

Our vision:

A world where every person's right to a fair trial is respected.

Fair

Trials

**Accessible Letters
of Rights in Europe**

**International and
Comparative Law
Research Report**

August 2016

With coordination by



Hungarian Helsinki Committee

About Fair Trials

Fair Trials works for fair trials in Europe according to internationally recognised standards of justice. Our vision is a world where every person's right to a fair trial is respected. Fair Trials helps people to understand and defend their fair trial rights; addresses the root causes of injustice through its legal and policy work; and undertakes targeted training and networking activities to support lawyers and other human rights defenders in their work to protect fair trial rights.

Fair Trials coordinates the Legal Experts Advisory Panel ("LEAP") which is a pan-EU network of criminal justice and human rights experts, currently bringing together over 190 defence practitioners, NGOs and academics from 28 EU Member States. LEAP is guided by its Advisory Board, consisting of 28 Members from 26 Member States. LEAP meets regularly to discuss criminal justice issues, identify common concerns, share examples of best practice and identify priorities for reform of law and practice. Fair Trials and the LEAP have been at the forefront of supporting the development and implementation of EU Directives of the rights on suspects and accused persons.



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I. EXECUTIVE SUMMARY

1. In 2012 the EU adopted Directive 2012/13/EC on the right to information in criminal proceedings (“the Directive”).¹ Amongst other requirements, the Directive (Article 3) obliges Member States to ensure that all suspects and accused persons are promptly provided information, orally or in writing, concerning the right of access to a lawyer, entitlements to free legal advice, the right to be informed of the accusation against them and the right to remain silent in order to allow those right to be exercised effectively. The Directive (Article 4) further obliges Member States to ensure that suspects or accused persons who are arrested or detained are provided promptly with and are given an opportunity to read a written Letter of Rights with information on the Article 3 rights as well as on rights to access case materials, have consular authorities and one additional person informed of the arrest or detention, and receive urgent medical assistance, as well as on the maximum duration of deprivation of liberty before being brought before a judicial authority. The transposition deadline for the Directive was 2 July 2014.
2. The Hungarian Helsinki Committee and its NGO-partners, including Fair Trials, as part of the EU-funded project on “Accessible letters of rights in Europe”, are examining what the requirement in the Directive for simple and accessible language in a Letter of Rights means in practice and whether existing practices with regard to notification of rights within EU member states can or should be improved. As part of this effort, this research report examines international and comparative standards and practices on notifications of rights provided to suspects and accused persons in criminal proceedings, with a view to identifying examples of transferrable good practice, and presents the results from a survey of Legal Experts Advisory Panel (LEAP) members into the status of implementation of the Directive across EU member states. The report consists of (a) findings from desk-based research conducted into international human rights treaties and international standard-setting documents; (b) findings from desk-based research conducted into the laws and practices in 30 non-EU countries; and (c) the results from a survey of members of the LEAP into existing law and practice in EU Member States related to the implementation of the notification provisions of the Directive.
3. **International and regional standards:** There are a number of commonalities among the international human rights documents reviewed. All guarantee that suspects and accused persons will be provided with information on the charges against them and the reasons for their arrest. Except for the Convention on the Rights of the Child, all of the treaties also guarantee notification of the right to legal representation. Certain international and regional documents go beyond these basic standards, however. For instance:
 - the European Convention on Human Rights (“ECHR”) has been interpreted by the European Court of Human Rights (“ECtHR”) to guarantee that notification of rights must

¹ Directive 2012/13 EU of the European Parliament and the council on the right to information in criminal proceedings, 22 May 2012 Directive 2012/13EU, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>.

be conveyed in a language and manner that clearly inform defendants of the rights and the consequences of not exercising them;

- Article 60 of the Rome Statute of the International Criminal Court uniquely requires the Court's pre-trial chamber to assess that notifications were provided lawfully; and
- the Guidelines on Conditions of Arrest, Police Custody and Pre-trial detention in Africa ("Luanda Guidelines") provide for a comprehensive list of rights that the suspect or accused person deprived of liberty must be informed of orally and in writing.

4. While most of the treaties are silent on the details of the notification beyond providing the content that must be notified, certain treaties do provide some noteworthy practice. For example, the Convention on the Rights of the Child provides that written notification to children will not always be sufficient and that oral notification may sometimes be required. In addition, the notification must be translated not only into the language the child understands, but in terms that is sufficiently accessible for the child's level of development and comprehension. Some of the international treaties give more definition to what is meant by "prompt" or "timely" notification. The Convention on the Rights of the Child requires notification at the moment the prosecutor or judge takes the first procedural step in an investigation (i.e. potentially before arrest). The European Convention on Human Rights requires notification upon arrest. The Rome Statute requires notification prior to interrogation and the Luanda Guidelines require notification when in police custody and prior to interrogation.
5. **Non-EU country standards:** In most of the 30 non-EU countries reviewed notifications are required related to the rights to legal representation and to remain silent. Several countries require notification of additional rights, such as the right to contact a relative or another third person, or to contact the consulate in case of foreign defendants. There are some interesting practices on notification of rights that can be of use within the EU. Countries such as Canada, Australia and Turkey require the provision of written notifications of rights and have somewhat developed practice for doing so. In Hong Kong, each interview room at the police station must feature a notice board informing suspects and accused person of their rights in writing, additionally to the individual notification of rights they must receive. In Malawi, a pilot project has begun through which a pre-recorded message in a number of languages will be played in the police station informing suspects and accused persons of their rights.
6. **EU Member States/LEAP survey:** A survey on the transposition and implementation of the Directive disseminated to our network of defense practitioners showed that while the Directive has been transposed into law in most Member States, in practice many suspects and accused persons are still not made effectively aware of their rights and are thus often not able to effectively exercise them. The most common complaint is that Letters of Rights are drafted in inaccessible language, often simply copied from the underlying legal provisions. In some countries suspects and accused persons are actively dissuaded from exercising their defense rights by the police, or provided with Letters of Rights that are confusing. Moreover, Letters of Rights are not always translated for non-native speakers. The survey showed that, for a number of reasons, a failure to provide an accessible Letter of Rights is unlikely to be remedied. For example, proving a failure could be difficult in certain circumstances; courts

may not consider it a sufficiently important breach of procedural rights, or remedies for such violations do not exist in national law.

II. INTRODUCTION

7. This report is part of the project “Accessible letters of rights in Europe”, which is coordinated by the Hungarian Helsinki Committee and on which Fair Trials, the Bulgarian Helsinki Committee, Human Rights Monitoring Institute (Lithuania), and Rights International Spain are project partners. The overall aim of this project is to contribute to the correct implementation of the Directive. It will do this by:
 - a. Increasing available knowledge on the status of implementation of the Directive across Europe;
 - b. Examining what the requirement for “simple and accessible” language for a letter of rights means in practice;
 - c. Identifying examples of good practice which are transferrable to other countries;
 - d. Producing reform proposals and model letters of rights to assist Member States and EU institutions; and
 - e. Raising public and professional awareness locally and at EU level about gaps in transposition.
8. This report provides an overview of international and regional standards (Part III), notification obligations in 30 non-EU countries (Part IV), and a comprehensive analysis of the current transposition and implementation progress of 25 Member States in the EU (Part V). With this report we hope to provide comprehensive context for the more in-depth research that will be conducted as part of the project in specific EU Member States, as well as to provide examples of best practices and core challenges in the notification of rights to suspects and accused persons.
9. The report was researched through a combination of desk-based research and a survey of the LEAP network. The analysis of international and regional standards in Part III and the notification obligations in non-EU countries in Part IV was conducted through desk-based research. The analysis of EU Member State law and practice in Part V is based on a survey of the LEAP network. The LEAP network is a network of over 190 criminal justice and human rights experts, including defence practitioners, NGOs and academics from all EU Member States, coordinated by Fair Trials. To survey the LEAP network, Fair Trials developed the online-survey annexed to this report. 42 LEAP members responded to the survey, covering 25 of the 28 EU Member States. Responses were not received for Latvia, Luxembourg or Sweden. However, Fair Trials will be following up in the coming months for more information from these jurisdictions.

III. RELEVANT INTERNATIONAL AND REGIONAL STANDARDS

10. International and regional documents (including some relevant General Comments and case law) have been reviewed in order to understand the broader perspective and standards of notifications and Letter of Rights, to assess the context this project is situated in, and to highlight best practices, where applicable.
11. The regional documents and treaties which have been reviewed regarding their provisions for notifications of rights are listed below:
 - a. International Covenant on Civil and Political Rights (“ICCPR”): Articles 9, 10, 14 (and General Comments 8, 32, 35);
 - b. Convention on the Rights of the Child (“CRC”): Article 40 (and General Comment 10);
 - c. Rome Statute of the International Criminal Court (“Rome Statute”): Articles 55, 59, 60, 67 (and Rules of Procedure and Evidence);
 - d. European Convention on Human Rights (“ECHR”): Articles 5, 6 (and case law by the European Court of Human Rights (“ECtHR”));
 - e. EU Right to Information Directive: Articles 3, 4;
 - f. American Convention on Human Rights: Articles 7, 8;
 - g. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas: Principle V;
 - h. African Charter on Human and Peoples’ Rights: Articles 6, 7;
 - i. African Commission Resolution on the Right to Recourse and Fair Trials: Article 2;
 - j. African Commission Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa: Paragraphs M2, N1, N2, O; and
 - k. African Commission Guidelines on Conditions of Arrest, Police Custody and Pre-trial detention in Africa (“Luanda Guidelines”): Articles 3, 4, 5, 8, 9, 33, 34, 35 – 38, 40.
12. All of the international and regional treaties and documents reviewed contain provisions that require that the suspect or accused person is informed of the reason for the arrest and of the charges against them (this notification obligation will therefore not be repeated below). There is, thus, a widespread acknowledgement that any suspect has this right and must, in most cases “promptly” or at the “time of the arrest”, be provided with this information in order to understand their position and be able to exercise their rights and prepare a defence.
13. Additionally, some of the international and regional treaties reviewed require or suggest that suspects and accused persons are informed of further defence and fair trials rights:
14. **International Covenant on Civil and Political Rights (“ICCPR”)**²: Article 14(3)(d) of the ICCPR provides that the suspect or accused person must be informed of the right to a lawyer when charged. It does not, however, clarify how they must be notified.

² UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> (Accessed 18 July 2016).

15. **Convention on the Rights of the Child (“CRC”)**³: While Article 40(2)(b)(ii) of CRC only concerns the right of the suspect or accused person to be informed of the charges against them, the respective General Comment 10 of the Committee on the Rights of the Child, paragraph 44 outlines that *“the child, in order to effectively participate in the proceedings, must be informed not only of the charges, but also of the juvenile justice process as such and of the possible measures”*.⁴
16. In terms of the method of delivery, General Comment 10, paragraph 47 states that notification must be “prompt and direct”, meaning when the prosecutor or judge initially takes procedural steps against the child, and in a language the child understands. “This may require a presentation of the information in a foreign language but also a “translation” of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand.” Further, in paragraph 48 the Committee on the Rights of the Child explained that:
- Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child’s legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her. The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.
17. Further, Article 40(2)(b)(iv) of the CRC provides that the child has the right to be informed of their right to examine witnesses. General Comment 10, paragraph 10 reads *“[...] it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard [...]”*. It is, therefore, unclear who might be responsible for such notification and how violation should be addressed.
18. **Rome Statute of the International Criminal Court (“Rome Statute”)**⁵: The Rome Statute provides for broad notifications rights and obligations of suspects or accused persons. Article 55(2)(b) provides for the right to be informed of the right to remain silent. Article 55(2)(c) provides the right to be informed of the right to a lawyer, the right to free legal assistance and the right to be questioned with a lawyer present. Article 55(2)(d), provides that the

³ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Available at: <http://www.refworld.org/docid/3ae6b38f0.html> (Accessed 18 July 2016).

⁴ The desk-based research of 30 non-EU countries presented in Part IV could find only one country – China – in which this requirement is reflected in national legislation.

⁵ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <http://www.refworld.org/docid/3ae6b3a84.html> (Accessed 18 July 2016).

suspect must be informed of the right to be questioned in the presence of a counsel when they are interrogated by a prosecutor of the ICC or national authorities. These notifications must be conducted before the interrogation.

19. The Rome Statute is one of very few treaties that introduces safeguards against unknowingly or non-voluntarily waiving the exercise of rights. Article 60(1) requires the ICC (Pre-Trial Chamber) to assess whether the suspect or accused person had been informed of their rights, including the right to apply for interim release pending trial. Article 55(2)(d) requires that the waiver must be voluntary. The court has clarified that the suspect must have been informed of their right to counsel in order to effectively waive it and they must have been informed that the right includes the right to prompt assistance of counsel, prior to and during any questioning.⁶
20. While the Rome Statute does not provide information on the method of delivery of rights notification, Rule 111(2) of the Rules of Procedure and Evidence of the International Criminal Court states that “when a person is informed of his or her rights under article 55, paragraph 2, the fact that this information has been provided shall be noted in the record.” Rule 112(1)(b) requires that “*a waiver of the right to be questioned in the presence of counsel shall be recorded in writing and, if possible, be audio- or video-recorded.*”
21. **European Convention of Human Rights (“ECHR”)⁷ and European Court of Human Rights (“ECtHR”)⁸**: The ECtHR has interpreted Article 6(1) and 6(3)(c) of the ECHR to provide that defendants must be clearly notified of the rights to silence and to legal assistance at the point of arrest in such a way as to enable the suspect to understand them and exercise their rights.⁹ There is a suggestion that an oral notification is insufficient in some cases, and the case-law points to a need to take account of the specific characteristics of the individual (e.g. youth).¹⁰
22. ECtHR case law suggests that waiver of rights can only be valid if it is done knowingly:

Neither the letter nor the spirit of Article 6 prevents a person from waiving of his own free will, either expressly or tacitly, entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right must be established in an unequivocal manner and be attended by minimum

⁶ *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, (Ruto Defence observations on Article 55(2)) (2015)Case No. ICC -01/09-01/11, (July 30, 2015), available at <https://www.icc-cpi.int/iccdocs/doc/doc2025385.pdf>

⁷ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html> (Accessed 18 July 2016).

⁸ <http://www.echr.coe.int/Pages/home.aspx?p=home>

⁹ See *Salduz v Turkey*, App. No. 36391/02 (Judgment of 27 November 2008), paras 50-55. See also, *Zaichenko v Russia*, App. No. 39660/02 (Judgment of 18 February 2010), para 38; *Pishchalnikov v Russia*, App. No. 7025/04 (Judgment of 24 September 2009), para 71; *Stojkovic v France and Belgium*, App. No. 25303/08 (Judgment of 27 October 2011) para 54 (French only); *Panovits v Cyprus*, App. No. 4268/04 (Judgment of 11 December 2008), para 65.

¹⁰ *Panovits v Cyprus*, *supra*, paras 67, 73.

safeguards. [...] A waiver of the right, once invoked, must not only be voluntary, but must also constitute a knowing and intelligent relinquishment of a right. Before an accused can be said to have implicitly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be [...].¹¹

23. When procedural rights are not effectively conveyed to the suspect, the ECtHR finds that the waiver is not effective, as it considers that the decision to waive the right was not taken on a properly informed basis. Consequently, the reliance on statements obtained in that context then means prejudice is caused to the fairness of the proceedings as a whole. The Court has pointed to various factors, both objective and subjective, relating to the notification of rights which affect the validity of a waiver of the right of access to lawyer and to counsel:

- The fact that rights were notified in a language other than the suspect's native language, without the assistance of an interpreter;¹²
- The fact of the notification being given only orally in the form of a standard caution (which barely serves the purpose of acquainting the suspect with the content of the rights);¹³
- The 'stressful situation' and 'quick sequence of the events' leading to questioning of the suspect;¹⁴
- A 'certain confusion' in the mind of the suspect at the point of questioning¹⁵
- The young age of the suspect;¹⁶
- The suspect's level of literacy;¹⁷
- Familiarity with police encounters;¹⁸ and
- Drug dependency of the suspect.¹⁹

24. **Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas**²⁰: Principle V requires that a suspect or accused person deprived of liberty to be informed promptly in a language they understand of their right to have access to a translator or interpreter during the proceedings and to communicate with their family. No further information is provided on the required method of delivery.

¹¹ *Saman v Turkey*, App. Nono 35292/05 (Judgment of 5 April 2011).

¹² *Ibid*, para 35.

¹³ *Panovits v. Cyprus*, *supra* note 9, para 74.

¹⁴ *Zaichenko v Russia*, *supra* note 9, para 55.

¹⁵ *Stojkovic v France and Belgium*, *supra* note 9, para 53.

¹⁶ *Panovits v. Cyprus*, *supra* note 9, para 67.

¹⁷ *Kaciu and Kotorri v Albania*, Apps. nos. 33192/07 and 33194/07 (Judgment of 25 June 2013), para. 120.

¹⁸ *Pishchalnikov v. Russia*, *supra* note 9, para 80.

¹⁹ *Plonka v Poland*, App. Nono. 20310/02 (Judgment of 31 March 2009), para. 38.

²⁰ Available at Inter-American Commission on Human Rights (IACHR), Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, 13 March 2008, No. 1/08, available at: <http://www.refworld.org/docid/48732afa2.html> (Accessed 18 July 2016).

25. **Africa – Principles and Guidelines on the Right to a Fair Trial**²¹: These guidelines provide for the right of suspects or accused persons to defend themselves with the support of legal representation, the right to defend themselves, to be examined by a doctor and the facilities available, notify the family, communicate with the embassy or consulate if a foreign national, right to communicate with an international organisation (if a refugee or stateless person). Notification of these rights must be made promptly upon arrest or detention. As a safeguard against waiving the right to access a lawyer unknowingly or non-voluntarily, a waiver must be submitted in writing by the accused.
26. **Africa - Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (“Luanda Guidelines”)**²²: The Luanda Guidelines require notification of a comprehensive list of rights. Article 5 requires that all suspects and accused persons are notified of their rights orally and in writing and in a format which is accessible and understandable. All suspects and persons have the following rights:
- a. The right to be free from torture or other cruel punishment,
 - b. The right to remain silent and freedom from self-incrimination,
 - c. The right to humane and hygienic arrest conditions and reasonable accommodation,
 - d. The right to contact a family member or another person of choice,
 - e. The right to urgent medical assistance, right to be provided with information in an accessible format and an interpreter,
 - f. The right to ask for release or bail bond,
 - g. The right to challenge the lawfulness of the arrest,
 - h. The right to freely access complaint and oversight mechanisms,
 - i. The right to access legal services,
 - j. The right to presence and assistance of a lawyer,
 - k. The right to appropriate support, if the suspect or accused person is disabled, and
 - l. The right to contact consular officials or relevant international organisations if the suspect or accused person is a refugee, non-citizen or stateless person.
27. This information must be provided promptly when the defendant is in police custody and prior to any questioning or interrogation. According to Article 38, non-compliance with these rights should provide the suspect or accused with the right to seek and obtain an effective remedy such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
28. **EU Directive on the Right to Information (2012/13/EC)**²³: While also regulating other fundamental defence rights such as access to the case file, the Directive provides in Article

²¹ Available at: http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf

²² Available at: http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines_arrest_police_custody_detention.pdf

²³ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1–10.

3(1), (2) the oral or written notifications of all suspects or accused persons of certain procedural rights as they apply under national law to facilitate them to be effectively exercised. In Article 4(1), the Directive provides that suspects or accused persons who are arrested or detained must be provided with a written Letter of Rights to keep throughout the time of their deprivation of liberty. Taking into account the special needs of suspects or accused persons deprived of liberty, Article 4(2), (3) of the Directive outlines other rights that the suspect or accused person must be informed of in addition to those required by Article 3(1).²⁴

29. Both, the oral notification and the written Letter of Rights must be provided in “simple and accessible” language (Article 3(2), 4(4) of the Directive). In particular the Directive requires that any particular needs of vulnerable suspects or accused persons are taken into account when informing them of their rights, to safeguard that they too will understand their rights and can effectively exercise them. In Article 4(5) of the Directive the requirements for the Letter of Rights for suspects or accused persons not speaking the local language are laid out: If a Letter of Rights written in a language the suspects or accused person understands is not available they must be informed of their rights orally in a language they understand and a written Letter of Rights must be given to them in a language they understand “without undue delay”.
30. In content all suspects and accused persons must be informed of “(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 of the accusation, in accordance with Article 6; (d) the right to interpretation and translation; (e) the right to remain silent” (Article 3(1) of the Directive). The Letter of Rights for suspects or accused persons deprived of liberty must additionally include the information on “(a) the right of access to the materials of the case; (b) the right to have consular authorities and one person informed; (c) the right of access to urgent medical assistance; and (d) the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.” (Article 4(2) of the Directive).
31. As recitals 5, 18, 42 of the Directive clarify, the provisions of the Directive should be interpreted consistently with the jurisprudence of the ECtHR. As the Directive does not provide further clarification on means to assess when the language used in a Letter of Rights is sufficiently “simple and accessible” (Article 4(4)), nor any guidance with regards to assessing the validity of a waiver of certain defence rights, the ECtHR-jurisprudence remains crucial in this context (see above in Part C).

Key Findings

²⁴ For further details see Fair Trials and LEAP, Right to Information Directive, Practitioner Toolkit, March 2015, available at: <https://www.fairtrials.org/fair-trials-launch-roadmap-practitioner-toolkits/>.

32. The findings from the analysis of the international and regional treaties with regards to notification requirements can be summarised as follows:
33. **Accessibility:** Except for the Luanda Guidelines, which require the notification of rights to be provided orally and in writing, and the EU Directive that requires detained and arrested suspects or accused persons to be informed in writing of their rights, none of the other provisions referred to above outline how the suspect must be informed of their rights or provide provisions clarifying that the notification must be provided in an accessible manner. While the ICCPR, ECHR and Rome Statute require that the notification must be delivered in a language the suspect or accused person understands, other international treaties and regional laws remain silent on this issue.
34. **Time of notifications:** Generally the suspect or accused person should be informed “*promptly*” of their rights under the respective treaty or regional law. Some of the international treaties give more definition to what is meant by “prompt” notification. The Convention on the Rights of the Child, as interpreted by the Committee on the Rights of the Child, requires notification at the moment the prosecutor or judge takes the first procedural step in an investigation (i.e. potentially before arrest). The European Convention on Human Rights, as interpreted by the European Court of Human Rights, requires notification upon arrest. The Rome Statute requires notification prior to interrogation and the Luanda Guidelines require notification when in police custody and prior to interrogation.
35. **Content of Notifications:** The most common rights that suspects and accused persons shall be informed of are the right to access a lawyer (ICCPR, Rome Statute, Luanda Guidelines; the Rome Statute additionally requires notification of the rights to access legal aid); to remain silent (Rome Statute, ECtHR, Luanda Guidelines) and to effectively participate in the criminal process against them (CRC, Luanda Guidelines, Rome Statute). The Luanda Guidelines sets out the most comprehensive list of rights which must be notified, including the right to be free from torture and to humane and hygienic arrest conditions as well as a number of defence rights such as the right to challenge the lawfulness of the arrest and ask for release or bail bond.
36. **Waivers:** Only the African Principles and Guidelines on the Right to a Fair Trial and the Rome Statute explicitly refer to waivers. Case law of the International Criminal Court and the ECtHR has further clarified standards on which waivers of a specific right can be considered lawful under their statutes. The right to waive the right to counsel in proceedings at the ICC, for example, is only lawful if the person was informed of their right to counsel prior to and during any questioning. ECtHR jurisprudence provides clear guidance on how notification of rights must be delivered and the requirement for a defendant to comprehend their rights in order for a waiver to be valid. The ECtHR has clarified that waivers of rights are only lawful and valid if the willingness to waive a certain right has been “*established in an unequivocal manner and be attended by minimum safeguards [...]*”. *A waiver of the right, once invoked, must not only be*

*voluntary, but must also constitute a knowing and intelligent relinquishment of a right.*²⁵ Further the suspect must understand what the consequences of waiving the respective right would be.²⁶ When procedural rights are not effectively conveyed to the suspect, the ECtHR has found that the waiver is not lawful, as it considers that the decision to waive the right was not taken on a properly informed basis.²⁷

37. **Remedies:** All of the international and regional documents above except for the African Principles and Guidelines on the Right to a Fair Trial and Legal Assistance and the African Resolution on the Right to Recourse to Fair Trial, provide for a right to a remedy or compensation if an arrest or detention took place in violation of rights under the treaty. Again, the Luanda Guidelines appear to be the most progressive, outlining in Articles 35 to 38 that the suspect or accused person has the right to have the legality of their detention reviewed, has the right to access appropriate complaints mechanisms and seek and obtain effective remedies for the violations of their rights, the remedies including “restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition”. Additionally, non-compliance with the rules on arrest and custody – including relating to notification – should be a disciplinary offence, a mechanism which is intended to deter police officers from violating the rights of suspects or accused persons in the first place. For its part, the Directive requires Member States to ensure that the defence has the right to challenge any violation of the right to receive information under national law, but provides no clarification which remedial measures should be available.

IV. LAW AND PRACTICE IN 30 NON-EU COUNTRIES

38. For the comparative study, the law in 30 countries situated in different regions of the world with vastly differing legal cultures, jurisdictions and human rights records was analysed. Researchers sought to identify legal provisions governing:
- a) the rights that the suspect or accused person is notified of;
 - b) the time in proceedings when this notification must be given (at the time of arrest, before interrogation or at the time of charges for example);
 - c) how the notification is provided (orally or in writing);
 - d) any adaptations that must be made to the notifications for either certain suspects or offences;
 - e) the validity of waivers which provide safeguards relating to notification of rights; and
 - f) remedies available for violation of the obligation to notify the suspect or accused person of their rights.
39. **Notification of charge/reasons for arrest:** As with the international and regional treaties/documents, every country examined requires that suspects or accused people are to

²⁵ *Pishchalnikov v Russia*, *supra* note 9, para 77.

²⁶ *Saman v Turkey*, *supra* note 9, para 32.

²⁷ *Ibid.*

be provided with information on the charges or the reasons for their arrest. Thus, we have not included this information in the country overviews below unless it was relevant for issues such as the timing or method of delivering a notification.

Country Overviews (by region)

North America

40. **United States of America** – The so-called *Miranda* rights (or “*Miranda* warning”)²⁸ have become a synonym for notifications of rights around the world.²⁹ 50 years ago the US Supreme Court ruled that a suspect must be made aware upon arrest and prior to any interrogation of their right to remain silent and that any statement provided could be used against them. Thereby, it strengthened the constitutional and legal rights of suspects guaranteed in Fifth and Sixth amendments to the US Constitution.³⁰ By US federal law, any suspect or accused person must be additionally informed of their right to counsel either at arrest or before any interrogation.
41. A *Miranda* warning must be given in a language the suspect understands. However, the translation need not be perfect, and courts have held that the warning will not be constitutionally defective as long as the translation reasonably conveys the essence of the rights.³¹ Law enforcement officers are required to ensure a suspect understands what the officer is saying, such that they may need to “translate” the warnings to account for variance in education levels. But no specific requirements are mandated at the federal level with respect to juveniles, those with mental disabilities, and other categories of individuals who may face a greater disadvantage in terms of understanding their rights. The Supreme Court has ruled that detainees must affirmatively invoke their *Miranda* rights.³² Remaining silent or making an equivocal or ambiguous statement is insufficient, and police are permitted to continue questioning unless the detainee affirmatively and clearly invokes their *Miranda* rights.³³
42. Any waiver of the right to silence or legal counsel must be “knowing and intelligent” and “voluntary.”³⁴ To satisfy the first requirement, the state must show that the suspect generally

²⁸ *Miranda v. Arizona*, 384 U.S. 436 Supreme Court case (1966), Available at: <https://supreme.justia.com/cases/federal/us/384/436/case.html>

²⁹ See: http://www.pressrepublican.com/news/local_news/the-law-and-you-miranda-rights-protect-citizens/article_d7efbdd8-4c32-519b-8016-86050ff6c6d2.html.

³⁰ *Miranda v Arizona*, *supra* note 28, Op cit. 30 .

³¹ See, e.g., *United States v. Hernandez*, 913 F.2d 1506, 1510 (10th Cir. 1990)

³² *Berghuis v Thompkins*, 560 US 3 (2010).

³³ Kimberly Larson, ‘Improving the Kangaroo Courts: A Proposal for Reform in Evaluating Juveniles’ Waiver of Miranda’ (2003) 8 Vill L Rev 629, available at:

<http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1328&context=vlr>.

³⁴ *Miranda v Arizona*, *supra* note 28, 444.

understood their rights and the consequences of forgoing those rights.³⁵ Regarding those with mental disabilities, the Supreme Court in *Connelly* held that a person's mental state is only one factor in the test of determining whether a waiver is "voluntary," and that a person's mental state, by itself and apart from its relation to official coercion, will not dispose of the inquiry into constitutional "voluntariness." A suspect may waive their *Miranda* rights even though they suffer from mental illness, as long as the illness does not interfere with their cognitive ability to understand the rights.³⁶ As to the second requirement, a waiver is considered voluntary unless the defendant can show that it was the product of police misconduct and coercion that overcame their free will. If they make such a showing, the court will determine the voluntariness of waiver looking at the totality of the circumstances, focusing on personal characteristics of the accused and the specifics of the coercive police conduct. If a statement was made without the defendant being informed of their *Miranda* rights before, this statement will be inadmissible.

43. There have been discussions and studies for a while stating that the typical *Miranda* warning is too difficult to comprehend for a number of offenders, whose reading levels and comprehension often are significantly lower than their ages might suggest.³⁷ In 2010, for example, the American Bar Association ("ABA") issued a policy statement urging "All federal, state, territorial and local legislative bodies and governmental agencies to support the development of simplified *Miranda* warning language for use with juvenile arrestees."³⁸
44. In addition to the rights to be notified in the *Miranda* warning, certain states required notification of additional rights under their respective state penal codes. For example, section 851.5 of the California Penal Code provides that any police facility or place where arrestees are detained must post a sign in a conspicuous place, in bold block letters, notifying an arrestee of his or her right to free local telephone calls (or paid calls outside the local area) to: (1) an attorney of his or her choice, or a public defender or other attorney assigned by the court, whose telephone number shall be posted; (2) a bail bondsman; and (3) a relative or other person. This statute further provides that the arresting or booking officer must inquire, as soon as practicable and no later than three hours after arrest, into whether the arrested person is a custodial parent with responsibility for a minor child. If so, the arresting or booking officer must notify the arrested person that they are entitled to make two additional telephone calls to a relative or other person for the purpose of arranging for the care of the minor child or children in the parent's absence. In addition, the facility must display a sign,

³⁵ *Colorado v Connelly*, 479 US 157 (1986).

³⁶ *Ibid*, 167-171.

³⁷ See, e.g., Richard Rogers *et al.*, 'An Analysis of Miranda Warnings and Waivers: Comprehension and Coverage' (2007) 31 Law and Human Behavior 177, available at <http://www.english.illinois.edu/-people/-faculty/debaron/584/584reading/rogers%20miranda.pdf>; L. Bowen 'Many suspects don't understand their right to remain silent' (2011) 42 American Psychological Association 24, available at: <http://www.apa.org/monitor/2011/10/suspects.aspx>.

³⁸ Available at:

http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102b.authcheckdam.pdf.

conspicuously and in bold block letters, describing the custodial parent's right to two additional phone calls. The written signs must include notifications in English and in any other language spoken by a substantial number of the public who are served by the police facility.³⁹

45. **Canada** – Upon arrest, accused persons must be made aware of their right to remain silent and their right to counsel (Sections 7, 10(a)-(b) of the Canadian Charter of Rights and Freedoms)⁴⁰. This notification is generally provided orally. The case law on these notifications has clarified that the police must inform suspects of their right to counsel in terms that they can understand.⁴¹ In *Evans*, the police were aware of the suspect's mental deficiency, but failed to make reasonable efforts to ensure that they understood when and how they were entitled to exercise their right to counsel. The Court ruled that the accused's Section 10(b) rights had been infringed and excluded certain incriminating statements they made to police.⁴²
46. The Supreme Court of Canada has nevertheless set a relatively low threshold for the purpose of determining whether accused persons or suspects have sufficient understanding to exercise or waive their right to counsel. The Supreme Court ruled that judges should apply the same test to determine whether accused persons have the mental capacity to exercise or waive any of their pretrial rights, the so-called "Operating Mind Test."⁴³ The Court held that the accused must possess the limited cognitive capacity that is required for fitness to stand trial. This standard does not take into account the physiological effects of a mental disorder that may impede the ability to understand one's rights. Accordingly, the Court found that even though the accused was suffering from schizophrenia and experienced auditory hallucinations that drove him to make incriminating statements to the police, he was nevertheless considered to have the "limited cognitive capacity" that is required for a making a valid waiver of the right to counsel.⁴⁴
47. Canada has adopted specific notification procedures and enhanced rights for children, which are codified in the Youth Criminal Justice Act, Section 25.⁴⁵ The Act provides enhanced notification rights regarding the right to counsel, such that children are to be notified at various points in the criminal process, and not solely at the time of arrest. In addition, the notification informing of the right to counsel must be provided in writing. The Canadian Charter of Rights and Freedoms, section 24, provides that evidence obtained in violation of an accused's notification rights may be excluded.

South America

³⁹ California Penal Code, Section 851.5

⁴⁰ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

⁴¹ 1991 case, *R. v. Evans*, 1 SCR 869, 871 (1991).

⁴² *Ibid*, 305

⁴³ *R v Whittle*, 2 SCR 914, 917-198 (1994).

⁴⁴ *Ibid*.

⁴⁵ Youth Criminal Justice Act (SC 2002, c 1).

48. **Brazil** – The Brazilian Constitution provides that suspects and accused persons must be informed of their rights at the time of the arrest, including their right to silence, counsel and have the assistance of their family.⁴⁶ As Brazil is a signatory to the Vienna Convention on Consular Relations, suspects and accused persons shall also be informed of their right to contact the consulate “without delay”.⁴⁷ However, our research shows that many countries in South America, including Brazil, are yet to transpose this provision into national law.
49. **Chile** – The Constitution of Chile only recognises the obligation to inform arrestees about their right to counsel. Nonetheless, a research study conducted by the United States Bureau of Democracy, Human Rights and Labour in 2013, found that detainees must be informed at the time of the arrest of their right to an attorney and the right to remain silent.⁴⁸ In addition, under the Vienna Convention on Consular Relations, non-nationals arrested in Chile must be informed without delay of their right to contact a consular representative.⁴⁹ If authorities fail to provide appropriate notification of rights, the process may be considered unlawful by judicial decision during the detention control hearing.⁵⁰
50. **Ecuador** – The Constitution of Ecuador provides that any person who has been arrested must immediately be informed of their rights to remain silent, be assisted by an attorney and communicate with a relative or any other persons indicated by him/her.⁵¹ Furthermore, under Section 3 of Article 77, at the moment of arrest or detention, the person arrested or detained is entitled to be informed in clear and simple language of the reason for arrest or detention, the identity of the judge or authority ordering the arrest or detention, the identity of those who enforced the order, and that of the persons responsible for the respective questioning.⁵²
51. **Mexico** – Suspects or accused persons who are arrested must be informed of their right to remain silent and access legal counsel at the time of arrest.⁵³ Although suspects who do not speak or understand the language are entitled to receive the assistance of an official interpreter during questioning,⁵⁴ the right to be informed about such an entitlement upon arrest is not expressly recognised in any of the national legal instruments researched. Article 20, Section A.IX of the Constitution confirms that any evidence obtained in violation of this fundamental right is declared “null and void”.⁵⁵ Remarkably, under Article 20 Section B.II of the Constitution, “any confession made without the assistance of a defender shall have no weight as evidence”.⁵⁶ Although this provision is not directly related to the obligation to notify the

⁴⁶ Constitution of Brazil (1988) Title II, Ch. I, Art. 5, section LXIII

⁴⁷ Vienna Convention on Consular Relations (24 April 1963) Article 36(b)

⁴⁸ US Bureau of Democracy, Human Rights and Labor, “Country Reports on Human Rights Practices for 2013: Chile”, (2013), available at:

<http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm?year=2013&dliid=220428#wrapper>

⁴⁹ See note 47, *supra*.

⁵⁰ Note 48, *supra*

⁵¹ Constitution of Ecuador (2008), Article 77(4)

⁵² *Ibid*, Article 77(3), (5).

⁵³ Political Constitution of the United Mexican States (2008), Article 20, Section B.II

⁵⁴ See <http://photos.state.gov/libraries/merida/231771/PDFs/beingarrestedordetainedinmexico.pdf>

⁵⁵ See above note 46, Article 20, Section A.IX.

⁵⁶ *Ibid*, Article 20, Section B.II

arrestees of their rights, it entails an example of good practice in the protection of defence rights overall.

52. **Venezuela** – Apart from the common right to be notified of the charges or suspicions against the suspect or accused person who is being detained or arrested, the Venezuelan Constitution does not provide any obligation to notify the suspect or accused person of any right at the time of the arrest.⁵⁷ A detailed report by the U.S. State Department also fails to mention any right to notification of the right to counsel or right not to be compelled to confess or testify, which further suggests that no such right exists.⁵⁸
53. **Paraguay** – Under Article 12 on the Constitution, a suspect or accused person should be informed of their right to silence and counsel upon arrest.⁵⁹ Additionally, Article 17(9) provides that any evidence presented in Court or any accusation grounded on evidence obtained in violation on any of the rights enshrined in the Constitution shall not be taken into account.⁶⁰ Therefore, a breach of the obligation to notify suspects of their rights could lead to the exclusion of any evidence obtained thereafter.

Africa

54. **Eritrea** – A new Criminal Procedure Code was enacted in Eritrea in 2015 that enhances the rights of detainees in criminal proceedings.⁶¹ They must be informed in a language they understand of their rights to counsel and to be brought before a Court within 48 hours.⁶² Prior to questioning, suspects of a criminal offence must also be informed of their right to remain silent and consult a lawyer.⁶³
55. **The Gambia** – Section 19 of the Gambian Constitution states that authorities must inform the individual of their right to consult a legal practitioner upon arrest or detention, or at least within three hours of arrest.⁶⁴
56. **Namibia** – According to the findings of our desk-based research, in Namibia authorities have no obligation to inform the suspect or accused person of their rights upon arrest. However the Namibian Criminal Procedure Act states that before the questioning, the police must inform the suspects of their right to remain silent and to consult with a lawyer of their choice, who is also entitled to be present during the questioning.⁶⁵

⁵⁷ See Constitution of the Bolivarian Republic of Venezuela

⁵⁸ Available at: <http://www.state.gov/documents/organization/220689.pdf>.

⁵⁹ Constitution of Paraguay (1992), Article 12

⁶⁰ *Ibid*, Article 17(9).

⁶¹ Criminal Procedure Code of the State of Eritrea (2015)

⁶² *Ibid*, Article 33(4).

⁶³ *Ibid*, Article 54.

⁶⁴ Constitution of the Second Republic of the Gambia (Adopted on 8 August 1996, entered into force in January 1997), ch IV Section 19 (2).

⁶⁵ Namibian Criminal Procedure Act, (2004), Section 37 (2)(e),(f).

57. **Federal Republic of Nigeria** – The Constitution of Nigeria does not require notification of rights to suspects and accused, requiring only notification of facts and charges. Of note, however, Article 35(3) of the Constitution requires that notification of facts and charges must be provided to any person who is arrested or detained in writing within 24 hours of the arrest or detention and in a language that the person understands.⁶⁶
58. **Rwanda** – Article 25 of the Criminal Procedure Code states that detainees must be informed during the interrogation of all the rights provided for by law.⁶⁷ Thus, the Law subsequently provides that detainees shall be informed of their rights to legal counsel, to inform another party of their arrest,⁶⁸ and receive information about the nature and causes of the charges.⁶⁹ Notably, the right to be informed about the right to defence is upheld as an absolute right under Article 18 of the Rwandan Constitution.⁷⁰
59. **Republic of South Africa** – The South African Bill of Rights provides that any person who is arrested must be informed “promptly” of the right to remain silent as well as of the consequences of not remaining silent.⁷¹ Additionally, any person placed in detention after being arrested shall be informed of their right to remain silent, to consult with a legal practitioner of their choice and to access a State-funded legal practitioner if necessary.⁷² This information is to be provided to the detainees “promptly” and in a language that they understand.⁷³ Failing to notify suspects and detainees may lead to the exclusion of any evidence gathered thereafter.⁷⁴
60. **Ghana** – In addition to the right to be informed of the reasons of the arrest, under Section 14(2) of the Constitution, suspects or accused persons must be informed of their right to consult with a lawyer of their choice.⁷⁵ The notification must be provided “immediately”, and must be given in a language that the person can understand.⁷⁶ In practice, the right to receive information about the right to access a lawyer is further safeguarded by the jurisprudence of the Supreme Court, which in *Republic v Akosah and another* found that a statement given by the accused person without being previously informed of the right to consult with a lawyer was inadmissible in trial.⁷⁷

⁶⁶ Constitution of the Federal Republic of Nigeria (1999), Article 35(3).

⁶⁷ Law N^o 30/2013 of 24/5/2013, Relating to the Code of Criminal Procedure (2013), Article 25.

⁶⁸ *Ibid*, Article 38.

⁶⁹ Constitution of the Republic of Rwanda (2003), Article 18

⁷⁰ *Ibid*.

⁷¹ Constitution of the Republic of South Africa (1996) Ch 2, Section 35(1)

⁷² *Ibid*, Section 35 (2).

⁷³ *Ibid*, Section 35 (4).

⁷⁴ *Ibid*, Section 35(5).

⁷⁵ Constitution of the Republic of Ghana (1992), Ch V, Section 14(2).

⁷⁶ *Ibid*.

⁷⁷ *Republic v. Akosah and another* [1975] 2 GLR 406

61. **Zambia** – Aside from the right to receive information of the basis of the arrest, the Zambian Constitution does not recognise the right of the suspect to be informed of their rights upon arrest or detention.⁷⁸

Asia

62. **China** – The Criminal Procedure Law of the People's Republic of China upholds the right of the suspect or accused persons to be informed of their rights, although that information is provided at different stages of the proceedings following the arrest. Thus, suspects or accused persons have to be informed of their right to counsel prior to interrogation⁷⁹ and of their right to free legal aid within three days upon the receipt of the materials of a case.⁸⁰ In addition, suspects or accused persons must be informed of their rights to request the disqualification of judicial personnel before the court hearings⁸¹ and to appeal after the first-instance judgement or ruling.⁸² The notification must be provided either orally or in writing. Foreigners should additionally be notified that they have the right to contact the consulate, meet or correspond with a guardian and close relatives and have the right to interpretation.⁸³ Juveniles should be informed by the People's Courts regarding the charges and applicable legal provisions, the trial procedures, and litigation rights and obligations.⁸⁴
63. **Hong Kong** – Arrested persons must be informed of their right to legal advice and representation, according to the Hong Kong Basic Law Chapter III, Article 35 and Article 11(2)(d) of the Bill of Rights. The right to legal advice is fundamental and should only be denied in exceptional circumstances and evidence obtained in breach of that right will be excluded.⁸⁵ For example, if the police cannot properly justify a refusal to provide access to a lawyer before questioning any incriminating statement will be excluded.⁸⁶ However, a delay in providing access to a lawyer will not automatically result in the exclusion of the evidence obtained in an interview insofar as the police can demonstrate that the statements were given freely and voluntarily.
64. Suspects and accused persons must also be notified of their right to remain silent at the time of arrest, before pre-trial questioning and before making any statement.⁸⁷ The information shall be given in the form of an oral caution, followed by a written notice at the police station, which shall include information on the basic content of the right to remain silent and the

⁷⁸ Constitution of Zambia (1991) (amended in 2009), Article 13(2).

⁷⁹ Criminal Procedure Law of the People's Republic of China (2012), Article 33.

⁸⁰ Legal Interpretations of the Supreme People's Court No. 21, on the Application of the "Criminal Procedure Law of the People's Republic of China", (2012) available at: <http://www.court.gov.cn/fabu-xiangqing-4937.html>.

⁸¹ *Supra* note 79, Article 28 and 185.

⁸² *Ibid*, Article 299.

⁸³ *Ibid*, Article 398

⁸⁴ *Ibid*, Article 471.

⁸⁵ *Secretary for Justice v Shun Chui* (uprep HCAL 101/2005 [2005] HKEC 2139)

⁸⁶ *HKSAR v Hau Tung Ying* (Unrep CACC 72/99).

⁸⁷ Hong Kong Bill of Rights (1991), Article 11(2); Hong Kong Basic Law 2012 Ch3, Article 35

consequences of waiving it.⁸⁸ Moreover, under the Rules and Directions for the Questioning of Suspects and Taking of the Statements a “notice” informing suspects in custody of their rights should be displayed in visible places at the police station.⁸⁹ Failure to provide information on the right to remain silent may not necessarily render the statement inadmissible in court.⁹⁰ Thus, for Courts to exclude the evidence, the prosecution must be able to demonstrate unequivocally that, despite not receiving appropriate caution, the accused made the statement freely and willingly and that statements were not obtained through force, threats, inducement or in circumstances of oppression.⁹¹ Furthermore, relevant case law establishes that even if the accused exercised his right to remain silent, the police may continue to ask questions until an incriminating statement is given, which will be admissible in court for as long as the questions are found to have been fair and not oppressive.⁹²

65. **India** – Articles 21 and 22(1) of the Constitution and the respective case law provide that the defendant must be notified of their rights at the time of arrest as well as at various different stages throughout the proceedings. Thus, the suspects or accused persons must be informed of their right to consult and be defended by a legal practitioner of their choice,⁹³ to have free legal aid,⁹⁴ to have another person informed of the arrest,⁹⁵ and to be released on bail or have sureties arranged on their behalf.⁹⁶ In general terms, the infringement of the right to inform detainees of their rights may vitiate the trial and could potentially lead to the abrogation of the conviction. In addition, if a police officer fails to inform of the right to notify a third party of the arrest, not only would the suspect be entitled to receive compensation, but the officer in question could incur in personal liability and may even be punished for contempt of court.⁹⁷
66. **Indonesia** – The Indonesian Code of Criminal Procedure states that, in general terms, suspects or accused persons who are arrested or detained must be informed of their rights.⁹⁸ Additionally, detainees must be informed of their right to legal counsel prior to questioning at the investigation stage.⁹⁹ Foreigners who are to be detained should also be informed of their right to contact the consulate.¹⁰⁰ The form and method of the notification is not, however, specified.

⁸⁸ The Rules and Directions for the Questioning of Suspects and the Taking of Statements (1992), Rules I-III and Direction 7(a), available at: <https://keithhotten.files.wordpress.com/2014/05/rules-and-directions-for-the-questioning-of-suspects-and-the-taking-of-statements-4.pdf>

⁸⁹ *Ibid*, Direction 8 (d).

⁹⁰ *Secretary for Justice v Lam Tat Ming*, 179; *HKSAR v Ng Wai an* [1998] 2 HKLRD 1

⁹¹ *HKSAR v Ng Wai an* [1998] 2 HKLRD 1

⁹² *HKSAR v Lee Sin* [2009] HKC 441.

⁹³ The Constitution of India, Article 22(1); The Criminal Procedure Code 1973, section 50(3); *Khetri v State of Bihar*, 1981 (1) SCC 635

⁹⁴ *Khetri v State of Bihar*, 1981 (1) SCC 635.

⁹⁵ *D.K. Basu v State of West Bengal* (1997) 1 SCC 416.

⁹⁶ The Constitution of India, Article 22(1).

⁹⁷ Indian Code of Criminal Procedure (1973), Section 345.

⁹⁸ Republic of Indonesia Code of Criminal Procedure (1981), Explanatory Note I, para 3 (g), available at: https://www.unodc.org/res/cld/document/idn/law_number_8_year_1981_concerning_the_criminal_procedure.html/I.2.Criminal.Procedure.pdf

⁹⁹ *Id*, Article 114 and Explanatory Note I, para 3 (g).

¹⁰⁰ *Id*, Article 57(2)

67. **Singapore** – A suspect or accused person must only be informed of their right against self-incrimination according to section 22 of the Criminal Procedure Code, if they are not aware of facts or circumstances of the case against them.¹⁰¹ If suspects are aware of the circumstances the police need not to inform them of their right to remain silent.¹⁰² However, once a suspect is formally charged with a criminal offence under Section 23 of the Criminal Procedure Code, prior to the questioning the police shall give him written notice of the possibility of negative inference being drawn from choosing to remain silent during the interview.¹⁰³ Singaporean courts have found that the lack of notification will not necessarily render the evidence inadmissible.¹⁰⁴
68. **Thailand** – Suspects or accused persons who are arrested should be “enlightened” at the time of their arrest of their rights to remain silent, to legal counsel, to be visited by another person, and to medical assistance.¹⁰⁵

Europe (outside the EU)

69. **Kosovo** – A suspect or accused person in Kosovo must be informed promptly after any arrest and before any interrogation of their rights to remain silent, to access legal representation, to interpretation, to contact a third person and to be provided with medical assistance.¹⁰⁶ Foreigners must also be informed of their right to contact their consulate.¹⁰⁷ These rights derive from the Constitution, which also outlines that the violation of any constitutional right would result in a right to legal remedies, a judicial finding that the arrest was unlawful, an order of release, and compensation.¹⁰⁸ The Kosovo Criminal Procedural Code that a waiver of the notified rights is only lawful if it is provided voluntarily, in writing, and after having been informed properly of the right being waived.¹⁰⁹ Minors cannot waive any of their rights without the consent of a guardian or parent.¹¹⁰ While written notification is not required in law, we understand from our partners in Kosovo that a practice has arisen, deriving from the practice of the European Union Rule of Law Mission in Kosovo which exercises some policing function, of providing written notification of rights upon arrest and detention.
70. **Switzerland** – In Switzerland, suspects and accused persons must be informed of their right to legal assistance immediately after the arrest and at the start of the first interview according to the Constitution and the Criminal Procedural Code.¹¹¹ Suspects or accused persons must also

¹⁰¹ Singapore Criminal Procedure Code (2012), Section 22

¹⁰² Court of Appeal case of *Public Prosecutor v Mazlan bin Maidun & Anor*, No 28/(1989 92SC201.Doc (1989).),

¹⁰³ Singapore Criminal Procedure Code (2012), Section 23.

¹⁰⁴ *Muhammad bin Kadar and another v Public Prosecutor* [2011] SGCA 32

¹⁰⁵ Kingdom of Thailand Criminal Procedure Code (adopted in 19354, amended in 2012), Section 7, 83, 84

¹⁰⁶ Constitution of the Republic of Kosovo (2008), Articles 29-30

¹⁰⁷ *Ibid*, Articles 29, 30. See also Criminal Procedure Code of the Republic of Kosovo (2012)

¹⁰⁸ Constitution of Kosovo, Article 29.

¹⁰⁹ Criminal Procedural Code, Article 11.

¹¹⁰ *Ibid*, Article 53(5).

¹¹¹ Federal Constitution of the Swiss Confederation (1999), Article 29(3), 31(2)

be informed of their rights to remain silent, to interpretation, and to have a third person informed of their arrest.¹¹² Notification of rights should be given in a language that the arrestees understand.¹¹³ Any violation of these procedural rights will result in evidence obtained being excluded.¹¹⁴

71. **Turkey** – In Turkey, suspects or accused persons must be informed of their right to legal assistance in writing under all circumstances.¹¹⁵ Nonetheless, an oral notification will also be sufficient if providing a written notification of rights immediately is impossible.¹¹⁶ The right to legal assistance cannot be waived by vulnerable suspects such as children and persons with a disability who cannot defend themselves, including people who are deaf or non-verbal.¹¹⁷ The written notification of rights must also include information on the right to remain silent, the right to inform another person of their arrest, right to medical assistance and the right to an interpreter.¹¹⁸ The suspect or accused person may claim damages from the State (material and economic losses) if they have been arrested without being provided a written notification of rights or without being provided the opportunity to exercise their rights.¹¹⁹ We are unaware of whether the failure to notify would have any other consequences on the proceedings, such as limiting the admissibility of evidence.

Middle East

72. **Islamic Republic of Iran** – Since the implementation of the new Criminal Procedure Code in 2015, detainees must be informed of their rights such as the right to notify a third person, to access legal representation, to challenge the lawfulness of detention, and to remain silent and not incriminate themselves. They must also be informed of procedures to use to complain about torture and other ill-treatment suffered during arrest or detention.¹²⁰ This notification is to be provided to detainees in writing.¹²¹ However, the failure to uphold these rights may not have any impact on the proceedings.¹²²

Swiss Criminal Procedure Code (2007), Articles 158(1), 159 and 219 (1)

¹¹² Constitution, *supra* note 111, Article 31(2)

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*, Article 31(3)(4); Criminal Procedure Code, *supra* note 111, Article 158 (2)

¹¹⁵ Code of Criminal Procedure (2009), Article 150

¹¹⁶ By-law On Arrest, Detention and Statement Taking (2006), Article 6, available at http://www.ab.gov.tr/tarama/tarama_files/23/SC23DET_Procedural%20Safeguards.pdf

¹¹⁷ Code of Criminal Procedure, *supra* note 115, Article 150 (2).

¹¹⁸ Constitution of the Republic of Turkey (1981), Article 19 (6)(7); *see also* By-law On Arrest, Detention and Statement Taking, *supra* note 116, Article 6.

¹¹⁹ Constitution of the Republic of Turkey, *supra* note 118, Articles 19 (10) and 40; Code of Criminal Procedure, Article 141 (1)(c)

¹²⁰ New Code of Criminal Procedure (adopted in 2014, entered into force in 2015)..

¹²¹ See Amnesty International, 'Flawed Reforms: Iran's New Code of Criminal Procedure' (2016), available at: <http://www.amnestyusa.org/research/reports/flawed-reforms-iran-s-new-code-of-criminal-procedure>.

¹²² *Ibid.*

73. **Sultanate of Oman** – Articles 22-24 of the Constitution concern the right to fair trial, defence rights and provide for the right to a lawyer for example, but they do not provide for the right to be informed of any rights.¹²³
74. **Republic of Yemen** - The Criminal Procedural Code of Yemen outlines in Chapter 2 that after arrest the detainee should be “quickly” informed of the right to contact a third party and to access a lawyer.¹²⁴ In cases concerning crimes that were not witnessed or where evidence may be lost, Article 181 requires the investigator to notify the detainee of their right to remain silent prior to interrogation.¹²⁵

Pacific

75. **Australia** – Defendants who are arrested or detained must be informed of their rights as soon as they are taken into custody upon arriving at the police station.¹²⁶ They must be informed of their right to remain silent, to legal counsel and to contact third party.¹²⁷ The information must be provided orally and in writing. The accused or suspect must sign a form acknowledging the receipt of the notification.¹²⁸ Under the Australian Evidence Act any evidence gathered in breach of the right to information could be considered illegally or improperly obtained and subsequently excluded in trial.¹²⁹ However, the decision to exclude any evidence remains at the discretion of the judge, who in making the decision would also ponder other factors such as probative value of the evidence, and the importance of the evidence in the proceedings.¹³⁰
76. **New Zealand** – In New Zealand any detainee must be informed of their right to consult and instruct a lawyer without delay at the time of arrest or detention.¹³¹ The Court of Appeal has clarified that “informed” means that the arresting officer has the obligation to communicate the nature of that right in a clear, meaningful way that gives effect to the right to the detainee.¹³² The determination of whether a person was aware of the right is subject to particular scrutiny in certain circumstances, where the detainee has mental or intellectual impairment, or is deaf or has significant hearing loss, or English is a second language.¹³³ The level of assistance to be provided to ensure awareness also depends on the circumstances of the case and the abilities of the detainee.¹³⁴ The expression “without delay” applies equally to the detainer and the detainee. The right to consult and instruct a lawyer must be exercised without delay and failure to do so may constitute a forfeiture of the right. There should,

¹²³ Constitution of Oman (1996, amended in 2010)

¹²⁴ Republican Decree – By Law No. [13] For 1994 Concerning the Criminal Procedures, Article 73

¹²⁵ *Ibid*, Article 181.

¹²⁶ Law Enforcement (Powers and Responsibilities) Act 2002, Section 122 – 123.

¹²⁷ *Ibid*

¹²⁸ *Ibid*, Section 123

¹²⁹ Evidence Act (1995) Section 138

¹³⁰ *Ibid*.

¹³¹ New Zealand Bill of Rights Act (1990), Article 23 (1)(b)

¹³² *R v Mallinson* ([1993] 1 NZLRNZR 528 (CA).; (1992) 8 CRNZ 707.

¹³³ *R v Samuelu* (2005) 21 CRNZ 902

¹³⁴ *R v Samuelu* (2005) 21 CRNZ 902

however, be a reasonable opportunity for consultation.¹³⁵ Any election to waive the right must be voluntary and express, and the person must be properly informed of the real substance of the likely allegations against him. Waiving the right to access a lawyer may result in subsequent statements being deemed inadmissible if it was improperly obtained under section 30 of the Evidence Act.¹³⁶

77. At arrest, detention or at trial, a defendant must be made aware of their right to remain silent.¹³⁷ When assessing if the defendant waived this right, the court will take account of all circumstances including the age, distress and sustained nature of subsequent questioning by the police, after the intent to remain silent was voiced.¹³⁸ If the notification was not provided any subsequent statement may be inadmissible.¹³⁹

Key Findings

78. Most of the countries reviewed provide suspects and accused persons with several defence rights, for example being brought before a judge within a certain time frame, seek medical assistance or to be provided with an interpreter. However, there does not appear to be any consistent practice with regard to notification of rights, whether in terms of the requirement to notify about rights, or the content, timing or form of notification. The key findings of this research are summarised below:
79. **Notification of charge/reasons for arrest:** As with the international treaties and regional documents, every country examined requires that suspects or accused people are to be provided with information about the charges or the reasons for their arrest. This notification has not been included in the country summaries above.
80. **Content of Rights:** *Venezuela, Nigeria, Oman and Zambia* do not appear to require notification of rights. There is widely varying practice among the remaining countries in terms of the rights to be notified. Almost all countries require their investigative or judicial authorities to inform defendants of their right to a lawyer and the right to remain silent, which usually includes the information that any statement made can be used against the defendant. The right to remain silent is not notified in *China, the Gambia, India and Rwanda* and is only notified in *Singapore* in certain circumstances. Other rights that defendants have to be informed of most often include the right to notify a relative or third person (*Brazil, China, India, Indonesia, Iran, Kosovo, Switzerland, Turkey and Yemen*). The right to be notified of the right to inform the consulate if arrested abroad should be provided in all countries that are signatories to or have ratified the Vienna Convention and is provided in law in *Australia, Canada, Ghana, Iran, and*

¹³⁵ *Ministry of Transport (MOT) v Noort* (1993); *Police v Curran* [1992] 3 NZLR 260; (1992) 8 CRNZ 114 (CA).

¹³⁶ *R v Robinson* CRI-2013-088-001658 (2016) NZHC 86012/5/97 CA16/97.

¹³⁷ Bill of Rights, *supra* note 131, sections 23(4), 25(d)

¹³⁸ *R v Kai Ji* ([2004]) 1 NZLR 59; *R v Ormsby* (2005) 493/04 CA)..

¹³⁹ *R v Robinson* CRI-2013-088-001658 (2016) NZHC 86012/5/97 CA16/97.

the *US*. However, in several countries, such as *Brazil*, *Ecuador*, and *Chile*, this has not been transposed into national law. Defendants in *China*, the *US*, and *India* should be also notified of rights to legal aid. Defendants in *Kosovo*, *Thailand* and *Turkey* are to be informed of their right to medical assistance.

81. **Method of notification:** The method of notification is not prescribed in the majority of jurisdictions studied. In those studied that require written notification, *Australia* and *Hong Kong* require notifications in writing **and** orally, *Iran* and *Turkey* require written notification of rights (in *Turkey* oral notification be only sufficient only in exceptional cases), while in *Singapore* a written notification of rights must be provided in some situations. We also understand that there is a practice in *Kosovo* of providing written notification, although that is not mandated by law. *Hong Kong* is notable for requiring that each interview room at the police station must also feature a notice board informing suspects and accused person of their rights in writing. In the *US* the State of California has a similar requirement within police stations. Finally, research also indicates that, as a pilot project, some police stations and detention facilities in Malawi will play an announcement which delivers information about defendants' rights automatically in different languages for suspects and accused persons who are waiting for a questioning
82. **Time of notification:** In most countries (e.g. *US*, *Canada*, *Chile*, *Ecuador*, *Mexico*, *Paraguay*, *Eritrea*, *India*, *Indonesia*, *Thailand*, *Switzerland* and *New Zealand*) the suspect or accused person must be notified of their rights at the time of arrest or, if not arrested, prior to any interrogation. In the *Gambia* the arrested suspect must be informed of their rights within three hours of their arrest. Other countries use less specific provisions such as "without delay" (*Brazil*), "timely" (*Hong Kong*) or "quickly" (*Yemen*).
83. **Safeguards for vulnerable suspects:** The most common adaptation of the notification of rights is for foreign suspects or accused persons. In several countries, including *Mexico* and *Ghana*, the notification of rights must be provided through an interpreter in a language the suspect or accused person actually understands. Modifications for other vulnerable suspects, such as minors, are not explicitly mentioned in the majority of countries, although some notable exceptions exist. For example, in the *US* Federal system, the language of the notification of rights must be adapted to the education level of the addressee. Further modifications for minors exist in some states. In *Canada*, children are to be repeatedly informed of their rights at different points during the criminal process, and the right to counsel must be provided in writing. Finally, *Kosovo* and *Turkey* have introduced safeguards with regards to waiving the right to access a lawyer for minors. In *Kosovo* the right can only be waived with the permission of the parents or guardian, while in *Turkey* minors cannot waive their rights to legal assistance at all. While these safeguards do not ensure that the defendant understands their rights initially, it does provide them with support in understanding them through the explanations of their lawyer.
84. **Waivers:** In only a few of the countries examined could information on the requirements governing the validity of waivers be found despite extensive desk research. A good example is *Kosovo*, where the conditions of a lawful waiver of a right are provided in the Criminal

Procedural Code. A waiver is thus only valid if it was voluntary, in writing, and exercised after the suspect or accused person was informed properly of the right being waived. In some other countries, such as the *Canada, New Zealand* and *US*, the case law has developed similar assessment criteria.

85. **Remedies:** Most laws researched did not explicitly provide remedies for failure to provide a notification of rights. Many countries do however provide remedies for “unlawful arrest or detention” or exclusion of evidence that was unlawfully obtained or without due process. For some countries (e.g. *Australia, Canada, Chile, Kosovo, South Africa, Switzerland, US*), the research showed that this remedy would be applied if the suspect or accused person was not lawfully informed of their rights. In *India*, the violating officer might be punished for contempt of court and the defendant has a right to compensation. In *Turkey*, the defendant may be able to claim material and economic losses of their notifications rights were violated. On the other hand, in *Singapore*, courts have established that the violation of notification rights need not necessarily result in the evidence obtained being inadmissible.

V. RESULTS OF THE LEAP SURVEY INTO LAW & PRACTICE IN EU MEMBER STATES

86. The online-survey designed by Fair Trials with the input from HHC (see Annex 1) was shared with the LEAP network. A web link to the survey was submitted to the entire LEAP network, with follow-up reminders, informing them about the objective of the project and the need for their input. Additionally, follow-up emails and/or phone call were made with individual LEAP members asking them to complete the survey for countries where insufficient response was provided to the initial emails. Further clarifications were required from some LEAP members where necessary. To date, 42 responses have been collected from LEAP Members in 25 Member States, including Denmark that opted-out of implementing this Directive. Through this survey, the project team sought to gather information about the law and practice relating to the notification of rights in each Member State as well as data on the responses of the courts to violations of notifications of rights.

Country Overviews

Austria (AT)

87. Section 171(4) of the Code of Criminal Procedure was introduced following the Directive in order to ensure compliance with the provisions requiring the suspects and accused persons deprived of liberty to be provided with a Letter of Rights. Thus, the content and language of the Letter of Rights is provided by law and a template drafted by the Federal Ministry of Interior is available online. The Letter is required to be provided to the suspects or accused person at the time of the arrest and be translated in a language the person understands.
88. As required by Article 3(1) of the Directive, the Letter of Rights contains information on the rights to remain silent, to interpretation and translation, to be informed of the accusation against them, to legal aid and conditions for obtaining legal aid and to access a lawyer. In

accordance with Article 4(2) of the Directive, the Letter also contains information on the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority, the right to access urgent medical assistance, and to have consular authorities and one other person informed. Additionally, in accordance with Article 4(3) of the Directive, the Letter of Rights contains information on means to challenge the lawfulness of the arrest under national law. The law also allows any person deprived on their liberty to keep the Letter of Rights in their possession for as long as the deprivation of liberty lasts. However, according to the survey respondent, the law contains no provision ensuring that people in a vulnerable situation fully understand their rights.

89. In the view of the survey respondent, although the Letter of Rights is not drafted in simple language, it is still useful for most of the suspects and accused persons. However, still some will not understand their rights given the language used and, in the experience of the respondent, suspects and accused persons are often verbally influenced by investigative authorities to disregard the importance of the Letter of Rights. The respondent was particularly concerned about confusing wording covering the right to remain silent and legal aid and suggested an amendment to the law requiring that a lawyer be required to explain the information contained in the Letter of Rights.
90. In the event of a violation of the right to information is found to have occurred, Section 152(1) of the Code of Criminal Procedure provides that evidence shall be excluded. However, national courts have not yet dealt with cases relating to the right to information on rights. As a result, practical guidance on the interpretation of the law and evaluation of violations remain to be established.

Belgium (BE)

91. The rule to provide a written Letter of Rights was implemented in Belgium through Royal Decree of 16 December 2011 on Article 47 of the Code of the Criminal Procedure. This introduced two annexes containing a bill of rights to be provided to the accused prior to the first interrogation; one for those under detention and one for accused who are not detained. The templates provided in these annexes were drafted taking the Directive into account and provide all the rights as required by Article 3 and 4 of the Directive. Currently, the Code of Criminal Procedure is being reformed and it is expected that the Directives' rights will be directly included. While the law does not entail specific safeguards for vulnerable suspects, the Code generally requires a mandatory lawyer for all minors suspected or accused of a crime, who will usually discuss the Letter of Rights with them.
92. In practice the survey respondents indicated that all suspects or accused persons are provided with the Letter of Rights before the first interrogation.¹⁴⁰ If a suspect or accused person is summoned to an interrogation through a written invitation, the Letter of Rights will be

¹⁴⁰ This contrasts with the findings from a 2011 report that found that some suspects and accused persons were not informed of their rights: K. DECRAMER, S. DE KEULENAER, A. DELADRIERE, E. DEVEUX, M. FRANSSSENS, H. PENNE, A. RAES en S. SIVRI, Evaluatie Salduz Wet. Eindrapport, 15 februari 2013, available at http://www.dsb-spc.be/doc/pdf/Salduz_eindrapport_NL.pdf.

attached therewith. In the respondents' experience, the Letter is written in accessible language and is useful for most suspects or accused persons. Suspects and accused persons who are not arrested or detained will effectively be reminded through the Letter of Rights that they should consider contacting a lawyer before their interrogation.

93. However, in the view of the survey respondents, the letter is less useful for suspects and accused persons deprived of their liberty. The letter is provided only moments before the first interrogation, which limits their capacity to understand its content due to the fact that they are often scared and stressed and do not have sufficient time to read it in detail. In these cases, the assistance of a lawyer that can explain the content of the letter usually provides a better protection of the rights of the accused. The suspects and accused persons can keep the Letter of Rights throughout the proceedings. The Letter is provided in 52 languages, all the official languages of the European Union, languages of the minorities of the European Union and those languages most often subject to translations in the European Union.¹⁴¹
94. The respondents are not aware of any specific case law having addressed the violation of the right to a Letter of Rights. However, in their opinion such cases would only result in an exclusion of evidence if the right of defence had suffered significant prejudice.

Bulgaria (BG)

95. In Bulgaria, the Letter of Rights is not a separate document as envisaged by the Directive, but simply a part of the enactment. Moreover, only accused persons who are deprived of liberty are informed of their rights through a written Letter of Rights. Bulgarian law does not have the concept of a "suspect." As a result, for any action prior to a formal accusation, the suspect will only be notified of rights that any witness would have, such as the rights to access to a lawyer, to remain silent and not incriminate themselves or to notify a close relative. Thus, if a suspect is never arrested or accused formally, they will not be notified of their rights fully prior to an interrogation.
96. Detained defendants who have not been formally charged will, however, receive some notification of rights as part of the so-called "declaration" upon arrest. This notification outlines rights to appeal the legality of the arrest before the court, access a defence lawyer, be provided with medical assistance, be allowed one phone call to inform somebody of their arrest, contact the consulate (if they are a foreigner), and be provided with an interpreter if they do not understand Bulgarian. These rights arise under Article 74(2) of the Act of the Ministry of the Interior.
97. Only upon formal accusation and deprivation of liberty will a full notification of rights be given. Article 55 of the Criminal Procedure Code, which preceded the Directive, requires that the accused person deprived of liberty is informed of the charges against him and the related evidence, the right to access the case file, the right to participate in the penal procedure and make demands, notes and objections, to speak last, appeal against decisions, have a defence

¹⁴¹ The Letters of Rights can be found at:
http://justitie.belgium.be/nl/themas_en_dossiers/diensten_van_de_fod/docu.

lawyer and remain silent. This information is included in the written enactment of the charges provided to the defendant when the prosecutor has decided to press charges against them. Pursuant to Article 219 of the Criminal Procedure Code, the defendant signs the enactment of the charges (Article 219 of the Criminal Procedural Code) shortly before any interrogation. A copy of the enactment will be provided to the accused person after the interrogation to keep.

98. The survey respondents from Bulgaria do not consider the notifications provided to be useful. They are very brief and formal and do not explain the rights the defence has in detail, merely repeating the legal provisions, or in a manner that would help the reader understand the actual importance of their rights and how to exercise them. Moreover, the respondents' stated that in practice, the right to a lawyer is often waived, as suspects and accused persons are influenced by the police who claim a lawyer "will only make it worse".
99. In Bulgaria, there are no specific safeguards to ensure that vulnerable suspects and accused persons are made aware of their rights. Translations of the letter are available in the most common languages, but suspects or accused persons from other countries will only be provided with an oral notification of their rights.
100. According to the respondents, courts would likely consider the failure to provide the notification to a formally-accused person to be a substantial breach of the procedural rules, although they had doubts as to how such a violation could be proven. The remedy available is to return the procedure to the stages prior to the violation of the right to information. Alternatively, the evidence obtained following a violation, could be excluded.

Croatia (HR)

101. Articles, 108, 108a, 239 of the Croatian Criminal Procedure Code were amended as a result of the Directive to guarantee the provision of a Letter of Rights. In compliance with Article 4(2) of the Directive, the Letter of Rights must inform the suspect or accused person of the grounds of the arrest or detention, and their rights to a access a lawyer, to legal aid, to remain silent, to interpretation, to inform their family or their consular body, to access the case file, to be provided with medical attention, as well as information on the duration of the deprivation of liberty before they are brought before a court.
102. As the survey respondent from Croatia explains, if the suspect or accused person is not arrested or detained they will be provided with a written Letter of Rights when they are provided with a search warrant, invitation to a first questioning, an investigation decision, or a summons to an evidentiary hearing, or when any other investigatory measures are about to take place.
103. The legal provisions do not provide any safeguards or provisions for ensuring the accessibility of the Letter of Rights for vulnerable suspects. However, in practice if the suspect or accused person is a non-Croatian-speaker, an interpretation and written translation of the Letter of Rights will be provided in the required language, depending on the availability of the official translators. Our respondent is not aware of any cases in which an appropriate interpreter was not available.

104. The survey respondent from Croatia did not consider the Croatian Letter of Rights to be accessible manner. It is drafted in such a way that it usually requires the assistance of a lawyer to fully understand its contents.
105. The survey respondent indicated that evidence gathered if the Letter of Rights was not provided would likely not be admissible in court proceedings. In Croatia, unlawfully gathered evidence is excluded from the case file before the case is tried in court and cannot be referred to by the judge or prosecutor.

Cyprus (CY)

106. Prior the adoption of the Directive, the law in Cyprus had already established that suspects or accused persons must be provided with written information about their rights following the arrest. The law was not amended in order to comply with the Directive fully. However, the law complies only partially with the Directive. Information must be given only on the rights to access a lawyer and to have consular authorities and one other person informed. The law also lacks any safeguard to ensure the accessibility of the Letter of Rights for vulnerable suspects. In the experience of the survey respondent from Cyprus, the Letter of Rights is not useful because it does not actually inform the suspects or accused person of all their rights.

Czech Republic (CZ)

107. Article 2(13) of Code of Criminal Procedure (Act No. 141/1961 Col.) was amended in order to transpose the Directive. As a result, a Letter of Rights, which must be provided to arrested persons and suspects without undue delay, is available at all police stations. All suspects and accused persons are notified of their right to access a lawyer, right to access legal aid and the conditions for obtaining legal aid, be informed of the accusation against them, interpretation and translation and remain silent. Suspects and accused persons who are arrested or deprived of their liberty are also informed in writing of their right to access the materials of the case file, have consular authorities and one other person informed, access urgent medical assistance and the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority.
108. In practice the survey respondents from the Czech Republic do not consider the Letter of Rights useful as it is essentially a transcription of the Criminal Procedure Code. It is, therefore, not easily understood by suspects or accused persons, who usually require the support of a lawyer to understand their rights. The respondents report that providing the Letter of Rights is primarily a “box-ticking” exercise for the courts and authorities. One respondent noted that, while recipients of a Letter of Rights will be asked to sign it only after having read it carefully, if they ask for an explanation of the provisions, they will usually be informed about their status as a suspect, the importance of not incriminating any other person falsely and their right to remain silent. The suspect or accused person will regularly be told that the other rights mentioned are mere formalities.

109. Suspects and accused persons can keep the Letter provided for future reference and a translation in the native language of the suspect or accused person are usually provided.
110. According to the Code of Criminal Procedure, evidence obtained in violation of procedural rights should be excluded. However, the suspect or accused person is required to sign a statement outlining that they received a Letter of Rights and understood it. If they refuse to sign the document the police officers at the hearing will testify that the letter was provided. Therefore, in practice the respondents argued that it would be almost impossible to prove that the suspect did not properly receive a Letter of Rights or did not understand it.

Estonia (EE)

111. Following the Directive, § 35(1) was introduced in the Code of Criminal Procedure. This Article provides that any suspect or accused person deprived of their liberty shall receive a Letter of Rights at the police station immediately after arrest. The Letter takes the form of a written declaration containing the rights of the suspected or accused person in the criminal proceeding, which they are entitled to keep during the time they remain in custody.
112. In compliance with Article 3 of the Directive, § 35(1) provides that the suspected or accused persons shall be informed of their rights to access a lawyer, the right to access legal aid and conditions for obtaining legal aid, the right to be informed of the accusation against them, the right to interpretation and translation and the right to remain silent. Following the requirement of Article 4 of the Directive, the person deprived of liberty is also informed of the right to access the materials of the case file, have consular authorities and one other person informed, access urgent medical assistance and be informed of the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority. Additionally, the Letter of Rights also contains information on means to challenge the lawfulness of the arrest under national law, on obtaining a review of the detention and on making a request for provisional release. However, the law fails to provide for safeguards for ensuring that vulnerable suspects understand the content of the letter.
113. A standard template of the Letter has been created by a regulation of the Ministry of Justice and suspect or accused person are able to keep the Letter of Rights as required by Article 4(1) of the Directive. Translations of the Letter of Rights are available in English and Russian, with translations in other languages provided on an ad hoc basis.
114. The respondent from Estonia stated that in practice the suspects or accused person does not always understand the information contained in the Letter of Rights. The language of the letter is too formalistic and hinders the lay persons' ability to comprehend the rights upon first reading of the Letter. Furthermore, the investigative authorities do not take the necessary steps to verify whether the persons effectively understand their rights. Consequently, the respondent argued that the language of the Letter should be simplified in order to make it easier for the suspect or accused person to understand.
115. The national law does not provide for any legal remedy for situations in which notification rights have been violated, nor have national courts dealt with such cases. As a result, there is

no relevant judicial practice on the provision of written information or on the consequences for failing to provide a Letter of Rights. The survey respondent predicted, however, that no serious consequences would be attributed to such violations.

Finland (FI)

116. The requirement to provide a Letter of Rights was introduced in Chapter 14, Section 17 of the Criminal Investigation Act in order to transpose the Directive.¹⁴² According to law and practice suspects and accused persons will receive the Letter of Rights upon arrest or, at the latest, upon arrival at the police station in advance of any interrogation.
117. Suspects and accused persons who are not deprived of their liberty, are notified of their rights (access a lawyer, access to legal aid and conditions for obtaining legal aid, to be informed of the accusation against them, the right to interpretation and translation and to remain silent) in compliance with Article 3 of the Directive. If a suspect or accused person is arrested or detained, they are additionally informed of the right to access the materials of the case file, have consular authorities and one other person informed, access urgent medical assistance, the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority on challenging the lawfulness of the arrest under national law, on obtaining a review of the detention and making a request for provisional release as required by Article 4 of the Directive. However, no safeguards have been included in the legal text to ensure that the Letter and notification of rights are also accessible to vulnerable suspects.
118. In practice, the survey respondents were concerned that police do not provide every suspect or accused person with a Letter of Rights. They were also concerned about the accessibility and usefulness of the Letter. Whilst the Letter of Rights is not drafted in complicated language, it is seven pages long and fails to explain the details of the rights or how to exercise them. One respondent suggested the police should seek the cooperation of lawyers in the drafting of a model Letter of Rights in order to guarantee that the required information is in fact accessible. Nonetheless, the respondents considered the Letter of Rights an improvement over the previous situation, in which no information on rights was required to be provided.
119. The Letter of Rights is available in 15 different languages.
120. If a court is involved in a case in which the violation of procedural rights is brought forward, the court assesses the fairness of the proceedings overall. The respondents believe that the violation of providing a Letter of Rights would not strongly affect the outcome of a case, except if the suspect or accused person was not informed of their right to access a lawyer or to remain silent. In such case, a subsequent statement would most likely be excluded from the evidentiary record.

France (FR)

¹⁴² <http://finlex.fi/fi/laki/ajantasa/2011/20110805#L4P17>;
<http://finlex.fi/en/laki/kaannokset/2011/en20110805.pdf>.

121. Article 803-6 of the Code de procédure pénale (Criminal Procedure Code) was amended through the Law number 2014-535 of 27 May 2015 to transpose the Directive. The provisions reads as follows:

Any suspected or accused person arrested or detained must be issued, upon notification of the measure, a document set out in simple and accessible terms and language that includes the following rights granted during the proceedings under this code: 1. The right to be informed of the qualification, date and place of the offence alleged against him; 2. The right, during the hearings or interviews, to make statements, answer questions put to him or remain silent; 3. The right to counsel; 4. The right to interpretation and translation; 5. The right to access the case file; 6. The right to inform at least one third person and, if necessary, the consular authorities of the country of which they are a national; 7. The right to be examined by a doctor; 8. The maximum number of hours or days that it can be deprived of liberty before being brought before a judicial authority; 9. The right to know on how to challenge the legality of the arrest, obtaining a review of their detention or seek release.

122. The suspect or accused person is allowed to keep this document for the duration of his detention.
123. The law outlines certain safeguards to ensure accessibility for vulnerable suspects. If the document is not available in a language understood by the suspect or accused person, they are orally informed of the rights provided in this article in a language they understand, with the information referenced in a record of the conversation. A translated version of the document in a language the person understands is then provided “without delay”. For deaf illiterate people a sign language interpreter or an adequate technical communication device must be provided.
124. In practice, the Letter of Rights is provided to suspects or accused persons after their arrest but before their first interrogation. They are required to sign a statement saying they received a Letter of Rights to keep and that they understood the Letter of Rights.
125. However, the survey respondents do not believe that the Letter of Rights is in fact useful as the legal terms used are very technical and an explanation by a lawyer is required. Often the Letter of Rights is signed without a lawyer present and the suspect and accused persons have no real understanding why these rights are important and why they might want to exercise them. Concerns with the technical nature of the language used in the Letter were also expressed regarding translated letters.
126. The respondents clarified that courts primarily insist on an oral notification of all suspects and accused persons of their rights and that this cannot be replaced by the mere provision of a written Letter of Rights. A violation of the right to be orally informed of their rights would

result in exclusion of the evidence obtained in breach of this right.¹⁴³ In the view of the respondents, a lack of provision of a Letter of Rights would probably not be a sufficient breach of rights that would result in excluding evidence obtained.

Germany (DE)

127. The Criminal Procedure Code was amended in order to comply fully with the Directive. Article 114(1)(b) establishes that the suspect or accused persons shall be instructed on their rights in writing and in a language they understand. The accused is required to confirm in a written statement that they received a notification or Letter of Rights. Additionally, in the event that a written instruction is insufficient, “oral instruction shall also be given.” In compliance with Article 3 and 4 of the Directive, the suspect or accused person shall be informed of their right to access a lawyer, to legal aid and conditions for obtaining legal aid, to be informed of the accusation against them, to interpretation and translation, to remain silent, to access the materials of the case file, to have consular authorities and one other person informed, to access urgent medical assistance and of the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority. The Criminal Procedure Code contains further provisions that entitle the suspect or the accused to receive information on their right to challenge the lawfulness of the arrest under national law, obtain a review of the detention and make a request for provisional release. However, the law fails to put in place adequate safeguards to ensure that people in a vulnerable situation understand their rights.
128. In practice, the respondent from Germany considers that the Letter of Rights is written in an easily accessible language. The respondent was concerned, however, that detainees are not entitled to keep a copy of their Letter of Rights during the detention period.
129. Evidence gathered in violation of the right to provide a Letter of Rights will be excluded from the court proceedings.

Greece (EL)

130. The Greek Law N^o4236/2014 transposed the Directive and outlines the requirements for a Letter of Rights. Suspects and accused persons should be informed of their rights as soon as they are arrested. The content of the Letter of Rights generally follows the requirements of Article 3 and 4 of the Directive, but it does not include information on national provisions such as how long the suspect or accused person may be detained before being brought to a judge. Legal provisions to provide safeguards for vulnerable suspects have also not been implemented.
131. In practice suspects and accused persons will often be informed of their rights not at arrest but at the beginning of an interrogation. Moreover, after the person signs to confirm receipt

¹⁴³ Cour de cassation, criminelle, Chambre criminelle, 1 December 2015, 15-84.874, available at: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000031573520&fastReqlid=903164086&fastPos=1>.

of the Letter of Rights it will be taken away and placed in the case file. Thus, while the respondents believed the Letter of Rights to be drafted in a simple and accessible language, in the experience of the respondents the suspects and accused persons, often do not understand their rights comprehensively, and obviously cannot refer to them at a later stage.

132. Translations of the Letter of Rights are only available for commonly used languages such as English and French. For other languages, the suspect or accused person will only be provided with an oral interpretation.
133. In the context of an EAW proceeding, the Greek Supreme Court found that a failure to provide the defendant with a Letter of Rights was not a substantial breach of rights.¹⁴⁴ This indicates that there is unlikely to be a meaningful remedy for failure to provide a Letter of Rights in Greece.

Hungary (HU)

134. A written Letter of Rights for suspects and accused person who are arrested or detained preceded the Directive in Hungary, and therefore Criminal Procedure Code para 179, Act Nr. XIX of 1998) was not amended. The Letter of Rights includes all the information required by Article 3 and 4. According to the Hungarian law, the suspect or accused person deprived of liberty must be provided with the Letter of Rights only at the beginning of the interrogation and thus might not have time to read them prior to the interrogation in detail. Safeguards to ensure the accessibility of the Letter of Rights for vulnerable suspects are not provided by law.
135. In practice, the respondents confirmed, all suspects or accused persons that are interrogated with receive a Letter of Rights at the beginning of the interrogation. However, the respondents believe the Letter of Rights not to be useful at all, as it is drafted in complex legalistic language. In order to properly understand the Letter of Rights the lay person will need a lawyer. Translations of the Letter of Rights are not readily available and will only be provided orally ad hoc, without the suspect or accused person subsequently receiving a translated Letter of Rights.
136. According to the respondents, trial courts in Hungary do not consider violations concerning the provision of a Letter of Rights a serious procedural rights violation that would require a remedy.

Ireland (IE)

137. The right to a Letter of Rights for suspects or accused persons who are deprived of their liberty precedes the Directive and is regulated in the Criminal Justice Act 1984, associated regulations for the treatment of persons in custody and related case law. In content, the Letter of Rights informs the recipient of their rights in compliance with Articles 3 and 4 of the

¹⁴⁴ Greek Supreme Court (decision no. 851/2014) available in Greek at Poinika Chronika 2016, 38, available at: www.areiospagos.gr.

Directive. However, the current regulations do not provide any safeguards to ensure the accessibility of the Letter of Rights, in particular to vulnerable suspects.

138. In practice, suspects or accused persons deprived of their liberty will receive a Letter of Rights at their arrival in a Garda (police) station from a staff member in charge, who must be unconnected and independent to the investigation or prosecution for which the suspect is being detained. In the view of the survey respondent from Ireland, the Letter of Rights is drafted in clear language and therefore useful for informing most suspects and accused persons of their rights. The Letter of Rights is readily available in the station in approximately 20 different languages. Alternatively, the Letter of Rights will be interpreted by an interpreter in the station.
139. Courts will exclude any evidence that follows from the deliberate violation of a constitutional defence right. A small number of Garda stations have custody suites with audio- and video-recording which would also confirm receipt by an individual of the Letter of Rights. Furthermore, the suspect is required to sign to confirm receipt of the Letter of Rights. These facts would need to be examined to establish any potential violation. In practice, it is not something which has arisen in the respondents' experience.

Italy (IT)

140. Articles 293, 294, 369, 369bis, 386 and 391 of the Code of Criminal Procedure were amended to transpose the Directive and introduced a written Letter of Rights to be provided to suspects and accused persons who are deprived of liberty. The Letter must be drafted in a "*clear and accurate form*" and if necessary "in a language which the suspect or accused understands". The Letter must be provided either at the time of the arrest, before the first police interview or – at the latest – at the conclusion of the preliminary investigations. The notification of rights to all suspects and accused persons, as well as the Letter of Rights for those deprived of liberty includes all the details required by Article 3 and 4 of the Directive respectively. However, the national law includes no provisions relating to safeguarding the accessibility of the notification of rights for vulnerable suspects. All suspects and accused persons, no matter if detained or not, can keep the Letter of Rights provided to them.
141. In practice the respondents explained that the language of the Letter of Rights is clear and accessible. The information given is only technical, however, and does not explain why, how or when the suspect or accused might chose to exercise a certain right, which in the respondents' opinion is necessary for a full understanding of the rights.
142. Translations of the Letter of Rights are only available in some languages and oral interpretation will not always be provided.
143. Under Article 369 bis of the Italian Criminal Procedure Code the failure to provide a Letter of Rights should result in the inadmissibility of any evidence obtained through the subsequent act (Articles 178/1 c and 180 Criminal Procedural Code). A complaint must, however, be raised

immediately by the defense lawyer or as soon as possible, otherwise the ability to rely on the violation will be forfeited.¹⁴⁵

Lithuania (LT)

144. The Lithuanian Code on Criminal Procedure¹⁴⁶ and an Order of Prosecutor General¹⁴⁷ recognised the obligation to provide written information on rights to the suspect before the Directive was adopted. Accused persons were not included in these provisions as it is assumed that an accused person will have been informed of their rights at a previous stage, while they were still a suspect. The Order of Prosecutor General was amended after the adoption of the Directive in order to comply fully with the Directive.
145. In compliance with Article 3 of the Directive suspects (who are or are not arrested or detained), will be notified of their right to access a lawyer, to legal aid and conditions for obtaining legal aid (by providing a reference to the Law on Legal Aid only), to be informed of the accusation against them, to interpretation and translation and to remain silent. In addition, as per Article 4 of the Directive, the Letter of Rights for suspects also contains information on the right to access the materials of the case file, to have consular authorities and one other person informed, to access urgent medical assistance and the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority. However, the law does not provide specific guarantees to ensure that people in a vulnerable situation understand the content of the letter or rights.
146. In practice, all suspects are provided with a Letter of Rights. However, in the experience of the respondent the Letter is not easily accessible for the arrested person as it is written in very legal language and contains provisions that have been directly transposed from the Code of Criminal Procedure. This means that suspects or accused persons might find the letter difficult to understand, especially in the stressful situation of an arrest. The respondent believes that the language of the letter should be simplified in order to ensure adequate accessibility.
147. Nonetheless, the respondent considered that, in view of the systematisation and nature of the information presented, the letter is actually useful for the suspect or accused person and can answer many initial questions, provided they take appropriate time to read it. Detainees are entitled to keep the Letter of Rights during the time they are deprived of their liberty, and the respondent believes that detainees often only read it after they have signed it.
148. According to the respondent, translations of the letter of rights are available only in English, French, German, Polish and Russian, which could hinder the understanding of their rights for people who do not speak those languages. Therefore, the respondent suggests that translations to more languages should be made available (even though oral ad hoc translations are available for suspects or accused persons from other countries).

¹⁴⁵ See among others the Italian Supreme court, III chamber, ruling from November 7, 2002.

¹⁴⁶ <https://www.e-tar.lt/portal/lt/legalAct/TAR.EC588C321777>

¹⁴⁷ <https://www.e-tar.lt/portal/en/legalAct/cf861010c5aa11e583a295d9366c7ab3/FKIKknznQM>

149. In the context of European Arrest Warrant proceedings, detainees are not entitled to be provided with a Letter of Rights because, formally, such person is not a suspected person. Instead, detainees receive information on their rights in the form of an annex to the notification of suspicion.
150. The respondent is not aware of any judicial practice providing guidance, evaluating violations of the right to written information or providing remedies for such violations.

Malta (MT)

151. Article 534AB(3) of the Criminal Code was introduced to comply with the Directive. Thereby, the police shall promptly provide a person arrested or detained with the Letter of Rights written in a language that the person understands. Detainees shall be given the opportunity to read it and to keep it during the time of their detention. The law also states that, in the instances when the Letter of Rights is not available in the language of the suspects or the accused person, they shall be informed of their rights orally in a language that they understand. Nonetheless, detainees must still be provided with a translated Letter of Rights immediately after the oral interpretation. If the suspect or accused person is not arrested or detained, the information may be given either orally or in writing (Article 534A of the Criminal Code).
152. A template of the Letter of Rights is contained in the Criminal Code. It contains information on the right to access a lawyer, to legal aid and the conditions for obtaining legal aid, to be informed of the accusation against them, interpretation and translation as well as on the right to remain silent. Additionally, it contains information on the right to access the materials of the case file, to have consular authorities and one other person informed, to access urgent medical assistance and the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority. However, the law does not contain specific provisions to ensure vulnerable people understand their rights properly.
153. In practice, Letters of Rights are currently given to all suspects and accused persons deprived of liberty prior to an interrogation. However, early after the adoption of the Directive and the subsequent introduction of Article 534AB(3) of the Criminal Code, the respondent was involved in a case in which the accused was not provided with a Letter of Rights. The respondent believes that there is still little awareness of the right to information and the obligation to provide Letters of Rights, even by defence lawyers and members of the judiciary of EU law.
154. In the respondent's view, the Letter of Rights is drafted in a somewhat accessible language. Suspects and accused persons appear to understand some rights better than others, such as the right to speak to a lawyer and the right to remain silent. However, rights that are more complex are rendered difficult for detainees to understand, such as the right to access to the police file.

155. The respondent was also concerned that the Letter of Rights is misleading and could lead recipients to take action that was not in their best interest. In Malta a negative inference can be drawn from silence if the suspect or accused person has spoken to a lawyer. The Letter of Rights does not warn suspects or accused persons that choosing to speak to a lawyer has an impact on their right to remain silent. Rather, it states that a lawyer may help the suspect or accused person to decide whether they want to exercise their right to remain silent. Therefore, the respondent suggested that the law and the Letter should be amended for the purpose of including advice on the consequences of speaking with a lawyer prior to interrogation.
156. The respondent also suggested introducing more specific safeguards to ensure that vulnerable suspects understand their rights, such as requiring trained social worker to explain the contents to a person with a disability, and providing for means to challenge evidence obtained when the right to information is violated, as well as adequate remedies.
157. The does not provide any remedy for failure to provide a Letter of Right and there are no expressly-created mechanisms to challenge the legality of evidences gathered in breach of the Directive. National courts have not yet been involved in any relevant case.

The Netherlands (NL)

158. Article 27c Wetboek van Strafvordering (Criminal Procedural Law Code) was introduced on 5 November 2014 to transpose the Directive and mandates the provision of a Letter of Rights to suspects or accused persons who are arrested or detained. The Letter of Rights must be provided at the time of arrest or at least before the first interrogation. The content of the Letter of Rights complies with Article 3(1) and 4(2) of the Directive, and includes the information on how to challenge the lawfulness of the arrest and obtaining a review of the detention under national law as required by Article 4(3) of the Directive.
159. The Criminal Procedural Law Code does not transpose any safeguards that ensure the accessibility for all suspects including vulnerable ones. However, generally, minors aged 12 – 15 years cannot waive their rights to a lawyer without speaking to the lawyer first. In addition, suspects and accused persons who are deprived of their liberty will always be provided with a duty lawyer and can, therefore, discuss their rights and whether to exercise or waive them before any interrogation.
160. The respondents consider the Letter of Rights useful as it is drafted in accessible language, although it is rather long and might not always be read in detail. But most suspects and accused persons are well-informed through the Letter of Rights, which they can keep throughout the proceedings. The Letter of Rights is available in many different languages, even less commonly required ones. If further translations are required, an interpreter will be available and a written Letter will be provided shortly after in compliance with Article 4(5) of the Directive.
161. The respondents are not aware of any jurisprudence addressing the failure to provide a Letter of Rights. However, they assume that any violation that would result in an uninformed waiving

of the right to a lawyer would result in subsequent statements being excluded. However, the lack of information on the right to consult a third party or the embassy might not have any severe consequences.

Poland (PL)

162. As a result of the implementation of the Right to Information Directive, suspects and accused persons in Poland, who have been arrested or detained are now provided with a written Letter of Rights. This Letter of Rights is provided to them after the arrest, usually at the police station before any interrogation. When notified of their rights, suspects and accused persons are informed of the charges against them, the right to interpretation and translations, access a lawyer and the conditions for legal aid as well as the right to remain silent. Additionally, suspects and accused persons deprived of liberty will be informed of the maximum number of days they may be detained before being brought before a judicial authority, the right to contact another person or consular assistance, their right to access the case file and urgent medical care. It further includes information on obtaining a review of the detention and on challenging the lawfulness of the arrest under national law.
163. The law does not provide safeguards to ensure that vulnerable suspects receive extra support to ensure they understand their rights. The Letter of Rights is provided in 26 different languages, if a suspect or accused person agrees they may be provided with an English version if the Letter of Rights has not been translated into their native language. Suspects and accused persons are also entitled to and do in practice keep the Letter of Rights throughout the period they are deprived of liberty and can therefore refer back to the letter.
164. The survey respondents believe that the Letter of Rights is drafted in inaccessible and legalistic language and therefore not very useful. In practice the suspects or accused person will often not have sufficient time to read the Letter of Rights carefully before the interrogation and will not be explained the meaning of the rights by the authority. They will, therefore, often sign the Letter without fully understanding their rights. One respondent, for example, discussed a client suffering from mental illness. Before interrogation she was provided the Letter of Rights, which she did not understand, and she was persuaded by the police officers to sign a statement of receipt as they were keen to begin the interrogation.
165. The respondents are not aware of any cases in which the violation of the suspect's or accused persons rights with regards to Letter of Rights has resulted in a judicial remedy to be ordered by the court.

Portugal (PT)

166. The legal provisions requiring the provision of suspects or accused persons with written Letter of Rights pre-dates the Directive. According to Article 58(4) of the Code of Criminal Procedure:

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¹⁴⁸ http://www.gddc.pt/codigos/code_criminal_procedure.html

The status of defendant implies the handing over to the concerned person, if possible simultaneously, a document specifying the particulars of the case and those of his defence counsel, should the latter have been appointed. The document must also indicate the defendant's procedural rights and duties as listed in Article 61.

Article 61 of the Code of Criminal Procedure further provides the following:

Unless otherwise provided for by law, a defendant has, at all stages of proceedings, particularly the right to: a) Attend all procedural acts that directly affect him; b) Be heard by the court or by the examining judge whenever they render a decision that personally affects him; c) Be informed of charges against him prior to making any statements before an authority; d) Refuse answering any questions addressed by an authority on charges against him and on the substance of his statements on them; e) Choose a lawyer or ask the court to appoint him a defence counsel; f) Be assisted by a defence counsel in all procedural acts where he takes part and, when detained, to contact such counsel in privacy; g) Take part in the inquiry and examination, submit evidence and require any necessary measures; h) Be informed on his rights by the judicial authority or criminal police body before which he must appear; i) Appeal, under the law, against any decisions to his detriment.

This applies to all suspects or accused persons irrespective of whether they were arrested or detained. Articles 7 (1) (j), 16(2), (3), (4) and 124 of the Code of Execution of Sanctions and Measures Depriving the person of Liberty reiterate that a suspect or accused person in custody or detention must be granted a Letter of Rights with the information outlined above, as well as the right to contact a relative, a trusted person, a lawyer and a consular or diplomatic authority. The legal provisions however, do not outline special safeguards to ensure that the Letter of Rights or notification of rights is accessible to vulnerable suspects.

167. In practice, all persons receive notification of their rights as soon as they are considered a suspect and will receive a written Letter of Rights before any interrogation. They can keep the Letter throughout the proceedings.
168. The Letter of Rights is generally considered to be useful by the lawyers who responded to the survey, especially if the rights provided are either explained in more detail by a lawyer (who is often present) or the respective police or judicial officers. However, translations of the notification or Letter of Rights are not always provided in writing as required by Article 4(5) of the Directive.
169. If the right to notify suspects and accused persons of their rights is breached, a statement made by the suspect or accused person cannot be used in the criminal proceedings¹⁴⁹.

¹⁴⁹ This follows from Article 58(2), (5), (6) of the Code of Criminal Procedure and related case law.

Romania (RO)

170. In Romania, the suspect or accused person will be provided with a Letter of Rights when they are informed of the proceedings and accusations against them. This document, called an “ordanata”, is issued by the Prosecutor and begins the criminal proceedings. It outlines the accusation and the rights and obligation of the defendant in detail. This text is essentially copied from the Articles 83, 210(1) of the Criminal Procedure Code.
171. The content of the ordanata complies with Articles 3 and 4 of the Directive informing suspects and accused persons of their right to access a lawyer, obtain free legal advice and legal aid, right to be informed of the accusation, right to interpretation and translation, to remain silent, access to the case files, inform consular authorities and another person, as well as medical assistance and the maximum hours they may be deprived of liberty before being brought before a judicial authority. It also informs them of the rights to challenge the lawfulness of the arrest, obtaining a review of the detention and making a request for provisional release.
172. The law does, however, lack special safeguards to ensure that vulnerable suspects are indeed able to understand their rights and how to exercise them.
173. In the view of the respondents the Letter is drafted in useful and accessible language and serves the function effectively of informing the suspects and accused persons of their right. All suspects and accused persons can keep the Letter of Rights throughout the proceedings.
174. If the rights of the suspects or accused person with regards to providing them with the Letter of Rights (or other procedural rights) were violated, the defendant can raise this complaint during the preliminary proceedings in which the court verifies the legality of any evidence and measures taken against the defendant. If successful, the court would exclude any evidence obtained in violation of procedural rights.

Slovakia (SK)

175. The Criminal Procedure Code (Trestny poriadok) establishes the obligation to inform suspects and accused persons deprived of their liberty of their rights in writing. The Letter of Rights provided to the suspect or accused person is part of the so-called “report on interrogation”, which is given to suspects or accused persons at the beginning or before an interrogation. In compliance with Article 3 of the Directive, it specifically contains information on the right to access a lawyer, to legal aid and conditions for obtaining legal aid, to be informed of the accusation against them, to interpretation and translation and to remain silent. However, it only contains information on the rights of the accused to access the materials of the case file in contravention of Article 4(2) of the Directive, which requires information to be provided on a number of different rights. In addition, the law does not provide for specific measures to guarantee that persons in vulnerable situations understand their rights to fully.
176. In practice, the respondent finds that the wording of the Letter of Rights is not accessible to all suspects or accused persons because it is very legalistic. In fact, the Letter of Rights has been copied directly from the relevant provision of the Criminal Procedure Code and is provided as

part of a report. For this reason, the respondent suggests that the law should be amended in order to ensure that every suspect and accused person is given a Letter of Rights as a separate document and that the Letter is written in a simpler language (for example using a bullet points system). The respondent highlights that he has been involved in cases where the police investigator carried out a detailed explanation of the rights, though this positive practice does not appear to be something that is generally done.

177. The respondent also noted some instances in which a Letter of Rights was not provided unless it was explicitly requested. Moreover, the respondent highlighted that translations of the Letter of Rights are not available for those who do not speak the native language.
178. Of note, The respondent was involved in a case when the accused person was not provided with a Letter of Rights, but instead the investigator was provided with brief oral information during the investigation. Immediately afterwards, the investigator asked the accused to verbally confirm he understood his rights. When the accused answered affirmatively, no other measure was taken to ensure effective understanding and they continued with the investigation.
179. The respondent states that he is not aware of any case when the national courts have provided guidance on the provision of written information about rights in criminal proceedings. However, when evaluating violations of the right to information the trial court normally will verify that the report of interrogation has been signed by the accused person. In the absence of valid signature, the trial court would possibly find a violation of the fundamental procedural rules and decide to exclude the evidences gathered in breach of the law or even restart the proceeding altogether.
180. The respondent confirms that a number of initiatives are promoting to provide translations of the Letter of Rights in all EU languages and making them available at every police station across the country. However, none of the initiatives have yet been implemented.

Slovenia (SI)

181. The Criminal Procedure Act was amended following the adoption of the Directive and now requires the provision of a Letter of Writes to suspects or accused persons who are arrested or detained. The content of the letter of rights is also provided by law and as a template is annexed to the Criminal Procedure Act. The Letter of Rights complies with Article 4 of the Directive in providing the suspect or accused person with information on the right to access the materials of the case file, have consular authorities and one other person informed, access urgent medical assistance and the national provisions on the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority. Furthermore, the Letter of Rights includes the information required under Article 3 of the Directive (right to access a lawyer, access to legal aid and conditions for obtaining legal aid, be informed of the accusation against them, interpretation and translation, remain silent). However, the law fails to provide adequate safeguards for vulnerable suspects or arrested person.

182. The respondent believes that the Letter of Rights is useful and is written in accessible language. From the experience of the respondent, the Letter of Rights is provided in most cases and the majority of detainees understand the information.
183. According to the respondent, cases raising the violation of notification obligations have not yet been taken to courts. However, the respondent has the view that, given the ambiguity of the Slovenian law, the Courts could hold oral information on rights as sufficient when determining whether the right to information has been violated.

Spain (ES)

184. Article 520(2) of the Code of Criminal Procedure (Ley de Enjuiciamiento Criminal) was introduced following the Directive and provides suspects and accused persons deprived of liberty with the right to receive written Letter of Rights. Suspects and accused persons must be provided with the Letter of Rights “immediately,” that is at the time of arrest. The legal provisions outline that the notification of rights will be adapted to “the age, maturity, disability and any other personal circumstance of the detained person”.
185. In substance the suspects and accused persons are informed in the Letter of Rights of their right to access a lawyer, how to obtain legal aid, the accusations against them as well as the right to interpretation and translation and the remain silent. They are further, in compliance with Article 4 of the Directive, in cases of arrest informed in writing of their right to access the materials of the case file, have consular authorities and another person informed, the right to access urgent medical assistance, and the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority and on challenging the lawfulness of the arrest under national law.
186. In practice, the Letter of Rights is not considered useful by some of the respondents as it only repeats the legal provisions without explaining the content and significance of the rights. However, generally, suspects and accused persons who are deprived of liberty will be provided with a lawyer who will advise them to exercise their right to be silent.
187. In order to comply with the Directive, Letter of Rights should be provided to non-Spanish-speaking suspects and accused persons in a translated version. At the airport the police have different language versions of Letter of Rights available. In other police stations, the translated versions are not necessarily the current updated versions of Letter of Rights, but only an outdated version. In other cases a translator is provided who will translate the Letter of Rights.
188. In theory, through a habeas corpus procedure, a violation of procedural rights should be remedied. However, respondents have not experienced a case related to a violation of notification rights and have the impression that the courts would not be inclined to exclude evidence for such a reason.

United Kingdom (UK)

189. Although the requirement to provide written information about their rights to suspects or accused persons upon arrest was in place in the UK before the adoption of the Directive, the legislation was subsequently amended in order to ensure consistency with EU legislation. According to Police and Criminal Evidence Act 1984, Code C, Section 3.2, detainees must be given a written notice at the police station informing them of their rights, although certain information must be communicated orally upon arrest. Furthermore, detainees are entitled to keep a copy of the letter during the time they are held in custody. In order to comply with Article 3 of the Directive, Section 3.2 requires that suspects and accused persons are informed of their right to access a lawyer, to legal aid and conditions for obtaining legal aid, to be informed of the accusation against them, interpretation and translation and to remain silent. Moreover, the Letter of Rights shall contain information on the right to access the materials of the case file, have consular authorities and one other person informed, access urgent medical assistance, the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority. Section 3.17 provides that a detainee must be provided with their rights in the presence of the appropriate adult where needed.
190. From the experience of the respondent, Letter of Rights are generally provided to all detainees and are written in a language that is easy to understand. Nonetheless, the respondent also highlights a number of issues that remain a concern in practice. The Letter of Right states: "If you are charged and your case goes to court, you or your solicitor will have a right to see the prosecution evidence before the court hearing." However, according to case law, solicitors at a first appearance are only entitled to see the previous convictions of the person and a case summary prepared by the relevant police authorities which is often misleading or incorrect. Therefore, in the view of the respondent, the suspect or accused person should be given access to the relevant witness statements before entering a plea in order to fully comply with the Directive.
191. In addition, the respondent also raised a concern relating to the Extradition Codes of Practice under which the requested persons must be provided with information on their rights upon arrest. However, the respondent reports that the information that is currently given is incorrect. This has recently triggered a consultation from the Home Office.
192. A template of the Notice of Rights and Entitlement has been developed and is available online. Translations of the letter are also available online in 60 languages.
193. National courts have not yet developed any jurisprudence with regards to the violation of rights under the Directive. However, in the view of the respondent, it is highly unlikely that the trial court would decide to apply the exclusionary rule if a violation is found to have occurred, unless combined with other breaches of the defendants' rights.

Denmark (DK) – not part of the Directive

194. In its national law, Denmark falls strongly behind the standards that have been implemented in most other EU Member States. Suspects or accused persons are usually not informed of their rights in writing but only orally at the beginning of each interrogation at the latest. Suspects will be informed of their rights to remain silent and not incriminate themselves.

However, there is no duty on the authorities to inform the suspects or accused persons of their rights to a lawyer or an interpreter, although in practice they are often provided with this information. No specific remedies are available for the violation of notifying suspects or accused persons of their rights. These can only be raised as a complaint that basic defence rights may have been infringed, if for example as a result of this violation the suspect or accused person was not represented by a lawyer or was not provided with an interpreter.

Key Findings

195. In this section, the different responses to the survey are analysed and compared by themes, providing insight to common challenges and highlighting examples of good practice in certain Member States. It was not possible to go into the same level of detail for every response. Thus, the fact that a Member State is not listed in a specific paragraph does not of itself mean that the issue is inapplicable in that jurisdiction.
196. **Transposition of the Directive:** Almost all Member States amended their Criminal Procedural Codes in order to transpose the Directive. Five Member States (BE, BG, CY, HU, PT) did not transpose the Directive with regards to the notifications or Letter of Rights, as they were already providing written Letter of Rights prior to the adoption of the Directive. Germany, Lithuania and the UK already provided written Letter of Rights prior to the Directive, but amended their Criminal Procedural Codes to comply fully with the Directive. The legal provisions and the practice concerning notifications and Letter of Rights provided in Bulgaria and Cyprus fall substantially short of the requirements of the Directive on different accounts, and in order to ensure that suspects and accused persons in these countries are in fact provided with the opportunity to exercise their defence rights, comprehensive transposition is required. Belgium is currently in the process of reforming its Criminal Procedural Code and the respondents expect that this process will include comprehensive transposition of the Directive.
197. **Time of notification/provision with Letter of Rights:** Most respondents confirmed that suspects and accused people are notified of the rights in compliance with Articles 3 (1) and 4(1) of the Directive, either before any interrogation (BE, FR, LT, PL, PT) or immediately after their arrest (AT, ES, EL, IT, NL). In Hungary suspects and accused persons are only provided with a Letter of Rights at the beginning of the interrogation, which can increase the pressure to read through the Letter very quickly. In Poland too, respondents noted, suspects or accused persons will not have enough time to read the Letter of Rights in detail before an interrogation. Suspects or accused persons in Greece should be informed of the rights at the moment of arrest but will often be provided with a Letter of Rights only prior to their interrogation. In Belgium, any invitation to a police interrogation will be accompanied with a Letter of Rights, often reminding the suspect or accused person to contact a lawyer for advice before attending any police questioning.

198. Several respondents were concerned that the provision of a Letter of Rights for arrested or detained suspects is provided in practice very shortly before any interrogation, leaving the suspect or accused person insufficient time to read the Letter of Rights in detail and effectively understand their rights (BE, EL). In Lithuania, the suspect or accused person can only read the Letter of Rights after signing a statement of receipt. In Slovakia, the Letter of Rights as part of an interrogation might in some cases not be provided to the suspect or accused person until after the interrogation.
199. **Article 4(1):** The Directive requires that suspects or accused persons who are arrested or detained are provided with a Letter of Rights, which they are allowed to keep in their possession. However, according to the survey respondents from Greece and Germany, the suspect or accused person is not able to keep a copy and refer to it at a later stage. In Bulgaria and Slovakia, information on the rights of the accused is provided as part of a different document, which in the view of the respondents devalues the effectiveness of the Letter of Rights.
200. Some Member States (BE, BG, HU, IT, LT, MT) also provide suspects and accused persons who are not deprived of their liberty with a written Letter of Rights.
201. **Accessibility of the Letter of Rights:** Survey respondents from certain member States (ES, HU, IT, CZ, LT, SI) found that the letters of rights are not drafted as required by Article 4(4) of the Directive in an easily accessible language. Respondents from two Member States (BG, EE) found that the Letters of Rights are too formalistic. The Finish letter is seven pages long. Several of the surveyed defence practitioners from BE, CZ HR and FR believe the Letter of Rights is only useful to the suspect or accused person if they can discuss the Letter of Rights with a lawyer.
202. The Austrian respondent explained that the Letter of Rights includes an explanation regarding the right to remain silent that is distinctly confusing to any non-legally trained reader and does not effectively inform of the benefits or disadvantages of exercising that right. Similarly, the Maltese respondent is concerned about misleading language with regards to the right to consult a lawyer and the impact that has on the right to remain silent.
203. Some lawyers believe though that the Letter of Rights provided is an improvement on the previous status of not providing a Letter at all (IT, ES). The Dutch respondents believe that the Letter of Rights provided might be a bit too long, but does in practice provide suspects and accused persons with a clear understanding of their rights. The Romanian, Slovenian and UK Letter of Rights were considered accessible and helpful to most suspects and accused persons.
204. **Dissuasive notification:** Several respondents raised concerns that police authorities provide suspects and accused persons with explanations that are intended to dissuade them from exercising their defence rights. In the experience of the Bulgarian respondent, for example, the police will try to dissuade the defendant from exercising their right to access a lawyer by saying “that would make it worse”. In the Czech Republic our respondent has experienced cases in which the police will refer to the Letter of Rights and most of the rights in it as a

“mere formality,” thereby dissuading the suspect or accused person from paying much attention to the Letter of Rights.

205. **Content of the notification and Letter of Rights:** The contents of Letter of Rights do in most Member States comply with the requirements of Articles 3(1) and 4(2) of the Directive. Cyprus and Bulgaria fail to include the complete list of rights in their Letter of Rights in violation of the Directive. The Greek Letter of Rights does not provide information on how long the suspect or accused person may be detained before being brought before a judicial authority, although Article 4(3) of the Directive requires this information to be included. The Slovakian Letter of Rights too, apparently fails to inform the suspect or accused person deprived of liberty of all their rights included in Article 4 of the Directive. The Maltese Letter of Rights informs suspects and accused persons wrongly of their rights and the implications that exercising their right to a lawyer may have and does not inform that this might undermine their right to remain silent.
206. **Safeguards for vulnerable suspects:** A clear majority of the respondents outlined that the safeguards for vulnerable suspects or accused persons are non-existent, despite clear requirements in Article 3(2) to take particular needs of vulnerable suspects or accused persons into account. However, there are exceptions. According to our respondents in France, for example, the notification is adapted for deaf and illiterate suspects or accused persons, who will be provided with a special interpreter (e.g. using sign language) or technical communication device. In Spain, the law requires modifications for notifying vulnerable suspects of their rights, but in practice, the respondents agree these are never applied. Similarly, in Belgium and the Netherlands the interrogations will be modified to address the vulnerabilities of the suspect or accused person, such as requiring mandatory lawyers for suspects or accused persons that are minors who would then be able to ensure that the suspect in fact understands their rights. In Finland, any interrogation of a minor must be recorded. In the Netherlands any suspect or accused person who is arrested or detained will be provided with a duty lawyer and cannot waive this right until after they have spoken to them.
207. **Translations:** Member States are required to provide suspects or accused persons with a Letter of Rights written in a language they understand. If such Letter of Rights is not available they must firstly provide an oral interpretation and subsequently a written Letter of Rights. Most Member States comply with these requirements. However a few Member States (BG, EL, HU, IT, PT) only provide an oral notification of rights, if they do not have a Letter of Rights in the required language already available. Moreover, the number of Letter of Rights readily available in different languages varies strongly, with countries having six, 15 (FI), 26 (PL), 52 (BE) or even 60 translations (UK) of the Letter of Rights available. In Spain, updated and translated versions of the Letter of Rights are available only at airports and not across the country.
208. **Remedies:** In several countries evidence that was obtained in violation of the notification obligation or the duty to provide a letter of right can result in exclusion of the evidence or repetition of the respective procedural stage (BE, BG, CZ, DE, IE, NL, PT, SL, SI) especially if the

suspect or accused person was not informed about their right to a lawyer or to remain silent (FI). However, in a number of countries the respondents believe that it is extremely unlikely that the court would actually order such remedy (BG, EL, FI, FR, PL, HU, UK). Some respondents believe a breach of the procedural rights would be impossible to prove as the defendant must sign a statement affirming receiving and understanding the Letter of Rights (BG, CZ, SL) or the courts would not consider such violation sufficiently substantial to require an exclusion of evidence or other remedy (ES, EL, HU, UK), except if for example the right to a lawyer were waived (EL, NL). In other Member States there is currently no legal provision or case law concerning such remedy (EE, IT, MT, PL, RO).

VI. Conclusion

209. This report presented findings from an analysis of international and regional standards regarding notification of rights provided to suspects and accused in criminal cases, as well as information on the law and practice in 30 non-EU countries and 25 EU Member States. It is clear from this review, that the Directive provides, in general, a level of notification – in both form and content – that is not seen elsewhere, either internationally or in non-EU countries. However, there are examples of practice – for example regarding the manner and means of notification (e.g. Hong Kong, Malawi) and the analysis of the legality of waivers (e.g. Rome Statute, Kosovo) – that would bolster practice in the EU. Moreover, the ECtHR jurisprudence remains of critical importance with regard to standards for determining when notification enables a suspect or accused to clearly understand their rights. With regard to the transposition and implementation of the Directive, the LEAP survey highlights that the Directive has led to improvements in the notification of rights of suspects and accused in several Member States. However, in many others there are clear deficiencies, either in law or practice, that need to be resolved.

Fair Trials

August 2016

VII. Annex

LEAP online Survey (disseminated via survey monkey, January 2016)

Dear LEAP members,

I hope you are well. We are currently working on a new project which will examine and inform the implementation of the obligations relating to the provision of letters of rights in the EU Right to Information Directive.

The overall aim of the project, which is coordinated by LEAP member Hungarian Helsinki Committee and funded by the European Commission, is to improve the quality and accessibility of information provided to suspects about their rights at the time of arrest. We hope to identify examples of transferable good practice through research into international standards and global practices and this will be set out in a report published next summer. As part of this research, we want to learn more about the implementation of the EU Right to Information Directive in all 28 Member States.

As you will recall the main innovation of the Right to Information Directive is that the suspect should be provided with a written notification of their rights as a suspect, as soon as they are made aware by the competent authorities (usually the police) that they are suspected or accused of a criminal offence. We are keen to ascertain how this right is complied with in practice in the different EU Member States.

We would therefore be grateful if you could complete our survey which examines the implementation in law and practice of the obligation to provide letters of rights under the EU Right to Information Directive. The questionnaire is available on SurveyMonkey via this link. It should take you a maximum of 30 minutes and we will be very grateful for your ongoing support and help. The survey can be filled out anonymously.

Additionally we would ask you to please email a scanned copy of a written statement of rights that is given to suspects in English and your national language to Jemima Hartshorn, Jemima.hartshorn@fairtrials.net.

Thank you very much and please do let me know should you have any queries.

Kind regards,

Jemima

1. Name (optional)
2. Country
3. Number of years of professional experience (including as a trainee lawyer)

The law

4. In your jurisdiction, are suspects or accused persons provided with written information about their rights following arrest or detention?

5. If yes, what specific legislation, case law or other policy guidance establishes this requirement? (Please provide reference, original text and English translation/summary if possible).
6. If no, are you aware of any plans to introduce such a requirement to implement the obligations under the EU Right to Information Directive?
7. Was this requirement introduced to implement the relevant obligations under the EU Right to Information Directive?
8. If no, was it amended in order to comply with that Directive?
9. Is the specific form, content and language of the letter of rights determined by law/policy?
10. If yes, please provide details.
11. If not, how is consistency ensured across the jurisdiction, if at all?
12. When the suspects and accused shall receive the letter of rights? (At the time of the arrest, Before the first interrogation, etc)
13. Does the letter of rights include all rights referred to in the EU Right to Information Directive, as listed below? (please tick below as included in the letter of rights in your jurisdiction)

The Right to Information Directive outlines in Art. 3 that suspects have to be informed of the right to

- access a lawyer,
- to legal aid and conditions for obtaining legal aid,
- be informed of the accusation against them,
- interpretation and translation, and
- remain silent.

In Art. 4 the Directive outlines that suspects who are arrested or detained should additionally to the rights outlined above be informed that they should be informed about their right to

- access the materials of the case file,
- have a consular authorities and one other person informed,
- access urgent medical assistance,
- and the maximum number of hours or days they may be deprived of liberty before being brought before a judicial authority.

The information should also include basic information about national provisions

- on challenging the lawfulness of the arrest under national law,
- on obtaining a review of the detention or making a request for provisional release, or
- making a request for provisional release.

14. In your view, is the letter of rights drafted in simple and accessible language? If not, why not?
15. In your view is the letter of rights useful?
16. If yes, please explain with examples from particular cases.
17. If now, please explain why not.

18. Are suspects and accused persons entitled to keep the letter of rights in their possession throughout any period of deprivation of liberty?
19. Are translations of the letter of rights available for suspects or accused who do not speak the language of the criminal proceedings? If yes, which languages?
20. Are there any specific safeguards for vulnerable suspects (eg. people with disabilities and children) set out in law/policy to ensure that they fully understand the content of the letter of rights?
21. Further comments/if you could amend the law, what would be the three major amendment?
22. Further comments?

The practice

20. As far as you are aware, in practice, do all suspects and accused who are arrested and detained receive written information on rights in accordance with the requirement described previously?
21. If not, why not?
22. What specific problems are encountered in practice?
23. From your experience, do suspects and accused understand the information provided in the letter of rights?
24. Have you noticed any reduction in the waiver of any of their rights by suspects and accused who have received the letter of rights?
25. Are you able to provide any examples of how written information on rights is not being provided in practice, drawn from your own casework or elsewhere?
26. Are there any aspects of the practice in your jurisdiction which you consider to be particularly positive? If so, please provide details.
27. Are there any aspects of the practice in your jurisdiction which you consider to be particularly negative? If so, please provide details.
28. Further comments

The courts

29. Have the national courts in your jurisdiction given any guidance on the provision of written information about rights in criminal proceedings? (If yes, please provide case references and links to judgments where possible)
30. How does the trial court evaluate violations of the right to written information on rights?
31. What remedy/ies is/are provided in cases where the right to written information on rights has been violated? (For example, exclusion of certain evidence, reduction in sentence, re-

trial, compensation). Are such remedies only granted by the trial court, or is it possible to obtain remedies during the pre-trial proceedings?

32. Further comments?

General

33. Are you aware of any legal developments or reform initiatives such as pilot projects currently taking place in your jurisdiction in relation to the provision of written information on rights? If so, please provide details.

Do the media cover the issue of providing written information on rights? (If yes, please provide links to forums/blogs or articles that are discussing this issue).