance with the Convention? Please specify whether the sanctions are criminal, civil and/or administrative sanctions. (*Article 27, Explanatory Report, paras. 182-193*)
- b. Have legislative or other measures been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures. (*Article 29, Explanatory Report paras. 203-208*)

Question 22: Jurisdiction

Are there any specific rules in your legal system related to jurisdiction over the offences established in accordance with the Convention. (*Article 25, Explanatory Report, paras. 165-176*). If so, please provide details and any example of good practice.

Question 23: Aggravating Circumstances

Please indicate which of the circumstances below, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (*Article 28; Explanatory Report, paras. 194-202*):

- the offence seriously damaged the physical or mental health of the victim;
- the offence was preceded or accompanied by acts of torture or serious violence;
- the offence was committed against a particularly vulnerable victim;
- the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;
- the offence was committed by several people acting together;
- the perpetrator has previously been convicted of offences of the same nature;
- the offence was committed within the framework of a criminal organisation;
- Other (please describe).

Question 24: Measures to empower the child victim

- a. Please describe the measures taken to inform child victims of their rights, the services at their disposal, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role as well as the outcome of their cases. (*Article 31, para 1, letter a and Article 31, para. 2*) Please also indicate what is done to provide all such relevant information in a manner adapted to the child's age and maturity and in a language that he/she may understand.
- c. Please also indicate whether measures have been taken to enable the child victim to be heard, to supply evidence and to choose the means of having his/her views, needs and concerns presented, directly or through an intermediary, and to be considered (*Article 31, para. 1, letter c*).
- d. What kind of support services are provided to child victims and their families so that their rights and interests are duly presented and taken into account? (*Article 31, para. 1, letter d*).
- e. Please describe the measures taken to protect the identity and safety of child victims before, during and after investigations and legal proceedings. (*Article 31, para. 1, letter e*).

- f. Please specify whether the victim and his/her family are informed when the person prosecuted or convicted is released temporarily or definitely from detention or custody. Please indicate who delivers this information and how. (*Article 31, para. 1, letter b*).
- g. Please also indicate what measures have been taken to ensure that contact between victims and perpetrators within court and law enforcement agency premises is avoided *Article 31, para. 1, letter g*).
- h. Please specify under which conditions child victims of the offences established according to the Convention have access to legal aid provided free of charge. (*Article 31, para. 3*)

Question 25: Investigation and criminal measures to protect the child victim

- a. Has a protective approach been adopted that ensures that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate? (*Article 30, para. 2, Explanatory Report, paras. 211-215*)
- b. Have legislative or other measures been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement? (*Article 32, Explanatory Report, para. 230*);
- c. Have measures been taken to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question? (*Article 33, Explanatory Report, paras. 231-232*)
- d. Please clarify whether your judicial authorities may appoint a special representative for the victim where the holders of parental responsibility are precluded from representing the child in proceedings related to sexual exploitation or sexual abuse of children as a result of a conflict of interest between them and the victim. Please specify who may be appointed as a representative and what are his/her tasks? Please also indicate when, the representative may, according to internal law, have the status of a party to the criminal proceedings.
- e. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting or supporting victims to participate in legal proceedings (for example, as third parties)? Please specify the conditions for this participation as well as their legal status during these proceedings.
- f. Please describe under which circumstances the use of covert operations is allowed in relation to the investigation of the offences established in accordance with this Convention.
- g. Please also describe what techniques have been developed for examining material containing pornographic images of children

Question 26: Child friendly interviewing and proceedings (*Articles 35 and 36*)

- a. Please describe how interviews with child victims are carried out, indicating in particular whether:
 - they take place without unjustified delay;
 - they take place, where necessary, in premises designed or adapted for this purpose;
 - they are carried out by professionals trained for this purpose;
 - the same person is, if possible and where appropriate, conducting all interviews with the child;
 - the number of interviews is limited as much as possible and in so far as necessary for the purpose of criminal proceedings;

- the child may be accompanied during the interview by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.
- b. Please also specify whether all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and whether these videotaped interviews may be accepted as evidence during the court proceedings.
- c. Please describe under which conditions the judge may order the hearing to take place without the presence of the public and the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies?