



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

T-ES(2014)GEN-MT

## **LANZAROTE CONVENTION**

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

**Replies to the general overview questionnaire**

**MALTA**

Replies registered by the Secretariat on 10 February 2014

Updated information registered by the Secretariat on 14 January 2016



## GENERAL FRAMEWORK

### Question 1: Definition of “child”

a. Does the notion of “child” under your internal law correspond to that set out in **Article 3, letter (a)**, i.e. “any person under the age of 18 years”?

Under internal law, reference is made to the notion of a ‘minor’ or a ‘person under age’ which refers to a child under the age of 18 years.

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. 2**?

According to Article 14(3) of the Victims of Crime Act, Chapter 539 of the Laws of Malta, *where the age of the victim is uncertain and there are reasons to believe that the victim is a minor, the victim shall for purposes of this Act be presumed, saving proof to the contrary, to be a minor.*

c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

The age for legal sexual activities in Malta is 18 years of age.

### Question 2: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in **Article 2**, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify. If not, please justify.

Discrimination is prohibited by means of Article 45 of the Constitution of Malta, and Article 14 of the European Convention on Human Rights to which Malta is a Party.

Incitement to racial hatred is specifically prohibited in the Criminal Code in Article 82A:

*(1) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or **racial hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion** or whereby such violence or racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.*

*(2) For the purposes of the foregoing subarticle "violence or racial hatred" means violence or racial hatred against a person or against a group of persons in Malta defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.*

According to Article 83B, the punishment established for any offence shall be increased when such offence was motivated by racial hatred:

*The punishment established for any offence shall be increased by one to two degrees when the offence is aggravated or motivated, wholly or in part by hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A: Provided that the provisions of this article shall not apply where an aggravation of punishment in respect of the motives mentioned in this article is already provided for under this Code or any other law.*

Article 83B is the **general** provision. There are specific articles in the Criminal Code regarding specific offences which increase the punishment for such offences if motivated by racial hatred. A **specific** example is the case of bodily harm.

**Criminal Code, Article 222A (2) – Increase of punishment:**

*The punishments established in the foregoing provisions of this sub-title shall also be increased by one to two degrees when the offence is aggravated or motivated on the grounds of **gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.***

**Question 3: Overview of the implementation**

Please indicate (without entering into details):

a. the main legislative or other measures to ensure that children are protected against sexual exploitation and sexual abuse in accordance with the Convention;

- Criminal Code, Chapter 9 of the Laws of Malta;
- Victims of Crime Act, Chapter 539 of the Laws of Malta.

b. whether your country has adopted a national strategy and/or Action Plan to combat sexual exploitation and sexual abuse of children. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

c. whether your country has any guidelines to ensure a child-friendly implementation of the laws, measures and strategies referred to in letters (a) and (b) above. If so, please specify. With regard to judicial proceedings, please specify whether the Council of Europe Guidelines on Child-friendly Justice were taken as inspiration for your guidelines.

#### **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**);

The Office of the Commissioner for Children coordinated an exercise of consultation with children on the Draft National Children's Policy. This policy is the first of its kind in terms of the integrated and holistic approach to policy making that cuts across the various sectors that have a bearing on the rights and well-being of children. Sexual exploitation and abuse and how these can be fought and prevented were key themes of the policy. The said consultation was conducted in 2010 as part of the Office's celebration of World Children's Day. In the same year, other consultations with children on the draft policy were conducted by the Ministry for Social Policy of the day.

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: 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)**);

The Commissioner for Children acts as an advocate or guarantor for the rights of all children in Malta, meaning that s/he has the legal autonomy and powers, which are conferred on her by the Commissioner for Children Act of 2003, to influence all entities to respect the rights of children fully and unconditionally.

The Commissioner can act to protect and promote the rights of children in a number of ways, namely by:

- Advocating publicly for the rights of children;
- Consulting with children about their rights;
- Educating children and the public at large about the rights of children;
- Investigating cases and issues that impinge on the rights of children;
- Recommending to the powers that be how to act in a way that is more respectful of the rights of children;
- Researching in a scientific way how far children are enjoying their rights.

The Office of the Commissioner for Children has a staff complement of 9 full-time workers (see diagram 1) and a part-time worker who does administrative work for the Office under the Me2 Coop scheme.

The Commissioner for Children works on an annual budget of €180,000 that is supplied by the central Government, to cover some of the wages and to finance activities and initiatives that benefit children. The Ministry for Health, the Ministry for Education and the Ministry for the Family and Social Solidarity also finance part of the wages for employees at this Office.

b. Which legislative or other measures have 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)**);

The Foundation for Social Welfare Services, the body that coordinates Malta's three state social welfare agencies, has a research unit within its organisational structures that consolidates data on cases of sexual abuse that are dealt with by the relevant agency at a national level. Such data is updated and published in the foundation's annual report on a yearly basis.

c. Which legislative or other measures have been taken to organise 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 6: 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, please 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**);

In 1999 the Child Protection Policy - Procedures for schools were issued by the then Education Department together with Agenzija Appogg. This national level policy bound all educational establishments in Malta to follow the said procedures. This policy aims at protecting children and young people from negligence, violence or exploitation. This policy and is currently being reviewed by the parties involved. This policy also brought about the setting up of the Child Safety Services (CSS) which falls under the Safe Schools Programme, Education Psycho-Social Service within the Student Services Department of the Directorate for Educational Services (DES).

The Child Safety Services is a specialized service working in the area of child abuse. It is an educational, coordinating and therapeutic service, offering intervention and prevention services to students, parents and school staff. The Child Safety Services strives to offer effective and professional services catering for the needs of children who have experienced or are still experiencing abuse.

Child Safety Services follow the following procedures as indicated in the policy:

### **Referring a case**

When the school suspect that a student is being abused they consult the Child Safety Services and when applicable a referral is made to the Child Protection Services (CPS) within Agenzija Appogg. The school sends out two copies of the referral– one to CPS who will be working on the case and another one to CSS.

### **Monitoring of Cases and Co-ordination of Services**

Once a referral is received, CSS monitors the case and co-ordinates any work that needs to be done by other student services and/or other agencies. In most cases a team of professionals from different agencies are involved with the case. CSS acts as a link between schools and the service delivery units of the Education Psycho-Social Services Department and /or other agencies/ professionals outside DES. Very often, before starting to investigate cases, a school meeting is called. CSS organises such a meeting with all the professionals involved. During these school meetings a way forward is usually planned after collecting more information from those involved.

### **Attending case conferences**

In severe cases of abuse Appogg calls a case conference. CSS and other professionals involved including school staff when relevant attend to give their feedback so that a well informed decision can be taken in best interest of the children.

### **Support given to students**

All CSS members are followed and support students who disclose abuse. CSS also offers counselling to students who have suffered abuse and whose case has been already investigated, when requested by Appogg.

### **Tracing**

CSS is often asked by Appogg to trace students in schools so that they can investigate or follow up cases of child abuse. Tracing involves gathering information from schools about the students especially if there are any concerns present on the wellbeing of the child. In May 2013, CSS members underwent training in E1. This training gave CSS members access to the student name lists in all state schools. When students are not found in state schools CSS members have to contact Church and Independent schools to confirm if the student is listed in one of their schools and gather the relevant information.

The information is then relayed to Appogg social workers who will use it to start work on the referred case.

### **Meetings with Appogg**

CSS also holds meetings with Appogg twice yearly. Such meetings help to acknowledge and improve the working relationship between the two entities.

### **The Personal and Social Development Department (PSD)**

PSD teachers are obliged to follow official education policies when they have suspicion of child exploitation or abuse. Services are then coordinated by the school counsellor or guidance teacher of the school (which fall under the remit of directorate for student services).

b. Is cooperation with a view to better preventing and combating sexual exploitation and sexual abuse of children encouraged between the competent state authorities, civil societies and the private sector (**Article 10, para. 3**)? If so, please specify how;

### **The Personal and Social Development Department (PSD)**

There is constant cooperation between the PSD department, the commissioner of children, The Health Promotion Unit and Malta Communication Authority to develop adequate and age appropriate prevention programmes in schools.

Currently the PSD department within the curriculum department is collaborating with MCA on a project entitled Smartonline with year 6 pupils. The aim of the project is that of making pupils aware of their rights and responsibilities when using the internet and social networking sites.

### **Question 7: 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.

<b>PREVENTION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE</b>
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### **Question 8: Education, awareness raising and training**

a. Which legislative or other measures have been taken to:  
- ensure that children, during primary and secondary education receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacities? (**Article 6, Explanatory Report, paras. 59-62**). Please also specify whether this information includes the risks of the use of new information and communication technologies (**Article 6, Explanatory Report, para. 63**);

### **Prevention Programmes in Schools**

#### **Prevention work with all Year 3 students organised by SEDQA**

The B.A.B.E.S programme is offered to children in Year 3 (7 to 8 years old), and is aimed to help them develop positive life skills. This six-lesson programme is delivered by trained SEDQA facilitators during which children learn about their self-image and feelings, decision making, peer pressure, coping skills, alcohol, tobacco, wise use of medicinals and getting help. Puppets and storytelling are used as the main media by facilitators to teach children about these important themes. A meeting is also held with parents to introduce them to the



B.A.B.E.S programme and its contents, with the aim that they reinforce the same concepts at home. All students will be given a bilingual work-book.

### **Prevention work held with other students organised by CSS**

Prevention work is a continuous process in schools. This includes awareness raising sessions with parents and prevention sessions with students.

CSS prevention programmes are offered primarily to Year 4 students in both Malta and Gozo state schools. The Year 4 programme includes an interactive story focusing mainly on child safety from abusive situations. CSS guidance teachers then follow those students who show any concern either to the SMT or the class teacher. CSS guidance teachers are also available to those students who wish to self-refer something related to the lesson.

As from last scholastic year (2012-2013), a Year 6 and Form 2 prevention programme has been initiated at the Gozo College. The Year 6 programme includes a class based power point presentation on “Dangers on Internet” whilst the Form 2 programme addresses child abuse. All Year 6 and Form 2 sessions include an activity sheet.

As from October 2013, a prevention programme was also initiated with Form 1 classes at St. Clare’s College Coeducational School. This programme addresses the issue of child abuse in a coeducational setting.

Prevention talks for primary and secondary students are also delivered to church and independent schools upon request.

All the above mentioned programmes aim at equipping students with the necessary knowledge about child abuse and vital skills necessary to protect oneself.

- 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**);

### **Professional Development Sessions to School Staff by CSS**

CSS facilitate a course which provides a clear definition of Child Abuse, its prevalence and other relevant information regarding the issue. The course will cover prevention, identification and response techniques, which can be adopted in the school. It will also give a clear explanation of the Child Protection Procedure and the role of the school staff, in cases where referral is necessary. It will also empower school staff with good practice guidelines of how to protect oneself from false allegations of abuse.

### **Other initiatives in schools**

Servizz GHOŻŻA also forms part of the Education Psycho-Social Services, within the Student Services Department. The aim of the service is to provide a support service and an educational programme to unmarried pregnant minors. The programme seeks to achieve its objectives by promoting the psycho-social and emotional well-being of unmarried teenage mothers encouraging them to adopt a positive attitude towards motherhood, as well as emphasising the importance of education and employment by empowering the girls to pursue their career paths.

As from this year Servizz GHOŻŻA also focused on making the girls aware of the consequences of abusive relationships and with this purpose in mind, the team liaised with

Child Safety Services. The girls were exposed to the term 'abuse' which then led to more specific abuse which our girls might experience in their relationships with their partners and boyfriends. Child abuse also featured in the second part of the seminar.

In April 2013 they also launched 'Bandiera Bajda' a prevention pilot project aimed for teenage boys. Servizz GHOZZA collaborated with a number of colleges where a selected group of boys from different Secondary schools, (selection took place at the discretion of the respective guidance and counselling team of each school) came over to the premises on a Wednesday and they were exposed to a three hour seminar which focused on sexual education as well as teenage pregnancy with specific attention to the role and the responsibilities of a teenage father. The aim of Servizz GHOZZA is to launch the programme in all Boys' Secondary Schools as from February/March 2014.

Throughout 2013 they also started working on a very similar project as the one mentioned above, aimed at teenage girls. Servizz GHOZZA guidance and counselling team have researched and formulated the material to be used throughout the project and the idea is to embark on a pilot project very similar to the one which took place with a number of Boys' Secondary Schools, this time with a number of Girls' Secondary Schools, with the intention of launching it in all Girls' Secondary Schools in the next academic year. The drafted title for this programme is 'Jien ser Inbennen?!'

- ensure that persons, referred to while replying to the bullet point 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).**

### **Expected Benefits / Outcomes for the School Community**

Members of staff will:

- Be helped to become more equipped with appropriate and effective skills
- Be made aware of the Child Protection Procedures
- Be given information to help them refer better
- Be able to impart to children skills that promote security

In addition to the professional development session, all school personnel are offered consultation with CSS.

Normally, school staff or other professionals within the Directorate for Educational Services call CSS for consultation. Consultations are being made mainly over the phone. However, in certain complicated cases, consultation meetings are held within the school and with the members of staff concerned. The aim of these consultations is to decide whether the school needs to refer the case for investigation or if the case needs to be observed further by the school before being referred. In the case of the latter, CSS together with the school, design an observation programme and time frame. Consultations have also been requested by parents, other professionals working within the Student Services Department and other outside agencies. In most cases, following the consultation, the school makes a referral.

In other circumstances, CSS staff consult with Appogg for more professional guidance before a referral is made.

### **The Personal and Social Development Department (PSD)**

The Personal and Social Development Department (PSD) endeavours to provide a wide spectrum of prevention programmes for learners ranging from Primary (Year 3, aged 7 years) up to Secondary (Form 5, aged 16). It deals with various topics: Sexuality and Relationships, Education, Sexual Abuse, Cyber bullying, Safe Places Safe People, Identifying what is a caring and non-caring relationship, reflecting on what is acceptable on social networking sites and the risks associated with the internet.

Regular in-set courses and seminars are organized for PSD teachers to acquaint themselves with developments in the field and develop the necessary skills to tackle such topics.

b. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at 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)**;

Before starting prevention programmes in schools for students, CSS offers to deliver an awareness talk targeted to students' guardians and other relatives who are in direct contact with children. The parental session is an informative talk through a power point presentation on the different types of abuse, positive discipline and parents' attitude when a disclosure about abusive situations takes place. A flyer in relation to the topic is also distributed to the audience.

At times, a CSS representative is also invited to give his input in relation to child abuse on the local media.

In 2012, the Office of the Commissioner for Children commissioned a Maltese translation of [Kiko and the Hand](#), which is a learning tool developed by the Council of Europe for young children that describes and illustrates the changing reactions of consent and refusal by a little boy called Kiko to the propositions of a personified hand to touch him on various parts of his body. The publication also contains a guide to help parents discuss the most important issues regarding appropriate and inappropriate physical contact with children. The resulting publication, Kiko u l-Id, was distributed amongst all children in year 1 in all primary schools. It has thus become a valid tool with which the Office can help fight child sexual abuse in Malta. (This publication does not include the risks of the use of new information and communication technologies).

c. Which legislative or other measures have 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**).

Advertisement of sexual tourism is specifically prohibited in Article 208AB of the Criminal Code.

#### **Criminal Code, Article 208AB – Advertisement of sexual tourism**

*(1) Whosoever disseminates any materials advertising the opportunity to commit any of the offences under articles 204, 204A to 204C, both inclusive, 208A(1) and 208A(1A), or is involved in the organization of travel arrangements with the purpose of committing any of the said offences, shall, on conviction, be liable to imprisonment for a term from two to five years.*

*(2) The punishment for the offence in sub-article (1) shall be increased by one degree, with or without solitary confinement, in each of the following cases:*

*(a) when the offender wilfully or recklessly endangered the life of the person under age;*

*(b) when the offence involves violence or grievous bodily harm on such person;*

*(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);*

*(d) when the offender abuses of a recognised position of trust, authority or influence over the person under age.*

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

a. Which legislative or other measures have been taken to ensure that the conditions for accessing those professions whose exercise implies regular contact 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**). Please specify to which professions such measures apply. Please also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country;

According to Chapter 518 of the Laws of Malta, any entity or organisation employing or otherwise engaging a person who shall be in contact with minors is required to file an application to the Court of Voluntary Jurisdiction inquiring whether such person's name is listed in the Register of Sexual Offenders. Furthermore, according to Chapter 77 'Conduct Certificates Ordinance' the Public Service Commission has the right to request a complete record of criminal convictions of persons it intends to employ or which it employs.

b. Does the screening of candidates apply to voluntary activities (**Explanatory Report, para. 57**)?

The provisions of Chapter 518 are applicable to any persons having contact with minors, irrespective of whether s/he is an employee or a volunteer.

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

a. Which legislative or other measures have been taken to ensure that persons who fear that they may commit any of the offences established in accordance with the Convention, have access to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? Please specify under which conditions, if required (**Article 7, Explanatory Report, para. 64**);

b. Which legislative or other measures have been taken to ensure that persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention, may have access to effective intervention programmes or measures? Please specify under which conditions, if required (**Articles 15 to 17**). Please indicate in particular:

- 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?);
- how the appropriate programme or measure is determined for each person;
- whether there are specific programmes for young offenders;
- whether persons have a right to refuse the proposed programme/measures?

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

What steps have been taken to encourage:

a. the private sector (in particular the information and communication technology sector, the tourism and travel industry, the banking and finance sectors) to participate in the elaboration and implementation of policies, programmes or other initiatives to prevent sexual exploitation and sexual abuse of children? Please indicate which private sectors are concerned and explain how participation takes place. Please also provide information concerning any relevant code of conduct or enterprise charter aimed at protecting children from sexual exploitation and sexual abuse (**Article 9, para. 2, Explanatory Report, paras. 68-73**);

b. the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children (**Article 9, para. 3, Explanatory Report, para. 74**);

c. the financing, including, where appropriate by the creation of funds, of the projects and programmes carried out by civil society aimed at preventing and protecting children from sexual exploitation and sexual abuse (**Article 9, para. 4, Explanatory Report, para. 75**). May the proceeds of crime be used to finance the above mentioned projects and programmes? Please provide details (**Article 27, para. 5, Explanatory Report, para. 193**).

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

a. Please specify whether an assessment of the effectiveness and impact of the preventive measures and programmes described in replies to questions 4, 10 and 11 is regularly carried out;

b. Please provide examples of the good practices in preventing sexual exploitation and sexual abuse of children.

<p style="text-align: center;"><b>PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN VICTIMS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE</b></p>
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**Question 13: Reporting suspicion of sexual exploitation or sexual abuse**

a. Are professionals working in contact with children bound by confidentiality rules? Do these rules constitute an obstacle for reporting to the services responsible for child protection any situation where they have reasonable ground for believing that a child is a victim of sexual exploitation or sexual abuse? Please indicate the criteria or guidelines which allow for the waiving of confidentiality rules (**Article 12, para. 1, Explanatory report, para. 89**);

b. Are there any rules encouraging any person who knows about or suspects, in good faith, sexual exploitation and sexual abuse of children to report the facts to the competent authorities? If so, please specify under which conditions and to which authorities (**Article 12, para. 2, Explanatory Report, para. 91**). Please provide examples of good practice.

**Question 14: Helplines**

Which legislative or other measures have 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 15: Assistance to victims**

a. Please indicate which types of assistance described in **Article 14** are provided to victims of sexual exploitation and sexual abuse of children. (**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 the parent or persons caring for 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 caring for the child are involved in his or her sexual exploitation or sexual abuse.

c. If internal law does provide for this:

- are the conditions and duration of such removal to be determined in accordance with the best interests of the child?

- 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, paras. 87-88**).

d. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the 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 16: Criminal law offences**

a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law;

Please see corresponding provisions in the Criminal Code in the box below.

**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.

**Criminal Code, Article 204C - Participation in sexual activities with persons under age:**

*(1) Whosoever takes part in sexual activities with a person under age shall, on conviction, be liable to imprisonment for a term not exceeding five years, with or without solitary confinement.*

*Aggravating circumstances:*

*(2) The offence shall be punishable with imprisonment for a term from four to twelve years, with or without solitary confinement, in each of the following cases:*

*(a) if the offence is committed with violence, coercion, force or threats;*

*(b) where money or other forms of remuneration or consideration is given as payment in exchange for the child taking part in sexual activities and any of the circumstances mentioned in paragraph (d) occurs;*

*(c) where the offender abuses of a recognised position of trust, authority or influence over such person;*

*(d) the circumstances referred to in paragraph (b) are the following:*

- (i) the offender wilfully or recklessly endangered the life of the person under age;*
- (ii) the offence involves violence or grievous bodily harm to such person;*
- (iii) the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).*

**Criminal Code, Article 204D - Unlawful sexual activities:**

*(1) Whosoever:*

- (a) compels, coerces, forces or threatens a person under age to perform sexual activities with another person, or*
- (b) knowingly causes, for sexual purposes, a person under age to witness sexual abuse or sexual activities, even without causing the said person to participate in the activities, or*
- (c) knowingly causes, for sexual purposes, a person under age to participate in real or simulated sexually explicit conduct or exhibition of sexual organs, including through information and communication technologies, or*
- (d) participates in sexual activities with a person under age, where **recourse is made to child prostitution**, or (e) knowingly attends a pornographic performance involving the participation of a person under age, shall, on conviction, be liable to imprisonment for a term from three to ten years, with or without solitary confinement.*

Aggravating circumstances:

- (2) The punishment for the offence in sub-article (1) shall be increased by one degree, with or without solitary confinement, in each of the following cases:*
- (a) when the offender wilfully or recklessly endangered the life of the person under age;*
- (b) when the offence involves violence or grievous bodily harm on such person;*
- (c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);*
- (d) when the offender abuses of a recognised position of trust, authority or influence over the person under age.*

**Child Prostitution (Article 19)**

1. Recruiting a child into prostitution or causing a child to participate in prostitution: **Criminal Code, Article 204B (below)**
2. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes: **Criminal Code, Article 204A (below)**
3. Having recourse to child prostitution: **Criminal Code, Article 204D (d) (above).**

**Criminal Code, Article 204 - Inducing, etc., persons under age to prostitution:**

*(1) Whosoever in order to gratify the lust of any other person induces a person under age to practise prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person, shall, on conviction, be liable to imprisonment for a term from two to five years, with or without solitary confinement:*

Aggravating circumstances:

- Provided that the offence shall be punishable with imprisonment for a term from three to nine years, with or without solitary confinement, in each of the following cases:*
- (a) if the offence is committed to the prejudice of a person who has not completed the age of twelve years;*
  - (b) if the offence is committed by deceit;*
  - (c) if the offence is committed by any ascendant by consanguinity or affinity, by the adoptive father or mother, by the husband or wife or tutor of the minor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the minor;*



(d) if the offence is committed habitually or for gain.

(2) The provisions of article 197(4) shall also apply in the case of any offence under this article, when the offence is committed by the husband or the wife, by an ascendant or by the tutor.

**Criminal Code, Article 204A - Instigation with violence of persons under age to prostitution or to participation in a pornographic performance:**

(1) Whosoever –

(a) with violence, threats, **coercion** or force compels a person under age into prostitution or into participating in a pornographic performance, or

(b) knowingly makes any **gain** or derives any benefit from the conduct referred to in paragraph (a), shall, on conviction, be liable to imprisonment for a term from three to twelve years, with or without solitary confinement.

Aggravating circumstances:

(2) The punishment for the offence in subarticle (1)(b) shall be increased by one degree, with or without solitary confinement, in each of the following cases:

(a) when the offender wilfully or recklessly endangered the life of the person under age;

(b) when the offence involves violence or grievous bodily harm on such person;

(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);

(d) when the offender abuses of a recognised position of trust, authority or influence over the person under age.

**Criminal Code, Article 204B - Inducing persons under age to prostitution or to participation in a pornographic performance:**

(1) Whosoever in order to gratify the lust of any other person engages, **recruits or causes a person under age to practice prostitution, or to participate in pornographic performances**, or profits from or otherwise exploits a person under age for such purposes, shall, on conviction, be liable to imprisonment for a term from two to nine years, with or without solitary confinement.

Aggravating circumstances:

(2) The offence shall be punishable with imprisonment for a term from three to twelve years, with or without solitary confinement, in each of the following cases:

(a) when the offender wilfully or recklessly endangered the life of the person under age;

(b) when the offence involves violence or grievous bodily harm on such person;

(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);

(d) when the offender abuses of a recognised position of trust, authority or influence over the person under age.

**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.

**Criminal Code, Article 204A - Instigation with violence of persons under age to prostitution or to participation in a pornographic performance:**

*(1) Whosoever –*

*(a) with violence, threats, coercion or force compels a person under age into prostitution or into participating in a pornographic performance, or*

*(b) knowingly makes any gain or derives any benefit from the conduct referred to in paragraph (a), shall, on conviction, be liable to imprisonment for a term from three to twelve years, with or without solitary confinement.*

**Aggravating circumstances:**

*(2) The punishment for the offence in subarticle (1)(b) shall be increased by one degree, with or without solitary confinement, in each of the following cases:*

*(a) when the offender wilfully or recklessly endangered the life of the person under age;*

*(b) when the offence involves violence or grievous bodily harm on such person;*

*(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);*

*(d) when the offender abuses of a recognised position of trust, authority or influence over the person under age.*

**Criminal Code, Article 204B - Inducing persons under age to prostitution or to participation in a pornographic performance:**

*(1) Whosoever in order to gratify the lust of any other person engages, recruits or causes a person under age to practice prostitution, or to participate in pornographic performances, or profits from or otherwise exploits a person under age for such purposes, shall, on conviction, be liable to imprisonment for a term from two to nine years, with or without solitary confinement.*

**Aggravating circumstances:**

*(2) The offence shall be punishable with imprisonment for a term from three to twelve years, with or without solitary confinement, in each of the following cases:*

*(a) when the offender wilfully or recklessly endangered the life of the person under age;*

*(b) when the offence involves violence or grievous bodily harm on such person;*

*(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);*

*(d) when the offender abuses of a recognised position of trust, authority or influence over the person under age.*

**Criminal Code, Article 208 - Offences relating to pornographic or obscene articles:**

*(1) Whosoever, for gain, or for distribution, or for display in a public place or in a place accessible to the public, manufactures, prints or otherwise makes, or introduces into Malta, or acquires, keeps, puts in circulation or exports, any pornographic or obscene print, painting, photograph, film, book, card or writing, or any other pornographic or obscene article whatsoever, whether similar to the above or not, shall, on conviction, be liable to imprisonment for a term from six to twelve months or to a fine (multa) of not less than one thousand euro (1,000) and not more than three thousand euro (3,000), or to both such imprisonment and fine.*

*(2) Whosoever trades in any article mentioned in subarticle (1), even if such trade is clandestine, or distributes any such article or displays any such article in public or in a place accessible to the public, shall, on conviction, be liable to the punishment prescribed in subarticle (1).*

### **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: **Criminal Code, Article 204B (above)**
2. Coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes: **Criminal Code, Article 204A (above)**
3. Knowingly attending pornographic performances involving the participation of children: **Criminal Code, Article 204D (e) (above)**

### **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: **Criminal Code, Article 204D (b) (above)**

### **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 age for sexual activities as established by internal law, 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.

#### **Criminal Code, Article 208AA - Solicitation of person under age:**

*(1) Whosoever, by means of information and communication technologies, proposes to meet a person under age for the purpose of committing any of the offences in articles 204, 204A to 204D, both inclusive, and 208A, shall, where the proposal is followed by material acts leading to such a meeting, be liable on conviction to imprisonment for a term from two to five years.*

#### **Aggravating circumstances:**

*(2) The punishment for the offence in sub-article (1) shall be increased by one degree, with or without solitary confinement, in each of the following cases:*

- (a) when the offender wilfully or recklessly endangered the life of the person under age;*
- (b) when the offence involves violence or grievous bodily harm on such person;*
- (c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);*
- (d) when the offender abuses of a recognised position of trust, authority or influence over the person under age.*

### **Aiding or abetting and attempt (Article 24)**

1. Intentionally aiding or abetting the commission of any of the above offences:

#### **Criminal Code, Article 208C - Aiding and abetting:**

*Whosoever aids, abets or instigates any offence under articles 204, 204A to 204D, both inclusive, and articles 208A to 208AB, both inclusive, shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated.*

2. The attempt to commit any of the above offences:

The general rule in **Article 41 of the Criminal Code** applies:

*(1) Whosoever with intent to commit a crime shall have manifested such intent by overt acts which are followed by a commencement of the execution of the crime, shall, save as otherwise expressly provided, be liable on conviction –*

- (a) if the crime was not completed in consequence of some accidental cause independent of the will of the offender, to the punishment established for the completed crime with a decrease of one or two degrees;*

*(b) if the crime was not completed in consequence of the voluntary determination of the offender not to complete the crime, to the punishment established for the acts committed, if such acts constitute a crime according to 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 incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included.

Please refer to the box below:

**Criminal Code, Article 203 – Defilement of minors:**

*(1) Whosoever, by lewd acts, defiles a minor of either sex, shall, on conviction, be liable to imprisonment for a term not exceeding three years, with or without solitary confinement.*

**Aggravating circumstances:**

*Provided that the offence shall be punishable with imprisonment for a term from three to six years, with or without solitary confinement, in each of the following cases:*

*(a) if the offence is committed on a person who has not completed the age of twelve years, or with violence;*

*(b) if the offence is committed by means of threats or deceit;*

*(c) if the offence is committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor of the minor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the minor.*

**Criminal Code, Article 203A - Instigation, etc., of defilement of minors:**

*Whosoever, by any means other than those mentioned in article 203(1), instigates, encourages or facilitates the defilement of a minor of either sex, shall, on conviction be liable to imprisonment for a term not exceeding two years and the provisions of article 203(2) and (3) shall, mutatis mutandis, apply to an offence under this article.*

**Aggravating circumstances:**

*Provided that the offence shall be punishable with imprisonment for a term not exceeding four years in any of the cases referred to in the proviso to article 203(1).*

**Criminal Code, Article 208AB – Advertisement of sexual tourism:**

*(1) Whosoever disseminates any materials advertising the opportunity to commit any of the offences under articles 204, 204A to 204C, both inclusive, 208A(1) and 208A(1A), or is involved in the organization of travel arrangements with the purpose of committing any of the said offences, shall, on conviction, be liable to imprisonment for a term from two to five years.*

**Aggravating circumstances:**

*(2) The punishment for the offence in sub-article (1) shall be increased by one degree, with or without solitary confinement, in each of the following cases:*

*(a) when the offender wilfully or recklessly endangered the life of the person under age;*

*(b) when the offence involves violence or grievous bodily harm on such person;*

*(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);*

*(d) when the offender abuses of a recognised position of trust, authority or influence over the person under age.*

d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

The age of the child plays a role in determining the punishment for the offences stipulated in Articles 204, 204A to 204D, both inclusive, Article 208AA and 208AB mentioned above. According to Article 208AC, the punishment for these offences shall be increased by one to two degrees where the person against whom the unlawful act was committed is a person **under the age of fifteen years.**

In the case of defilement of minors, the offence is aggravated if it is committed on a person **under the age of twelve years.**

In the case of rape, the offence is aggravated if it is committed on a **minor.**

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

Does your system provide that a legal person may be held liable for an offence established in accordance with **Article 26**? Please specify under which conditions.

Article 208B (3) of the Criminal Code provides that the provisions of Articles 121D, 248E (4) and 248E (6) shall apply *mutatis mutandis* to the offences on sexual abuse and sexual exploitation of children:

#### **Criminal Code, Article 121D – Corporate liability for offences under title ‘Of Unlawful Exaction, of Extortion and of Bribery’:**

*Where an offence under this title has been committed by a person who at the time of the said offence is the **director, manager, secretary or other principal officer** of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the said offence was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than twenty thousand euro (€20,000) and not more than two million euro (€2,000,000), which fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure:*

*Provided that where legal representation no longer vests in the said person, for purposes of this article, legal representation shall vest in the person occupying the office in his stead or in such person as is referred to in this article.*

#### **Criminal Code, Article 248E (4) – Corporate liability for offences under title ‘Of the Traffic of Persons’:**

*Where the person found guilty of any of the offences under this sub-title –*

(a) was at the time of the commission of the offence an **employee** or otherwise in the service of a body corporate, and

(b) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and

(c) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in article 121D, the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than ten thousand euro (€10,000) and not exceeding two million euro (€2,000,000).

#### **Criminal Code, Article 248E (6) - Exemption for acts under compulsion:**

The offences committed under this sub-title shall not be liable to punishment if the offender was compelled thereto by another person where the provisions of article 33(b) do not apply.<sup>1</sup>

#### **Conditions for corporate liability to arise:**

As a result of the above amendments to the Criminal Code, Maltese law recognises corporate liability in the case of offences of sexual abuse and sexual exploitation of children. In order for a person to be held liable, the following conditions need to be satisfied:

1. One of the offences under Articles 204, 204A to 204D, both inclusive, and Article 208A(1), (1A), (1B), 208AA and 208AB must have been committed;
2. The offence must have been committed for the benefit, in whole or in part, of the corporate body;
3. The offence must have been committed either by:
  - a. a person who at the time of the offence is the **director, manager, secretary or other principal officer** of the corporate body, or is a person having a power of representation of such body, or having the authority to take decisions on behalf of that body, or having authority to exercise control within that body. In such case, the person must have acted on the basis of one of his or her powers (whether to represent the company, to take decisions or to exercise control) demonstrating that that person acted under his or her authority to incur liability on behalf of the body corporate; or
  - b. By a person who is an **employee** of the body corporate or by a person in the service of such body corporate, and the commission of the offence was rendered possible because of the lack of supervision or control by the persons referred to in point (i) above.

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

a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (**Article 27, Explanatory Report, paras. 182-193**);

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<sup>1</sup> Article 33 (b): Every person is exempt from criminal responsibility if at the time of the act or omission complained of, such person was constrained thereto by an external force which he could not resist.

## Criminal sanctions – Natural persons

### **1. Imprisonment**

The Criminal Code provides that upon conviction, the offender shall be liable to a term of imprisonment, with or without solitary confinement. The term of imprisonment depends on the nature of the offence, and whether there are any aggravating circumstances.

### **2. Exercise of professional activity**

In addition to the said punishment, the Court may order that the offender be temporarily or permanently prevented from exercising at least professional activities involving direct or regular contact with children (Criminal Code, Article 208B (2)). Such order shall be registered in any criminal record of the offender (Criminal Code, Article 208B (2A)).

### **3. Sexual offenders to be registered on a sexual offenders register**

Please refer to Chapter 518 of the Laws of Malta, Protection of Minors (Registration) Act.

### **4. Forfeiture of Parental Authority in the case of an offence under Article 197**

A conviction under Article 197 of the Criminal Code (see below), *shall entail **the forfeiture of every authority and right granted to the offender over the person or property of the husband or wife or of the descendant to whose prejudice the offence shall have been committed**, and, in the case of the tutor, his removal from the tutorship and his perpetual disability from holding the office of tutor:*

*Provided that where the rights of the offender over the person to whose prejudice the offence has been committed consists of rights of parental authority the forfeiture provided for in this sub-article shall not apply automatically but may be imposed by the court after it has considered all the circumstances of the case and in imposing such forfeiture the court may also impose conditions:*

*Provided further that in the cases referred to in the above proviso the court may, upon the application of the offender, and only after appointing any expert that it may deem fit to appoint, remove or vary the conditions of the forfeiture, after being satisfied that a material change in circumstances justifies such revocation or variation of conditions.*

### **Criminal Code, Article 197 (1) – Prostituting of descendant under age by ascendant:**

*(1) Any ascendant by consanguinity or affinity who, by the use of violence or by threats, compels, or, by deceit, **induces any descendant under age to prostitution**, shall, on conviction, be liable to imprisonment for a term from three to six years, with or without solitary confinement.*

### **Criminal Code, Article 197 (2) - Prostituting of spouse under age or of minor by husband or wife or tutor:**

*(2) The same punishment shall be applied to any husband or wife or tutor who, by the use of violence or by threats, compels, or, by deceit, **induces to prostitution his or her spouse under age or the minor under his or her tutorship.***

## **5. Closure of any establishment used to carry out any of the offences established in accordance with the Convention & cancellation of licences**

By virtue of Article 208B (4), the provisions of Articles 13 and 14 of the White Slave Traffic (Suppression) Ordinance, shall apply *mutatis mutandis* to the offences under articles 204, 204A to 204D, both inclusive, and article 208A(1), (1A), (1B), 208AA and 208AB of the Criminal Code.

In line with Article 13 of the said Ordinance, the Commissioner of Police is empowered to order that the house, shop, lodging-house, hotel, apartment or other premises used in the commission of an offence be kept closed until the court delivers judgment.

### **White Slave Traffic (Suppression) Ordinance, Article 13 - Power of Commissioner of Police to order premises to be closed pending proceedings:**

*The Commissioner of Police may, in the course of any proceedings for an offence against the provisions of articles 8, 9, 10 and 12, order that the house, shop, lodging-house, hotel, apartment or other premises be kept closed until the court delivers judgment, saving the provisions of any other existing law under which the Commissioner of Police may suspend or withdraw any licence.*

*Under Article 14 of the Ordinance, the Court may, upon conviction, order the cancellation of any licence of premises used in the commission of an offence, and it may also cancel the driving licence of any person who knowingly lets for hire or permits the use or shares in the profits of any vehicle used in the commission of the offence.*

### **White Slave Traffic (Suppression) Ordinance, Article 14 - Court may cancel licence of premises**

*On conviction for an offence under this Ordinance, the court may cancel any licence held by the offender in respect of any hotel, lodging-house, shop or other premises wherein or within the precincts whereof the offence was committed, and, in the case of article 8(2), both the offender's driving licence and any licence held by him in respect of the vehicle to which the offence relates:*

*Provided that nothing in this article shall be deemed to affect any powers of the Commissioner of Police under any other law to cancel or suspend any licence.*

### **Criminal sanctions – Legal persons**

#### **6. Pecuniary Fines**

Under Article 121D of the Criminal Code, a legal person shall be liable to the payment of a fine (multa) of not less than twenty thousand euro (€20,000) and not more than two million euro (€2,000,000).

Under Article 248E (4) of the Criminal Code, a legal person shall be liable to the payment of a fine (multa) of not less than ten thousand euro (€10,000) and not more than two million euro (€2,000,000).



By virtue of Article 208B (3) of the Criminal Code, the provisions of Articles 121D and 248E (4) shall apply *mutatis mutandis* to the offences of sexual abuse and sexual exploitation of children.

### **Criminal sanctions – Natural & Legal persons**

#### **7. Forfeiture of *corpus delicti***

The Criminal Code provides for the forfeiture of the *corpus delicti*, of the instruments used or intended to be used in the commission of a crime, and of anything obtained by such crime (Criminal Code, Article 23).

#### **8. Freezing of property & forfeiture of proceeds**

The Court shall also make an order for the freezing of the property of the person accused if certain conditions are satisfied (Criminal Code, Article 23A), and order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds (Criminal Code, Article 23B).

### **Civil sanctions – Natural Persons**

#### **9. Deprivation of parental authority in civil proceedings**

Offenders may also be deprived, by the Civil Court, wholly or in part, of the rights of parental authority (**Civil Code, Article 154 (1)**).

b. Which legislative or other measures have 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**).

Article 208B (2B) of the Criminal Code provides that where the person convicted is the subject of an order by a foreign court that such person be temporarily or permanently prevented from exercising professional activities involving direct or regular contact with children, the Maltese Court shall order that effect shall be given to the order made by the foreign court as if it were an order made by the Maltese court under subarticle 208B (2).

### **Question 19: Jurisdiction**

With regard to the offences referred to in question 16, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (**Article 25, Explanatory Report, paras. 165-176**).

The **general rules of jurisdiction** are laid down in Article 5 of the Criminal Code:

*(1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta – (a) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta;*

*(b) against any person who commits an offence on the sea beyond such limits on board any ship or vessel belonging to Malta;*

*(c) against any person who commits an offence on board any aircraft while it is within the air space of Malta or on board any aircraft belonging to Malta wherever it may be; For the purposes of this paragraph the expression "air space" means the air space above the land areas and territorial waters of Malta;*

*(d) without prejudice to the preceding paragraphs of this subarticle, **against any citizen of Malta or permanent resident in Malta** who in any place or on board any ship or vessel or on board any aircraft wherever it may be shall have become guilty of the offences mentioned in article 54A or of an offence against the safety of the Government or of the offences mentioned in articles 133, 139A, or of the offences mentioned in articles 311 to 318 and in article 320 when these are committed or are directed against or on a state or government facility, an infrastructure facility, a public place or a place accessible to the public, a public transportation system, or of forgery of any of the Government debentures referred to in article 166 or of any of the documents referred to in article 167, or of the offence mentioned in article 196, or of any other offence against the person of a citizen of Malta or of any permanent resident in Malta; For the purposes of this paragraph: "permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the of the Immigration Act; "offence against the person" includes the offences mentioned in articles 86 to 90 and in articles 211 to 205; the expressions "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them respectively by article 314A(4);*

*(e) against **any person who being in Malta** –*

*(i) shall have become guilty of any offence under article 87(2) or articles 198, 199, 211, 214 to 218, 220, 249 to 251, 311, 312, 314A, 314B, 314C, 316 or 317 when committed or directed on or against the person of a protected person or to the prejudice or injury of such person or likely to endanger the life or to cause serious injury to the property, life or health of such a person, or in connection with an attack on any relevant premises or on any vehicle ordinarily used by a protected person or when a protected person is on or in the premises or vehicle; or*  
*(ii) shall have committed any act which if committed in Malta would constitute an offence and such act involved the use of a bomb, grenade, rocket, automatic firearm, letter bomb or parcel bomb which endangered persons, although the offences referred to in this paragraph shall have been committed outside Malta: Provided that for the purposes of sub-paragraph (i) of this paragraph it shall be immaterial whether the offender knew that the person was a protected person;*

*(f) against any person who –*

*(i) commits any offence in premises or in a building outside Malta having diplomatic immunity due to the fact that it is being used as an embassy, a residence or for such other purpose connected with the diplomatic service of Malta; or*

*(ii) commits an offence in a place outside Malta when such person enjoys diplomatic immunity by virtue of such service;*

*(g) against any person who being in Malta, shall be a principal or an accomplice in any of the crimes referred to in article 87(2), or in articles 139A, 198, 199, 211, 214 to 218, 220, 249 to 251, 298, or in articles 311 to 318 or in article 320 when these are committed in the circumstances mentioned in paragraph (d) or (e) of this subarticle, or in a crime which is committed by any act as is mentioned in paragraph (e)(ii) of this subarticle, or conspires with*

*one or more persons for the purpose of committing any of the said crimes, although the crimes shall have been committed outside Malta; (h) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;*

*(i) against any person who commits an offence which, by express provision of law, constitutes an offence even when committed outside Malta:*

*Provided that no criminal action shall be prosecuted against the President of Malta in respect of acts done in the exercise of the functions of his office.*

Article 208B (5) of the Criminal Code provides that in the case of the offences under Articles 204, 204A to 204D, both inclusive, and Article 208A (1), (1A), (1B), 208AA and 208AB of the Criminal Code, the general rules of jurisdiction laid down in Article 5 of the Criminal Code shall apply in addition to the **special rules** laid down in Article 208B (5). Accordingly, Article 208B (5) provides that the Maltese courts shall also have jurisdiction over the said offences where:

- (a) only part of the action giving execution to the offence took place in Malta; or
- (b) the offender is a Maltese national or permanent resident in Malta or the offence was committed for the benefit of a body corporate registered in Malta; or
- (c) the offence was committed by means of a computer system accessed from Malta notwithstanding that such computer system may be outside Malta; or
- (d) the offence was committed against a Maltese national or permanent resident in Malta.

## **Question 20: Aggravating Circumstances**

Please indicate which of the circumstances referred to in **Article 28**, 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 (**Explanatory Report, paras. 194-202**).

All the circumstances referred to in Article 28 of the Convention are considered as aggravating circumstances in the determination of the punishment of the offences in accordance with Article 208AC of the Criminal Code.

### **Lanzarote Convention, Article 28 – Aggravating circumstances:**

*Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, 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 as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention:*

- a) the offence seriously damaged the physical or mental health of the victim;*
- b) the offence was preceded or accompanied by acts of torture or serious violence;*
- c) the offence was committed against a particularly vulnerable victim;*

- d) *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;*
- e) *the offence was committed by several people acting together;*
- f) *the offence was committed within the framework of a criminal organisation;*
- g) *the perpetrator has previously been convicted of offences of the same nature.*

**Criminal Code, Article 208AC – Aggravating circumstances:**

*(1) The punishment for the offences referred to in articles 204, 204A to 204D, both inclusive, 208A(1) to 208AB, both inclusive, shall be increased by one to two degrees in each of the following cases:*

- (a) where the offence involved the use of violence or results in harm to the physical or mental health of the person under age;*
- (b) where the person under age is a vulnerable person within the meaning of subarticle (2);*
- (c) where the offence is committed by two or more persons acting together;*
- (d) in any of the circumstances described in article 202(a)<sup>2</sup>, (b)<sup>3</sup>, (c) and (h)<sup>4</sup>;*
- (e) if the offender lives with or is a member of the victim's family;*
- (f) if the offender has been previously convicted of an offence under this sub-title;*
- (g) where the offence is committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority;*
- (h) where the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/ 841JHA of 24 October 2008 on the fight against organised crime;*
- (i) where the offender has deliberately or recklessly endangered the life of a child: Provided that where an aggravation of punishment in respect of the circumstances mentioned in this article is already provided for under this Code or any other law, the higher punishment shall be applied.*

*(2) For the purposes of this article a vulnerable person means:*

- (a) any person under the age of fifteen years; or*
- (b) any person suffering from a physical or mental infirmity; or*
- (c) any other person considered by the court to be particularly at risk of being induced into cooperating with the offender or into surrendering to the offender's will when taking into account the person's age, maturity, health, pregnancy, disability, social or other conditions including any situation of dependence, as well as the physical or psychological consequence of the offence on that person.*

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<sup>2</sup> *(a) when the offender has availed himself of his capacity of public officer, or when the offender is a servant of the injured party, with salary or other remuneration;*

<sup>3</sup> *(b) when the crime is committed by any ascendant, tutor, or institutor on any person under eighteen years of age;*

<sup>4</sup> *(h) when the crime is committed on the person of: (i) the spouse; or (ii) the brother or sister; or (iii) a natural ascendant or descendant; or (iv) another person having or having had a child in common with the offender; or (v) another person living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence; or (vi) another person who is or had been formally or informally engaged with a view to get married; or (vii) other persons who are related to each other by consanguinity or affinity up to the third degree inclusively: Provided that in this paragraph "spouse" includes the person whose marriage with the offender has been dissolved or declared null.*

## **Question 21: Measures of protection for 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 para. 2**). Please also indicate what is done to provide all relevant information in a manner adapted to the child's age and maturity and in a language that he/she may understand;

Please liaise with the relevant Police department on the measures referred to in this question. However, please note that the Victims of Crime Act, Chapter 539 of the Laws of Malta, which came into force on the 2<sup>nd</sup> of April, 2015, grants a number of rights to victims of crime when a complaint is made:

### **Victims of Crime Act, Article 4 - Right to receive information from a competent authority:**

***4. The following information shall be offered to an injured party, without unnecessary delay and as may be applicable, from his first contact with a competent authority in order to enable him to access the following rights set out in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA:***

*(a) the type of support which can be obtained and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;*

*(b) the procedures for making complaints with regard to a criminal offence and the victim's role in connection with such procedures;*

*(c) how and under what conditions the victim can obtain protection, including protection measures; (d) how and under what conditions the victim can access legal advice, legal aid and any other sort of advice;*

*(e) how and under what conditions the victim can access compensation;*

*(f) how and under what conditions the victim is entitled to interpretation and translation;*

*(g) if the victim is resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect his interests in Malta;*

*(h) the available procedures for making complaints where the victim's rights are not respected by the competent authority operating within the context of criminal proceedings;*

*(i) the contact details for communications about the victim's case;*

*(j) the available restorative justice services;*

*(k) how and under what conditions expenses incurred as a result of the victim's participation in the criminal proceedings can be reimbursed.*

### **Victims of Crime Act, Article 5 - Right of victims when complaint is made:**

***5. (1) Where a complaint is made by the victim in terms of article 546 of the Criminal Code, the Executive Police shall deliver to the victim a written acknowledgement of his complaint stating the basic elements of the criminal offence concerned.***

*(2) It shall be lawful for a victim, who requests to make a complaint with regard to a criminal offence and who does not understand or speak Maltese or English, to make the complaint in a language that he understands or by receiving the necessary linguistic assistance of an interpreter.*

*(3) A victim who does not understand or speak Maltese or English shall, if he so requests, receive a translation into a language he understands, which translation shall be free of charge, of the written acknowledgement of the complaint referred to in sub-article (1).*

**Victims of Crime Act, Article 6 - Right to receive information on the case:**

*6. (1) A victim shall be notified without unnecessary delay of his right to receive the following information about the criminal proceedings instituted as a result of the complaint made by him and upon request, **the victim shall receive information on:***

***(a) any decision not to proceed with or to end an investigation or not to prosecute the offender;***

***(b) the time and place of the trial, and the nature of the charges against the offender;***

***(c) any final judgement in a trial;***

***(d) information enabling the victim to know about the state of the criminal proceedings,** unless in exceptional cases the proper handling of the case may be adversely affected by such notification: Provided that in the circumstances cited in paragraphs (a) and (c) and unless in the case of a verdict in a trial by jury or where prohibited by law, the information shall include reasons or a brief summary of reasons for the decision concerned:*

*Provided further that it shall not be necessary to furnish such information in cases where the victim, as injured party, has been served with the notice of first hearing or admitted into the proceedings as provided in article 410(4) and (5) of the Criminal Code.*

***(2) A victim shall be offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning the said victim is released from or has escaped detention and of any relevant measures issued for his protection in case of release or escape of the offender.***

*(3) A victim shall, upon request, receive the information provided for in sub-article (2) at least in cases where there is a danger or an identified risk of harm to him, unless there is an identified risk of harm to the offender which would result from the notification.*

**Victims of Crime Act, Article 7 - Right to interpretation and translation:**

*7. (1) **Where the injured party does not understand the language in which the criminal proceedings are conducted or any evidence is adduced, such proceedings or evidence shall be interpreted to him either by the court or by a sworn interpreter.***

*(2) An injured party who does not understand or speak the language of the court shall, upon request, be provided with translations of information essential to the exercise of his rights in the criminal proceedings in a language he understands, free of charge, to the extent that such information is made available to the injured party.*

*(3) Translations of the information cited in sub-article (2) shall include at least any decision ending the criminal proceedings, and upon the injured party's request, reasons or a brief summary of reasons for such decision, except in the case of a verdict in a trial by jury.*

*(4) Saving the provisions of articles 410(4) to (6), 414(1) and 421(1) of the Criminal Code, an injured party who is entitled to information about the time and place of the trial in accordance with article 6(1)(b) and who does not understand the language of the court shall, upon request, be provided with a translation of the information to which he is entitled.*

*(5) An injured party may submit a reasoned request to consider a document as essential although there shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling the injured party to actively participate in the criminal proceedings.*

*(6) Notwithstanding the provisions of sub-articles (1) and (2), an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.*

*(7) The court shall assess whether victims need interpretation or translation as provided for under sub-articles (1) and (2).*

**Victims of Crime Act, Article 8 - Rights in decision not to prosecute:**

***8. The injured party shall be notified of any decision by the Executive Police not to institute proceedings against the offender without unnecessary delay. Such notification shall at least contain the reasons on which the decision not to institute proceedings was taken: Provided that the disclosure of such information would not be contrary to the public policy or the internal public law of Malta or if the ends of justice would be prejudiced if such disclosure is made.***

b. Please also indicate which 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 considered (**Article 31, para. 1, letter (c)**);

Please liaise with the Department of Social Welfare on any support provided from their end in this regard.

It is to be noted that during criminal proceedings in court, minors and vulnerable persons give evidence by audio-recording and by video-recording **only**. The courts are very strict on adhering to this procedure. The courts also insist that minors and vulnerable persons give evidence only once. On a *de facto* basis, the following rules are adhered to by the courts:

1. Minors give evidence *in camera (fis-sigrieta)* and not in open court. Therefore, they cannot see or hear the accused;

2. The minor gives evidence in the presence of the magistrate. A parent is allowed to accompany the minor and a professional such as a psychologist is also present;
3. The accused, the prosecution, the police, the defence lawyer etc remain in the court room so that the minor is not intimidated or negatively affected;
4. The magistrate wears a set of headphones to listen to the questions being asked by the prosecution and the defence in the court room during examination and cross examination. Therefore, the questions are not asked directly to the minor but to the magistrate who will then ask the questions directly to the minor *in camera*;
5. The evidence given by the minor is also video-recorded so that the accused and his lawyer can see the minor while answering the questions.

c. 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)**);

Police officers have the facility to consult with or refer the victim to Government and/or Non-Government Organisations such as Aġenzija Appoġġ and/or Victim Support Malta. Please liaise with the Department of Social Welfare, Aġenzija Appoġġ and the Victim Support Malta on any support provided from their end in this regard.

d. Please describe the measures taken to protect the privacy, the identity and the image of child victims (**Article 31, para. 1, letter (e)**);

In order to protect the privacy and identity of the child, the court may order that the court proceedings are held *in camera* and that the identity of the child and those of the parent or family member, if such parent or family member is the perpetrator, is not publicised in the court judgment.

**Criminal Code, Article 531 - Sittings to be held with closed doors:**

*(1) The court shall hold its sittings with open doors. Nevertheless, **the court may hold its sittings with closed doors in cases where it is of opinion that the proceedings, if conducted in public, might be offensive to modesty, or might cause scandal**; in any such case, the court shall previously make an order to that effect stating the reasons for so doing.*

*(2) Where the sittings are held with closed doors, it shall not be lawful to publish any report of the proceedings under the penalties established for contempt of the authority of the court.*

e. Please describe the measures taken to provide the safety of the child victims and witnesses and their families from intimidation, retaliation and repeat victimisation (**Article 31, para. 1, letter (f)**);

Each case is handled individually by the police officer who is expected to make reasonable judgments according to the information he/she has available. The investigating officer may arraign any suspect who poses such risks by way of arrest. When a person is charged or accused with an offence, and is in custody, the court may release such person from custody on bail. Should the court decide to do so, the court may be requested to release the accused



subject to certain conditions to ensure the safety of the child. The court may also be requested to issue a protection order. The prosecution may also appeal a decision of the court releasing the accused on bail.

#### **Criminal Code, Article 412 C – Protection Orders**

*(1) Where a person (hereinafter in this article and in article 412D referred to as "the accused") has been charged or accused with an offence before the Court of Magistrates whether as a court of inquiry or as a court of criminal judicature, the court may, on reasonable grounds, **for the purpose of providing for the safety of the injured person** or of other individuals or for the keeping of the public peace or for the purpose of protecting the injured person or other individuals from harassment or other conduct which will cause a fear of violence, issue a protection order against the accused.*

*(2) A protection order may impose any restrictions or prohibitions on the accused that appear to the court necessary or desirable in the circumstances in order to give effect to any of the purposes mentioned in subarticle (1).*

*(3) Without limiting the nature of the orders which may be made under subarticle (1), a protection order may do all or any of the following:*

*(a) prohibits or restricts the accused from approaching or following the movements of the injured person or any other individual specified in the order; or*

*(b) prohibit or restrict access by the accused, for a period not exceeding six months or until final judgement, to premises in which the injured person, or any other individual specified in the order, lives, works or frequents even if the accused has a legal interest in those premises; or*

*(c) prohibit the accused from contacting or molesting the injured person or any other individual specified in the order.*

#### **Criminal Code, Article 574A (7) – Bail Conditions**

*(7) If the court does not find cause to release unconditionally the person charged or accused under the provisions of subarticle (6) it may nevertheless, saving the provisions of article 575(1) and unless release is prohibited by any provision of law, **release that person from custody on bail subject to such conditions as it may deem appropriate.***

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)**);

#### **Victims of Crime Act, Article 6: Right to receive information on the case**

*(2) A victim shall be offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning the said victim is released from or has escaped detention and of any relevant measures issued for his protection in case of release or escape of the offender.*

*(3) A victim shall, upon request, receive the information provided for in sub-article (2) at least in cases where there is a danger or an identified risk of harm to him, unless there is an identified risk of harm to the offender which would result from the notification.*

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. Please specify under which conditions the competent authorities may authorise such contact in the best interests of the child or when the investigations or proceedings require such contact (**Article 31, para. 1, letter (g)**);

On a *de facto* basis, steps are taken to ensure that no contact between the victim and the accused is made in court. For example:

- the court ensures that minors are called to give evidence only once, and therefore the court will not allow the prosecution and/or the defence to examine the victim on a subsequent hearing;
- minors give evidence *in camera* i.e. not in the presence of the accused;
- video and audio recording is done by setting up an appointment.

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**).

The victim has the right to free legal aid if he/she is *parte civile* to the case. See **Article 410(5) of the Criminal Code** in the footnote.

#### **Victims of Crime Act, Article 10 – Right to legal aid:**

*Where the injured party, who has been served with the notice of first hearing or admitted into the proceedings as provided in article 410(4)<sup>5</sup> and (5)<sup>6</sup> of the Criminal Code, or in cases where the prosecution lies with the injured party, wishes to avail himself of the benefit of legal aid, **the provisions of article 570 of the Criminal Code shall mutatis mutandis apply: Provided that, for the purpose of such proceedings, any reference in those provisions to the accused shall be construed as being a reference to the injured party.***

#### **Criminal Code, Article 570 – Duties of Advocate for Legal Aid:**

*(1) **The Advocate for Legal Aid shall gratuitously undertake the defence** of any accused who has briefed no other advocate or who has been admitted to sue or defend with the benefit of legal aid in any court mentioned in this Code. (2) **The request for the assistance of the Advocate for Legal Aid or for the benefit of legal aid shall be made either by application or orally to the Advocate for Legal Aid.***

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<sup>5</sup> (4) Without prejudice to the provisions of subarticle (3) and subject to the provisions of subarticle (6), any party injured having an interest in being present during any proceedings instituted by the Executive Police shall have **the right to communicate that interest to the police giving his or her particulars and residential address whereupon that injured party shall be served with a notice of the date, place and time of the first hearing** in those proceedings and shall have **the right to be present in court** during that and all subsequent hearings even if he is a witness.

<sup>6</sup> (5) Without prejudice to the provisions of subarticle (3) and subject to the provisions of subarticle (6), any person not served with the notice referred to in subarticle (4) and claiming to be an injured party may **apply to the court to be admitted into the proceedings as an injured party** and if his claim that he is an injured party is allowed by the court that person shall thereupon have **the right to be present at all subsequent hearings** even if he is a witness.

(3) Article 911(4), (5) and (6) of the Code of Organization and Civil Procedure shall *mutatis mutandis* apply to the Advocate for Legal Aid.

**Victims of Crime Act, Article 14 - Assistance, support and protection to victims who are minors**

Where a victim is identified as a minor and:

(a) the holders of parental responsibility are precluded from representing the said minor as a result of a conflict of interest between the said holders and the minor; or

(b) where the minor is unaccompanied or separated from the family; or

(c) there is, or there may be, a conflict of interest between the minor and the holders of parental responsibility,

**the Court shall, *ex officio*, or upon a request by the prosecution or upon an application by any person, appoint a child advocate in terms of the Code of Organization and Civil Procedure or an advocate for legal aid, to represent the interests of the minor, and the provisions of article 10 shall apply.**

(2) A child advocate appointed in terms of the Code of Organization and Civil Procedure or an advocate for legal aid, as the case may be, may be appointed in any case if the Court considers that this is in the best interests of the minor.

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

a. What protective approach towards victims has been adopted to ensure 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);**

Audio-recording or video-recording of evidence (see above);

Minors give evidence only once during trial;

Protection Orders (see above);

Bail Conditions (see above);

*In camera* proceedings

Child Advocate in the cases mentioned in Article 14 of the Victims of Crime Act (see above);

Questioning of minors at the Police station should be done by Police officers of the same sex, where possible and appropriate;

Social support - Please liaise with the Department of Social Welfare on any support provided from their end in this regard.

b. Which legislative or other measures have 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);**

The Criminal Code does not expressly provide that the complaint of the person under age is required in order for criminal proceedings to be instituted against the offender in the case

of offences established in accordance with the Convention. The Police proceed *ex officio* to institute proceedings on the basis of Article 543 of the Criminal Code.

**Criminal Code, Article 543 - Cases in which Police may proceed ex officio:**

*It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases:*

***(a) in the case of crimes for which the law does not expressly provide that the complaint of the private party is requisite;***

***(b) in the case of any offence consisting in the carrying of prohibited weapons, or in the case of any offence against any law relating to fishing, vehicles, or boats, or to any art or trade;***

***(c) in the case of any offence committed against a person who, by reason of physical or mental infirmity, is incapable of instituting criminal proceedings, even though such offence be one in respect of which, if committed against any other person, the complaint of the private party would be requisite;***

***(d) in the case of any offence affecting public order or the community in general;***

***(e) in the case of any offence involving domestic violence.***

c. Which legislative or other measures have 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**);

The limitation period to initiate proceedings in the case of offences under Articles 204, 204A to 204D, both inclusive, and Article 208A(1), (1A), (1B), 208AA and 208AB of the Criminal Code shall start to run from the day the victim attains the age of majority.

**Criminal Code, Article 208B (6):**

***(6) Notwithstanding any other provision of this Code or of any other law, the period of prescription shall run from the day on which the victim attains the age of majority.***

d. Please clarify whether your judicial authorities may appoint a special representative for the victim who may be party, 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 (**Article 31, para. 4**). Please also describe under which conditions it is possible;

**Victims of Crime Act, Article 14 - Assistance, support and protection to victims who are minors** - Please see above.

e. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to participate in legal proceedings (for example, as third parties) (**Article 31, para. 5**). Please specify under which conditions, if so required;

This is not specifically regulated in our law. However, on a *de facto* basis, courts do make use of Government agencies e.g. Appogg who employ professionals to assist the courts such as during audio and video recording of evidence given by the minor.

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 the Convention (**Article 30, para. 5**);

As a general rule, the use of covert operations (under cover), in so far as they are compatible with the powers of the Police and as long as they do not constitute entrapment<sup>7</sup>, is allowed in relation to the investigation of criminal offences.

g. Please also describe what techniques have been developed for examining material containing pornographic images of children (**Article 30, para. 5**).

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

a. Please describe how interviews (**Article 35**) with child victims are carried out, indicating in particular whether:

- they take place without unjustified delay after the facts have been reported to the competent authorities;

- they take place, where necessary, in premises designed or adapted for this purpose;  
When the child is questioned during trial, this is done *in camera (fis-sigrieta)* and not in open court i.e. not in the presence of the accused. Please liaise with the Police department on where interviews with minors are carried out by them.

- they are carried out by professionals trained for this purpose;  
When the child is questioned during trial, the person posing the questions is the Magistrate, who generally employs a psychologist to assist him/her. Interviews also take place at the Police station by Police officers who undergo a training program to become more insightful into the psycho-emotional impact experienced by victims of crime particularly in those cases of a sensitive nature such as domestic violence, sexual assault and child abuse.

- the same persons are, if possible and where appropriate, conducting all interviews with the child;  
Interviews by the Police are generally conducted by the same Police officer.

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<sup>7</sup> The luring by a law enforcement agent of a person into committing an offence.

- the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of proceedings;  
Questioning during court proceedings is generally done only once.

- the child may be accompanied 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;  
A parent generally accompanies the minor during questioning in court and a professional is also present. Interviews by the Police are conducted in the presence of a parent.

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;

Evidence given by children during court proceedings is videotaped and audio recorded, and is accepted as evidence during the court proceedings. Interviews with children at the Police station are not recorded.

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? (**Article 36**).

Criminal Code, Article 531 - Sittings to be held with closed doors – Please see above.  
A child victim gives evidence by audio-recording and by video-recording in criminal proceedings.