



The Lisa Maria  
Foundation

SAFEGUARDING CHILDREN AND THE YOUNG

# Recommendations for the refinement of legislation and policy for the increased safeguarding of children and youth in Malta and Gozo

Recommendations for:

## **Family Court Reform - November 2024**

**Ministry For Justice and Reform of the Construction  
Sector & Ministry For Social Policy and Children's Rights**

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### Main Points

**All amendments should primarily be taken in the best interest of the child and not favouring parental rights over children's rights.**

**The current system should be strengthened and what is already in law should be practiced and enforced, rather than creating new systems that threaten to slow the process down further or create a system which is more biased and therefore unfair.**

### Sharing of Information between courts

It is very important that civil court and criminal court are able to share information about ongoing cases that are being heard with the same individuals/families. This sharing of information will safeguard children further by ensuring that the decisions taken are based on the whole picture surrounding the child, whilst also including possible risks and harm that may be evident from another ongoing case. For example: if one court is taking a decision on care and custody, whilst not factoring in that one of the parents has ongoing cases in the criminal court for violence and abuse.

### Existing over New

Much of what is being proposed in the reform is already doable with the current system and with the current laws in place. Rather than adding new boards, new support offices and new mechanisms for court experts, it is suggested that:

- A. more investment is placed in human resources to lower waiting times, lessen the burden on the few and make the system generally more efficient.
- B. More investment is placed in physical resources to have additional court halls available so more hearings can take place to sustain suggestion A.
- C. It should be mandatory for all court staff (magistrates and child advocates included) to have training about the abuse and harm of children, in order for them to have a thorough understanding of how this may manifest and to adopt a trauma informed approach. The court cannot fully represent victims without the training of what they may have endured or may still be enduring as a consequence of the abuse.
- D. A monitoring system should be implemented for current and new court experts to ensure that they are also accountable to consistency and to maintaining a professional role

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### **The Board**

The board has the potential of adding another layer to an already lengthy procedure, as opposed to facilitating the process. The increase of resources aforementioned will avoid the need for the board and will instead strengthen and enforce what is already available and in law.

Finding professionals who have the expertise to be on this Board but who are not biased or have a conflict of interest, having worked with these clients in another capacity, is extremely difficult. This could potentially make the system unfair, whereas currently the judiciaries can be more neutral with the use of court experts as deemed necessary.

### **Physical Spaces**

It should be mandatory that the Children's House is used for all interviews and child witnesses. This House was created and established specifically with the idea of creating a child-centred environment and to minimise harm and trauma as much as possible during the proceedings. However this is hardly being used in practice. The logistics surrounding any barriers to use should be ironed out and this made a mandatory practice.

### **Maintenance**

- Children who are with their families escaping violence and are seeking refuge in shelters, should be prioritised in hearings for maintenance. Children still require food, clothing, medical and basic needs in this interim and the court should ensure that decisions are taken promptly to ensure that these basic rights and needs of children can be upheld, even during this time of transition.
- The preferred suggestion of the maintenance options is Option B, with the following suggested amendments:
  - Raising the basic from 200 euros to be in line with the current cost of living, considerate of rises in cost of rent, bills and basic needs.
  - Highlighting a yearly cost of living percentage which automatically increases from year to year.
  - That if at the point that the court is making a decision, that the child is in more than one extracurricular activity, that these are preferably maintained and responsibilities shared between parents. This would need to be considerate of means and always if in the best interest of the child.

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- In order to ensure that children's needs are not neglected due to the length of court proceedings or due to parental disagreements, maintenance should be paid directly by the Department of Social Security and it is the DSS who is responsible for collecting the maintenance by the 'paying parent'. This can be done by the maintenance due being paid directly from their salary/social security benefits/income, to the DSS, as suggested in the reform. This system is already in place in other countries and ensures that:
  - The best interest of the child is upheld because their needs can be tended to monthly without delay.
  - The receiving parent receives the maintenance on time, every month and that the needs of the children are not neglected at any point.
  - Missed payments are detected straight away without the need for constant police reports.
  - The strain on services such as police and courts is reduced drastically, who currently have to deal with ongoing reports all of which currently are seen separately.
  - The responsibility and accountability falls on the 'paying parent' to uphold their responsibilities as opposed to currently being on the 'receiving parent' who has to report every time maintenance is not paid.
  - An abusive or controlling parent cannot use maintenance as another form of coercion and control.

### **Access**

The message should not be about the parent's right to access, but the child's right to see their parents and the parent's duty to be a consistent part of the child's life. These can only be implemented if it is safe and in the best interest of the child.

A child who is afraid to be in the presence of a parent, should be listened too. This should not immediately be considered as parental alienation because the consequence of this could possibly be forcing a child to spend time with their abuser. Abuse is not always visible and this is why training (previously mentioned) is essential to detect the subtlety and undercurrents that exist in child abuse.

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In instances when the child is afraid but abuse definitely is not present, the child's fear still needs to be considered as such. The court should recommend support to the child to overcome these fears BEFORE being forced to spend time with a parent they are afraid of. This could be potentially very harmful to the child and again their needs must be prioritised over those of the parents. We must take the time to understand what the child is trying to communicate to us by not wanting to go and that then forming the assessment and way forward.

In relation to the suggestion of criminalising continuous failure for a non-custodial parent to make use of their access, there is nothing to be gained from prosecuting criminally. It is not in the best interest of the child, that a parent is forced to see them. This could result in more harm for the child than supporting the child to work through the pain of the rejection.

On the other hand, the non custodial parent should be accountable for their access, and in instances when they consistently do not come for their access with the child, it should be understood how difficult this can be for a child to be let down time and time again.

Therefore failure to attend or be consistent with access over a specific duration of time (ex. 3 months), without justifiable reason, should result in the parent's access being revoked together with their rights related to custody. This should only be reinstated following an assessment whereby the parent needs to prove that they will maintain consistency in the life of the child.

### **Child's rights to access services during court proceedings**

Currently children are being left without needed medical procedures, medical appointments, therapy to address trauma and even education at times because one of the parents fails to sign or turn up to give consent. In these instances the court needs to have the resources to take urgent decisions to overrule this parental 'right' to stall the rights and needs of the child.

### **Child Advocates**

All children should be appointed a child advocate to ensure that the child is given space, their rights protected and their voice amplified. However it is important that:

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- child advocates are given thorough training on child abuse and safeguarding of children to adopt a trauma informed approach.
- The child advocate works alongside other professionals (especially those who have already worked with the child and their family in the past) in order to gain an understanding of significant people in the child's life. Other professionals may be more trauma informed and systemically trained to approach the child and assess the situation thoroughly and appropriately.

### **Domestic Violence**

The reform does not given enough attention to domestic violence and the fact that children exposed to domestic violence is a form of child abuse which can leave long lasting effects. The court and it's personnel need a thorough understanding of gender based and domestic violence (GBDV) in order to understand how:

- victims should NOT be forced to face in court or negotiate through mediation with abusers/perpetrators.
- abuse may not be visible and the control and coercion present can be further inflicted with a court system which favours the rights of parents over that of children.
- children going through this need the court to recognise their specific needs and factor these specifics into any decision making to ensure that they are protected during ongoing access with parents.

### **Parental Alienation**

It is rather concerning that this was given so much emphasis in the reform especially when widely contested by a number of worldwide established organisations. This emphasis suggests that the court is weighing this more strongly than the other areas aforementioned which were not given such weighting.

The term is not recognised by the World Health Organisation who made the decision to exclude it's inclusion in the ICD-11 and who have said "Following that clarification, comments and questions have persisted about the misuse of the term to undermine the credibility of one parent alleging abuse as a reason for contact refusal and even to criminalize their behaviour." (<https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation>)

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The manipulation and emotional abuse of children in relation to the other parent, may exist, but it is another form of psychological abuse along with threatening, gaslighting, coercion etc. As quoted by WHO, the term is being used to undermine victims of abuse and domestic violence to gain access and put the other parent in a negative light. It could be very harmful to assume 'parental alienation' without a thorough understanding of abuse and domestic violence, especially when such credible organisations do not recognise it and this could be used by an abuser to deflect abuse and continue to gain access to abuse.

We must listen to the children, their fears and their realities. It is never acceptable that a child is caught in between feuding parents but neither that the court listen to the parent's needs and versions, without thoroughly understanding the perspective and feelings of the child.

### **Co-Parenting**

Co-parenting suggests that the child lives with one parent for one week/one month and then alternates living with the other parent for the next week/month. This means that the child would have a lack of consistency, possible lack of belonging and a lot of upheaval. Again we must ask what the motivation behind this suggestion is. Is it 'what is in the best interest of the child' or 'to give both parents fair and equal access'? Again the child's needs must be a priority.

If for some reason this could work for a particular family, there are a number of practical and logistical barriers which would make this an extra strain on the child, such as:

- If one parent lives on one side of the island and the other parent lives at the other end, the child might take 5 minutes to get to school on one week and an hour and a half on the next week. This offers no stability and routine for the child.
- If the child attends a government school, the current system requires that the child attends in the locality that they reside. Currently children who reside in shelters temporarily are also asked to relocate school because of this condition in the educational system, so how would this work?
- Again the school transport system only accepts to have the same address for pick up and drop off. The system does not allow for changing of address from morning to afternoon, let alone from week to week. Again how would this work?
- There are many other systems which would be effected by the implementation of such a system and it is essential that there is harmony and agreement between all entities before such suggestions are recommended to ensure that further strain and risk is not placed on the child to adapt, to a system that is not willing to.

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