

# Human Rights and Criminal Law

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# CARLO ALBERTO

per la grazia di Dio

## RE DI SARDEGNA, DI CIPRO, DI GERUSALEMME,

Duca di Savoia, di Genova, di Monferrato, d'Aosta, del Chiabrese, del Genevese e di Piacenza; Principe di Piemonte e di Oneglia; Marchese d'Italia, di Saluzzo, d'Ivrea, di Susa, di Ceva, del Maro, di Oristano, di Cesana e di Savona; Conte di Moriana, di Ginevra, di Nizza, di Tenda, di Romonte, di Asti, di Alessandria, di Goceano, di Novara, di Tortona, di Vigevano e di Bobbio; Barone di Vaud e del Faucigny; Signore di Vercelli, di Pinerolo, di Tarantasia, della Lomellina e della Valle di Sesia, ecc. ecc. ecc.

**I** popoli, che per volere della Divina Provvidenza governiamo da diciassette anni con amore di padre, hanno sempre compreso il Nostro affetto, siccome Noi cercammo di comprendere i loro bisogni; e fu sempre intendimento Nostro, che il Principe e la Nazione fossero coi più stretti vincoli uniti pel bene della patria.

Di questa unione ognor più salda avemmo prove ben consolanti nei sensi, con cui i Sudditi Nostri accolsero le recenti riforme, che il desiderio della loro felicità Ci avea consigliate per migliorare i diversi rami di amministrazione, ed iniziarli alla discussione dei pub-

Art. 7.

La prima sarà composta da Membri nominati a vita dal Re: la seconda sarà elettiva sulla base del censo da determinarsi.

Art. 8.

La proposizione delle leggi apparterrà al Re ed a ciascuna delle Camere.

Però ogni legge d'imposizione di tributi sarà presentata prima alla Camera elettiva.

Art. 9.

## Staatsgrundgesetz vom 21. December 1867,

über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder.

Wirksam für Böhmen, Dalmatien, Galizien und Lodomerien mit Krakau, Oesterreich unter und ob der Enns, Salzburg, Steiermark, Kärnthén, Krain, Bukowina, Mähren, Schlesien, Tirol und Vorarlberg, Istrien, Görz, und Gradiska, dann die Stadt Triest mit ihrem Gebiete.

Mit Zustimmung beider Häuser des Reichsrathes finde Ich das nachstehende Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger zu erlassen, und anzuordnen, wie folgt:

Artikel 1. Für alle Angehörigen der im Reichsrathe vertretenen Königreiche und Länder besteht ein allgemeines österreichisches Staatsbürgerrecht.

Das Gesetz bestimmt, unter welchen Bedingungen das österreichische Staatsbürgerrecht erworben, ausgeübt und verloren wird.

Artikel 2. Vor dem Gesetze sind alle Staatsbürger gleich.

Artikel 3. Die öffentlichen Aemter sind für alle Staatsbürger gleich zugänglich.













اتفاقية حقوق الطفل

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《儿童权利公约》

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CONVENTION ON THE RIGHTS OF THE CHILD

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CONVENTION RELATIVE AUX DROITS DE L' ENFANT

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КОНВЕНЦИЯ О ПРАВАХ РЕБЕНКА

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CONVENCION SOBRE LOS DERECHOS DEL NIÑO



**Signature**

**Ratification**

**Reservation**

## Afghanistan

*Upon signature:*

*Declaration:*

"The Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect."

## Iran (Islamic Republic of) [25](#), [39](#)

*Upon signature:*

*Reservation:*

"The Islamic Republic of Iran is making reservation to the articles and provisions which may be contrary to the Islamic Shariah, and preserves the right to make such particular declaration, upon its ratification".

*Upon ratification:*

*Reservation:*

"The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect."

... the Government of Djibouti shall not consider itself bound by] any provisions or articles that are incompatible with its religion and its traditional values.

*Reservations:*

The Republic of Korea considers itself not bound by the provisions of paragraph (a) of article 21 and sub-paragraph (b) (v) of paragraph 2 of article 40.

Nothing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens.







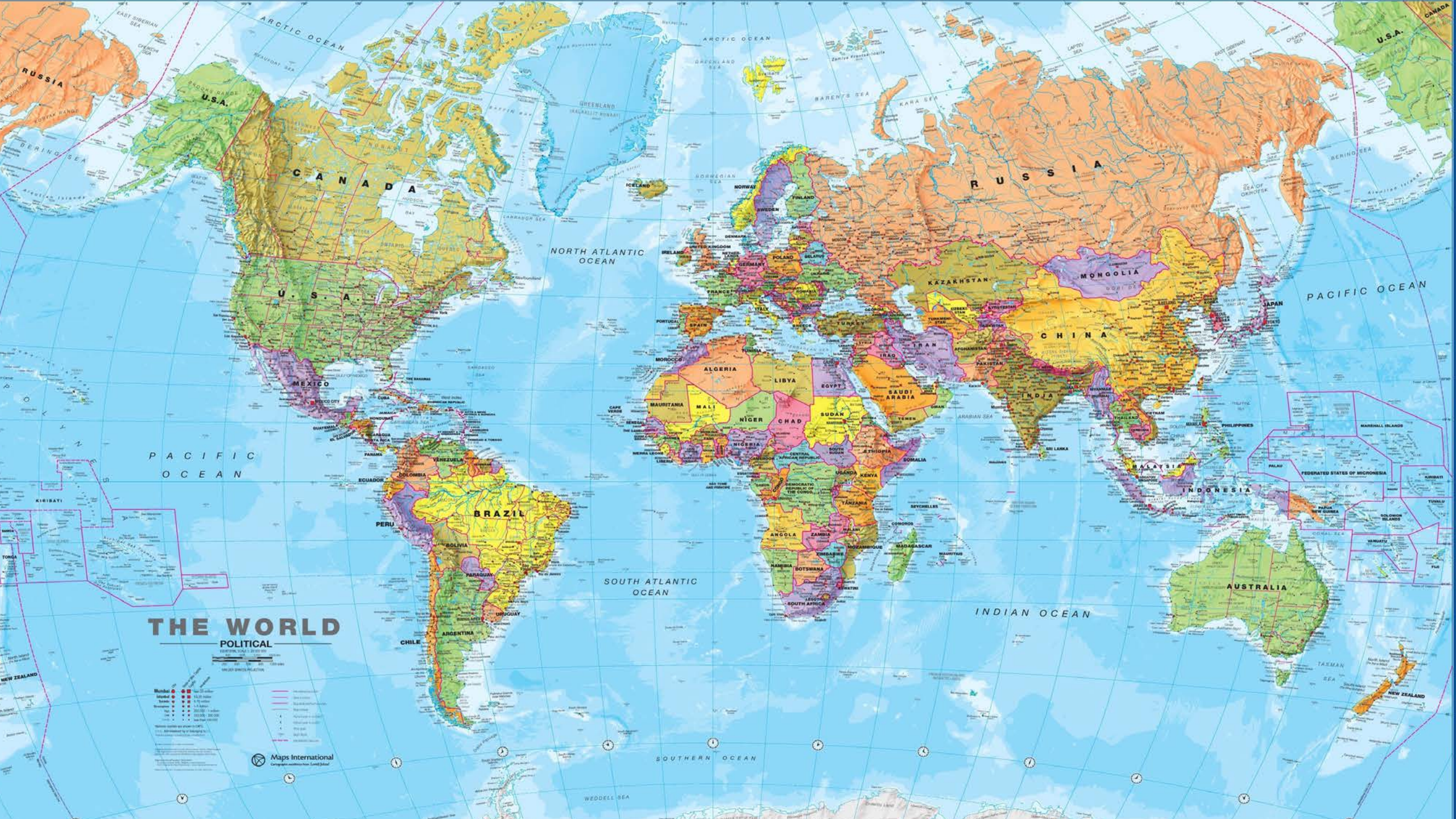








Does technological  
development create  
new human rights?



# THE WORLD

## POLITICAL

POPULATION IN MILLIONS

Population	Color
100,000,000+	Dark Red
50,000,000+	Red
10,000,000+	Orange
1,000,000+	Yellow
1,000,000	Light Green
500,000	Green
100,000	Light Blue
10,000	Blue
1,000	Dark Blue
100	Very Dark Blue

POPULATION DENSITY PER SQUARE KILOMETER

Density	Color
100+	Dark Red
50+	Red
10+	Orange
1	Yellow
0.1	Light Green
0.01	Green
0.001	Light Blue
0.0001	Blue
0.00001	Dark Blue

MAPS INTERNATIONAL



**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Positive  
obligation to  
protect human  
rights via  
criminal law

Obligation not  
to criminalise  
the exercise of  
human rights

Human rights  
within criminal  
process & law  
enforcement







**« teenagers increasingly  
consider sexting to be ‘normal’**

»

UN COMMITTEE ON THE RIGHTS  
OF THE CHILD, *Guidelines OPCRC*,  
2019

**«Sexting can be [...] a normal  
part of teenagers’ exploration of  
sexuality and relationships »**

STOILOVA/LIVINGSTONE/KHAZBAK  
, *Investigating Risks and Opportunities for  
Children in a Digital World*, Unicef –  
Innocenti, 2021







# 'Self-generated' child sex abuse

Overview

Key trends

7-10 years

11-13 years

14-15 years

16-17 years

In 2022, we continued to see a high proportion of 'self-generated' imagery. These are child sexual abuse images and videos created using smartphones or webcams and then shared online. In some cases, children are groomed, deceived or extorted into producing and sharing a sexual image or video of themselves by someone who is not physically present in the room with the child. These images are most often taken in a home setting – a child's bedroom, or a bathroom.

## A note on terminology:

We regard the term 'self-generated' child sexual abuse as an inadequate and potentially misleading term which does not fully encompass the full range of factors often present within this imagery, and which appears to place the blame with the victim themselves. Children are not responsible for their own sexual abuse. Until a better term is found, however, we will continue to use the term 'self-generated' as, within the online safety and law enforcement sectors, this is well recognised.

In our charts, and explanations in this section, we have also used the term 'abuser present' to describe images and videos which are 'not "self-generated"'. **Please note that 'abuser present' means that we assessed this content as being created when the abuser was physically present in the room with the victim/s or their likeness, but this does not necessarily mean that the abuser was depicted in the imagery itself.**

## Trends

Children aged 11-13 continue to appear most frequently in 'self-generated' imagery, as in previous years. We observed a steep increase, however, in the proportion of this type of imagery including children aged 7-10 in 2022, up 129% from 2021.

**Autonomy**

**Protection**

**Evolving  
capacities**

Positive  
obligation to  
protect human  
rights via  
criminal law

Obligation not  
to criminalise  
the exercise of  
human rights

Human rights  
within criminal  
process & law  
enforcement



- 1989 UN Convention on the Rights of the Child (CRC)



- 2001 UN Second protocol to the CRC on child pornography

COUNCIL OF EUROPE



- 2001 Council of Europe Cybercrime Convention (Budapest Convention)

CONSEIL DE L'EUROPE



- 2004/68/JHA EU Council Framework Decision on child pornography

COUNCIL OF EUROPE



- 2007 Council of Europe Child Abuse Convention (Lanzarote Convention)

CONSEIL DE L'EUROPE



- 2011/93/EU Directive on Child Sexual Abuse



# EU Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography

## Article 2

A Member State may exclude from criminal liability conduct relating to child pornography: [...]

(b) [...] in the case of production and possession, images of children having reached the age of sexual consent are produced and possessed with their consent and solely for their own private use.



# Council of Europe 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

## Article 20 (3)

Each Party may reserve the right not to apply, in whole or in part, [the required criminalization of production and possession of child pornography] to the [...] material

– involving children who have reached the [age of sexual consent] and where these images are produced and possessed by them with their consent and solely for their own private use.



# Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography

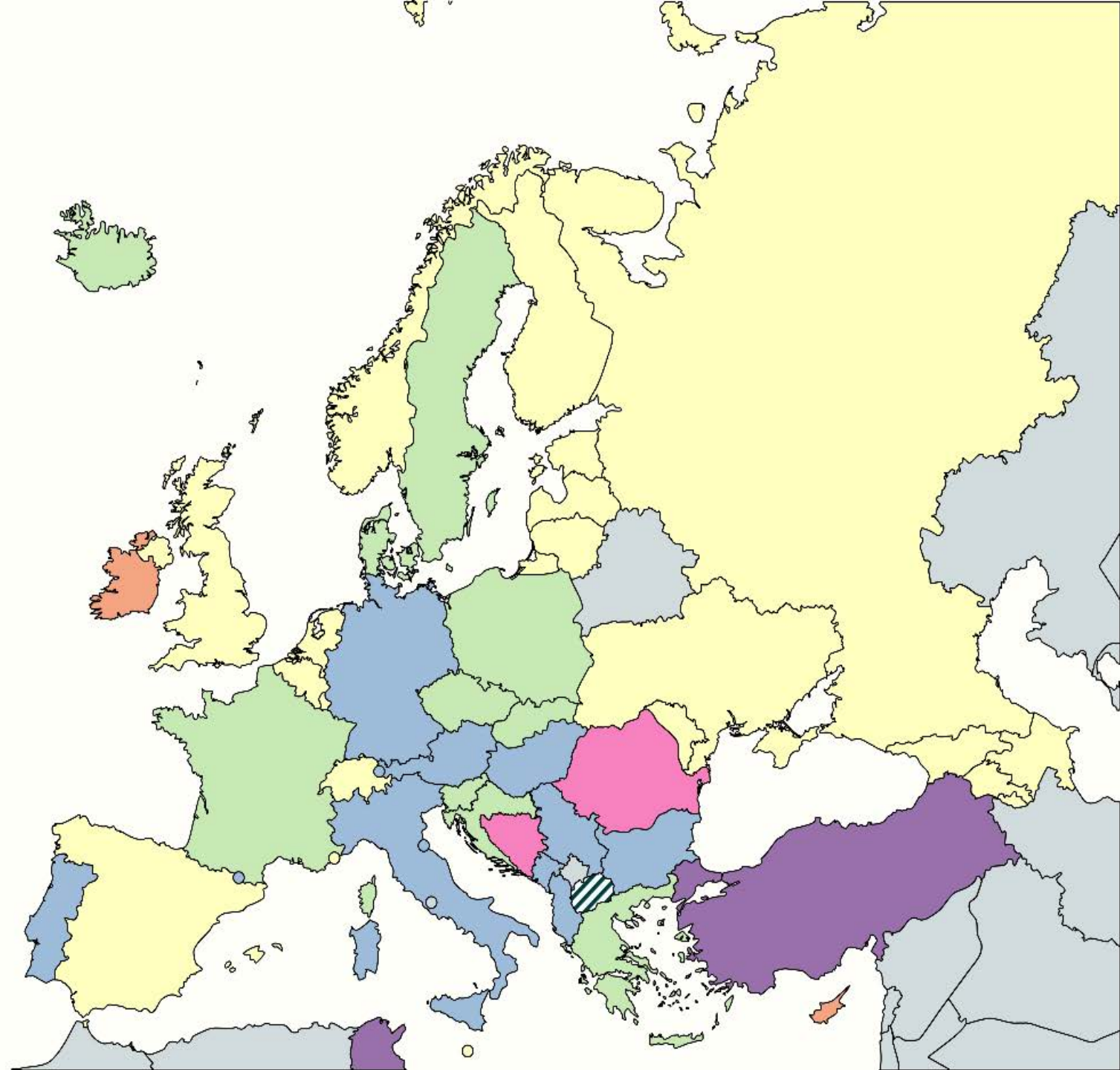
## Article 8 (3)

It shall be within the discretion of Member States to decide whether [the crime of production and generation of child pornography] apply to the production, acquisition or possession of material involving children who have reached the age of sexual consent where that material is produced and possessed with the consent of those children and only for the private use of the persons involved, in so far as the acts did not involve any abuse.

## **States may (!) decide not to criminalise consensual child pornography if:**

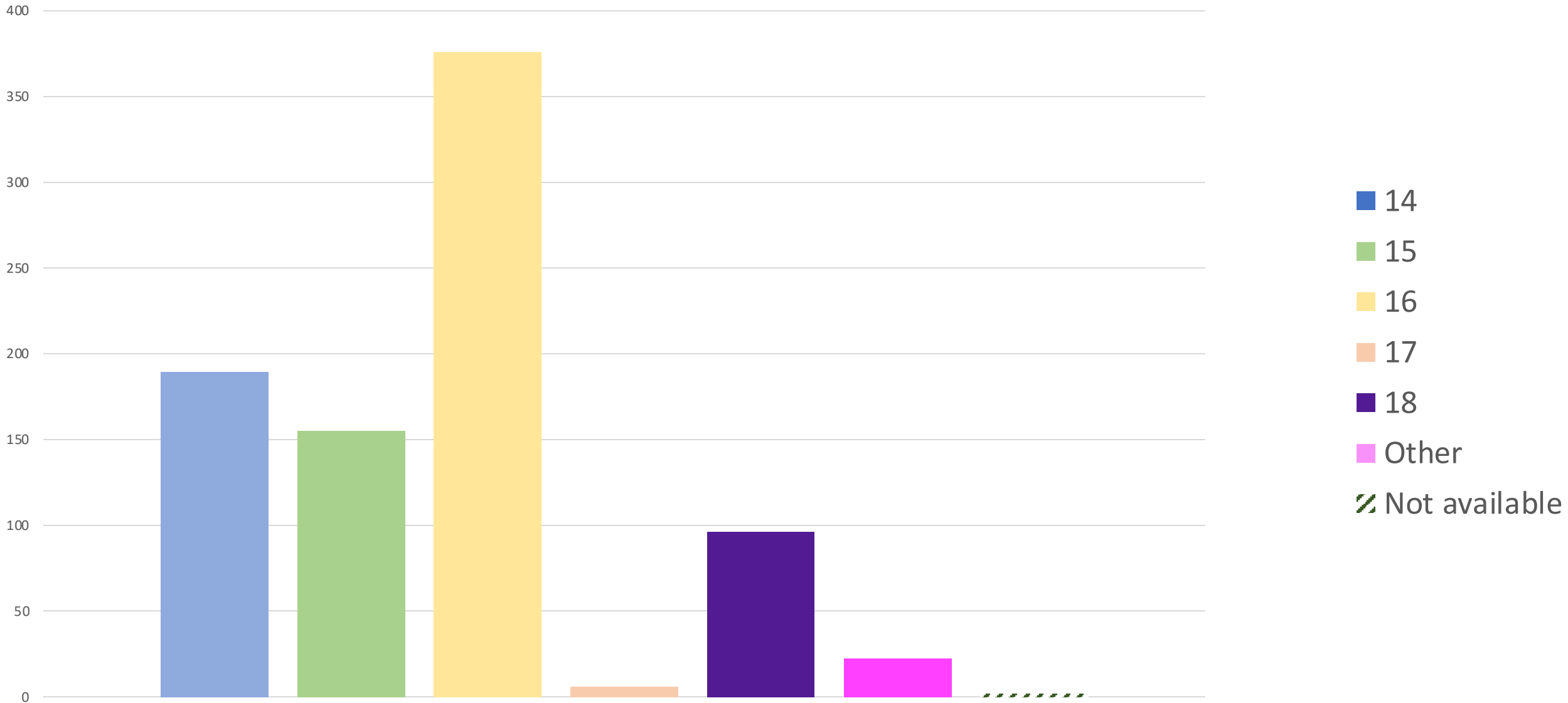
- Child has consented
- Children above the national age of sexual consent
- Private use (of the child? of the persons involved?)
- No abuse
- Only production and possession

# Age of Consent



*To be published in:*  
Rosani, A study on the  
legal age for sexual activities  
in the Lanzarote countries,  
Council of Europe, 2023

# Legal age for sexual activities (population, mln)



## **States may (!) decide not to criminalise consensual child pornography if:**

- Child has consented
- Children above the national age of sexual consent
- Private use (of the child? of the persons involved?)
- No abuse
- Only production and possession





**« The self-generation of sexually suggestive or explicit images and/or videos by children does not amount to the production of child pornography when it is intended solely for their own private use»**

**Lanzarote Committee  
Opinion on child sexually suggestive  
or explicit images and/or videos generated,  
shared and received by children (2019)**





**« Self-generated sexual material by children that they possess and/or share with their consent and solely for their own private use should not be criminalized »**

**UN Committee on the Rights of the Child  
General comment No. 25 (2021) on children's rights in  
relation to the digital environment**



« The Lanzarote Committee requests that Parties ensure in their legal framework that a child will not be prosecuted when he/she possess a) their own self-generated sexually suggestive or explicit images and/or videos; b) self-generated sexually suggestive or explicit images and/or videos of another child with the informed consent of the child depicted on them »

Lanzarote Committee  
Implementation report “Addressing the challenges raised by child self-generated sexual images and/or videos”  
(2022)



« The Lanzarote Committee requests that Parties ensure in their legal framework that a child will not be prosecuted for sharing his/her sexual images and/or videos with another child when such sharing is voluntary, consensual and intended solely for their own private use »

Lanzarote Committee  
Implementation report “Addressing the challenges raised  
by child self-generated sexual images and/or videos”  
(2022)



**Framework Decision  
2004/68/JHA**

**Directive 2011/93/EU**



**Lanzarote Convention**

**Opinion Lanzarote  
Committee 2019**

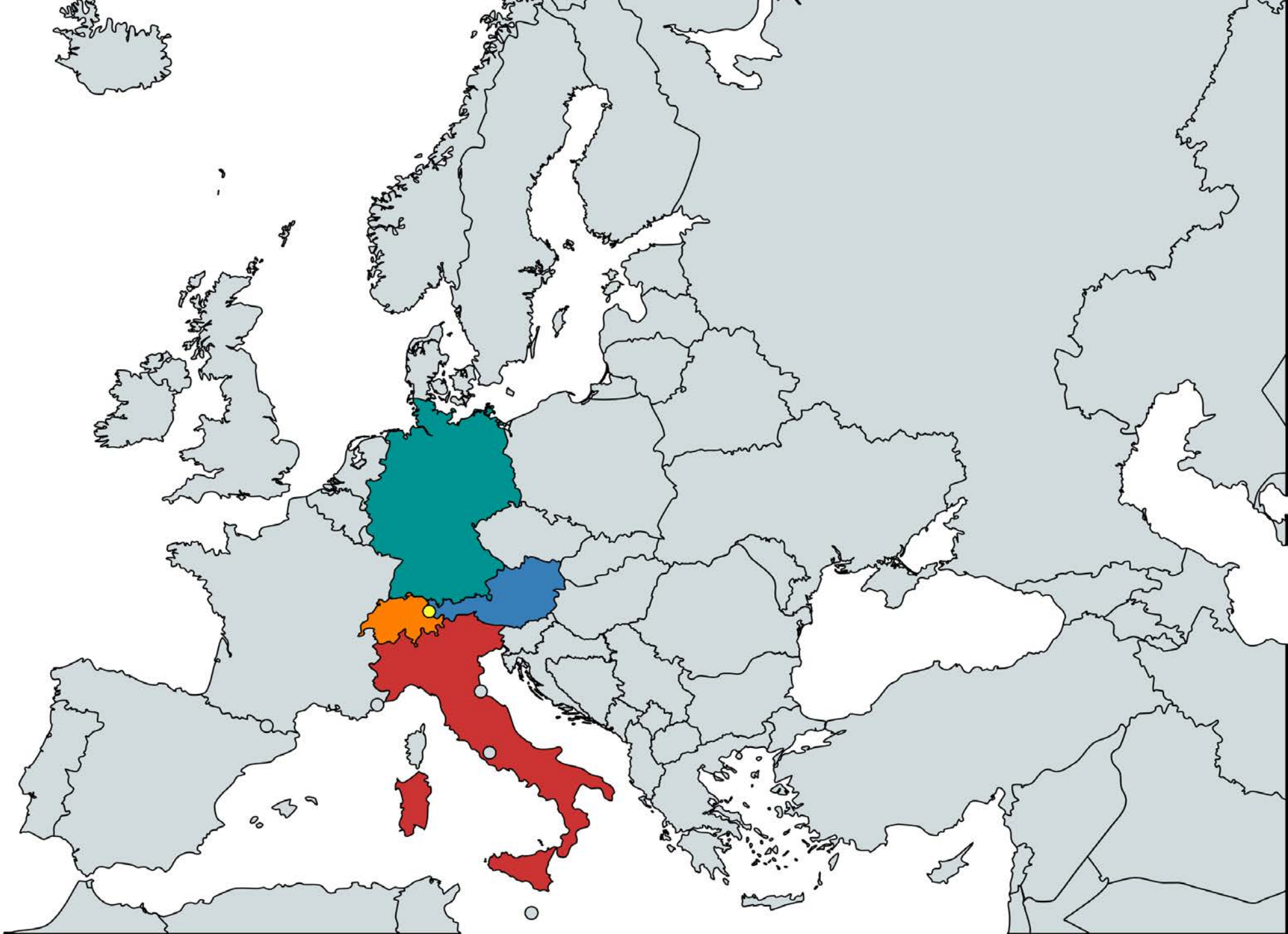
**Report Lanzarote  
Committee 2022**



**General Comment no. 25  
UN Committee on the  
Rights of the Child 2021**

**Green: soft law**

**Blue: hard law**





**No regulation**

**Case-law developments**



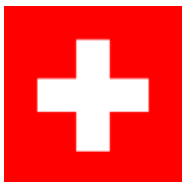
**Specific regulation**



**Specific regulation**



**Specific regulation**



**Specific regulation**

Protection



Autonomy

