

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

Fields marked with \* are mandatory.

## Introduction

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

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

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

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

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

### **The notion of the circle of trust**

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

### **The previous and current monitoring rounds on the circle of trust**

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

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

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

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

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

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

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

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

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

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

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

9. In addition, Parties are kindly requested to:

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

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

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

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

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

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

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

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

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

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

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

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

## IDENTIFICATION OF THE RESPONDER

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\* Name of the Party responding or concerned by your response

Malta

\* Name of the contact person/coordinator

\* Email address of the contact person/coordinator

## KEY NOTIONS Question 1. Does your national legal framework:

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

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

- Yes  
 No

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

Various offences listed in Criminal Code, where specific reference is made to abuse by a person in a position of trust. 1) Article 208AA

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

[7] *Ibid.*, Recommendation 2

- Yes  
 No

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

It is included as an aggravating circumstance.

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c. [list specific categories of adults in contact with children automatically qualifying as holding this position?](#)<sup>[8]</sup>

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

- Yes  
 No

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

There is no definition of what constitutes a person holding this position, however Article 203 1 (c) of the Criminal Code speaks of relatives and family members including adoptive parents and also any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person (d) speaks of recognized position of trust, authority, influence or during his duties as a professional in the possession of an official qualification and, or warrant to practice as counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker and, or youth worker

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d. [define the notion of “circle of trust”](#)?<sup>[9]</sup>

[9] *Ibid*

- Yes  
 No

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

Although no specific definition provided, it is implied and understood to mean family members and relatives, extending also to a recognised position of trust and authority as provided for in article 203 1 (d): position of trust, authority, influence or during his duties as a professional in the possession of an official qualification and, or warrant to practice as counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker and, or youth worker

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

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

[10] *Ibid.*, Recommendation 6

- Yes  
 No

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

Article 207 of the Criminal Code provides for non-consensual acts of a sexual nature, to be read in conjunction with article 202, which lists several aggravating circumstances. Additionally, Article 205 of the Criminal Code provides for the offence of 'Compelling or inducing person of age to prostitution' (Kindly note age of sexual consent in Malta is 16),

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

[1] *Ibid.*, Recommendation 5

- Yes  
 No

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

Age is not relevant as the child is protected nonetheless. Same reply as above (2a).Article 207 of the Criminal Code provides for non-consensual acts of a sexual nature, to be read in conjunction with article 202, which lists several aggravating circumstances. Additionally, Article 205 of the Criminal Code provides for the offence of 'Compelling or inducing person of age to prostitution' (Kindly note age of sexual consent in Malta is 16),

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

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

[12] *Ibid.*, Recommendation 1

- Yes  
 No

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

A recognised position of influence is referred to specifically in articles 203 (1) and 204 C(1), 208AA and 208AB

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

[13] *Ibid.*, Recommendation 7

- Yes  
 No

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

In Malta, under the Marriage Act (Chapter 255 Laws of Malta) a child at the age of 16 may get married if there is parental consent. Article 202 of the Criminal Code, when referring to the offence of carnal knowledge and violent indecent assault, provides for the aggravating circumstance of -when the crime is committed on the person of:(i) the current or former spouse, civil union partner or cohabitant

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

[14] *Ibid.*, Recommendation 8

- Yes  
 No

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

Article 204A provides for the use of coercion, force, violence and threats by an offender and lists the abuse of a position of trust, authority or influence is listed as an aggravating circumstance.

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

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

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

[15] *Ibid.*, Recommendation 9

- Yes  
 No

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

Refer to attached document for other offences constituting sexual abuse other than sexual intercourse and equivalent actions

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

[16] *Ibid.*, Recommendation 11

- Yes  
 No

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

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

[17] *Ibid.*, Recommendation 12

- Yes
- No

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

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

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

[18] *Ibid.*, Recommendation 57

- Yes
- No

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

Article 203 (3) of the Criminal Code states that in relation to the offence of 'defilement of minors under the age of 16 years', proceedings shall be instituted ex officio when the act is committed with abuse of parental authority or of tutorship.

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

[19] *Ibid*

- Yes
- No

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

Same as (a).

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

[20] *Ibid.*, Recommendation 56

- Yes  
 No

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## MEASURES IN RESPECT OF CHILDREN WHO SEXUALLY OFFEND AND CHILDREN DISPLAYING RISKY AND HARMFUL SEXUAL BEHAVIOUR Question 6. Does your national legal framework:

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

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

- Yes  
 No

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

The Minor Protection (Alternative Care) Act provides for therapeutic and support services/interventions for the minor through the Directorate for Child Protection. Article 19 (1) (a ii) provides for a correctional care order when the minor exhibits very challenging behaviour that is or has been harmful to self or others or is in need of protection and control which the minor is unlikely to receive otherwise.

The same law will also in future provide for a purpose of holding minors with serious behavioural difficulties in a safe and adequate place so that they be given the required therapy and assistance in order to return to society and participate in it in an appropriate manner (article 26 not yet in force).

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

[22] Question included for capacity-building purposes

- Yes  
 No

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

The minimum age of criminal responsibility in Malta is 14 if mischievous discretion is proved, as established under the Criminal Code (Chapter 9 Laws of Malta). Minors below the age of 16 are tried before the Juvenile Court and punishment for minors below the age of 18 is always lower by 1 or 2 degrees than that for adults, for the same offence. This is provided for under articles 35 and 37 of the Criminal Code.

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## CHILD VICTIMS' RIGHT TO PROTECTION AND PARENTAL RIGHTS

### Question 7. Does your national legal framework:

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

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

- Yes  
 No

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

The Directorate of Child Protection, under Chapter 602 Laws of Malta 'Minor Protection (Alternative Care) Act', has the power to conduct investigations and speak with the minor at will (article 11).

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

[24] *Ibid*

- Yes  
 No

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

Same as above (a).

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

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

- Yes  
 No

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

The 'Minor Protection (Alternative Care) Act' provides for a Removal Order under 19 1 (d) to remove the 'author significant harm to the minor from the place of residence of the minor'.

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

[26] *Ibid.*, Recommendation 27

- Yes

No

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

In practice and as a rule of policy the removal of a child from the family environment and issuing of a care order is done as a measure of last resort. The conditions are clearly defined by law under the Minor Protection (Alternative Care) Act. The same law also provides for emergency orders. Detailed supporting information by means of an extract of the law is attached.

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

[27] *Ibid.*, Recommendation 25

Yes  
 No

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

The Foundation for Welfare Services includes the Directorate for Child Protection Services, as well as the Directorate for Alternative Care. They work closely with other entities such as the Executive Police and the Office of the Commissioner for Children and have a Memorandum of Understanding in place.

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## CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

### Question 8. Does your national legal framework clearly distinguish:

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- cases of suspension of parental rights as a provisional measure to protect the child before a court decision on the conviction of the concerned parent is taken, and  
- cases of withdrawal of parental rights once the court has convicted the said parent?<sup>[28]</sup> Please provide details.

[28] *Ibid.*, Recommendation 32

Yes  
 No

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

The Civil Code lists specific grounds for the termination of parental authority, governed under for very specific reasons(attached) and the Minor Protection (Alternative Care) Act cases of a temporary care orders for instance, when parents are following a treatment order to improve their situation and treat substance abuse for instance (relevant articles attached). Under both laws, parental authority rights can be reinstated if the reason for which parental authority was removed, ceases to exist/improves. The 2 laws complement one another as there is some overlap and the court can refer to both. The exception to this is when the child is adopted fully and is then entrusted in the care and custody of the adoptive family.

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## CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

### Question 9. Does your national legal framework provide for:

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

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

- Yes  
 No

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

The Civil Code, article 154 (3) specifically provides that 'The Court may also restrict the exercise of the aforementioned rights where one or both of the parents are charged with one or more of the offences listed in Title VII of Part II of Book First of the Criminal Code', which includes sexual offences and other Crimes affecting the Dignity of Persons. Under the Minor Protection (Alternative Care) Act, an Emergency Order can also be issued together with the automatic suspension of parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of own child are pending. In the case of the Emergency Order, the Director (Child Protection) may, with the assistance of the Executive Police, immediately proceed towards the removal of the minor from the place in which such significant harm is being occasioned, and this without any need of any form of authorisation.

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

[30] *Ibid*

- Yes

No

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

The Civil Code, article 154 (3) specifically provides that 'The Court may also restrict the exercise of the aforementioned rights where one or both of the parents are charged with one or more of the offences listed in Title VII of Part II of Book First of the Criminal Code', which includes sexual offences and other Crimes affecting the Dignity of Persons. Under the Minor Protection (Alternative Care) Act, a care order is issued where the parental rights are automatically terminated.

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## GUARANTEES OF PROTECTION FOR PERSONS REPORTING SUSPECTED OFFENCES Question 10.

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

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

Article 9 (2) of the Minor Protection (Alternative Care) Act specifically provides for this.

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## ASSISTANCE TO THIRD PARTIES Question 11.

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

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

Support services for family members are provided for legally under article 13 of the Victims of Crime Act (attached below) and include emotional, psychological, medical assistance, compensation and accommodation amongst others.

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## ASSISTANCE TO THIRD PARTIES Question 12.

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

[33] *Ibid.*, Recommendation 31

Victims and their family members have the right to protection of privacy under the Victims of Crime Act.

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

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a. a mechanism to monitor or supervise persons convicted of child sexual abuse and, specifically, persons convicted of child sexual abuse while holding a recognised position of trust, authority or influence?<sup>[34]</sup>

Please provide details.

[34] *Ibid.*, Recommendation 33

- Yes  
 No

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

CHAPTER 518 Laws of Malta, PROTECTION OF MINORS (REGISTRATION) ACT, provides for the registration of sexual offenders and other offenders who commit offences of serious violence. Access to the Offender's Register is through a court application, thus making it ineffective for efficient monitoring or supervision purposes, as court process can take some weeks.

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b. sharing with other countries data concerning persons convicted of child sexual abuse?<sup>[35]</sup> Please provide details.

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



- Yes  
 No

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

The Protection of Minors (Registration) Act does not provide for a data sharing mechanism with other countries, although there may be systems in place, through the Executive Police and Europol and Interpol to do so.

Article 11 of the Protection of Minors (Registration) Act however provides for the power for the Minister to make regulations requesting the offender to file an official notification if leaving Malta, including details such as the date he will leave Malta and the country he will be travelling to and any other information that may be requested.

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

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

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

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

- Yes  
 No

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

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

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

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

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

- Yes  
 No

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

Under Article 9 of the Minor Protection (Alternative Care) Act, Chapter 602, any professional who has knowledge of an act which constitutes a criminal offence causing significant harm to a child must immediately report it to the competent authorities or the police. Failure to do so is sanctioned with imprisonment or a fine. This same article clarifies that “significant harm” includes abuse, neglect, harassment, ill-treatment, exploitation, abandonment, exposure and trafficking. There are also National Mandatory Reporting Guidelines (Child Protection Services).

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

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c. **ensure that legal persons failing to protect children in their care from sexual abuse are held liable?**<sup>[39]</sup>

Please provide details.

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

- Yes  
 No

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

Same as above.

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

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

---

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

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

Special representatives and guardians ad litem receive training on how to handle sensitive situations involving a child victim and holders of parental authority/legal guardians. Additionally, the Victims of Crime

Act also provides for a support person in terms of the Code of Organization and Civil Procedure to assist the minor in court proceedings (attached).

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

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

[41] *Ibid.*, Recommendation 36

A warranted social worker (CPS) carries out the duties of a guardian ad litem in Malta. While advocating for the victim's rights, he/she is not a lawyer.

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

c. [are provided free of charge for the child victim?](#)<sup>[42]</sup>

[42] *Ibid.*, Recommendation 37

Yes, there is no fee for the child victim.

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

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

a. [Do you appoint a special representative or guardian ad litem when there is a conflict of interest between the holders of parental authority and a child?](#)<sup>[43]</sup> Please provide details.

[43] *Ibid.*, Recommendation 34

- Yes  
 No

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

Under the Victims of Crime Act, 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.

A support person can also be appointed under the Victims of Crime Act.

A curator ad litem and also Children's Advocate is appointed in terms of the Minor Protection (Alternative Care) Act.

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

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b. **Is this person allowed to be present throughout the criminal proceedings?**<sup>[44]</sup> Please provide details.

[44] *Ibid*

- Yes  
 No

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

The curator ad litem and also Children's Advocate, as well as the support person under the Victims of Crime Act are appointed by the Court to assist throughout and are always present.

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

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

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a. **protection measures are available to all children irrespective of their age?**<sup>[45]</sup> Please provide details.

[45] *Ibid.*, Recommendation 38

Protection measures are available to all children below the age of 18 (article 14 (3) Victims of Crime Act).

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

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

[46] *Ibid.*, Recommendation 39

Where the victim is a minor he shall be presumed to have specific protection needs due to his vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under the Victims of Crime Act, child victims shall be subject to an individual assessment (article 14 (4)).

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

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

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

A wide range of support services, including the provision of a support person during the entire proceedings is provided under the Victims of Crime Act (article 14A).

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

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

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

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

- Yes  
 No

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

Various laws were introduced or amended, most notably, the Victims of Crime Act, the Minor Protection (Alternative Care) Act, Protection of Minors (Registration) Act. The laws could not be attached as they exceed the size limit.

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

## INVESTIGATION Question 19. In the investigation phase:

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

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

[49] *Ibid.*, Recommendation 41

- Yes  
 No

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

Child legal interviews are held in the Children's House. Medical doctors, specialized in child protection, also examine the child in separate premises to make the child feel as comfortable as possible.

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

b. **are all staff responsible for interviewing child victims required to undergo suitable qualifying training?**<sup>[50]</sup> Please provide details.

[50] *Ibid.*, Recommendation 42

- Yes  
 No

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

the Directorate for Child Protection provides training to this effect, and the Office of the Commissioner for Children had also organised specialised training for members of the judiciary, by inviting a child expert from abroad to provide training on child interviewing techniques.

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

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

[51] *Ibid.*, Recommendation 43

- Yes
- No

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

All these factors are taken into consideration especially in view of a child' memory and to avoid re victimisation and prevent repeat trauma.

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

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

[52] *Ibid.*, Recommendation 54

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

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

[53] *Ibid.*, Recommendation 44

- Yes
- No

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

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

[54] *Ibid.*, Recommendation 45

- Yes
-

No

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

Cross-examination is done following the Barnahus model. Regulations explaining the rules of procedure are attached.

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

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## JUDICIAL PROCEEDINGS Question 20. In the judicial proceedings:

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

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

[55] *Ibid.*, Recommendation 46

- Yes  
 No

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

Criminal Code - article 647A. (1) Without prejudice to the provisions of articles 646 and 647, the court may, if it deems it proper so to act, allow for the audio-recording or for the video-recording of any evidence required from a witness as aforesaid or a witness residing outside Malta, in accordance with such codes of practice as the Minister responsible for justice may, by regulations, prescribe.  
(2) The Court may also allow for the testimony of any witness even if present in Malta to be given by video conference or by teleconference from such place as the Court may order and subject to such conditions and directions as the Court may deem necessary: Provided that the Minister responsible for justice may, by regulations, provide for any procedures, formalities, modalities or restrictions which are to apply to the taking of evidence in Malta in respect of proceedings in Malta by video conference or by teleconference and where the Minister makes such regulations the said regulations shall apply and any conditions or directions given by the Court under this sub-article shall not conflict with such regulations.



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

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

[56] *Ibid.*, Recommendation 59

- Yes
- No

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

Children's House (Barnahus) Regulations explaining the rules of procedure for child victims and witnesses are attached.

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

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c. [is there any difference in the scope of the application of this requirement based on the child's age?](#)<sup>[57]</sup> Please provide details.

[57] *Ibid.*, Recommendation 60

- Yes
- No

If appropriate, please provide more information (20.c No)

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

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

[58] *Ibid.*, Recommendation 47

- Yes
- No

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

Code of Organization and Civil Procedure article 622B. (1) Without prejudice to the provisions of article 622A, the court may, if it deems it proper so to act, allow for the audio-recording or for the video-recording of any evidence required from a witness as aforesaid, in accordance with such codes of practice as the Minister responsible for justice may, by regulations, prescribe

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

e. [what measures do you take to guard against any further contact between a child victim of sexual abuse by someone in a recognised position of trust, authority or influence and a presumed offender during the criminal proceedings?](#)<sup>[59]</sup>

[59] *Ibid.*, Recommendation 48

A child victim is interviewed in the Children's House by a trained professional in an appropriate manner so as to avoid contact with the perpetrator and as much as possible is only interviewed once so as to avoid repeat victimisation.

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

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

[60] *Ibid*

- Yes  
 No

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

same as above

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

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

[61] *Ibid*

The child victim is never present in Court to and is heard in the Children's House (Minor Protection (Alternative Care) Act).

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

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

[62] *Ibid.*, Recommendation 49

There is a complete ban on publication in the media of cases involving minors.

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

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

[63] *Ibid.*, Recommendation 50

- Yes
- No

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

Criminal Code article 534AB. (1) Saving the provisions of articles 355AC, 355AS, 392 and 445, it shall be the duty of the Police or of the Court, as the case may be, to inform the suspect or the accused without undue delay of the following procedural rights:

- (a) the right of access to a lawyer;
- (b) any entitlement to free legal advice and the conditions for obtaining such advice;
- (c) the right to be informed, in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of his rights of defence, of the offence he is suspected or accused of having committed:

Provided that the suspect or accused shall be promptly informed of any changes in the information given in accordance with this article where this is necessary to safeguard the fairness of the proceedings;

- (d) the right to interpretation and translation;
- (e) the right to remain silent;
- (f) the right to have a third party informed of the suspect's or the accused person's deprivation of liberty;
- (g) the right to communicate with third persons and with consular authorities when the suspect or an arrested

person is deprived of his liberty;

(h) the right to be allowed to consult a medical practitioner;

(i) should the suspect or arrested person be illiterate, the right to have the Letter of Rights read out and explained to him.

(2) The information provided for under sub-article (1) shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspected or accused persons within the meaning of 208AC(2).

(3) It shall be the duty of the Police to provide a person arrested or detained promptly with the Letter of Rights set out in Schedule E and the Police shall give the said person an opportunity to read it and to retain same in his possession throughout the time that he is detained. The Letter of Rights shall be written in a language that the person understands:

Provided that where the Letter of Rights is not available in the appropriate language, the suspect or the accused shall be informed of his rights orally in a language that he understands and the Letter of Rights shall subsequently, and without undue delay, be provided to him in a language that he understands.

(4) Information provided in accordance with this article shall be recorded by the Police or by the Court, as the case may be.

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

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

[64] *Ibid.*, Recommendation 51

- Yes  
 No

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

Criminal Code article 534AB. (1) Saving the provisions of articles 355AC, 355AS, 392 and 445, it shall be the duty of the Police or of the Court, as the case may be, to inform the suspect or the accused without undue delay of the following procedural rights:

(a) the right of access to a lawyer;

(b) any entitlement to free legal advice and the conditions for obtaining such advice;

(c) the right to be informed, in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of his rights of defence, of the offence he is suspected or accused of having

committed:

Provided that the suspect or accused shall be promptly informed of any changes in the information given in accordance with this article where this is necessary to safeguard the fairness of the proceedings;

(d) the right to interpretation and translation;

(e) the right to remain silent;

(f) the right to have a third party informed of the suspect's or the accused person's deprivation of liberty;

(g) the right to communicate with third persons and with consular authorities when the suspect or an arrested person is deprived of his liberty;

(h) the right to be allowed to consult a medical practitioner;

(i) should the suspect or arrested person be illiterate, the right to have the Letter of Rights read out and explained to him.

(2) The information provided for under sub-article (1) shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspected or accused persons within the meaning of 208AC(2).

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Provided that where the Letter of Rights is not available in the appropriate language, the suspect or the accused shall be informed of his rights orally in a language that he understands and the Letter of Rights shall subsequently, and without undue delay, be provided to him in a language that he understands.

(4) Information provided in accordance with this article shall be recorded by the Police or by the Court, as the case may be.

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

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

[65] *Ibid.*, Recommendation 52

Criminal Code article 534AB. (1) Saving the provisions of articles 355AC, 355AS, 392 and 445, it shall be the duty of the Police or of the Court, as the case may be, to inform the suspect or the accused without undue delay of the following procedural rights:

(a) the right of access to a lawyer;

(b) any entitlement to free legal advice and the conditions

for obtaining such advice;

(c) the right to be informed, in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of his rights of defence, of the offence he is suspected or accused of having committed:

Provided that the suspect or accused shall be promptly informed of any changes in the information given in accordance with this article where this is necessary to safeguard the fairness of the proceedings;

(d) the right to interpretation and translation;

(e) the right to remain silent;

(f) the right to have a third party informed of the suspect's or the accused person's deprivation of liberty;

(g) the right to communicate with third persons and with consular authorities when the suspect or an arrested person is deprived of his liberty;

(h) the right to be allowed to consult a medical practitioner;

(i) should the suspect or arrested person be illiterate, the right to have the Letter of Rights read out and explained to him.

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Provided that where the Letter of Rights is not available in the appropriate language, the suspect or the accused shall be informed of his rights orally in a language that he understands and the Letter of Rights shall subsequently, and without undue delay, be provided to him in a language that he understands.

(4) Information provided in accordance with this article shall be recorded by the Police or by the Court, as the case may be.

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

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