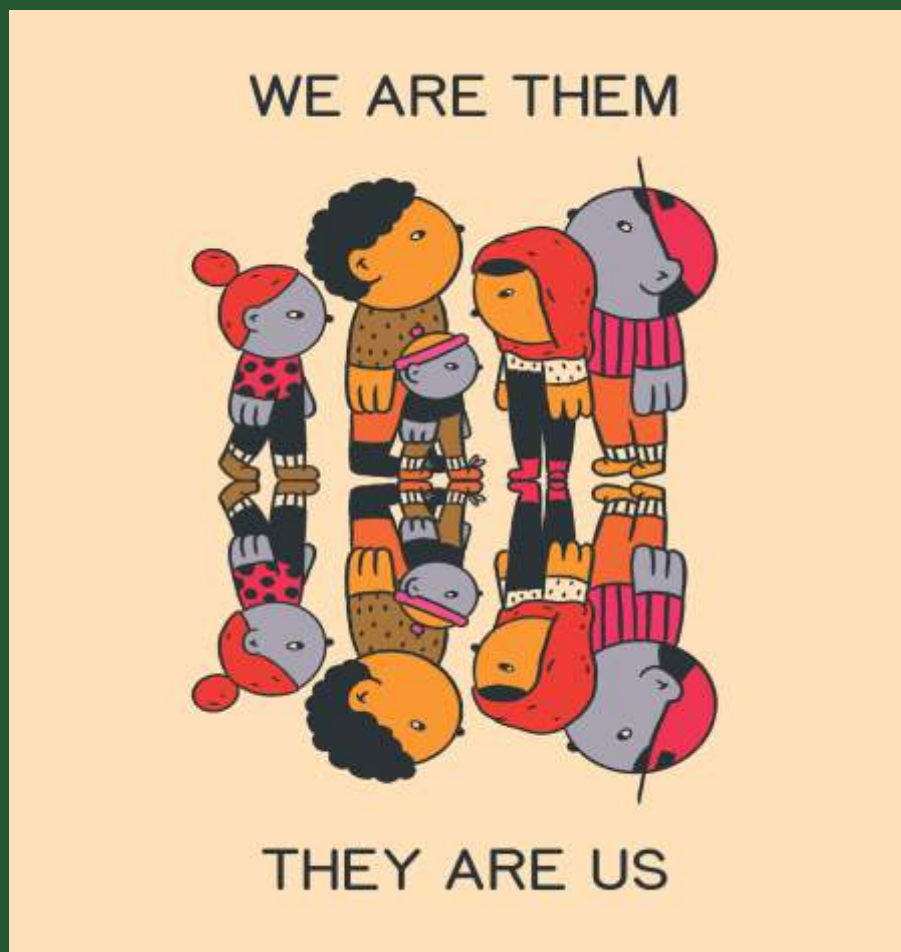


CAN JUSTICE BE CHILD-FRIENDLY?

INTERNATIONAL AND NATIONAL PERSPECTIVES



**International Conference
Sofia, 30 June – 2 July 2021**

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Collection of conference materials

This publication was prepared by the Bulgarian Center for Non-Profit Law in the framework of the international project „Child Friendly Justice: Development of a Concept for Social Judicial Practices” (CFJ-DCSCP), funded by the EU and on the occasion of the international conference „Can Justice be child-friendly?”, organized under the project in partnership with Validity Foundation, PRISM Impresa Sociale s.r.l., Italy, Centrul de Resurse Juridice (Centre for Legal Resources – CRJ/CLR), Romania.

The aim of the project is to improve access to justice for children with enhanced vulnerability in the criminal justice system by developing and disseminating specialized models of individualized assessment of their needs in accordance with international and European law. The project includes a research component that aims to identify existing and current problems and to formulate recommendations related to individual assessments in criminal proceedings concerning vulnerable child victims or children who are suspected or accused of committing a crime.

The special focus of the project is on children deprived of parental care, unaccompanied minors and children with mental disabilities. The project is implemented by a consortium of European NGOs with a leading partner Validity UK, where the Bulgarian partner is BCNL.

The content of this collection reflects the views only of the authors for which they have a personal responsibility. The European Commission is not responsible for any use that may be made of the information contained therein.

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ISBN 978-619-7345-07-0

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Front cover picture: Vicky Hughes, The Greats platform

**Preprinting: Vladimir Lubenov
Sofia, 2021**

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CONFERENCE HIGHLIGHTS

*"When you ask what our job is, I'll answer you -
someone just has to love these kids."*

[former inspector of Children's pedagogical room]

- **Can we ensure an approach to child litigation that is inclusive, child-friendly and participatory in Europe?**
- **What are the barriers and prejudices that prevent us from making progress?**
- **Is this a field of action that provokes optimism or pessimism?**

More than 160 participants from around the world signed to attend the three-day conference. Representatives of the United Nations, the European Commission, the EU Fundamental Rights Agency, NGOs, as well as lawyers, journalists and university researchers were part of the sessions. Official guests at the event in Sofia were the Ombudsman of the Republic of Bulgaria Diana Kovacheva and the Deputy Minister of Justice Maria Pavlova.

During the event the system of legal acts and policy documents related to child-friendly justice at European and international level was analysed. Bulgaria's delay in transposing Directive (EU) 2016/800 and Directive (EU) 2012/29, which regulate the minimum standards for the rights of child offenders or victims of crime in criminal proceedings, was also discussed. Particular attention was paid to the nature and objectives of the „individual assessment“ under the two European Directives. It was emphasized that individual assessment can be used to individualize a punishment, but its main purpose is to ensure that the individual educational and other needs of the child guaranteed by the recognized children's rights are met.

At the Conference, a number of other issues related to the child-friendly justice in Bulgaria and other European countries were raised:

- **Children do not know their rights, especially when they are accused or are suspects;**
- **Professionals do not know how to interact with children - there is a lack of appropriate training;**
- **Court and pre-trial proceedings are not adapted to the needs of the child and are not age appropriate;**
- **Repeated hearings of the child are still a widespread practice**
- **Professionals and other involved structures do not communicate with each other - there is no feedback from social services to the court, which is especially problematic if there is another case involving the same child, but before a different judge;**
- **Particularly vulnerable are children who have additional problems - disability, children who are clients of the protection system, refugee children, etc.**

In addition to the child-friendly justice and the challenges to its implementation, the need for a change in the public attitudes towards children was also discussed. The lack of maturity in children should not be a reason to treat them with less respect and upholding the best interests of the child is beneficial for society as a whole.

During the Conference good practices on individual assessment in Italy, the use of „blue rooms“ in Bulgaria and Romania, working with child victims of crime in social services and others were also presented.

On the third final day of the Conference, a session was held in an unusual format: young people presented real cases of child offenders and / or victims of crime and asked their questions to the experts. The conference was held in Bulgarian and English and was accompanied by interpretation into both sign languages.

Links to Conference materials:

- **A Contextualized Analysis of the Steps, Safeguards and the Reluctance in the Implementation of Directive 2012/29/EU and Directive 2016/800/EU in Bulgarian and in English;**
- **Reports of Italian and Romanian researches [here](#);**
- **Conference materials [in Bulgarian](#) and [in English](#);**
- **Info and Conference videos [with Bulgarian sign language](#) and [with English sign language](#).**

MESSAGES

Dear colleagues,

The way we have defined the theme of the conference „Can justice be ‘child-friendly’?“ is very significant.

Of course, the child and the court, the police and the prosecution cannot be friends. The child encounters the justice system on unpleasant occasions in his life and it would be best for the child if that could be avoided.

But for many children the contact with the justice system cannot be prevented. Children meet the court when their parents divorce, when they are in care, when an issue related to their legal status has to be decided - for example, their origin or residence, when they are refugees or migrants. The child's contact with the criminal justice system is the most difficult one - when he or she is a victim of violence and a witness or is a suspect or accused as offender.

Therefore, modern justice systems must adapt to child participants in order to reduce the stress of children and to empower and provide them with the best possible protection in proceedings.

The tools for this are safeguards through modifications to the usual rules of procedure, training for police officers, prosecutors and judges, and the enforcement of the rights of child participants in justice. A real integrated and effective support for children, however, can't take place without the appropriate involvement of the other systems, the educational and social systems, which are essential if general theoretical provisions are to be translated into real conditions for the exercise of rights.

The purpose of this conference is not to formulate proposals for legislative changes. There are enough of those, and many more awaiting adoptions by the legislature.

Our aim is to examine why the current law is not working or not working sufficiently in the interests and protection of children's rights. What are the obstacles for professionals, why despite the laws, rights do not reach children to the desired extent, why is it so difficult (and often impossible) for systems to co-operate, why do we forget that a child who is a victim of a crime or accused as offender is a developing person and if we protect his or her rights as they are written in laws and conventions, we will help the child to choose the path of a good adult.

The focus of the conference is on two Directives of the European Parliament and of the Council, the common point between which is the formulation of the right to an individual assessment of a child involved in criminal proceedings.

For 22 years now, the Bulgarian political and public space has been dealing with the need for a reform of the child justice system. Despite the Convention on the Rights of the Child, the Council of Europe Committee of Ministers Guidelines on Justice in the Interest of the Child, the repeated recommendations of the UN Committee on the Rights of the Child and the Council of Europe Commissioner for Human Rights, and many other standards, Bulgarian governments stubbornly refuse to modernise legislation in this area.

This conference is part of a series of conferences open to lawyers and other child rights professionals from Bulgaria, Romania and Italy and other countries. Our aim is to examine the topic in the context of global and European standards, but also through the practice, achievements and challenges in the process of modernising justice systems in the protection of children's rights.

We wish you an interesting and useful event!

Velina Todorova,
Assistant Professor of Civil and Family Law,
Member of UN Child Rights Committee

THE GOAL OF THE CONFERENCE

Can we ensure in Europe inclusive, participatory and child-friendly approach in legal procedures that affect children? What are the barriers and prejudices that impede us from reporting progress? Is it an optimistic or pessimistic field of work?

This 3-days event aims to provide a platform for discussion of the level of transposition and implementation of two EU Directives: Directive (EU) 2016/800 and Directive (EU) 2012/29, as well as of approaches and practices in three member states – Bulgaria, Italy and Romania.

The first two days offer a broad international participation with the aims to:

- identify the approaches taken by the Bulgarian, Italian and Romanian legislator to transpose the Directives and the possible remaining gaps in the national laws;
- promote existing “promising practices” in terms of the exercise of procedural rights, in particular the right to an individual assessment and the outcomes thereof for children;
- raise awareness about the critical and key issues that need to be addressed during the process of changing the context.

The third day is a national advocacy day for Bulgaria. It is devoted to discussions of the national reforms regarding the rights of children victims and children-offenders, and their access to justice. Special focus of the day is the De-institutionalization reform, taking place in the last 10 years and the way forward for improving the results for children.

The organisers hope that with reflective discussion, knowledge exchange about innovative and successful lessons learnt and networking the decision-makers and professionals can improve access to justice for children as well as the justice system. The situation of children with enhanced vulnerabilities is even more warning so additional efforts and affirmative actions for them also have to be discussed.

CONFERENCE AGENDA

Time	30 June
10.00 – 16.30 CET	From international standards on Child-Friendly Justice to national reforms
Session 1	Latest developments in the EU and UN standards regarding child's rights in the child justice systems
10.30 -12.00 CET	<ul style="list-style-type: none">➤ Mikiko Otani, UN Child Rights Committee➤ Marta Tarragona Fenosa, European Commission➤ Marieta Tosheva, European Commission, DG JUSTICE and CONSUMERS <p>Moderator: Velina Todorova, UN Child Rights Committee</p>
Session 2	The standards at national level on individual assessment: key findings from three countries – Bulgaria, Italy and Romania
13.00 – 14.30 CET	Lessons learnt <ul style="list-style-type: none">➤ Marieta Dimitrova, lawyer, BCNL➤ Anthinea Interbartolo, jurist, PRISM Impresa Social s.r.l., Italy➤ Oana Maria Dodu, lawyer, and Stefania Dascalu, lawyer, Center for Legal Resources, Romania <p>Moderator: Bruno Monteiro, Validity Foundation</p>
Session 3	The rights of children in the criminal and civil justice systems: views of practitioners
14.30 – 16.15 CET	<ul style="list-style-type: none">➤ Tsvetomira Velcheva, Judge, Bulgaria➤ Vessela Tsankova, Association “Civic Initiatives - Lovech”, Bulgaria➤ Mugur Frăţilă, Romania➤ Diana Oncioiu, journalist, Romania➤ Elisa Bruno, lawyer, Italy➤ Serena Romano, lawyer, Italy <p>Moderators: Steven Allen, Validity Foundation, Nadia Shabani, BCNL</p>
Session 4	
16.15 – 16.30 CET	Wrap up and closing of the first day

Time	1 July
10.00 – 16.30 CET	Local developers and change makers
Session 1	Good practices of the Child-Friendly Court
10.30 – 12.00 CET	Good models of multi and interdisciplinary approaches in the court procedure that can support the child participation, protect the best interest and improve the quality of the professional interventions <ul style="list-style-type: none"> ➤ Aleksandra Ivankovic, Victim Support Europe ➤ Orinda Gjoni, Terre des Hommes ➤ Astrid Podsiadlowski, Fundamental Rights Agency Moderator: Simona Veleva, lawyer
Session 2	Special preparation and specialization of lawyers, social workers and services for children in the child justice system
13.00 – 14.30 CET	<ul style="list-style-type: none"> ➤ Aneta Genova, Validity Foundation ➤ Simona Florescu, Validity Foundation ➤ Julie Ahern, Children Rights Alliance Moderator: Marieta Dimitrova, BCNL
Session 3	Intersectionality challenges facing child victim and child suspect or accused of committing a crime, living in institutions and/or have mental disabilities
14.30 – 16.15 CET	<ul style="list-style-type: none"> ➤ Bernard Rorke, European Roma Rights Centre ➤ Šárka Dušková, Validity Foundation. ➤ Dr. Stephanie Rap, Leiden University Moderator: Venelin Stoychev, BCNL
16.15 – 16.30 CET	Wrap up and closing of the second day

Time	2 July
9.00 – 16.30 CET	Child Justice
Session 1	Can justice in Bulgaria be child-friendly? Perspectives and challenges
9.00 – 10.30 CET	<ul style="list-style-type: none"> ➤ Maria Pavlova, Deputy Minister of Justice ➤ Diana Kovacheva, National ombudsman ➤ Venelin Stoychev, BCNL ➤ Vladislava Tsarigradska, judge ➤ Natasha Dobрева, lawyer
	Moderator: Nadia Shabani, BCNL
Session 2	Event with young people
10.45 -12.00 CET	Moderators: Alexander Kirov and Zahari Iankov, BCNL
Session 3	Integrated support for children-victims and witnesses of violence and crimes and for their parents
13.00 - 14.30 CET	<ul style="list-style-type: none"> ➤ Nelly Petrova, Institute for social activities and practices ➤ Svetlin Azmanov, Animus Foundation ➤ Nadia Shabani, BCNL
	Moderator: Lyubomir Krilchev, UNICEF Bulgaria
Session 4	DI reform in Bulgaria: reflection stage, Coalition 2025
14.30 – 16.00 CET	<ul style="list-style-type: none"> ➤ Elen Mitova-Ivanova, Know-How Center for Children ➤ Galina Bisset, Hope and Homes for Children ➤ Maria Petkova, Tulip Foundation.
	Moderator: Bisser Spirov, Lumos
16.00 – 16.30	Way forward

PROJECT PARTNERS AND ORGANISERS

Child-friendly Justice

Developing the Concept of Social Court Practices

The goal of this project is to improve criminal justice systems by making them more child-friendly to child victims and children suspected or accused of committing a crime, particularly for those who are in vulnerable situations. There is a lack of understanding on how children should be assessed by criminal justice professionals to identify their social, educational, protection and/or restoration/reintegration needs within criminal justice processes. This project will focus on improving individual assessments of children in vulnerable situations in Bulgaria, Italy and Romania. In particular, it will focus on improving the situation for children with disabilities, children deprived of parental care and unaccompanied minors. The project will develop a set of specialist tools which will contribute to ensuring access to justice, a child-centred approach and ensuring that appropriate measures are taken to enhance their participation and to protect them from harm throughout the criminal justice process.

The European Union Victims' Rights Directive (2012/29/EU) and the Children Procedural Safeguards Directive (2016/800/EU) aim to assure child victims of crime and children who are suspected or accused of committing a crime a set of rights to enable them to be supported, protected and to actively participate in the criminal justice process in line with their needs and taking into account their individual vulnerabilities. These Directives emphasise the importance and obligation to understand their needs before any measures are applied by criminal justice authorities. The means to achieve this is through an individual assessment, where the information required to understand the child's situation is collected by trained professionals in a child-friendly manner that enables their participation and protection. There is limited awareness of how to achieve these goals in practice across criminal justice systems, and how to undertake individual assessments for children with enhanced vulnerabilities, and the importance of a multidisciplinary approach.

This is a two-year project which started in July 2020, and is co-funded by the European Union Rights, Equality and Citizenship Programme (2014–2020). It will focus on children in particularly vulnerable situations who experience multiple barriers within the criminal justice system and who are often side-lined or excluded. The project will take place and benefit directly 3 EU countries (Bulgaria, Italy and Romania), with the resulting tools and methods being of relevance more widely across the EU.

Partners

- **Validity Foundation** (Validity, Hungary): brings 18 years substantive expertise in advocacy and international strategic litigation on the rights of people with disabilities. It uses legal strategies to promote, protect and defend the human rights of people with mental disabilities worldwide.
- **The Bulgarian Center for Not-For-Profit Law** (BCNL, Bulgaria): BCNL is the local affiliate of the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for-Profit Law (ECNL). The mission of BCNL is to provide legal support for the development of civil society in Bulgaria. BCNL spreads its activities over the territory of the whole country, providing expertise and legal assistance to NGOs, local government and institutions.
- **PRISM Impresa Sociale s.r.l.** (PRISM, Italy) is a social enterprise, born in the heart of the Mediterranean, and acts as a qualified development agent, able to intercept and to thrive in the territory of development policies promoted by transnational, national and regional bodies, creating development opportunities for the territories in which it operates, encouraging economic, cultural and social growth.

• **Centrul de Resurse Juridice** (Centre for Legal Resources – CRJ/CLR, Romania): CLR has substantial experience and skill in providing complex legal and professional support to people with disabilities who have experienced human rights violations. It actively advocates for the establishment and operation of a legal and institutional framework that safeguards observance of human rights and equal opportunities, as well as free access to fair justice.

Project Coordinator

Validity Foundation – Mental Disability Advocacy Centre

cfj@validity.ngo, <https://validity.ngo/>, Facebook

Full name of the project: Child-Friendly Justice: Developing the concept of social court practices (878552 – CFJ-DCSCP).

REC-AG-2019/REC-RCHI-PROF-AG-2019-878552. The contents of this project represent the views of the project partners only and are their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Partners for the event in Sofia, Bulgaria

BULGARIAN CENTER FOR NOT-FOR-PROFIT LAW (BCNL)

BCNL was established in July 2001 as a foundation in pursue of activities for the public benefit. The mission of the organization is to support the draft and the implementation of laws and policies aiming the development of the civic society, civic participation and good governance in Bulgaria.

UNION OF JUDGES IN BULGARIA

The Union of Judges in Bulgaria is an independent, voluntary, professional organization, uniting judges in Bulgaria and assisting in the protection of their professional, intellectual, social and material interests, in strengthening the prestige of the courts in Bulgaria. The Union was registered in 1997 as a non-profit legal entity to carry out activities for the public benefit.

UNICEF BULGARIA

UNICEF is the United Nations Children's Fund, working in 190 countries and territories, including Bulgaria, to uphold the rights of every child. For 70 years, UNICEF has been striving to improve the lives of children and their families.

NATIONAL NETWORK FOR CHILDREN

The National Network for Children is an association of civil society organizations and like-minded people working with and for children and families throughout the country. The promotion, protection and observance of the rights of the child are some of the key principles that unite the network.

YOUTH NETWORK MEGAPHON

Megaphone Programme of the National Network for Children enables children to learn about their rights and to exercise their right of opinion - a basic principle in the UN Convention on the Rights of the Child. The program is a way for adult professionals to enrich their knowledge related to children's rights and their skills to carry out activities for child participation in the organizations in which they work.

SPEAKERS AND MODERATORS

DAY ONE – JUNE 30th

Steven Allen, Co-Executive Director (Advocacy), Validity Foundation



Steven Allen is Co-Executive Director at Validity, alongside Ann Campbell. The Validity Foundation is an international NGO that deploys legal strategies to advance human rights protections for persons with disabilities. Steven joined the organization in 2013 and currently leads Validity's advocacy and research initiatives which take place in Europe and Africa. He holds an LLB (Law) from the University of London and has a postgraduate research interest in systems which restrict and/or deny legal agency for members of historically-marginalised populations. Before this, Steven was a senior trainer in conflict transformation for a decade, leading programmes for young people in conflict with the law in the UK, the Middle East and India.

He served on the independent monitoring board of a young offenders' institution in London for five years, and previously worked at a charity that successfully campaigned to establish the first Office of the Children's Commissioner for England. Along with Ann Campbell, he was jointly named as a recipient of an Open Society Foundations New Executives Fund award in 2019.

Nadia Shabani, Director of BCNL



Ms. Nadia Shabani is a jurist with a master degree in Law from the Law Faculty of the Sofia University "St. Kliment Ohridski" with major in International Law and International Relations. She has worked in the Bulgarian Center for Not-for-Profit Law (BCNL) since its establishment in 2001 until 2009, and returns to BCNL in 2012. Since April 2016 she is the Director of BCNL.

Nadia Shabani leads projects in various fields: advocacy for diverse civic causes, social policies, human rights, social contracting, public-private partnerships. Ms. Shabani provides legal assistance to civic organizations, public officials on central and local level, professional groups, parental organizations and providers of social services for developing policies, strategic documents, drafting legislation changes and impact assessments in the social sphere.

In 2009, Ms. Shabani became the Chairperson of the National Agency for Child Protection in Bulgaria, responsible for the enforcement of children rights and coordination of all government policies in the area. As the head of this Agency, she was in charge of the coordination of all measures and programs in the plan for the deinstitutionalization of children in Bulgaria, accepted in 2010 and funded by the EU.

Mikiko Otani, Chair of the United Nations Committee on the Rights of the Child (2021–2023)



Mikiko Otani is Chair of the United Nations Committee on the Rights of the Child (2021–2023) and an international human rights lawyer based in Tokyo, practicing family law with focus on women's and children's rights and access to justice. She is currently a Council Member of the International Bar Association's Human Rights Institute, a Commissioner of the International Commission of Jurists and the country representative of Japan for the Family Law and Family Rights Section of LAWASIA (The Law Association for Asia and the Pacific). Ms. Otani is active in academic, research and teaching works. She has been actively involved with NGOs and professional organizations, and served as a Vice-President of the Japan Women Bar Association (2004–2006), Chair of the Committee on International Human Rights of the Japan Federation of Bar Associations (2015–2017), Co-representative of the

Japan NGO Network for CEDAW (2012–2016), a Regional Council member of the Asia-Pacific Forum on Women, Law and Development (2005–2014) and Co-Chair of the Women Lawyers' Interest Group of the International Bar Association (2013–2014). Ms. Otani holds Bachelor of Law from Sophia University in Tokyo (1987), Master of International and Public Affairs from Columbia University in New York (1999), Master of Law from University of Tokyo (2003) and Doctor of Law from Aoyama Gakuin University (2020). Her publications include: *Addressing Trafficking in Persons as Transnational Organized Crime*, Hyu-rights Osaka (ed.), *Asia-Pacific Human Rights Review 2006* (2006); *Protection of Children from Violence*, Kantaro Serita et. al. (ed.) "International Human Rights Law Making and Development, Lecture on International Human Rights Law, vol.2" (2006).

Marta Tarragona Fenosa

Marta Tarragona Fenosa works in the team of the European Commission coordinator for the rights of the child since 2018. In her current position, she closely follows some of the thematic areas of the new EU Strategy on the Rights of the Child, mainly child-friendly justice, violence against children and child poverty, among others. With a legal background, she holds a master on family law and rights of the child by the University of Barcelona (Spain).



Marieta Tosheva, legislative officer, European Commission DG JUSTICE and CONSUMERS



Marieta Tosheva is a Legislative Officer at the Procedural Criminal Law Unit of the European Commission. She is a member of the victims' rights team, which is led by the European Commission Coordinator for victims' rights. Marieta joined the team in November 2019. Her work includes implementation of the Victims' Rights Strategy, enforcement of the EU rules, policy development and mainstreaming of the victims' rights policy into different areas. Prior to joining the Commission, Marieta had been a Justice Counsellor, responsible for the files on judicial cooperation in criminal matters and general criminal law. Marieta has academic background in Law and International Relations. She holds postgraduate degrees in Politics, Security and Integration and in European Studies from the University College London and from Maastricht University.

Assoc. Prof. Velina Todorova, PhD, ISL-BAS, member of CRC, moderator



Velina Todorova is a lawyer (1981) and Ph.D. in Sociology of Law (1989), Associate Professor on Civil and Family Law at the Law Faculty, Plovdiv University and Bulgarian Academy of Sciences. She has an extensive experience in research and in law making in the areas of human rights protection, social protection and family law (1997 to date). Publishes nationally and internationally and is both expert (2001) and a member (2014-2019) to the Commission on the European Family Law, member to the European Family Law (FLEUR) since 2019. National Programme Manager for International Labour Organisation (ILO - IPEC) and a founder of the Agency for Child Protection (2001). She has always combined her academic career with a strong activism as a member and

supporter of various human rights initiatives and NGOs. A Deputy Minister of Justice (2011-13). Member to the UN Committee on the Rights of the Child (2017-2021, 2021-2025).

Marieta Dimitrova, Sofia Bar Association

Attorney at law Marieta Dimitrova has been a member of the Sofia Bar Association since 1990. She has been a legal consultant at the Bulgarian Center for Not-for-Profit Law (BCNL) Foundation since its establishment with more than 15 years of experience in implementing projects related to the development of civil society, the social sphere and the problems of people with disabilities. Attorney at law Dimitrova was Legal Advisor to the Committee on Labor and Social Policy in the 41st National Assembly.



Anthinea Interbartolo, jurist, PRISM Impresa Social s.r.l., Italy



Anthinea Interbartolo, CFJ Project Manager, with a Master's Degree in Law, enriched with different academic and non- formal learning experiences at the EU level in the field of social inclusion, migration and human rights. Volunteering at EU level towards migrants and vulnerable subjects providing legal advice and support in social integration processes. For one year she has been working in the project management field, writing and implementing projects under Erasmus +, REC and AMIF programmes. Multilingual skills in Italian, English, Spanish, French and Greek.

Oana Maria Dodu, Lawyer
Centre for legal resources, Romania



One of the youngest members of CLR's team, Oana Dodu is program assistant and legal expert within the programme 'Plea for dignity'. She has done valuable work for PwD when conducting the HELP-LINE for those who are in institutions during the pandemic period - a project implemented in partnership with UNICEF and the National Authority for PwD, solving over 300 requests such as finding a job, getting medical assistance etc. At the moment her work revolves around helping people with mental health problems in Romania. With strong knowledge of international and European law, Oana is also passionate about refugee's rights, which was big part of her research project done in Paris 1 Panthéon-Sorbonne Master II Program.

Stefania Dascalu, Lawyer
Centre for legal resources, Romania

Stefania Dascalu is a lawyer within the Bucharest Bar, working with CLR, mostly within the programme „Plea for dignity”. She is conducting investigations, taking over cases of abuses against the rights of people with mental disabilities, of discrimination or human-rights related cases and goes through all the necessary trial steps for securing these rights. Stefania is advocating for the observance of vulnerable people's rights and is involved in various stages of such cases, including criminal cases.



Bruno Monteiro, Project Manager, Validity Foundation, moderator



Bruno has joined Validity Foundation in 2020, where he currently manages the implementation of the Child-Friendly Justice: Developing the Concept of Social Court Practices project. He has extensive experience working as a legal researcher and/or project coordinator in access to justice projects in different NGOs, universities and international governmental organisations. At the United Nations Office on Drugs and Crime and European Union Agency for Fundamental Rights he conducted research and assisted in the management of international projects on crime prevention, juvenile justice, legal aid, victims' and defence rights and algorithmic discrimination. He was also a Coordinator for international research projects where he managed research teams in 28 European countries on topics such as protection of child victims in criminal justice

systems, protection of journalists, migration law and social rights in collaboration with the Council of Europe and the International Labour Organisation. Finally, he was also a victim support case-worker where he witnessed first-hand the challenges and obstacles that child suspects and victims may face when they are involved in the criminal justice system.

Tsvetomira Velcheva
Judge in Lovech district court, Bulgaria



Tsvetomira Velcheva graduated from Sofia University „St. Kliment Ohridski ”in 2002, specialty“ Law ”, specialization“ Justice ”. After acquiring legal capacity in 2003, he began his legal experience as a legal adviser in the Regional Directorate of Social Assistance - Pleven. Since 2007 she has been working as a judge in the Lovech District Court and hearing civil cases.

Vessela Tsankova
Association “Civic initiatives – Lovech”

Vessela is the Chairman of the Board of the Association, Manager of the Center for Social Support, Center for Social Rehabilitation and Integration and Observed Housing, Center for Family Accommodation for Children and Youth with Disabilities. She graduated from Veliko Tarnovo University „St. St. Cyril and Methodius” with a bachelor's degree in Social Activities and a master's degree in law. Vessela leads the project „From ideas and actions to civic awareness at school”, funded by the Program for Support of Non-Governmental Organizations in Bulgaria under the EEA Financial Mechanism 2014-2020.



Mugur Frățilă, Romania



He is a psychologist with 25 years of experience and 17 years of monitoring human rights of people with psychological, psychosocial or intellectual disabilities. His belief is that „there are two dimensions of human life that we have not yet managed to handle reasonable: disability and age. We did not understand yet that disability and age do not define people, but existential stages: one of them is possible, the other is certain. I feel that this misunderstanding has made us, as a society, indifferent to all those of us who just happen to pass through these stages of their lives. We must assume, as human beings, that our mission is, at least, to see and hear their sufferance and sorrow. By seeing them, they are not alone anymore, they are not forgotten.”

Diana Oncioiu, journalist, Romania



Currently a reporter at the alternative publication Dela0.ro. Prior to Dela0.ro she worked for five years in two TV News Stations - Realitatea TV and Digi24. She often writes on social issues - violence against women, education, social assistance, extreme poverty, discrimination. She is the author of in-depth reports on the social reintegration of detainees, segregation, on life in the basements of the urban ghettos in Bucharest, on human trafficking, but also on the way justice handles sexual crimes with minor victims.

Serena Romano, Lawyer, Italy

Lawyer specialized in the field of criminal law of immigration, working in particular with children suspects or accused of crime. Researcher in human rights, co-founder of the CLEDU (Human Rights Legal Clinic) at the University of Palermo. Professor of philosophical and juridical subjects.

Elisa Bruno, Lawyer, Italy



Elisa Bruno, Lawyer, Graduated from the Faculty of Law of Catania in 2010. Keen on family law, protection of minors and human rights, against all forms of discrimination and violence. Since 2011 she has been working with the Juvenile Court of Catania, as well as with the Ordinary Court of the same district of Court of Appeal, she was appointed as a voluntary guardian and/or as a lawyer of vulnerable children, in particular with victims of human trafficking. Since 2016 she provides legal assistance at the beneficiaries of the association "Penelope".

The experience gained so far, also and especially thanks to the diligent action of connection and synergy between the Prosecutor's Office at the Juvenile Court of Catania, the Juvenile Court of Catania, the District Anti-Mafia Section at the Public Prosecutor's Office of Catania, the antitrafficking organizations and the Territorial Commission for International Protection of Catania allowed to take effective actions of contrast, as evidenced by the data relating to the arrests and the significant number of children emerged from trafficking conditions.

DAY TWO – JULY 1st

Aleksandra Ivankovic – Deputy Director, Victim Support Europe



Aleksandra is a widely respected human rights lawyer with a passion for justice and equality for all. She has supported several international organisations, governments and NGOs and has developed her capacities in this field of rights of women and persons with disabilities, linking her work with some key human rights agencies and procedures. Previously Project Manager of Victim Support Europe, in August 2018 Aleksandra has been appointed as our new Deputy Director. In VSE, she is responsible for supporting the executive director in the development and implementation of the VSE's strategic plans and policies, and to provide leadership and direction to the VSE team. Before joining VSE, Aleksandra has worked at the European Court of Human Rights, litigated on behalf of victims with disabilities and managed several European human rights projects.

Orinda Gjoni, Terre des hommes

Orinda Gjoni is an Albanian child rights and human rights activist based in Budapest, Hungary. She has been the Executive Director of the Center of Integrated Legal Services and Practices, a prominent Albanian NGO focusing on the rights of children and advocating for the improvement of the situation of children in the areas of justice and child friendly justice, child protection, domestic violence, child abuse and labor exploitation. Orinda is a lawyer by background. She joined Terre des hommes Foundation in 2016 and she is currently Regional Coordinator on Access to Justice for the Europe Office. She is also a graduate from the Center for Civil and Human Rights at Notre Dame University in South Bend, Indiana, USA (Selected for the Fulbright Foreign Student Program). Orinda



has extensive experience in working to ensure that children's rights are fulfilled, for children involved in criminal proceedings, whether as victims, witnesses, suspects or accused.

Dr. Astrid Podsiadlowski, FRA



Dr. Astrid Podsiadlowski works for the European Union Agency for Fundamental Rights and acts as Focal Point on Rights of the Child. The Agency is providing evidence-based advice to decision makers on European and national level based on quantitative and qualitative fieldwork research and secondary data analyses of policies, legislation and statistics. Her areas of expertise include child-friendly justice, child participation, child poverty, non-discrimination, integration and social inclusion as well as research methodologies (including fieldwork research with and for children). She is a social and cross-cultural psychologist by education and has previously held academic research and teaching positions in Europe (Germany, Austria, the Netherlands) as well as New Zealand and the USA.

Simona Veleva, PhD, moderator



Simona Veleva is a lawyer and has a PhD degree in the field of Constitutional law from Sofia University "St. Kliment Ohridski". She works in the field of media and constitutional law, digital rights and human rights. She is assistant prof. at the American University in Bulgaria. Author of numerous legal publications. She is an expert at the Digital Freedom Fund. She is part of Forbes *30under30* for 2019.

Aneta Genova, Validity Foundation

Aneta Genova is leading a team of independent lawyers working in the fields of the right to life, inhuman and degrading treatment and punishment, protection from detention, guardianship, and incapacity of people with mental disabilities. Part of its responsibilities include identification and implementation of human rights litigation - civil and political, but also economic, social and cultural. For decades, she has been working for protecting the rights of victims of violence, people with mental disabilities, children at risk, and victims of gender-based violence. Currently she leads Kera Foundation, which is dedicated to work to advance the right and possibility of all people, regardless of their differences, to live together, free, independent, in their right to fight for personal happiness and to achieve the realization of their human potential. Aneta and Kera Foundation work in close cooperation with Validity Foundation.



Simona Florescu, Validity Foundation



Simona Florescu is a qualified attorney with Bucharest Bar Association. Simona has worked as a case lawyer with the European Court of Human Rights and as a Lecturer for the Child Law Department of Leiden University, The Netherlands. She has researched in children's rights, including access to justice for children.

**Julie Ahern, Legal and Policy manager,
Children's Rights Alliance**



Julie joined the Children's Rights Alliance in September 2013 and is the Legal and Policy manager. Prior to this she has worked in various roles across the Alliance and led the establishment of the Access to Justice Initiative and projects such as the annual Report Card and the Children's Report to the UN Committee on the Rights of the Child. Prior to joining the Alliance, she worked on the children's rights referendum campaign with the ISPC and NASC (The Irish Immigrant Support Centre). Julie is a qualified barrister having been called in 2018. She holds a BL from the Honourable Society of King's Inns, a BCL (Clinical)(Hons) and an LLM in Child and Family Law both from University College Cork. Julie sits on the board of management of Ballyfermot Star and is a long-time volunteer with Childline.

Bernard Rorke, European Roma Rights Centre

Bernard Rorke was born in Dublin and lives in Budapest. He is the Advocacy and Policy Manager for the European Roma Rights Centre, and has worked on Roma issues since 1998. He was formerly Director of the Roma Initiatives Office of the Open Society Foundations, and taught a "Roma Rights" module at the Central European University in Budapest for seven years. He has a PhD in Political Theory from the Centre for the Study of Democracy, University of Westminster, London, and is a regular contributor and commentator on issues related to Roma exclusion, racism, and far-right politics. His most recent publications include the ERRC reports *Blighted Lives: Romani children in state care* (2021); and in 2020, *Roma rights in the time of Covid* (co-authored with Jonathan Lee).



Šárka Dušková, Validity Foundation



Sarka Duskova is a Litigation Manager at Validity Foundation. Prior to working with Validity, she worked at the European Court of Human Rights and with several human rights NGOs in Czechia, focusing mainly on the rights of children with disabilities, inclusive education and deinstitutionalisation. She is also a doctoral student at the Human Rights Centre at the University of Essex, where she researches on reasonable accommodation and changing perspectives on equality and non-discrimination.

Stephanie Rap, Assistant Professor, Leiden University, the Netherlands



Dr. Stephanie Rap is Assistant Professor at the Department of Child Law at Leiden University, the Netherlands. Her academic interest lies in the field of the effective participation of children in (legal) procedures. Currently, she conducts a study on the participation of refugee and migrant children funded by the Dutch Research Council. Stephanie employs an interdisciplinary approach, combining international children's rights and child law with knowledge and insights from social sciences. She lectures in the LL.M. programme *Advanced Studies in International Children's Rights*. She is a member of the editorial boards of the *Flemish Journal on Youth and Children's Rights* and the *Chronicle of International Association of Youth and Family Judges and Magistrates (AIMJF)*.

Venellin Stoychev, BCNL

Venellin L. Stoychev is a Bulgarian sociologist. He has a master's degree in political sciences (1999) and sociology (2001) at Sofia University „St. Kliment Ohridski ”and PhD in sociology (2006). His interests are in the fields of civil society development, modernization theories, monitoring of public policies, civil advocacy, etc. Dr. Stoychev has published three monographs, he has co-authored a textbook on civil education and is the author of dozens of reports and articles.



DAY THREE – JULY 2ND

Maria Pavlova, Deputy Minister of Justice



Maria Pavlova was born in 1971 in Plovdiv. She has a master degree in law. From 1998 to 2012 she was successively an investigator in the Sofia Investigation Service and a prosecutor in the Sofia District Prosecutor's Office. Since 2012 she has been an investigator in the National Investigation Service /NSIS/. Minister of Justice in the period 27.01.2017 to 04.05.2017

Investigator in the National Investigation Service and head of the Analytical Unit. Deputy Minister of Justice in the present government from 12 May 2021 until now.

Assoc. Prof. Diana Kovatcheva, PhD. Ombudswoman of the Republic of Bulgaria

Assoc. Prof. Dr. Diana Kovacheva was elected National Ombudsman of the Republic of Bulgaria on May 21, 2020 with the support of a broad parliamentary majority of 173 votes from the 44th National Assembly. She graduated the Faculty of Law of Sofia University „St. Kliment Ohridski” and she also holds a Master's degree in European Union Law (SU) and in European Union Law and the Judicial System (Nancy II University, France). She is holder of PhD degree and is Associate Professor of International Law and International Relations. Diana Kovacheva has extensive professional experience from various academic and administrative institutions: Research Associate at the Institute of Legal Sciences at the Bulgarian Academy of Sciences, Executive Director of Transparency International – Bulgaria (2002–2011); Minister of Justice of Bulgaria (2011 - 2013); Deputy Ombudsman (2016–2020); lecturer at the Faculty of Law of UNWE. She is the author of a number of articles and monographs on international law: “Anti-corruption. International Legal Aspects” (2016), “The International Criminal Court, Establishment and Complementary Jurisdiction” (2017), “The Individual in International Law. Legal personality of individuals in the context of international human rights law and international humanitarian law” (2018). In 2014, Diana Kovacheva was awarded by Her Majesty Queen Elizabeth II with the Order of the British Empire for her contribution to combating corruption and her efforts for a transparent and efficient judiciary.



**Vladislava Tsarigradska,
judge at the Regional Court – Lukovit**



Vladislava Tsarigradska has a law degree from the Law Faculty of Sofia University „St. Kliment Ohridski“. Since 2010 she has been a judge at the Regional Court - Lukovit. She is interested in securing and safeguarding the rights of persons with disabilities and vulnerable groups in lawsuits, including the implementation of restorative practices and a multidisciplinary approach - interacting with professionals from other fields.

Natasha Dobрева, attorney at law, Sofia Bar Association

Natasha Dobрева is a lawyer from the Sofia Bar Association and holds a Master's degree in International Human Rights Law. She has 15 years of experience as a representative of the applicants before the European Court of Human Rights. She is famous with her complaints on behalf of minors A.S.E. with Bulgaria; Savinovski et al. v. Russia, Spaska Mitrova and Suzana Savic v. Northern Macedonia and others. In Bulgaria, Natasha Dobрева specializes in procedural representation of victims of crimes against the person. She has worked on the murder case of Yana Krasteva in Borisova Gradina and on a number of media cases of human trafficking. For the last 3 years she has been working as a children's lawyer in the Zona ZaKmila program of the Animus Association Foundation.
<https://www.linkedin.com/in/natasha-dobrev-a-7306673/>



Milena Radoytseva, Youth Network Megaphon



Milena Radoytseva is 17 years old. Milena studies at the English language school „Thomas Jefferson“. She has been participating in number of organizations and projects that focus on children's rights. She is currently participating in the Megaphone program, the Youth Panel at the Center for Safe Internet and the Children's Council of Eurochild. She believes that children's participation is key to improving the continuity of children's rights because it enables children and young people to defend themselves and practically to learn.

Ralitsa Vassileva, Youth Network Megaphon



Ralitsa Vassileva was born in the town of Veliko Tarnovo. She completed her secondary education at the school „Vicho Grancharov” in Gorna Oryahovitsa in the profile „Marketing and e-advertising”. She has been a member of the NGO „Youth Parliament of Gorna Oriahovitsa” and the Association „Youth Tolerance” since 2018. Also since 2018 she has been a member of the „Bulgarian Youth Red Cross”, and since 2019 she has been the coordinator of the „Bulgarian Youth Red Cross” in Gorna Oryahovitsa.

Darina Mihailova, Youth Network Megaphon

Darina Atanassova Mihailova graduated from the Secondary School „Vicho Grancharov” in Gorna Oryahovitsa in the profile of Business and Entrepreneurship. She has been a member of the NGO Youth Parliament of Gorna Oriahovitsa for 5 years. She is part of the „Megaphone” program of the „National Network for Children” and the „Duke of Edinburgh Award”, She is deputy coordinator of the „Bulgarian Youth Red Cross” in Gorna Oryahovitsa.



Zahari Iankov, BCNL, moderator



Zahari Iankov is a legal consultant in BCNL. He has a LLM from the University of Sofia “st. Kliment Ohridski” and a master in Democracy and Human Rights in Southeast Europe (ERMA) with a double degree from the University of Sarajevo and University of Bologna. His interests are in the fields of child-friendly justice, rights of the refugee children and the rights of association and peaceful assembly.

Alexander Kirov, BCNL, moderator

Alexander Kirov from the Bulgarian Center for Not-for-Profit Law is a specialist in communications and public relations, graduated from the Faculty of Journalism and Mass Communication at Sofia University. His professional career began with an internship as an editor in an American online magazine on street culture, and then entered the civil sector, working over the years on topics related to children’s rights, combating human trafficking, short films, cultural events and more.



Prof. Nelly Petrova, Institute for social activities and practices



Professor at Sofia University “St. Kliment Ohridski”. She teaches methods of Social work, Fundamentals of social pedagogy and social work; Socio-pedagogical work with offenders, etc.

Head of Master Programme “Socio-educational and Probation Activity”. Chairperson of SAPI Managing Board. Leading methodological consultant on SAPI’s projects from 2005. Trainer on social work (1992 -2020) – casework, social group work, social work with young offenders, social work with victims of violence, resilience approach, interviewing, supervision and intervision. Case supervisor in social work with children and families at risk with more than 1000 h. hands-on experience (2004-2020). International consultant on child welfare reform of the UNICEF in: “Building & Reforming Child

Care Systems in Central Asia”, (2009) Child care conference in Moldova, (2009); Marocco “Le rôle de l’assistant social judiciaire pour une meilleure protection de l’enfant en contact avec la loi” (2016) Armenia, “Keeping Families Together” (Yerevan), 2018; Social Service Agency of Georgia, 2018 etc.

Svetlin Azmanov

Svetlin Azmanov has a Bachelor’s degree in Social pedagogy. Throughout his career he has been involved in psycho – social support of women and children who have suffered violence. He worked in Sofia – at the City’s Crisis centre “St. Petka” for women and children who have suffered violence. He was a volunteering telephone consultant at the National help line for people who have suffered violence. Currently he is a social worker at the Child and youth advocacy center Zona ZaKрила. He has been trained in providing Crisis intervention, case management and conducting child friendly court hearings.



Lubomir Krilchev, UNICEF Bulgaria, moderator



Lubomir Krilchev is a human rights legal expert. His professional career is closely linked to protecting and safeguarding fundamental human rights and freedoms. Over 10 years he worked for the office of the Ombudsman of the Republic of Bulgaria where he was a Head of the National Preventive Mechanism (NPM) to monitor all places of detention. The past 4 years Mr. Krilchev works as a consultant on Violence Against Children for UNICEF Bulgaria, supporting the office in development and implementation of programme interventions aimed to build national capacities to prevent and respond to violence against children in the country, as well as to support the office in integrating prevention and response to violence in other program areas.

Elen Mitova - Ivanova

Know-how Center for Alternative Care for Children, NBU



Elen Mitova - Ivanova has many years of experience in the field of social activities, policy making for children and families and deinstitutionalization, has significant knowledge in the field of advocacy, monitoring of children's rights, the specifics of working with local communities and local administrations, project management.

Elen Ivanova holds a Master's degree in Social Pedagogy and Psychology at Sofia University „Kliment Ohridski” and a post-graduate qualification in „Marketing and Management” at the Technical University – Sofia. She has participated in and led number of applied and research projects in the social sphere and deinstitutionalization. Since 2011 she has been a coordina-

tor of programs and projects at the Know-how Center for Alternative Care for Children, NBU, where she coordinates and manages network projects, deals with partners, fundraising and project development, administrative support of the center, coordination of research work.

Galina Purcheva-Bisset

Executive Director of the non-profit association “Equilibrium”

Galina has over 20 years of experience in designing and developing child protection systems, social services for children and families in the context of the deinstitutionalization process. She is currently a technical advisor on deinstitutionalisation and alternative care at Hope and Children's Homes, UK, where she previously served as Regional Manager for Central and Eastern Europe. She leads a pioneering project to close the first baby institution in Bulgaria in the town of Teteven. Galina is highly qualified in capacity building for social work and has developed and conducted training programs in a variety of contexts, including Bulgaria, Ukraine, Moldova, Belarus, Bosnia and Herzegovina, Kyrgyzstan, Mexico, South Africa, and Nepal. Qualified as early childhood development consultant, she is a co-author of the family center „In the world of early childhood” in Ruse and the publications of „Equilibrium” on positive parenting, games and adventures for young and old, the family center as a place for magic.



Maria Petkova, Tulip Foundation

Maria Petkova leads Tulip Foundation since its establishment in 2004. She is Board member of Volonteurope and OWN Europe, member of EU FGC Network, COFACE Families Europe and Social Value International. Petkova is an experienced trainer on the Rights of the Child, Family Group Conferencing, Marketplace model for co-operation among business, NGOs and communities, volunteering. Petkova's qualifications include NGO Management, Effective International Partnership at Salzburg Seminar, Strategic Planning, Organizational development, Programme Monitoring and Evaluation etc. Mrs. Petkova has worked as consultant at The World Bank Institute The WB Group in Washington DC, country coordinator for Cooperating Netherlands Foundations for Central and Eastern Europe, consultant at Open Society Foundation Sofia and expert at the Office of the President of Bulgaria. M. Petkova is a Knight of the Order of Orange Nassau (Royal Dutch Decoration awarded by HM The Queen of the Netherlands for supporting others and contributing to a just society).



Bisser Spirov – Bulgaria Country Manager, Lumos



B. Spirov has been working in the field of childcare in Bulgaria since 1993. He is experienced in assessing different type of specialized institutions for children, training and supervision of different professionals in the field of child care. Since 2003 he has been working actively for reforming of system for child care in Bulgaria as Expert and National Consultant for social services provision in Bulgaria as well as Coordinator of different projects regarding DI and implementing better services for children and families. Since 2010 B. Spirov has been working in Lumos, Bulgaria and was deeply involved in the process of DI for children with disabilities in Bulgaria.

PRESENTATIONS – DAY 1



International conference. Can justice be child-friendly?

30 June 2021

Marta Tarragona Fenosa
European Commission
DG Justice
Policy assistant
Coordinator for the Rights of the Child team

Marta.TARRAGONA-FENOSA@ec.europa.eu

[European Commission website on the EU Strategy on the Rights of the Child and the Child Guarantee](#)

[European Commission website on the rights of the child](#)
[Newsletter on the rights of the child](#)







EU STRATEGY ON THE RIGHTS OF THE CHILD

Child population **EU: 18.3%**



- Mission letter of COM Vice-President in charge of Demography and Democracy
- Based on the **EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child** ([Annex I](#) and [Annex II](#) of the Strategy)
- Consultations with a **wide range of stakeholders, including voices of children** ([Our Europe, our Rights, our Future](#))





EU STRATEGY ON THE RIGHTS OF THE CHILD

Main elements:

- **Comprehensive:** 6 thematic areas + mainstreaming tools
- **Internal** and **external** dimension of the EU
- **Specific needs** of groups of children (gender, age, disabilities, migration, LGBTIQ, ethnic background, e.g. Roma,...)
- Actions for the **European Commission** and recommendations for **EU Member States**
- **Synergies** with other recent strategies and frameworks



Strategy for and with children

Child friendly and accessible version (long and short) – soon in all EU languages



Just with children. Child-friendly justice for all children in Europe



4 Child-friendly justice

Why was this chosen?

- Many children do not feel safe or are not treated equally when taking part in justice systems.
- Children often do not have the information they need to understand what is happening.
- Child victims often do not report crimes.
- Too many children are kept in detention.

What will the EU do?

10 DO

- Have children's rights training for the police, lawyers and judges.
- Make laws that support children in the justice system and put them into practice.
- Find ways that children can stay in the community and not go to detention centres.
- Have everyone accept a decision by one EU country that someone is the parent of a child.

The justice system can include the police and courts. Children might be victims, witnesses or accused of a crime. They might also be involved if decisions are being made about their education or who they will live with.



Areas of the Strategy



Participation in political and democratic life



Child-friendly justice



Socio-economic inclusion, health and education



Digital and information society



Combating violence and ensuring child protection



The Global Dimension



Embedding a child perspective in all EU actions



EMBED A CHILD PERSPECTIVE IN ALL EU ACTIONS



European Commission key actions

- Establishment of **the EU Network for Children's Rights** to reinforce the dialogue and mutual learning on children's rights
- **Training and capacity-building to EU staff**
- Pursue **more data and research** on children
- **EU funds and programmes** key to support the implementation of EU policies in the **Member States**





COMBATING VIOLENCE AGAINST CHILDREN AND ENSURING CHILD PROTECTION

- Violence against children, **in all its possible forms is widespread**
- Children can be **victims, witnesses**, as well as **perpetrators of violence**
- At **home**, in **school**, in **leisure** and recreational activities, in the **justice system**
- **Offline** and **online**



European Commission key actions

- Initiative on **integrated child protection systems**
- **Legislative proposal to combat gender-based violence** against women and domestic violence
- Recommendation on the prevention of **harmful practices against women and girls**

Recommendations for EU Member States

- Raise awareness and capacity for **a more effective prevention of violence** and **protection of victims and witnesses**
- Improve the functioning of child protection systems at national level. In particular **establish and improve child helpline** (116 111) and **missing children hotline** (116 000)
- Promote national strategies and programmes to **speed up de-institutionalisation and transition towards quality, family- and community-based care services**





CHILD-FRIENDLY JUSTICE

- Children may be:
 - **victims, witnesses, suspects or accused** of having committed a crime, or be a party to judicial proceedings
 - in **civil, criminal, or administrative proceedings**



CHILD-FRIENDLY JUSTICE

Challenges

- **Knowledge on their rights** (e.g. reporting)
- **Professionals** sometimes lack **training** to interact with children in an age appropriate way (e.g. hearing)
- Adaptation of proceedings to **children age and needs**
- **Hearing of the child** (avoid multiple hearings)
- **Right to information** before, during and after the proceeding
- Professionals/services do not always **coordinate**
- **Support for rehabilitation**
- Difficulties for children to **access justice** and obtain **effective remedies** for violations of their rights
- Children might be **deprived of their liberty**





European Commission key actions

- Train **justice professionals on the rights of the child and child friendly justice**
- Strengthen implementation of **the 2010 CoE Guidelines on Child-friendly Justice**
- **Propose a horizontal legislative initiative** to support the mutual recognition of parenthood between Member States
- Support use **of viable alternatives to the detention of children** in migration procedures



Recommendations for EU Member States

- **Support judicial** training on the rights of the child and child friendly and accessible justice
- **Develop robust alternatives to judicial action**
- Implement the Council of Europe's **Recommendation on children with imprisoned parents**
- Strengthen **guardianship systems for all unaccompanied children**, including through participation to the activities of the European Guardianship Network;





Can Justice be Child-Friendly? International Conference

*Marieta Tosheva, Legislative Officer
European Commission
DG Justice and Consumers
Victims' Rights Team*

30 June 2021

Child victims and children in conflict with law - the perspectives

Structure of the presentation:

- The Victims' Rights Directive (provisions and the way ahead)
- The EU Strategy on victims' rights (2020 – 2025)
- The Directive on procedural safeguards for children who are suspects and accused persons in criminal proceedings



The Victims' Rights Directive

- Where the victim is a child, the child's best interests must be a primary consideration.
- A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail.



The Victims' Rights Directive

Provides to child victims the right to:



Understand and to be understood



Special protection measures in accordance with every child's individual needs



Support, in accordance with child's needs



Access justice



Privacy



The Victims' Rights Directive

The way forward – evaluation of the Victims' Rights Directive:

- Open Public Consultation to be launched in July 2021
- Report on the evaluation of the directive – beginning of 2022



Child victims in the context of the EU Strategy on victims' rights (2020 – 2025)

- Effective communication with child victims and a safe environment to report crime
- Improving support and protection to the most vulnerable victims, including child victims
- Strengthening the international dimension of victims' rights, including the rights of child victims



Children in conflict with law

Children need the highest possible protection

- around 1 million children in the EU come into contact with police and judiciary every year;
- children are particularly vulnerable in criminal proceedings due to their young age and immaturity;
- often children do not understand the law and their rights.



Children in conflict with law

Directive on procedural safeguards for children who are suspects and accused persons in criminal proceedings - main elements:

- the directive supports effective participation by a child in the criminal proceedings;
- it provides for safeguards in case of deprivation of liberty and alternative measures to detention;
- the directive provides for a number of other safeguards, such as the audio-visual recording of interviews, the protection of the right to privacy and training of judges.



Announcements:

Funding opportunities:

- the Commission has launched a call for proposals for action grants to support transnational projects to enhance the rights of persons suspected or accused of crime and the rights of victims of crime - check the Funding and Tenders Portal

The Conference on the future of Europe:

- a citizen-led series of debates and discussions that will enable people from across Europe to share their ideas and help shape our common future, more information is available on the Commission's website



THANK YOU!

For any other questions contact:
Marieta.Tosheva@ec.europa.eu



CHILD-FRIENDLY JUSTICE: DEVELOPING THE CONCEPT OF SOCIAL COURT PRACTICES PROJECT (CFJ-DCSCP) - 878552

National standards for individual assessment: Research findings from Bulgaria

Marieta Dimitrova, legal expert BCNL

INTERNATIONAL CONFERENCE ON CHILD-FRIENDLY JUSTICE SOFIA, 30 JUNE – 2 JULY, 2021

VALIDITY



This conference is co-funded by the European Union's Rights, Equality and Citizenship Programme (2014-2020)

The content of this project represents the views of the author(s) only and is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Contents:

1. Specifics of the national legal framework prior to transposition of Directive (EU) **2012/29** and Directive (EC)**2016/80** of the European Parliament and the Council
2. **How to conduct** Individual Assessment within the **current** legal framework
3. **Research** findings.

Directive (EU) 2016/800 on the rights of child suspect and accused (**not transposed**) and the Individual assessment in Bulgaria

- The term 'personal characteristic' **v** Individual assessment;
- Criminal Procedure Code speaks of "collecting data on the child", but not of data evaluation and best interests of the child;
- Criminal Procedure Code does not define the aims of the personal characteristic;
- The legal regulation is too abstract, placing the individual assessment in the general framework for gathering evidences.

Practical steps to IA/ personal characteristic – Opportunities

- **WHO** – 'investigation and prosecution' but also the judge
Not clear obligation on the police – not in the special law
- **WHEN** – at the first contact and prior to judicial stage
- **WHAT** – biographical data and crime related facts
- **HOW** – **collection of information not assessment of needs**
- **AIMS** – for the penalty only

Practical steps to IA/ personal characteristic – gaps

- **WHO** – the regular authorities not the child experts or authorities
- **WHAT** – Not professional assessment by trained experts
- **HOW** – not in a holistic manner and not a multidisciplinary approach
- **AIMS** – not to serve special needs and rights during the process – ie
- Health, education, detention as a *precautionary measure*
- Participation of the child - No specific provisions, general norms apply;
- Lack of human resources (specialists) trained to prepare personal characteristic (individual assessment)

Overall findings: IA possible but not effective for the child, not a right just an opportunity

- The current legislation remains within the old paradigm that criminal proceedings should not be mixed with any specific measures in favor of the child;
- the criminal justice system in Bulgaria does not provide any opportunities for education, as well as for participation in reintegration programs while juveniles are detained in pre-trial detention;
- The right of the child to be informed from the earliest stage of the proceedings about his right to a personal characteristic (individual assessment) - the obligation to provide information is not fulfilled in practice

Directive (EU) 2012/29 (partially transposed) and the Individual assessment of the child victim of crime

- The Criminal Procedure Code allows an expert to be appointed to establish specific needs for the protection of a witness in connection with his participation in criminal proceedings. There is no provision specifically for the child victim;
- The introduction of the right of the child victim to individual assessment is incomplete;
- Expertise **v.** individual assessment;

Practical steps to IA/ personal characteristic – Opportunities

- The Criminal Procedure Code recognizes the existence of special needs in regards to children, i.e. vulnerabilities in criminal proceedings;
- However, it does not provide for an assessment to establish the degree of vulnerability, but introduces a general rule for the application of measures to prevent the victim from coming into contact with the perpetrator;
- The measures are possible, but not obligatory - they depend on the decision of the investigator or prosecutor leader during the respective stage of the criminal proceedings,
- Denial of IA may be based on various reasons - lack of technical support, personal judgment, concern for the course of the case and the defendant's demands and defense etc.;
- The measures are provided only for the purpose of interrogation in a protected environment.

Practical steps to IA/ personal characteristic – gaps

- The legal status of the victim and the child-victim in the criminal proceedings is not well established;
- The IA of the victim will be regulated in a special law but not in the Criminal Procedure Code – undervalue the IO;
- No multidisciplinary approach
- No child specific needs – i.e. due to gender, disability, ethnicity and other status as well as the type of the crime
- The best interests of the child victim and special protection needs – not in the core of law – the IA does not aim to establish needs and measures beyond the separate interview (but not numbers, support).

Right to individual assessment within the existing legal framework: common opportunities and gaps

- It is optional, depends on the discretion of the person in charge of the proceedings (prosecutor/judge);
- it is prepared by experts appointed by the court / or prosecutor;
- multidisciplinary approach may be achieved based on the ruling of the prosecutor/ judge, which experts and institutions will be involved;
- the aim and the scope of the IA can be defined by the person in charge of the proceedings (prosecutor/judge);
- the mentality and the attitudes of the magistrates are crucial.

Findings and conclusions from the research

- The transposition of both Directives is imitative. The main message has not been conveyed - that individual assessment should not be seen as a form of gathering of evidence or to be used for sentencing purposes;
- The rights of the child in the criminal justice system remain a vague concept, in contrast to the well-integrated concept of the rights of defendants of a fair trial;

Findings and conclusions from the research

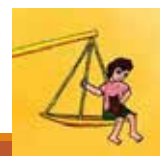
- Even in the cases when individual assessment is made, it is in the form of a judiciary expertise and it does not aim to take useful measures for the children related to their special needs, or to impose specific educational measures
- The right to individual assessment is not guaranteed by the realization of other rights;
- The legislator does not introduce in the field of criminal law requirements for individual assessment and giving priority to the interests of the child.

Findings and conclusions from the research

- The criminal justice system does not have a tradition to work with other systems - social, health and educational, when it comes to a child and the IA might be an opportunity to change this
- Under the existing legislative framework, the assignment, elaboration and implementation of recommendations that are relevant to individual assessment are the responsibility of the investigation authorities and the prosecution, however largely depend on the personal motivation and attitudes of judges, prosecutors and the police.

Findings and conclusions from the research

- The protection of the rights of the children in the criminal proceedings including the introduction of the individual assessment is not provided with resources;
- Despite the pessimistic conclusions and findings, good practices of judges looking for the capabilities of other systems for the protection of children's rights are also being established;
- There are opportunities for piloting innovative models for conducting individual assessments and advocacy for the adoption of a standard framework for multidisciplinary individual needs assessment.





This conference is co-funded by the European Union's Rights, Equality and Citizenship Programme (2014-2020)

**Anthinea
Interbartolo**

PRISM
Impresa Sociale s.r.l.
Palermo, Italy

Child-friendly Justice 'Developing the Concept of Social Court Practices'

Report on existing judicial practices in Italy



prism
impresa sociale s.r.l.

CFJ-DSCSP International Conference

Sofia, Bulgaria 30/06/2021

Unaccompanied minors (UAM)

"Third-country nationals or stateless persons below age 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person"

"Child victim"

Under the Victim's Rights Directive means any person below 18 years of age:

- a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

"Child as suspects or accused of a crime"

Underage or turning 18 during the criminal proceedings, is highly protected «in order to preserve their potential for development and reintegration into society» (except for those proceedings which are specifically designed for children that lead to protective, educative, or corrective measures, as recital 17 of the Council Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings provides).

 **prism**
impresa sociale s.r.l.

Research QUESTION

To what extent are unaccompanied children's rights granted within the Italian legislation with reference to EU directives (2012/29/EU and 2016/800/EU)?



Italian legal framework applied towards UAMs

Intersection of legislations in the area of asylum and international protection, human trafficking and other crimes.

>>> Victims' Rights Directive (Directive 2012/29/EU)

Transposed in Italy with the Decree Law No. 212/2015 (concerning measures to be adopted to prevent secondary victimizations scenarios) concerning **vulnerability assessments** at different stages of ordinary criminal proceedings. The provision of Article 498 CPP is intended to ensure **fair examination, genuineness of answers, relevance of questions**. Examination and cross-examination are **established not on the evidence but for the evidence**.

>>> Children Procedural Safeguards Directive (Directive (EU) 2016/800)

No specific measures were introduced to transpose Directive 2016/800/EU.

>>> Zampa Law (Law No. 47/2017)

The first European "comprehensive framework" for UAMs: Recognition of specific vulnerabilities of UAMs; Same protection for all children; Provision of new institutional figures, such as cultural mediators and voluntary guardians.



Features of Italian individual assessment procedures

- ❑ **Proliferation of actors**\\\\ Multistakeholder coordination
- ❑ **Child-oriented proceeding**\\\\ Capacity of multidisciplinary teams to choose freely whether and when to hear the children
- ❑ **Cognitive information**\\\\ Ensuring every person involved a proceeding understands the language and the judicial context; it is of utmost importance that the child is aware and well informed about the process, risks and judicial path to follow.
- ❑ **Cultural mediation**\\\\ to increase awareness about judicial rights through a better communication and understanding of the host and origin context.
- ❑ **Protective participation of the child upon proceedings**\\\\ The participation in a proceeding does not imply that the child has to be heard in every phase (the authorities have to adopt all guarantees to avoid victims meeting the offenders). When there are more proceedings pending for the same crimes, these should be combined whenever possible.
- ❑ **No standard regulations**\\\\ of individual assessments > cases by case individualised assessment



Age assessment procedures

Age is one of the causes of their vulnerability condition!

Same procedure for victims and suspects of crimes.

Multidisciplinary approach substitutes the X Ray examination, protecting the human dignity by being less invasive.

Dynamics to prevent:

- Premature transition to adulthood
- Deprivation of rights, such as access of education, information, etc.

...the case of the young adult accused of a crime in front of the Ordinary Court, although he was under 18...



Assessment procedures in PRE-TRIAL phase

...the case of a child suspect of crime with a new life after a probation measure; or the cases of emersion victims of crime thanks to the cooperation of local NGOs' street units; or the quality indicators as identified by international organizations...

Child's best interest | Needs to be considered:

- To create a data sharing and management system accessible to those involved in the case to enable access to information collected throughout asylum and international protection systems and criminal proceedings.
- To strengthen the monitoring of the reception centre and verify appropriate distribution of financial resources among local organizations
- To be exhaustive and complete in transferring information concerning the proceedings



Assessment procedure in the TRIAL phase

...the contribution of the Prosecutor's Office and its network in Catania in contrasting human trafficking; the contribution of the Juvenile Court of Palermo in promoting restorative justice measures and strengthening the role of voluntary guardians...

The judge assesses the credibility of the witness, his/her reliability and, in general, the contribution and participation to the proceeding, examining and reviewing the answers.

Determination of protective measures for cross-examination (video conferencing system, protected hearings) and the provision of the probative incident focus on obtaining evidence and not on ensuring comprehensive support and assistance during the trial phase.

Child's best interest | Needs to be considered:

- To use simple language
- To take into account the child's needs and specific vulnerability conditions
- To ask to confirm his/her statements; repeat information
- To provide examples from actors' real-life proceedings experiences.



**Successful
Multi-
stakeholder
cooperation:**

**Real Practice
EXPERIENCES**

CLEDU

- Legal Clinic for Human Rights (University of Palermo) experience in providing legal and social assistance towards migrants in administrative and criminal proceedings.

USSM

- Social Service Office for Minors (the social service of the tribunal) experience in providing social support towards children in the criminal justice system.

NEXAE

- Experience in contrasting human trafficking through an online app for communication and exchange purposes: personal data of each beneficiary are entered and constantly updated with info related to support and work carried out by social workers in (Catania, Italia).



**Exploiting
evidences
from Judicial
Performance
and
Experiences,
to better
identify and
assess
vulnerabilities
among UAMs.**

Mutual connection between the child's best interest and the individual assessment is a *conditio sine qua non* to ensure a substantially equal children protection, from a multidisciplinary point of view.

The Italian training model | Specific objectives:

- To raise awareness on the existing good practices in identifying and assessing vulnerabilities of UAM involved in proceedings with the Italian justice system
- To offer an overview on best interest procedures with UAM
- To promote practical tools and monitoring instruments to support the work with UAM involved in the penal justice system
- To contribute to the development of the capacities and skills of professionals working with UAM in the juvenile and penal justice system
- To identify new challenges and relevant tailored responsive solutions



CHILD-FRIENDLY JUSTICE: DEVELOPING THE CONCEPT OF SOCIAL COURT PRACTICES
PROJECT (CFJ-DCSCP) - 878552

Report on existing judicial practices in Romania

Ștefania Dascălu, CLR and Oana Dodu, CLR

INTERNATIONAL CONFERENCE ON CHILD-FRIENDLY JUSTICE

SOFIA, 30 JUNE – 2 JULY, 2021



This conference is co-funded by
the European Union's Rights,
Equality and Citizenship
Programme (2014-2020)

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In Romania, children with psychosocial and intellectual disabilities (part of the category of children with enhanced vulnerabilities), is one of the most vulnerable categories of participants in the criminal process, whether they are victims or defendants / suspects. Prejudices and the undue formalism of procedures are combined with a lack of knowledge and / or expertise of professionals, often resulting in decisions that fail to reach the child's best interest.

Research

This report provides an overview of the children's situation - victims of crime, as well as those accused of committing a crime, in Romania, in terms of support services, assessment of their needs and provision of information.

The report's results are based on quantitative and qualitative research conducted between September 2020 and March 2021, combining theoretical research, legislation and public policies analysis with 28 semi-structured interviews with specialists from across the country and 31 requests for public information addressed to state institutions with responsibilities in protecting and supporting children involved in criminal proceedings.

Despite the latest improvements in Romania, specialized assistance services remain underdeveloped, insufficient and often inaccessible. Although the Victims Directive (2012/29/EU) and the Procedural Safeguards for Children Directive (2016/800 / EU) have been largely transposed into national law, in practice their implementation is unsatisfying.

Statistics : from available data centralized at the level of National Administration of Prisons, on 11.30.2020, in the subordinated units there were 248 persons in custody (242 boys and 6 girls) for the following crimes: robbery (110), theft (57), murder (37), rape (26) and other offenses (18)

Craiova Centre	Detention	14-17 years old	174 boys	5 girls
Târgu Ocna Educational Centre	Ocna	14-17 years old	171 boys	-
Buziaş Centre	Educational	14-17 years old	152 boys	13 girls
Brăila Tichileşti Detention Centre		14-17 years old	214 boys	-

Statistical data: in 2019, 1459 perpetrators were prosecuted, accused of crimes committed in the family against 1700 victims, out of which 661 minors.

Year	Charged for child trafficking	Child pornography	Non-compliance with child custody measures	Family abandonment	Sexual act with a minor	Domestic violence
2014	350	84	10	738	Lipsă date	1459
2015	292	65	15	865	Lipsă date	1938
2016	195	96	19	778	308	1467
2017	211	163	29	651	301	1491
2018	169	156	31	597	319	1360
2019	175	174	27	510	323	1459

Cited from <https://vedemjust.ro/2019-minori/?fbclid=IwAR38IOz0rK6gLesKI0fw2819bfDxYHsJp5edFhKSJ77Nqax3nHo1AHMf88l>

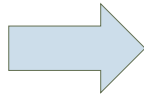
Findings of the research

In accordance with the Victims Directive provisions, art. 113(2) from C.P.C. provides that the following categories of victims are more vulnerable: 'Child victims, victims with a dependence relationship with the offender, [...], victims of human trafficking, victims of violence in close relationships, victims of sexual violence or exploitation, [...], victims with disabilities [...]'.

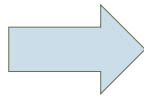
For these categories of victims, judicial authorities may institute special protection measures if victims are to be considered threatened or vulnerable witnesses. However, interviews with specialists have shown that, in practice, judicial authorities rarely institute such protection measures.

Likewise, protective measures for victims presumed to be vulnerable may also include a hearing carried out by the judge, police or the prosecutor in special places and in the presence of a psychologist or social worker whose purpose is to reduce the risk of secondary victimization. These victims should, as far as possible, be heard a second time, only if strictly necessary and by the same person. At the same time, vulnerable victims are granted the right to be heard by a person of the same sex, upon request.

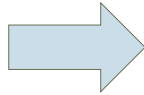
Identified problems



Problem 1 - Lack of adapted procedures when hearing and supporting children with psychosocial disabilities



Problem 2 - The relationship between public and institutional actors - lack of preparation, training and working tools



Problem 3 - Lack of adequate social reintegration

Excerpts from interviews

'It was ugly at the police station. I stayed there for 24 hours. I stayed with a boy from the foster care centre. I received a baton in my hand for my theft. Sometimes the police officers screamed.'

'The police jumped on to me, beat me, to confess'

The prosecutor spoke nicely, he explained what rights I have granted. The police gave me a sheet of paper containing my rights, but they didn't read them to me and I didn't read them either [...]. The prosecutor was saying the acts I committed, I didn't really understand what they were talking about. [...]

We found out from interviewing child defendants that they do not trust the actors involved in criminal proceedings, this being explained by the humiliating and unprofessional behaviour of some of them towards the children, when they were asked how the police officers were treating them. In the below charts we can notice some examples of such. Being asked 'If you were to change something, what would you like to change?', the children gave the following answers:

- ★ *To stop beating children to recognize the crimes. You didn't give birth to me so you can beat me.*
- ★ *To change the violence. You are not allowed to hit anyone. All you allowed to do is put him down, not break his bones*

'The first time they didn't behave badly. The second time with the robbery they spoke very ugly. They took everyone I was with. One time the police officers hit me 6 times with the sticks. I went to wash my hands and he said don't wash your hands, leave them like that and stretch out your palm! If the hand is wet, it doesn't swell and leaves no marks' they hit him in the wet palm with the stick to hide any evidence.

Sala de audiere minori din cadrul Direcției Generale de Asistență Socială și Protecția Copilului (DGASPC) Cluj



Examples of promising practices

Sala de audiere minori din cadrul Direcției Generale de Asistență Socială și Protecția Copilului (DGASPC) Dolj



Examples of promising practices

Sala de audiere minori din cadrul Parchetului de pe lângă Tribunalul București



"The room is just an instrument, what matters is the hearing, the NICHHD protocol, which is extraordinary, uses children's words and it does not ask direct questions until the end, *in extremis*, to clarify certain issues, it gives the child the opportunity to provide as many details and aspect as possible, so that the statement is very plausible and can later be used in the process, but for that all participants should be trained in this regard, which does not happen [...]"

About NICHHD protocol

This Protocol is intended to encourage the use of open-ended prompts, which are more likely to lead to verbal narrative accounts, thus being adopted as practical guidelines, recommendations widely supported by research. The NICHHD protocol is the structured interview of the child victim, containing, equally, the different activities and stages to be carried out during the hearing, as well as the questions to be addressed to the child.

The purpose of using the NICHHD protocol is to reduce the suggestibility of professionals participating in the legal proceedings when hearing a child victim, to allow them to adapt their questions according to the child's level of understanding, helping in the same time children to make as detailed and accurate allegations as possible. The NICHHD protocol is a structured way of interviewing and covers all phases of a hearing: introduction, rapport-building development, exercise of episodic memory, the narrative part of the hearing and its closure.

Using a standardized approach to interviewing has important advantages that go beyond simply conducting superior interviews. A standardized approach gives all children who are interviewed an equal opportunity to disclose or not disclose alleged abuse. Personal biases such as underestimating children's capabilities, or those resulting from certain case characteristics, are minimized.

Examples of promising practices

At the level of criminal prosecution bodies in Bucharest, but also of other specialists such as prosecutors, lawyers, judges, we found that some practitioners adopted a self-taught behavior and they are learning and improving based on their experience and they also study on their own to better communicate and deal with children.

Thus, a specialist officer within IGPR - Criminal Investigations Department, stated that at the IGPR level *'quite a lot of such lectures are held - with partners also from abroad (more on serious crimes); Specialization in hearing techniques in general – my colleagues participated in a training organized at the US Embassy by the FBI - statement analysis - analyzing the statement according to how it was given and figuring out what the person wants to communicate in real time when conducting the hearing'*.

It is also organized within the IGPR the Homicides Service, Sexual Assault Office, in which trained people work, according to a lawyer:

Within the Homicides Service, the Sexual Assault Office, I've noticed trained police officers, who studied the child's psychology, special methods of interviewing a child, the hearings took place in specialized rooms, the child was not interrupted, the specialist did not repeat the hearing, everything took place in a comfortable setting for a 12 years old child and the statement was later transcribed after a video recording. This is how I would see the reality ab initio. What I would find useful would be the establishment at the city level of such departments of sexual assault offices to which each such case would be redirected.

Thank you for listening!

Ștefania Dascălu, CLR
Oana Dodu, CLR



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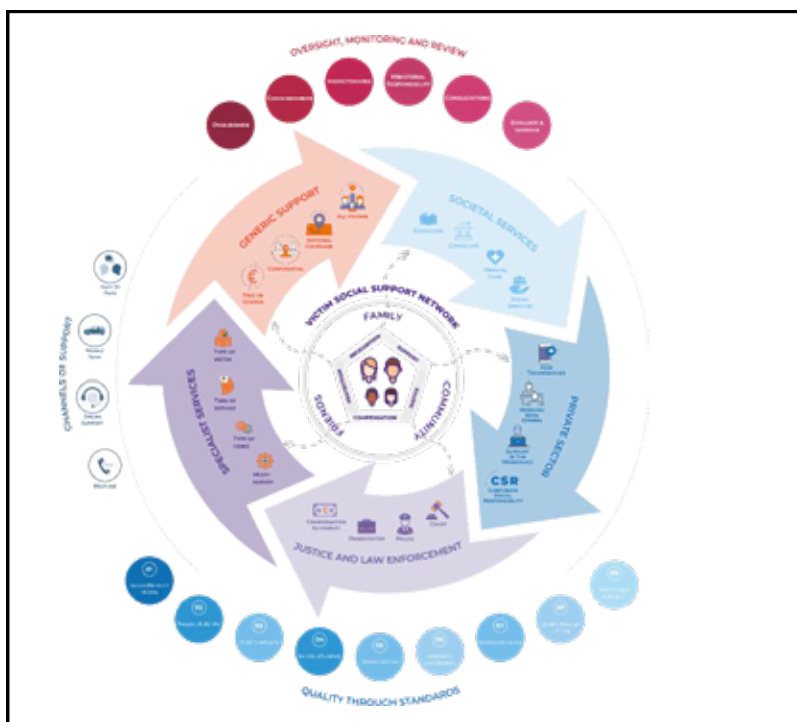
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PRESENTATIONS – DAY 2



Safe Justice for child victims

Aleksandra Ivanković
Deputy Director
Victim Support Europe, Brussels



Judiciary as a part of a larger picture

Justice is not just achieved at court

Courts are just a small (but important) part of the entire system that should support a victim

Vicitms' Rights Directive

Article 23



Presumption of vulnerability of children victims

- Type of measures:
 - Interviews with the victim audiovisually recorded and such recorded interviews may be used as evidence
 - Appoint a special representative for child victims because of a conflict of interest between the holders of parental responsibility and the child victim, or because the child victim is unaccompanied or separated from the family
 - Where the child victim has the right to a lawyer, he or she has the right to legal advice and representation where there is or could be a conflict of interest between the child and the holders of parental responsibility



Examples of good practices for child victims at court





Make children understand what is going on

Mr Justice Peter Jackson:

1. This judgment is as short as possible so that the mother and the older children can follow it.
2. The case is about a white British family. There are four children – H [a boy aged 12], A [a girl aged 10], N [a boy aged 3] and R [a girl aged 10 months]. Since July they have been seeing their mother four times a week. The older children are at school and they come twice a week. The meetings have gone well. The mother and the children are very close and very happy. The mother has a very good relationship with her own mother, who I will call the grandmother.
3. When H and A were born, the mother was living with their father, Mr B. They were together for about 8 years. After that, Mr B moved out, but he and the children still see each other. Mr B has been sent to prison for violence. He has also used drugs but says that he has not done that since the last time he went to prison in 2013. H and A see their father and grandmother.
4. In 2009, the mother met Mr A, the father of the younger children. He was in the army when he was young, but that didn't last long. In 2004, he was sent to prison for robberies. When he came out, as soon as he came out, he moved into the family home. He got on well with H and A, and they had some good times. Then N and R were born and everyone was happy.
5. Unfortunately, there have been some serious problems, ending up with the children being taken away and Mr A being arrested and kept in prison.
6. Children can't be taken away from their parents unless social services prove to a judge that it would be harmful for them to live at home. If children are taken away, judges will not order that.
7. Another thing is that children are not taken away from their parents simply because the parents have lied about something. Even if they do tell lies they can still be good enough.
8. People can tell lies about some things and still tell the truth about other things.
9. Also, children are not taken away because parents are rude or difficult or because they have strange views, even if those views offend people. The only reason to take children away is if it is in their best interests.
10. In this case, I haven't met the children, but I have been told good things about them by their mum and their dad, and also by their teachers and by their social worker K and their grandmother. They have been well looked after in many ways. Everyone says that the mother deserves praise for that, and praise also goes to Mr B and to Mr A when they deserve it.
11. K and M would like the children to live with their grandmother and their mother if that can be arranged safely. They would like H and A to go on seeing their dad and his family.
12. K and M do not think the children should be seeing Mr A. Mr B agrees with that too. The mother says that she agrees, but she finds it hard because she and Mr A have been together for a long time.

Accessible judgment

Adapt proceedings to the needs of vulnerable victims



Multidisciplinary teams

- psychologists,
- social workers,
- anthropologists,
- medical professionals

Multidisciplinary – next level



Barnahus

- Neophodno je uvesti jednake uslove podrške žrtvama na cijeloj teritoriji zemlje



Different kind of support?



FYDO Project by VSE & partners



FYDO Facility Dogs Europe



Thank you!

Aleksandra Ivanković

Victim Support Europe

a.ivankovic@victimsupporteurope.eu





Individual Assessment & Good Models of Multidisciplinary Approaches

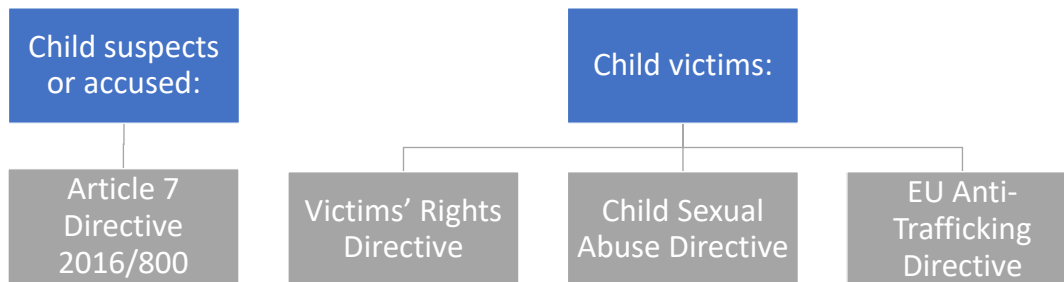
Prepared by: Orinda Gjoni, Regional Project Coordinator A2J, Tdh Hungary
1 July 2021



Structure of the presentation

- I. Standards of individual assessment processes**
- II. In uncertain times: How are the needs of children assessed and considered in criminal proceedings?**
- III. Reintegration of children in conflict with the law – a model from Albania**

I. Standards of individual assessment processes



3

I. Standards of individual assessment processes



□ Importance of Individual Assessments:

- ✓ Focus on the child
- ✓ Gateway into criminal justice proceedings for all children
- ✓ Feed information to all professionals involved with the child
- ✓ Will allow coordination of both child justice and child welfare and protection responsibilities

Support the child participation, protect the best interest and improve the quality of the professional interventions.

4

What are the standards?



Foundation stones for solid individual assessment processes

Assist both in the development of the system and improving practice

General principles which all models can fulfil

General but not abstract, designed to assist practical progress

Provide guidance and can be used with an accompanying assessment tool

5

Designed to address key problems



Limited in scope & purpose

Not undertaken for certain children

About children but not with them

Often intimidating/hostile settings

One off step, not updated

1. Holistic

2. Inclusive

3. Participatory

4. Child-centred process

5. Timely & continuous

6

Designed to address key problems



Often done by one professional

6. Multidisciplinary & collaborative

Lack of knowledge & skills

7. Quality

Missing key resources

8. Properly resourced & sustainable

Not contributing to outcomes

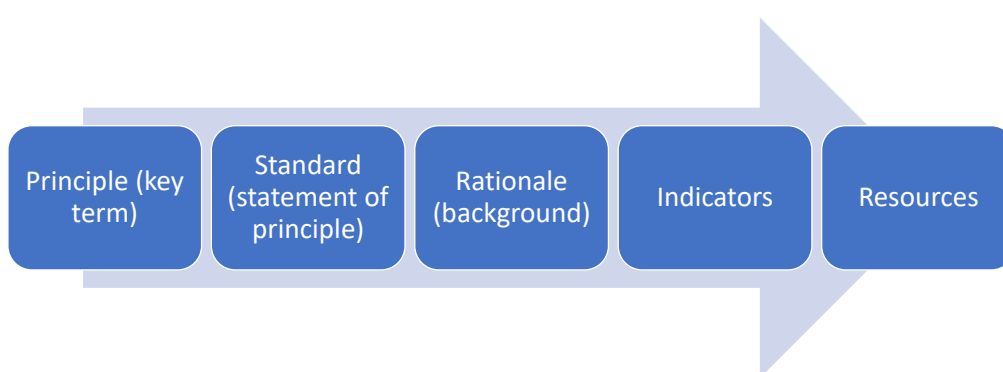
9. Impact oriented

Ad hoc, dispersed

10. Progress oriented

7

Practical tool, not abstract



8

Example

Standard 6: Multidisciplinary & collaborative

- The child should benefit from an individual assessment and collaborative approach of the professionals around
- Rationale: ...ensures different dimensions of child's situation taken into consideration....
- Involvement of different professionals
- Protocols for coordination
- Case management meetings and tools
- Protocols for data sharing, in respect of privacy rules

9

II. In uncertain times: How are the needs of children assessed and considered in criminal proceedings?

At the onset of the pandemic a wide range of difficulties for children:

- ☐ No access to a lawyer
- ☐ Inaccessibility to penitentiary institutions
- ☐ Delays in criminal proceedings
- ☐ Lack of safe places for children victims of domestic violence or other crimes.

10

II. In uncertain times: How are the needs of children assessed and considered in criminal proceedings?

- ❑ How can **case management** be improved to meet the needs of children more effectively and to put in place specific procedural safeguards where necessary?
- ❑ How are/can **individual assessments** of a child's individual circumstances carried out, taking into account covid-19 restrictions? How can this be improved? What challenges are professionals from different sectors facing in undertaking interviews and assessments?
- ❑ What kind of **multidisciplinary processes** are in place/can be put in place to improve these assessments? Privacy and confidentiality concerns while conducting needs assessments for child victims and children in conflict with the law.

11

III. Reintegration of children in conflict with the law – a model from Albania

The structure of the model:

- Understanding how children come into conflict with the law.
- Responding: A model of reintegration.
- Committing to a structured framework of practices, programmes and services which would activate reintegration
- Evaluating the effort

12

Understanding how children come into conflict with the law

- Adverse or traumatic childhood experiences
- Lack of secure relationships to support recovery
- Adoption of an anti-social or criminal coping strategy
- Negative reactions and exclusion from school and society
- Association with anti-social peers
- Escalation of offending
- Involvement with the criminal justice system
- Further marginalization and alienation

13

Responding: A model of reintegration

The key approaches to theory and practice that inform this model of reintegration include:

- Restorative practices
- Desistance research and theory
- Trauma informed practice
- Motivational theory

14

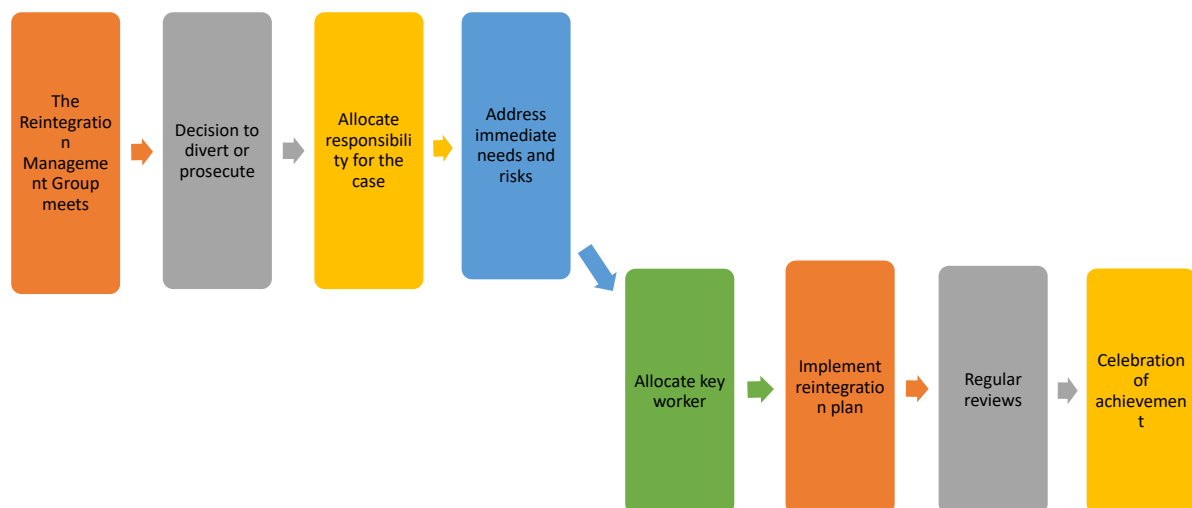
Committing to a structured framework of practices, programmes and services which would activate reintegration

The practices will be organised on three levels:

1. Action designed to practice responsibility
2. Engagement with others designed to generate the supportive relationships and the resources needed for reintegration;
3. Reflection on evidence from the practices designed to enable the young person to transform his or her identity from one of condemnation to respect and to develop a more positive narrative about the future.

15

Institutional framework



16

Evaluating the effort

- The support of a greater number of responsible adults
- Sustained access to the resources required for a better life
- A sustainable healthier lifestyle
- An identity and narrative that is pro-social, responsible and future oriented
- **Overall outcome:** A more resourceful person who no longer wishes to harm self or others.

17

Useful links

☐ 2021 WORLD CONGRESS MEXICO

<https://justicewithchildren.org/mexico-2021/>

☐ FOCUS Project

<https://tdh-europe.org/our-work/focus-on-my-needs-working-together-for-children-in-criminal-proceedings-/7144>

☐ Child Protection Hub

<https://childhub.org/en>

18

Child-friendly justice

FRA research on good models



Good practices for a Child-Friendly Court

Dr. Astrid Podsiadlowski
1 July 2021



Overview

Goal: learn about good models to support child participation, protect best interests of the child and improve quality of professional interventions

Overview:

- Introduction into the work of the Agency on child-friendly justice in the context of EU legislation
- Gaps in national legislation on children's access to procedural safeguards and participation in the justice system
- Key findings, opinions and promising practices to ensure child-friendly justice:
 - Training and multi-disciplinary cooperation
 - Right to information
 - Right to be heard
- Links to tools and resources

FRA PROJECTS ON CHILDREN AND JUSTICE

2015 and 2017 + 2020-2022



[Free publication available:
Child-friendly justice](#)

2017-2018



[Free publication available:
Children's rights and justice](#)

3

QUIZ

CHILDREN AND JUSTICE

What is the most important condition for children to feel safe and comfortable in a judicial proceeding?

The presence of their parents

To know what is going to happen with them during the proceeding

The behaviour of the professionals with whom they interact

How many children are estimated to be involved in judicial proceedings per year in the EU?

2.5 mio

1 mio

4 mio

What is the most important condition for children to feel safe and comfortable in a judicial proceeding?

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CHILDREN AND JUSTICE

In majority of Member States legal aid is provided depending on income requirements.

True

False

How many percent of interviewed children felt that they did not receive sufficient information?

45%

82%

62%

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True

False

How many percent of interviewed children felt that they did not receive sufficient information?

45%

82%

62%

MAPPING MINIMUM AGES

NATIONAL LEGAL REQUIREMENTS

AVAILABLE DATA SOURCES

MAPPING MINIMUM AGE REQUIREMENTS CONCERNING THE RIGHTS OF THE CHILD IN THE EU

Minimum age requirements in the EU



KEY FINDINGS ON JUSTICE

(April 2018): [Mapping minimum age requirements: Children's rights and justice](#)

RIGHT TO BE HEARD

- Great variation not only across Member States but also within.

PROCEDURAL SAFEGUARDS

- In majority of EU MS, children in criminal proceedings are entitled to special support and procedural safeguards until 18 years old.

LEGAL AID

- In line with the Procedural Safeguards Directive, EU MS provide for legal aid for children without an explicit minimum age requirement.
- In majority MS legal aid is provided depending on income requirements.

DETENTION

- Child offenders can be subject to custodial sanctions and measures in all EU Member States.
- The minimum age threshold is the same as the minimum age for criminal responsibility (between 10 to 16 years of age).
- Solitary confinement is not applicable in only four EU MS.



THE CONCEPT OF CHILD-FRIENDLY JUSTICE

2.5 million children are involved in judicial proceedings across the EU

EFFECTIVE PARTICIPATION OF CHILDREN IS VITAL FOR IMPROVING THE OPERATION OF JUSTICE

<p>UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD</p> <ul style="list-style-type: none"> • Right to participation • Best interest of the child 	<p>EUROPEAN UNION EU STRATEGY FOR THE RIGHTS OF THE CHILD</p> <ul style="list-style-type: none"> • Child-friendly justice 	<p>COUNCIL OF EUROPE GUIDELINES</p> <ul style="list-style-type: none"> • Child-friendly justice • Children's rights to be heard, to be informed and to be protected
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← IMPORTANCE OF CHILDREN'S PARTICIPATION →

The EU Strategy on the Rights of the Child and the European Child Guarantee | European Commission (europa.eu)

EU LEGISLATION

OBLIGATION OF EU MEMBER STATES TO SAFEGUARD CHILD'S WELL-BEING AND PROVIDE ADEQUATE CARE AND SUPPORT



11

EU LAW SAFEGUARDS FOR CHILD VICTIMS

Protection measures during criminal proceedings :

- ✓ Free legal counselling
- ✓ Free legal representation
- ✓ No unjustified delay in carrying out interviews
- ✓ Adapted premises for interviews
- ✓ Interviews by trained professionals
- ✓ Same person doing the interviews
- ✓ Minimising the number of interviews
- ✓ Right to be accompanied by representative/adult
- ✓ Video-recorded interviews
- ✓ Hearings with no presence of the public
- ✓ Hearing through video link
- ✓ Witness protection programmes

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FRA RESEARCH ON CHILD-FRIENDLY JUSTICE

ASSESSING

- How are children's needs and rights addressed in judicial proceedings
- How are the **CoE's Guidelines** on child-friendly justice applied

THROUGH

- Personal interviews, focus groups and consultations with
 - 570 professionals
 - 392 children

EU MEMBER STATES COVERED

BG DE EE ES FI FR HR PL RO UK



13

GENERAL FINDINGS FROM FRA RESEARCH

There is great variation of actual practices not only across Member States but also within.

This often depends on the judgement of the individual professional.

Concrete measures on a child's right to be informed, to be heard and to be protected are not standard practice.

A lot more needs to be done to make justice more child-friendly so that children feel safe and comfortable to be able to express their views freely and participate effectively.

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PROFESSIONAL BEHAVIOUR IS A KEY TO ENSURE CHILD-FRIENDLY JUSTICE

TRAINING

on legal and psychological aspects is essential for all professionals, in particular judges, prosecutors and police

"... as a judge I was never trained how to talk with children, so I can only use my private knowledge. That is a dangerous zone in my opinion."
Croatia, Judge

COOPERATION

between professionals of different disciplines, should be facilitated through specific measures

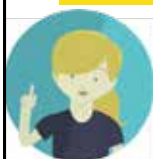
We work in separate chapels. It's complicated and it's not innate to work in a multidisciplinary way. The more we do multidisciplinary training, the more we will be able to work in a multidisciplinary way."
France, NGO

GUIDELINES

should be developed to ensure standard practices on how to hear, inform and support children

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CHILDREN SUGGESTION BOX PROFESSIONALS SHOULD:



- ✓ **Informal** and **casual** attitude
- ✓ **Avoid wearing uniforms**
- ✓ **Smile**, be friendly, polite, empathetic
- ✓ **Speak loud** enough and **clearly**
- ✓ Should behave in a **calm manner**, be patient, **not raise voice** or **rush a child**
- ✓ Have **experience** and **formal training** to work with children
- ✓ Be **genuinely interested**, engage children, be available and **contactable** at any time during proceedings

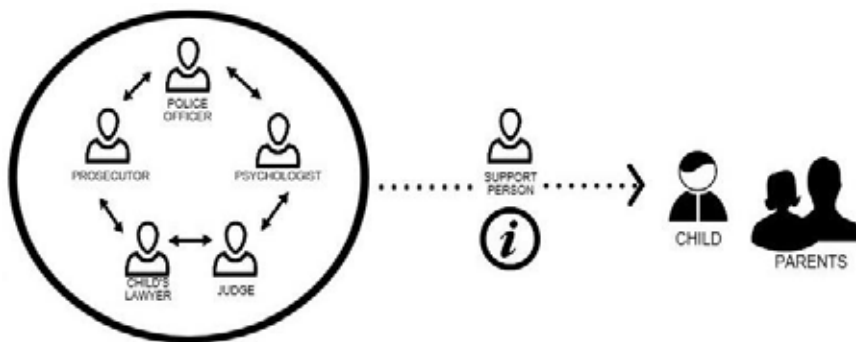


- ✓ Improve their communication skills: frame hearings as **conversations between equals** and **treat children seriously**, not treat children like adults, adjust the approach and language to the children's age
- ✓ Include **small talk** to make children feel at ease
- ✓ Interrogate children younger than 10 years through **playing**
- ✓ Offer children **breaks** and **make available food, water, sweets**
- ✓ Use **child-friendly material** during the hearings and support children



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COORDINATED PROVISION OF INFORMATION



Professionals suggest one **contact point/support person** who is responsible for informing children (and their parents) throughout the proceedings.

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CHILDREN SUGGESTION BOX



CHILDREN RECOMMEND THE FOLLOWING INFORMATION TO BE CONVEYED DURING THE HEARINGS:

- ✓ Professionals who conduct the hearings should **explain** their **professions** and **functions**, introduce themselves and **explain practical arrangements, behavioural guidelines**.
- ✓ Children should receive **feedback** after the hearings. This may include **encouragements** and **information** on how their testimony may influence the proceedings.
- ✓ The outcome and **next steps** should be **explained**, e.g. what and why.

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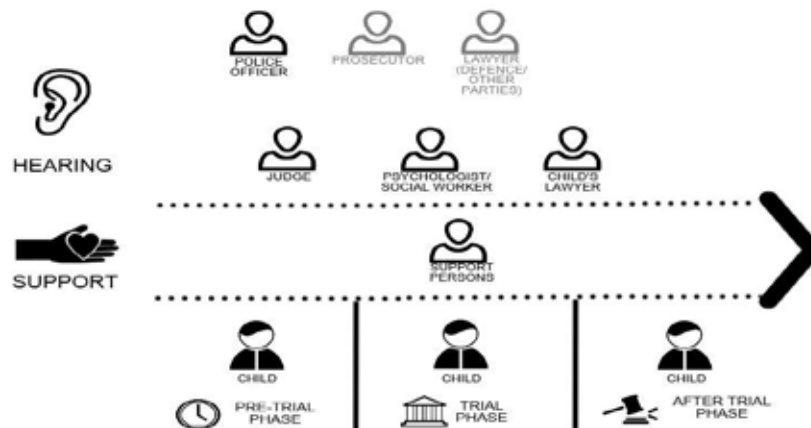


Child-friendly information material used in Spain

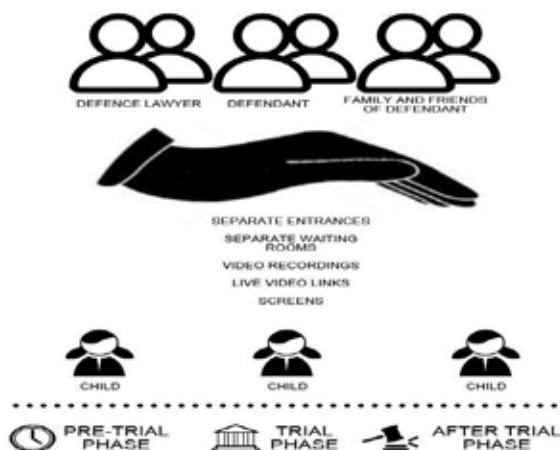


Wall of leaflets in a family centre tailored to teenagers, children and families in the United Kingdom

PROTECTIVE SUPPORT THROUGHOUT PROCEEDINGS



PROTECTION MEASURES IN CRIMINAL PROCEEDINGS



23

PROMISING PRACTICE

PREVENTING CONTACT BETWEEN THE CHILD AND THE DEFENDANT

The Tartumaa Victim Support Center (Tartumaa Ohvriabikeskus) in Estonia has set up a separate entrance at the back of the building for especially traumatised children. Some courtrooms in Finland also have separate entrances, and separate entrances and waiting rooms are highly valued aspects of courts in the United Kingdom.



Estonia. Separate entrance at the back of the building of Tartumaa Victim Support Center.

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In Estonia, police have a special video-linked room for interviewing children



In Finland, special material is provided to children to facilitate interviewing

TO MAKE IT HAPPEN USE



RAISING CHILDREN'S AWARENESS OF THEIR RIGHTS

Please have a look at **FRA videos** for children that are based on the key messages

- ✓ RIGHT TO BE HEARD
- ✓ RIGHT TO INFORMATION
- ✓ RIGHT TO PROTECTION AND SAFETY AND RESPECTIVE SUPPORT

[Video for children on their right to be heard](#)

<http://fra.europa.eu/en/publication/2015/child-friendly-justice-professionals>

Please feel free to communicate those to children and relevant gatekeepers

For more information or publications

www.fra.europa.eu

or contact us

childrights@fra.europa.eu



Специална подготовка и специализация на адвокатите, социалните работници и услугите за деца в системата на правосъдие за деца

Адв. Анета Генова
Aneta.mircheva@gmail.com
+359 889 766 206

1.07.202.

Правната рамка

- Конвенция на ООН за правата на детето:
 - Чл. 2 ал. 1: Държавите:
 - “зачитат и осигуряват правата”
 - “без каквато и да е дискриминация”
 - Чл. 3: Висшите интересите на детето са първостепенно съображение във всички действия, отнасящи се до децата, независимо дали са предприети от
 - обществени или частни институции за социално подпомагане;
 - от съдилищата,
 - административните или законодателните органи.

Правна рамка

- Конвенция на ООН за правата на детето:
 - Чл. 12
 - 1. Държавите - страни по Конвенцията осигуряват на детето, което може да формира свои собствени възгледи, правото да изразява тези възгледи свободно по всички въпроси, отнасящи се до него, като на тях следва да се придава значение, съответстващо на възрастта и зрелостта на детето.
 - 2. За тази цел на детето е предоставена по-специално възможност да бъде изслушвано при всякакви съдебни и административни процедури, отнасящи се до него, или пряко, или чрез представител или съответен орган по начин, съответстващ на процедурните правила на националното законодателство

Общи коментари на КПД

- Коментар 8: Правата на децата при правосъдие спрямо ненавършили пълнолетие лица
- Коментар 12: Право на детето на изслушване.
- Коментар 13: Правото на детето на свобода от всички форми на насилие

Национална правна рамка:

- Конституция на Република България
- Закон за закрила на детето
- Закон за защита от дискриминация

Формално срещу реално
необходимото

С какво ще напълним рамката?
Как го правим?

Роли на детето в съдебната система

- Жертва
- Свидетел
- Извършител
- Носител на права и в някои случаи – задължения.

Независимо от това в каква роля детето влиза в досег със съдебната система, необходимо е да помним, че децата са различни и могат да имат различни нужди!

Кои са “играчите” на това поле?

- **Непосредствени участници:**
 - Съд
 - Прокуратура
 - Адвокат
 - Социален работник/психолог
 - Родител/настойник
- **Косвени:**
 - Обучителни институции
 - Законодател
 - Супервизиращи лица/органи
 - Други?

В каквато и роля да се намесваме в живота на детето, ние трябва да помним отговорностите си:
да не нанасяме вреда,
да не дискриминираме,
да зачитаме и осигуряваме спазването на правата на детето.

Необходимо е да сме чувствителни към развитието на различните сфери на знанието и да прилагаме достиженията в практиката си.

Ролята на специалната подготовка – защо е необходима?

- Детето е комплексно човешко същество, със специфични нужди;
- В много случаи, детето в досег със съдебната система е преминало през травматично събитие: необходимост да се познават механизмите реакция на травмата, белезите на преживяна травма и начините за избягване на ре-виктимизация.
- Необходимост от познаване на механизмите на дискриминация – от психологическа, социална и правна страна и развиване на критичност към собственото си поведение.
- Знание, базирано на правата.

Специалната подготовка: за кого (и защо)?

- **Експерти, които не са юристи:**
 - Необходимост да имат базови знания за правото, правната система, йерархията на правните актове и силата им да обвързват;
 - Необходимост за разбиране на основни принципи на правото (на конвенциите, националното право);
 - Умения да разпознават дискриминацията в различните и форми, правилата свързани със забрана на насилието и т.н.
 - Практически знания за съдебните процедури и техния смисъл.
- **Надграждане на знания и умения в собствената им сфера, с фокус свързан със специалната уязвимост на децата в досег със съдебната система.**

Специалната подготовка: за кого (и защо)?

- **Специална подготовка за адвокати:**
 - Знания за международните стандарти и как те биха могли да се приложат на национално ниво.
 - Знания от други сфери:
 - Създаване на условия за информирано за травмата правосъдие;
 - Кое наранява? Кое има потенциал да ре-травматизира? Как да го избегнем?
 - Какви експерти са ни нужни? Къде да
 - Какви въпроси задаваме, за да достигнем до благоприятен за детето резултат? Да различаваме заключенията на експертите: кога са базирани на предразсъдъци и кога са базирани на факти и научни достижения.
 - Общуване с детето и родителите/настойниците, особено в конфликтни;
 - Знания за специфичната уязвимост на детето и как това рефлектира върху различни аспекти на живота на детето и възможността му да участва в съдебните процедури по щадящ начин. Как установяваме какви са специфичните процесуални улеснения, които ще помогнат на детето, за да участва по щадящ в съдебната процедура?

Етика и право

- **Необходимост от полагане на етични стандарти за работа по дела, в които са замесени интересите на деца – ценностите на Конвенцията на ООН за правата на детето.**
- **Общо съгласие на всички “играчи” на полето на правосъдието за деца относно спазване на тези стандарти и начините по които това може да се случи.**
- **Лидерство, основано на етични стандарти.**

Благодаря за вниманието!



Barriers to children accessing justice

Simona Florescu
Validity Foundation

Structure

- ◊ Situating access to justice in international law
- ◊ The ideal: how justice for children should be
- ◊ How justice for children is

Children with disabilities

- ◇ 31.8% of the foster care population had a disability
- ◇ 30% to 60% of children in foster care have chronic health conditions, and including behavioral, emotional, and developmental concerns jumped the number of foster children who have serious health care needs to above 80%
- ◇ one-third of children
- ◇ ages 0 to 14 years who are at all involved in the child welfare system have special health care needs, nearly three times the rate found in the general population.
- ◇ 11% of children attending public schools had been maltreated as opposed to 31% of children receiving special education
- ◇ CwD 3 to 4 times more at risk to be neglected or abused physically, sexually, or emotionally

Access to justice for children

CRC: Hearing children

The right to be heard (Art. 12);
Best interests (Art 3)
Evolving Capacities

Participation
=
effective hearing

Access to justice
+
Remedies (Art 13 CRPD)

Barriers

❖ Right to information

What and Why

Examples: Romania; project violence against children; child abduction context (the Netherlands, role of guardians *ad litem*)

Barriers: the hearing

❖ How is the voice of children presented to the court?

- ❖ Difference between types of proceedings: eg criminal or family law
- ❖ How often are children heard directly?
- ❖ Indirect hearing: what do judges hear? (role of guardians / attorneys)

❖ How long does hearing the child take?

❖ Are judges attuned to how children testify / make declarations?

Children's declarations

- ◆ **How do children testify?**
- ◆ **Is the legal system equipped for accommodating children's testimonies?**

Paternalistic attitudes

- ◆ **Protection ♥ participation**
- ◆ **What does it mean for children to have rights?**

Children's Rights Alliance

Julie Ahern
Legal and Policy Manager

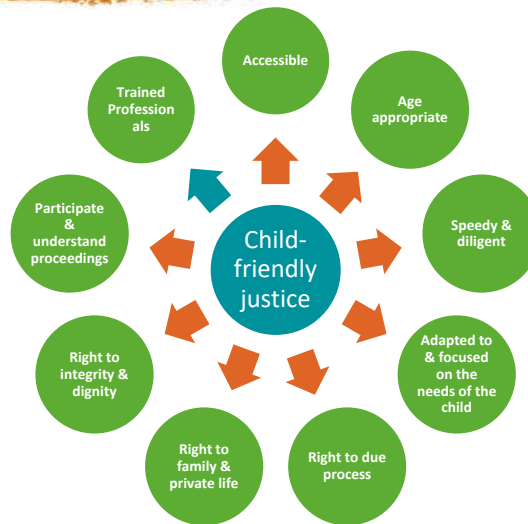


About the Children's Rights Alliance

- The Children's Rights Alliance unites over 120 members working together to make Ireland one of the best places in the world to be a child.
- We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.
 - We identify problems for children
 - We develop solutions
 - We educate and provide information on children's rights
 - We unite our members and put pressure on government to put children first



Child Friendly Justice Principles



Child Friendly Justice Guidelines

- All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.
- Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability.

Child Friendly Justice Resources

Council of Europe Child Friendly Justice Guidelines

- [Booklet on Child Friendly Justice Guidelines](#)
- [Leaflet on Child Friendly Justice Guidelines](#)

EU Fundamental Rights Agency

- [Handbook on European law relating to the rights of the child \(2015\)](#)
 - Chapter 11: Children's Rights within Criminal Justice and Alternative (Non-Judicial Proceedings)
 - Includes relevant case-law examples



Innovating European Lawyers to Advance the Rights of Children with Disabilities

- Children's lived experiences
- Key rights
- Barriers to Rights
- International Mechanisms
- Key skills
 - Communicating
 - Taking Instructions
 - Working with Trauma

Training with the Law Society of Ireland

- Trauma-informed skills training to legal practitioners
 - Taking Instructions 1: Foundation Skills
 - Taking Instructions 2: Instructions
 - Working with Trauma: Skills for Lawyers
 - Understanding Child Development and Child Protection for Lawyers
 - Self-Care for lawyers
 - Jurisprudence

Training with the Child and Family Agency

- Know Your Rights training for family support workers and social workers
 - Training on children's legal rights and entitlements
 - Listening skills
 - Taking a children's rights approach to their work
 - Remedies for children and families whose rights have been breached

Upcoming Legal Reforms in Ireland

- Family Courts Bill
 - Provides for the establishment of a Family Court Structure
 - Provides for the specialisation of Judges
 - Will require Judges to undergo training
 - Currently no requirement for Lawyers to be trained

Challenges for children with disabilities

Intersectionality challenges facing children who live in
institutions and/or have mental disabilities

Šárka Dušková, Validity Foundation



Why should we focus specifically on children with disabilities?

Barriers:

- Attitudinal
- Environmental (social and physical)
- Legal
- Communicational



Attitudinal barriers

- Presuming incompetence
- Stigmatising and intimidating language
- Failing to be attentive to the needs and experiences of the child

Environmental

- Inaccessible buildings
- Unfriendly and intimidating environments
- Formalistic procedures and rules

VALIDITY

Legal

- Denial of the right to participate or testify
- Inadmissibility of evidence on the basis of disability and/or age
- Inaccessible support or complaint mechanism

Communicational

- Lack of accessible information
- Inability to communicate with children

VALIDITY

Child-friendly justice and guarantees for children with disabilities

o **Article 7 of the UN CRPD** (United Nations Convention on the Rights of Persons with Disabilities)

*“States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being **given due weight** in accordance with their age and maturity, on an equal basis with other children, and to be provided with **disability and age-appropriate assistance** to realize that right.”*

o **Article 9 of the UN CRPD**

*„States Parties shall take **appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment**, to transportation, to information and communication, including information and communication technologies and systems, and to **other facilities and services open or provided to the public**, both in urban and rural areas.”*

o **Article 13 of the UN CRPD**

*The governments must: “ensure **effective access to justice for persons with disabilities** on an equal basis with others, including through the provision of **procedural and age-appropriate accommodations**, in order to **facilitate their effective role** as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”*

o **Article 5 § 3 and Article 2 of the UN CRPD**

*“In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. **“Reasonable accommodation” means necessary and appropriate modification and adjustments** not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”*

VALIDITY

Accessibility and accommodation

- Accessibility = general measures improving access to justice
- Accommodation = individualised adjustments needed in particular cases, their denial (unless posing a disproportionate burden) may be discriminatory

- Enable flexible procedures responsive to the needs of children
- Carry out individual needs and barriers assessment
- Work with other professionals, the child's family and support persons
- Practically:
 - • Establish a simple, easily accessible mechanism for a child with a disability
 - to request support;
 - • Require courts to specifically ask whether a child with a disability requires
 - accommodations.

VALIDITY

Accessibility and accommodation measures

- **Attitudinal**

- Comprehensive training for justice professionals

- **Legal**

- Testimonies of children with disabilities must be given equal weight
- An easy and accessible complaints procedure must be available (also bringing complaints on behalf of children)
- Automatic support by a person of choice and legal aid should be available
- Waivers or flexibility in procedural rules: filing of complaints, appeals, taking testimonies, time-limits, hearing dates, ...

VALIDITY

Accessibility and accommodation measures

- **Environmental**

- ensuring accessibility of buildings, facilitating transport and assistance/a support person
- providing more break times, allowing to drink
- allowing children to take personal items on the stand with them.
- interviewing the child in a familiar and comfortable setting, in the absence of formal court apparel, visiting the courtroom prior to proceedings
 - video-recording testimony so as to avoid repeat questioning
 - holding hearings *in camera*
 - allowing a person of trust to accompany them throughout proceedings
 - engaging a psychologist/social worker to be available for help in the event of triggering
 - eliminating distractions and interruptions, restrict attendance to the courtroom
 - respecting the wishes and expressions of the child, checking the child's well-being throughout the process

VALIDITY

Accessibility and accommodation measures

Communicational

- Use short, concise, simple, concrete and open-ended questions, one at a time; verify impressions and interpretations
- Recognise and respect non-verbal forms of communication including play, body language, facial expressions, drawing and painting, sign language, augmentative and alternative communication
- Engage interpreters or intermediaries
- Ensuring access to a support persons
- Use easy-to-read and easy-to-understand language throughout the proceedings
- Use a range of assistive devices, augmentative or alternative communication ("AAC") methods, such as pictorial representations, idiosyncratic verbal or non-verbal communication
- Use exhibits, writing, diagrams, drawings, body maps, visual timetables
- Allow doodling or repetitive drawing may help maintain attention and emotion

Spotlight: Intermediaries in the UK

VALIDITY

Closing thoughts

- Change of attitudes rather than investments which can make a world of difference
- The possibility of flexible adjustments should be incorporated into the procedural rules themselves
- Remember:

Denial of reasonable accommodation is discrimination

VALIDITY

The right to effective participation: the involvement of refugee children in asylum application proceedings in the Netherlands

Dr. Stephanie Rap – 1 July 2021



Universiteit
Leiden
The Netherlands



International children's rights

- UN Convention on the Rights of the Child: special protections and general principles
- Article 22 – Refugee and migrant children
 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, **receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights** set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
- Protection and participation



Discover the world at Leiden University

Right to participation for children

- The right to be heard
- The right to information

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child” (art. 12(1) CRC).



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VluchtelingenWerk Nederland, 2017

Child participation in asylum proceedings

- Children value being heard in decision-making
- Positive influence on self-confidence, self-esteem and better understanding and accepting of decisions
- Interviewing young children in forensic setting
- Children in migration: complex and adversarial procedures, lack of information and of trust, accompanied children



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Danibal, 2021

Methodology

- In-depth interviews with professionals
 - 42 participants
 - Between March 2018 and October 2019
- Observations of child interviews
 - 13 interviews
 - Between 2012-2019
- Interviews with children
 - 21 interviews
 - 2020-2021



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Children's perspectives: information

• Information provision

R: No, at that time nothing, no. Actually then, yes, we heard a lot of false information that was bad, so to say, also for us.

I: From other residents at the reception centre?

R: Also from other residents from the reception centre and yes, also people who, who helped us get to the Netherlands so to say.

I: Oh, yes. You mean, yes, how do you say that, human traffickers?

R: Yes, yes, exactly.

(R9: Boy, unaccompanied, from Afghanistan)

Source: UNHCR

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Children's perspectives: participation

- Feelings of stress

R: Yes, I thought it was nerve-wracking. Because I never experienced that before, I do not know what, yes, what they are going to ask there. Yes, you get an idea so to say of what they are going to ask, but I just felt very nervous (R7: Girl, unaccompanied, from Syria)

- Agency and control

- *R: Yes, for example, when children want to go to those meetings, then they should really be alone there. Then they have the freedom to tell everything and explain everything. But if they sit there with someone from the family, for example, it is a little awkward (R6: Girl, unaccompanied, from Syria)*

- Accompanied children

- *R: I was really scared, because I thought, now they have interviewed me, I have said something about mom, about dad, about the story and when a decision comes and I did not remember correctly, give the right information, then I am responsible for the decision. And the feeling of: I am responsible for something and I am still fifteen, I am responsible for the future of everybody, that was really terrible (R5: Girl, accompanied, from Palestine)*

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Child interviews

- Child-friendly interview room
- Interviews lasted on average 49 minutes (19 to 72 minutes, excl. breaks).
- Analysis
 - preparations and explanations
 - the content of the interview
 - the conversation techniques used by the immigration officer.

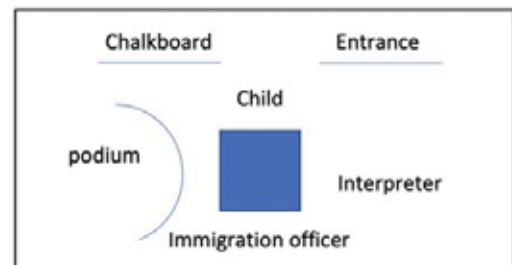


Figure 1: Map of the interview room

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Content of the interview

End of the interview:

IO: Is there anything else you want to tell or ask?

C: Why am I here?

IO: Everybody who wants to stay in the Netherlands comes here. We always want to hear from the people themselves. Everybody gets a conversation, including children.

C: Can we stay?

IO: That will be decided soon. Do you understand?

C: Can my mother come here from Syria?

IO: That is the next step. Your guardian can explain all about that.

C: If we cannot stay, do we have to go back?

IO: That is a small chance, you don't have to worry about that. We don't send people from Syria back for no reason, when there is war going on (Interview 2).

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Conversation techniques

- Metacommunication: making expectations explicit
- Small talk: making the child feel at ease
- Complimenting the child
- Summarising the answers of the child
- The here-and-now technique

IO: We already discussed a lot, you told me where you lived, which language you speak, how you came to the Netherlands, you told me about school and church, who you lived with in a house and you told me about the day you left your home, about the bad people with guns, you told me they came to get money (Interview 9).

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Concluding

- The right to be heard: hearing the true voice and opinion of the child, in a child-friendly environment
- Child interview in asylum procedure: aim is to collect facts and evidence, not to 'hear' the child
- Highly complex procedures, power imbalances and political nature of decisions
- Better preparation and individual assessment of needs and interests is needed
- Training of immigration officers in child-friendly interview techniques

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**Universiteit
Leiden**
The Netherlands

PRESENTATIONS – DAY 3



“Деинституционализация: Случаят България – 3”

Изследване на процеса на деинституционализация на грижата за деца 2020-2021

Елен Митова
Ноу-хау център за алтернативни грижи
за деца, НБУ
2 юли 2021 г.



Phone: +359 2 403 20 30
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Web: www.knowhowcentre.nbu.bg



Информация за изследването:

- Екип: опитни изследователи и консултанти с различен профил
- Региони: Велико Търново, Враца, София, Стара Загора
- Период: март 2020 - август 2021
- Методология: изследване в хода на действието (Action Research)
- Участници:
 - над 250 (близо половината от тях като съ-изследователи)
 - 75 деца и младежи в грижа и млади хора с опит със системата
 - 13 родители с опит със системата
 - 20 приемни родители

- Литературен преглед
- Рефлексия върху находките със съ-изследователите





Находки, тези и изследователски въпроси:

- Тема 1: Деинституционализация - същността на промяната, която реформата е донесла, реалните последиците от нея и как изглежда тя в настоящия момент.
- Тема 2: Децата и родителите – нов профил.
- Тема 3: Професионалистите.

- Информацията в системата и достъпа до нея
- Политика, планиране и управление на ДИ - централизация
- Темите за страха, срама, лъжата, корупцията, насилието...
- Макро анализ на 10 годишен период – проследяване на тенденции и процеси



Тематични области със събрани препоръки:

- **Вземане на решения**
- **Спешни настанявания и кризи**
- **Децата, техните родители и грижата**
- **Концепция за резидентна грижа**
- **Професионализъм и служители**
- Образователната система и социалните проблеми
- Развитие на приемната грижа
- Обучение по социална работа
- Управление на национални политики и планиране
- Работата на ОЗД отвън и отвътре
- Критики към новото законодателство
- Подкрепа за осиновяване и др.



Вземане на решения

Проблем/и	Идеи за промяна
<p>Решенията за децата често изглеждат произволни и необосновани; друг път сякаш се вземат инертно, без оглед на конкретиката.</p> <p>Зад решенията често стои защитно поведение на служителите.</p> <p>Споделянето на отговорността е само „на хартия“.</p> <p>Децата и родителите са подведени, разочаровани и наранени от взаимодействието си със системата.</p>	<ul style="list-style-type: none"> • прецизиране и утвърждаване на процедури и инструменти за оценка, които да насочват към различни решения за подкрепа • гъвкавост и съдействие за родителите, които се сблъскват с документални и институционални затруднения • изискване за посочване на точната причина за решението и комуникирането ѝ с децата и родителите ясно и разбираемо

Спешни настанявания и кризи

Проблем/и	Идеи за промяна
<p>Всяко действие на системата изглежда като реакция на спонтанно възникнала криза. Смята се, че за да се наложи мярка за закрила изобщо, това трябва да стане веднага.</p> <p>Повечето настанявания в грижа са спешни. Така всяка мярка е нова криза за деца, родители, приемни родители, други деца и служители в услуги (всички, освен самата система).</p> <p>Подробности за ситуацията и децата почти липсват.</p>	<ul style="list-style-type: none"> • осмисляне и драстично намаляване на спешните настанявания в ПГ и ЦНСТ • създаване на повече и гъвкави варианти за временно кризисно настаняване • документация, която следва детето, представя историята на неговото развитие и дава достатъчно информация на хората, които се включват в работата с него

Децата, техните родители и грижата

Проблем/и	Идеи за промяна
<p>Децата в грижа са все по-малко увредени от институционализация и все повече идват от (дисфункционален и травмиращ) семеен контекст. Децата пребивават в услугите дълго, но остават активно във връзка с близките си.</p> <p>Родителите в различни ситуации (напр. работещите в чужбина) възприемат услугите като пансиони за дългосрочно настаняване. Те сами изпращат децата си там.</p>	<ul style="list-style-type: none"> фокус в квалификацията върху работа със семейства, а не с деца целенасочена работа със зависимото поведение на родители, които смятат, че държавата им е длъжна законова рамка, която да налага такси за резидентната грижа срок за проучване след подаване на молба за реинтеграция до 6 месеца, а след това – отнемане на родителските права

Концепция за резидентна грижа

Проблем/и	Идеи за промяна
<p>Масово средата в резидентните услуги все още не предполага създаването на устойчиви, значими връзки с възрастни.</p> <p>Услугите се оценяват и като по-скоро неефективни като интервенции за справяне с травми, социализация и основа за житейска реализация.</p> <p>Недиференцираната грижа е с особено ниско качество в случаите, които се изисква специализирана, професионална подкрепа за развитие.</p>	<ul style="list-style-type: none"> стандарты за добро управление и практика специализация и профилиране нови услуги или цели интервенции за (а) децата в риск от противообществени прояви; (б) младежи, напуснали грижа до 25 г.; (в) насърчаване на връзката с биологичните родители; (г) жени, жертва на злоупотреби и ранна бременност; (д) родителски обединения

Професионализъм и служители

Проблем/и	Идеи за промяна
<p>Да работиш в системата означава: ниско заплащане и болезнена уязвимост.</p> <p>Хорничният проблем със системното недостатъчно финансиране на услугите стои. Отчасти заради него в тях ите попадат хора „от всякъде“ или „от където и да е“. Ниското ниво на професионализъм занижава качеството на грижата.</p>	<ul style="list-style-type: none"> • инвестиции в задържане на хората в тази работа (заплащане, повече подкрепа и по-малко контрол) • единни стандарти за упражняване на професията на социалния работник и прилежащите помагачи професии • база данни на професионалистите • изграждане на професионална общност • преосмислене на подхода към бюджетирането през анализ на ефективността

Общи изводи от предварителния анализ на препоръките

Препоръките представени от участниците в изследването бяха обобщени в 5 големи групи в зависимост от това към кого са насочени конкретните идеи за промяна:

- Клиентите на услугата
- Професионалистите
- Управлението на политиките за ДИ
- Работата в различните услуги
- Нагласите.

Включени препоръките на представители на държавната администрация от АСП и ДАЗД, клонове на международни НПО, общини, ОЗД, ръководители и служители от ЦНСТ, местни НПО, управляващи услуги, деца, биологични и приемни родители, супервизори и обучители, финансови експерти и университетски преподаватели.

Препоръките са насочени както към органите на централната власт, така им към местните управления, услугите, децата и родителите.



Клиентите на услугата

- Реално въвеждане на индивидуален подход в работата с децата – баланс между индивидуална подкрепа и структуриране като фокус на грижата за всяко едно дете.
- Работа с биологичното семейство като неотменна част от работата по случай на всяко едно дете в грижата.
- Участие на децата и родителите във вземането на решения за тях.
- Услуги и подкрепа за напуснали услугите младежи като част от продължаващата подкрепа за постепенна социализация и подготовка за самостоятелен










Професионалистите

- Основана на ясни стандарти, практически ориентирана и непрекъсната подготовка на кадрите, свързани с физическите, емоционалните и социалните нужди на децата в риск – специалисти от социалните, здравните, образователните услуги и от системата за закрила на детето.
- Непрекъсната подкрепа за професионалистите чрез супервизия, продължаващо обучение, достойно заплащане и кариерно развитие.
- Ясни и реалистични стандарти за работа с профилиране на специалистите и преодоляване на бюрокрацията и свръхнатовареността.
















Управлението на политиките за ДИ

-  Подобряване на координацията между министерствата.
-  Финансиране, основано на ясен национален приоритет в грижата за уязвими деца и семейства, базирана на данни финансова стратегия и гъвкаво бюджетиране на услугите според потребностите на всяко дете и местните ресурси.
-  Законодателни правомощия на управляващите политиката структури.
-  Основани на мониторинг и анализ политики и практики в областта на ДИ и включване на децата, родителите, специалистите от услугите и представителите на местната власт и общности в този процес на мониторинг и планиране.
-  Правна рамка, законодателство, които да дават повече правомощия на държавните институции, пряко ангажирани с политиката по ДИ /АСП, ДАЗД/, на органите на местната власт и на приемните родители при решаване на някои спешни нужди от подкрепа на децата. Ясни правила за попечителство, осиновяване.
-  Закриване на услуги да е постепенен, обмислен и ненасилствен процес с грижа за деца, семейства и специалисти.
-  По-активно включване на НПО в обсъждането на националните и местните политики и стратегии.



Работата в различните услуги

-  Въвеждането на реална мултидисциплинарна координирана работа по случай и междусекторно сътрудничество.
-  ОЗД да промени ролята си от административна към реално координираща мрежата от услуги около детето.
-  Преодоляване на командно-административния модел на работа на ОЗД и нуждата от хоризонтални отношения с всички участници в процеса.
-  Облекчаване на документацията - преосмисляне на всеки изискван документ и облекчаване на административно-документалните изисквания към общинските ЦНСТ, към услугите, за да може да се фокусират усилията върху работа с децата.
-  Събиране на информация по случай на всяко дете, която да се държи на едно място, да се поддържа непрекъснато, да е достъпна за всички, работещи с детето и родителите специалисти, да се обсъжда с детето и родителите.
-  Дългосрочно проследяване на случаите на всяко дете и предоставяне на следваща подкрепа при реинтеграция, осиновяване, напускане на услугите.
-  Осиновяването също да бъде подкрепено дългосрочно като процес, за да няма връщане на деца.
-  Извеждане и настаняване на децата да придобие по-малко кризисен и спешен характер и да има ясни критерии за спешност.
-  Приемната грижа да се развие и за случаите на деца с увреждания и да бъде компетентно подкрепяна, супервизирана и финансово обезпечена. Връзката между приемни и биологични родители да се поддържа и развива.
-  При реинтеграцията на децата да има по-голям контрол и услуги за дългосрочна подкрепа на детето и семейството.
-  Ранни интервенции и превенция като приоритет в бъдеще.





Нагласите

- Преодоляване на негативните нагласи на специалистите към разнообразни групи от клиенти и целенасочена и компетентна работа с негативните нагласи на част от клиентите към услугите.






Общи изводи

- **Децентрализация на системата**
- **Синхронизиране на работата между различните услуги – ЦНСТ, Приемна грижа и др. – на местно ниво**
- **Институционалната култура и нуждата от хуманизиране на иерархичните връзки в системата – от снадкия към покрепа.**
- **Насърчаване и подкрепа за съхраняване и подобряване на връзката биологичен родител – дете**







Общи изводи

-  **Изграждането и поддържането на цялостната картина за историята и живота на детето**
-  **Нужда от пространство за дебат на политиките по ДИ**
-  **Събраното знание в работата по ДИ да се изучи и обобщи**



Общи изводи

-  **Приоритет на работата с родителите – устойчива, превантивна.**
-  **Критериите за качество на грижата да са свързани с отношенията, а не с администрацията и документацията.**



Моделът на Активната семейна подкрепа и приложението му в процеса на деинституционализация

Галина Бисет
Технически съветник –
деинституционализация и алтернативна
грижа



hope and homes
for children



надежда и домове
за децата-клон България

www.hopeandhomesbg.com

Защо избрахме този подход за подкрепа на процеса на деинституционализация в България?

Успехът на реформата на грижата за деца зависи от способността на системата да подкрепи детето в родното му семейство.

Системата за социално подпомагане и закрила на детето не може да реагира адекватно на криза в семейството, която води до изоставяне или извеждане на детето (бюрокрация + нагласи).

Европейските фондове, чрез които се реализира реформата, не могат да бъдат разходвани за индивидуална подкрепа на семействата (социални плащания).



Какво е Активната семейна подкрепа?

Интензивна социална работа с определена времева рамка в контекста на бурни системни промени.

Надгражда силните страни на семейството и привлича ресурсите на общността. Възстановява или създава около семейството формални или неформални мрежи за подкрепа.

Рехабилитация на семейството = решителни действия за извеждане от криза + дългосрочен план за устойчивост и независимост.

Холистичен подход към всички нужди на семейната система. Направена „по поръчка“.



Външни оценки на модела на Активната семейна подкрепа

Ноу-Хау център за алтернативна грижа за деца към НБУ в две отделни изследвания дава позитивна оценка на модела:

2014 г. (227 превенции и 42 реинтеграции в 8 географски области)

2017 г. (108 превенции и 18 реинтеграции в 15 географски области)

2018 г. верифициращо изследване на 25 семейства от д-р Стели Петева прави заключение:

„Наблюдаваните и анализирани случаи в рамките на настоящата оценка верифицират и, надяваме се, обогатяват резултатите от предходните външни оценки на ефективността на работа на НДД, проведени в периода октомври 2014 - март 2017 г., като предоставят актуална „жива картина“ с преки резултати от живота и бита на посетените семейства.“

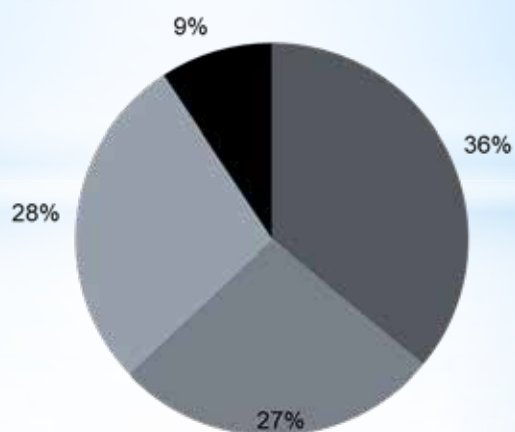


Моделът през очите на оценителите



2017 г. Превенции

■ НДД+дарения 36% ■ Доставчик 27%
■ Соц. подп./общ. фондове 28% ■ ЗИХУ 9%





2017 г. Превенции

■ Подкрепа по 6-те области



2017 г. Превенции

■ Специфични разходи



1. Подобряване на битовите условия
2. Битово-комунални разходи
3. Дрехи
4. Храна за бебе
5. Принадлежности за бебе
6. Транспорт
7. Комуникации
8. Храна
9. Медикаменти
10. Медицински услуги и консумативи
11. Здравни осигуровки
12. Административни данъци и такси
13. Човешки ресурс - НДД човеко-часове

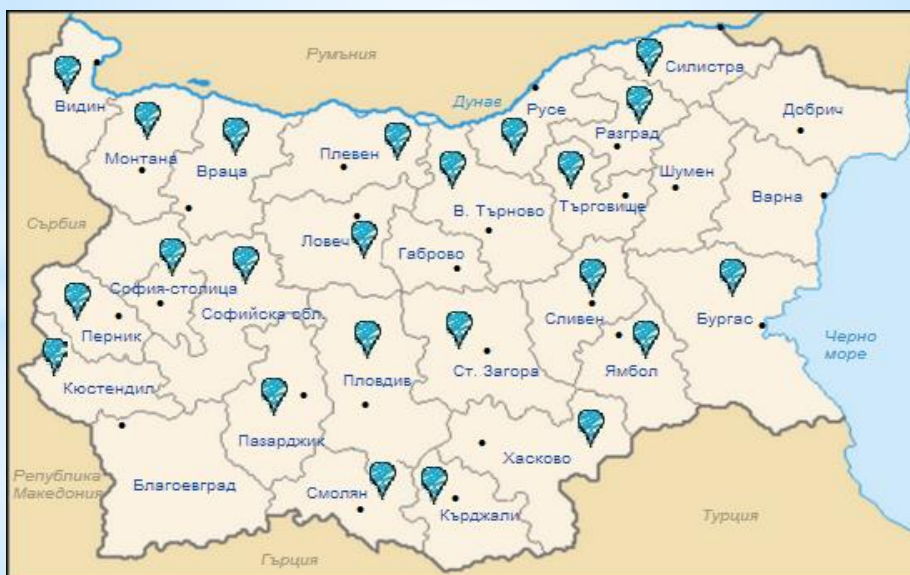
Първите закрити ДМСГД: Тетевен (2010), Широка Лъка (2013), Кюстендил (2013)

Подкрепа на закриването на 8 ДМСГД по националния проект „ПОСОКА: семейство“ (2011-2015); София (Св. Параскева), Перник, Монтана, Габрово, Русе, Пловдив, Пазарджик, Търговище.

Закрити ДМСГД при липсата на национален проект и политическа нестабилност: Ветрен (2015), Разград (2015), Златица (2016), Силистра (2018), Ямбол (2018), Враца (2018), Видин (2020).








Подкрепа на актуален национален проект „Продължаваща подкрепа за деинституционализация на децата и младежите“ (2018-2022) за закриване на оставащите 12 ДМСГД: 8 дома закрити в края на 2020 г. от правителството, като от 2 от тях – Хасково и Дебелец – бяха изведени поетапно всички деца с наша подкрепа, а в Сливен, Бургас, София (И.Рилски), Бузовград, допринесохме за значително поетапно намаляване броя на децата.

Остават 4 ДМСГД – Плевен, Варна, Стара Загора и Кърджали с около 230 деца.





Отвъд Активната семейна подкрепа

-  1984 успешни и проследени превенции
-  197 успешни и проследени превенции
-  25 области, в които сме работили и продължаваме
-  23 местни координатори в цялата страна
-  21 сформирани, обучени и консултирани ОКМД; 160 срещи със 1032 участника
-  24 закрити ДМСГД с наша подкрепа
-  2648 участници в обучения – ОКМД, ОЗД, доставчици на социални услуги
-  Участие в застъпничество, политики, нормативна база, мониторинг



Активната семейна подкрепа е в основата на новия етап, в който навлиза реформата на грижата за деца

Висок брой деца в ЦНСТ

Висок брой деца постъпващи в системата за грижа

Как може Активната семейна подкрепа да се внедри устойчиво в системата за закрила на детето и социалните услуги?

ОКМД в подкрепа на предотвратяване настаняването на деца в резидентна грижа (ЦНСТ, Кризисни центрове и др.) и тяхното извеждане в семейна среда.



Фамилна групова конференция – устойчива подкрепа в трудни моменти в живота на децата

Мария Петкова

2.07.2021

Право и възможност за всяко дете и семейство

Законодателство

Практики:

- **Професионални**
- **Житейски**



Житейски практики

- Да разбираш
- Да си част
- Да имаш доверие
- Модели на поведение
- Осъзнаваш последствията
- Поемаш отговорност



Различни системи

Институции/училище:

- Закони, правила
- Процедури
- Изисквания
- Санкции

Деца/Семейства:

- Уникални
- Различни
- Очаквания
- Насърчение

Различни начина на вземане на решение

Професионалисти

Семейните групи



**Фамилната групова конференция
позволява дискурс между две системи
от легитимни интереси:**

- Правото на държавата
- **Правото на детето / семейството**

„Важно е обяснението на конфликта,
не само разрешаването му...“



Децата /децата жертви, децата извършители/

- Семейство, дом
- Детска градина / училище
- Приятелски групи, клубове, кръжоци
- Улица, театър, обществена среда

Поведението зависи от контекста / средата.

Проблемът и решението също



Какво търсим? Какво е важно?

- Да бъдат санкционирани извършителите
- Да решим проблема сега, на място
- Да има план за бъдещото на детето / децата и семействата им



Какво научихме:

В България са проведени стотици ФГК за деца:

- Обикновено има проблем, затруднение, несигурност, притеснение, вълнение, нарушение...
- Учители, възпитатели, родители, дори приятели, нямат идея за причините и състоянието
- Трудно е да се намери съвет, насока, подкрепа, помощ...
- Проблемът ескалира ...
- Различните участници имат /драматично/ различни виждания и решения!



Какво помага?

- Доверие, познатото
- Споделяне
- Разбиране, изслушване
- Приемане, подкрепа
- Сигурна среда

Значим възрастен!

Значими близки хора!



Какво се променя?

- Усещането за себе си, самочувствието
- Разбирането за другите
- Отношенията
- Очакванията
- Мотивацията
- Поведението
- Личният модел



Фамилна групова конференция

Модел с описани и приети принципи и процедури, основан на права

- Конвенция за правата на детето
- Конвенция за правата на човека
- Конвенция за правата на хората с увреждания



Характеристики на ФГК

- Това е модел на взимане на решение;
- Семейството и социалната му мрежа е “собственик” на конференцията – техни хора, техен проблем, тяхно време, тяхна храна и напитки, техния план...;
- Координаторът е независим;
- Семейството има право на информация, лично време и приемане на плана без условия /изключение при неотразен риск за дете/.



RESOURCES

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012

establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

**Having regard to the Treaty on the Functioning of the European Union,
and in particular Article 82(2) thereof,**

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.
- (2) The Union is committed to the protection of, and to the establishment of minimum standards in regard to, victims of crime and the Council has adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (⁴). Under the Stockholm Programme – An open and secure Europe serving and protecting citizens (⁵), adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States were asked to examine how to improve legislation and practical support measures for the protection of victims, with particular attention paid to, support for and recognition of, all victims, including for victims of terrorism, as a priority.
- (3) Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular with regard to the rights of victims of crime.
- (4) In its resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (⁶) (‘the Budapest roadmap’), the Council stated that action should be taken at Union level in order to strengthen the rights of, support for, and protection of victims of crime. To that end and in accordance with that resolution, this Directive aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings.
- (5) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women (⁷) called on the Member States to improve their national laws and policies to com-

bat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.

- (6) In its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women ^(8) the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union action plan. International regulation within this area includes the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979, the CEDAW Committee's recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.
- (7) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order ^(1) establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims ^(2) and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography ^(3) address, inter alia, the specific needs of the particular categories of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.
- (8) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ^(4) recognises that terrorism constitutes one of the most serious violations of the principles on which the Union is based, including the principle of democracy, and confirms that it constitutes, inter alia, a threat to the free exercise of human rights.
- (9) Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.
- (10) This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.
- (11) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.
- (12) The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.
- (13) This Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.
- (14) In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated

as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.

- (15) In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information.
- (16) Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security.
- (17) Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.
- (18) Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence.
- (19) A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive. In the case of a child, the child or, unless this is not in the best interests of the child, the holder of parental responsibility on behalf of the child, should be entitled to exercise the rights set out in this Directive. This Directive is without prejudice to any national administrative procedures required to establish that a person is a victim.
- (20) The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria: whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings. Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.
- (21) Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language. It should also be ensured that the victim can be understood during proceedings.

In this respect, the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment should be taken into account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.

- (22) The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings *ex officio* as a result of a criminal offence suffered by a victim.
- (23) Information about reimbursement of expenses should be provided, from the time of the first contact with a competent authority, for example in a leaflet stating the basic conditions for such reimbursement of expenses. Member States should not be required, at this early stage of the criminal proceedings, to decide on whether the victim concerned fulfils the conditions for reimbursement of expenses.
- (24) When reporting a crime, victims should receive a written acknowledgement of their complaint from the police, stating the basic elements of the crime, such as the type of crime, the time and place, and any damage or harm caused by the crime. This acknowledgement should include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported, for example in relation to insurance claims.
- (25) Without prejudice to rules relating to limitation periods, the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint.
- (26) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless otherwise required, it should be possible to provide the information communicated to the victim orally or in writing, including through electronic means.
- (27) Information to a victim should be provided to the last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel.
- (28) Member States should not be obliged to provide information where disclosure of that information could affect the proper handling of a case or harm a given case or person, or if they consider it contrary to the essential interests of their security.
- (29) Competent authorities should ensure that victims receive updated contact details for communication about their case unless the victim has expressed a wish not to receive such information.
- (30) A reference to a 'decision' in the context of the right to information, interpretation and translation, should be understood only as a reference to the finding of guilt or otherwise ending criminal proceedings. The reasons for that decision should be provided to the victim through a copy of the document which contains that decision or through a brief summary of them.
- (31) The right to information about the time and place of a trial resulting from the complaint with regard to a criminal offence suffered by the victim should also apply to information about the time and place of a hearing related to an appeal of a judgment in the case.
- (32) Specific information about the release or the escape of the offender should be given to victims, upon request, at least in cases where there might be a danger or an identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all other risks when determining an appropriate action. The reference to 'identified risk of harm to the victims' should cover such factors as the nature and severity of the crime and the risk of retaliation. Therefore, it should not be applied to those situations where minor offences were committed and thus where there is only a slight risk of harm to the victim.
- (33) Victims should receive information about any right to appeal of a decision to release the offender, if such a right exists in national law.

- (34) Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system. For other aspects of criminal proceedings, the need for interpretation and translation can vary depending on specific issues, the role of the victim in the relevant criminal justice system and his or her involvement in proceedings and any specific rights they have. As such, interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.
- (35) The victim should have the right to challenge a decision finding that there is no need for interpretation or translation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such decision may be challenged and should not unreasonably prolong the criminal proceedings. An internal review of the decision in accordance with existing national procedures would suffice.
- (36) The fact that a victim speaks a language which is not widely spoken should not, in itself, be grounds to decide that interpretation or translation would unreasonably prolong the criminal proceedings.
- (37) Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services. Victims who have suffered considerable harm due to the severity of the crime could require specialist support services.
- (38) Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims.
- (39) Victim support services are not required to provide extensive specialist and professional expertise themselves. If necessary, victim support services should assist victims in calling on existing professional support, such as psychologists.
- (40) Although the provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be and are adhered to. Repeat referrals should be avoided.
- (41) The right of victims to be heard should be considered to have been fulfilled where victims are permitted to make statements or explanations in writing.
- (42) The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of that victim's age.
- (43) The right to a review of a decision not to prosecute should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers,

but not to the decisions taken by courts. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review can be made, in which case the review may be carried out by that same authority. The right to a review of a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position.

- (44) A decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges or discontinue proceedings.
- (45) A decision of the prosecutor resulting in an out-of-court settlement and thus ending criminal proceedings, excludes victims from the right to a review of a decision of the prosecutor not to prosecute, only if the settlement imposes a warning or an obligation.
- (46) Restorative justice services, including for example victim- offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process. Restorative justice processes should, in principle, be confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.
- (47) Victims should not be expected to incur expenses in relation to their participation in criminal proceedings. Member States should be required to reimburse only necessary expenses of victims in relation to their participation in criminal proceedings and should not be required to reimburse victims' legal fees. Member States should be able to impose conditions in regard to the reimbursement of expenses in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings. The right to reimbursement of expenses in criminal proceedings should not arise in a situation where a victim makes a statement on a criminal offence. Expenses should only be covered to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in the criminal proceedings.
- (48) Recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, subject to exceptional circumstances, such as in a dispute concerning the ownership or where the possession of the property or the property itself is illegal. The right to have property returned should be without prejudice to its legitimate retention for the purposes of other legal proceedings.
- (49) The right to a decision on compensation from the offender and the relevant applicable procedure should also apply to victims resident in a Member State other than the Member State where the criminal offence was committed.
- (50) The obligation set out in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is without prejudice to the rules of conflict relating to the exercise of jurisdiction, as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (¹).
- (51) If the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.
- (52) Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.

- (53) The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.
- (54) Protecting the privacy of the victim can be an important means of preventing secondary and repeat victimisation, intimidation and retaliation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, and includes non-disclosure of the name of the child. However, there might be cases where, exceptionally, the child can benefit from the disclosure or even widespread publication of information, for example where a child has been abducted. Measures to protect the privacy and images of victims and of their family members should always be consistent with the right to a fair trial and freedom of expression, as recognised in Articles 6 and 10, respectively, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (55) Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.
- (56) Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.
- (57) Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.
- (58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.
- (59) Immediate operational needs and constraints may make it impossible to ensure, for example, that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due, for example, to renovation. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis.

- (60) Where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority.
- (61) Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest road-map.
- (62) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels — at Union level, and at national, regional and local level. Victims should be assisted in finding and addressing the competent authorities in order to avoid repeat referrals. Member States should consider developing 'sole points of access' or 'one-stop shops', that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.
- (63) In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints.
- (64) Systematic and adequate statistical data collection is recognised as an essential component of effective policymaking in the field of rights set out in this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims. Relevant statistical data can include data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organisations working with victims of crime. Judicial data can include information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.
- (65) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, that Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.

- (66) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.
- (67) Since the objective of this Directive, namely to establish minimum standards on the rights, support and protection of victims of crime, cannot be sufficiently achieved by the Member States, and can therefore, by reason of its scale and potential effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (68) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (¹) and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.
- (69) This Directive does not affect more far reaching provisions contained in other Union acts which address the specific needs of particular categories of victims, such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, in a more targeted manner.
- (70) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Directive.
- (71) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (72) The European Data Protection Supervisor delivered an opinion on 17 October 2011 (²) based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (³),

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objectives

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.
- Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.
2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) 'victim' means:

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;
- (b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;
- (c) 'child' means any person below 18 years of age;
- (d) 'restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

2. Member States may establish procedures:

- (a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and
- (b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

CHAPTER 2

PROVISION OF INFORMATION AND SUPPORT

Article 3

Right to understand and to be understood

- 1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.
- 2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.
- 3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

Article 4

Right to receive information from the first contact with a competent authority

- 1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:
 - (a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
 - (b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
 - (c) how and under what conditions they can obtain protection, including protection measures;
 - (d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
 - (e) how and under what conditions they can access compensation;
 - (f) how and under what conditions they are entitled to interpretation and translation;
 - (g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

- (h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
 - (i) the contact details for communications about their case;
 - (j) the available restorative justice services;
 - (k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.
2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

Article 5

Right of victims when making a complaint

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.
2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.
3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

Article 6

Right to receive information about their case

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:
 - (a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
 - (b) the time and place of the trial, and the nature of the charges against the offender.
2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:
 - (a) any final judgment in a trial;
 - (b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.
3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.
4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.
5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

Article 7

Right to interpretation and translation

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.
2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.
3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.
4. Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.
5. Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.
6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.
7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.
8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

Article 8

Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.
2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.
3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim

support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Article 9

Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

(b) information about or direct referral to any relevant specialist support services in place;

(c) emotional and, where available, psychological support;

(d) advice relating to financial and practical issues arising from the crime;

(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:

(a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;

(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

CHAPTER 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 10

Right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

Article 11

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.
4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.
5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

Article 12

Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:
 - (a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;
 - (b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;
 - (c) the offender has acknowledged the basic facts of the case;
 - (d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
 - (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.
2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

Article 13

Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

Article 14

Right to reimbursement of expenses

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.

Article 15

Right to the return of property

Member States shall ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.

Article 16

Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.
2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Article 17

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:
 - (a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;
 - (b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (¹) for the purpose of hearing victims who are resident abroad.
2. Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.
3. Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

CHAPTER 4

PROTECTION OF VICTIMS AND RECOGNITION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS

Article 18

Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Article 19

Right to avoid contact between victim and offender

1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.
2. Member States shall ensure that new court premises have separate waiting areas for victims.

Article 20

Right to protection of victims during criminal investigations

Without prejudice to the rights of the defense and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

- (a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;
- (b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;
- (c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;
- (d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Article 21

Right to protection of privacy

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.
2. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

Article 22

Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.
2. The individual assessment shall, in particular, take into account:
 - (a) the personal characteristics of the victim;
 - (b) the type or nature of the crime; and (c) the circumstances of the crime.
3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.
4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.
5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.
6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.
2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):
 - (a) interviews with the victim being carried out in premises designed or adapted for that purpose;
 - (b) interviews with the victim being carried out by or through professionals trained for that purpose;
 - (c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;
 - (d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.
3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:
 - (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
 - (b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
 - (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
 - (d) measures allowing a hearing to take place without the presence of the public.

Article 24

Right to protection of child victims during criminal proceedings

1. In addition to the measures provided for in Article 23, Member States shall ensure that where the victim is a child:
 - (a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;
 - (b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;
 - (c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.The procedural rules for the audiovisual recordings referred to in point (a) of the first subparagraph and the use thereof shall be determined by national law.
2. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

CHAPTER 5

OTHER PROVISIONS

Article 25

Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.
2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.
3. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.
4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.
5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Article 26

Cooperation and coordination of services

1. Member States shall take appropriate action to facilitate cooperation between Member States to improve the access of victims to the rights set out in this Directive and under national law. Such cooperation shall be aimed at least at:
 - (a) the exchange of best practices;
 - (b) consultation in individual cases; and
 - (c) assistance to European networks working on matters directly relevant to victims' rights.
2. Member States shall take appropriate action, including through the internet, aimed at raising awareness of the rights set out in this Directive, reducing the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships. Such action may include information and awareness raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

CHAPTER 6

FINAL PROVISIONS

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.
2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 28

Provision of data and statistics

Member States shall, by 16 November 2017 and every three years thereafter, communicate to the Commission available data showing how victims have accessed the rights set out in this Directive.

Article 29

Report

The Commission shall, by 16 November 2017, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Articles 8, 9 and 23, accompanied, if necessary, by legislative proposals.

Article 30

Replacement of Framework Decision 2001/220/JHA

Framework Decision 2001/220/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to that Framework Decision shall be construed as references to this Directive.

Article 31

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 32

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 25 October 2012.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

A. D. MAVROYIANNIS

DIRECTIVE (EU) 2016/800 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

**Having regard to the Treaty on the Functioning of the European Union,
and in particular point (b) of Article 82(2) thereof,**

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.
- (2) By establishing common minimum rules on the protection of procedural rights of children who are suspects or accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.
- (3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (4) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ⁽³⁾ ('the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspected or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be experienced in full.
- (5) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens ⁽¹⁾ (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.

- (6) Four measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives 2010/64/EU ⁽²⁾, 2012/13/EU ⁽³⁾, 2013/48/EU ⁽⁴⁾ and Directive (EU) 2016/343 ⁽⁵⁾ of the European Parliament and the Council.
- (7) This Directive promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice.
- (8) Where children are suspects or accused persons in criminal proceedings or are subject to European arrest warrant proceedings pursuant to Council Framework Decision 2002/584/JHA ⁽⁶⁾ (requested persons), Member States should ensure that the child's best interests are always a primary consideration, in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union (the Charter).
- (9) Children who are suspects or accused persons in criminal proceedings should be given particular attention in order to preserve their potential for development and reintegration into society.
- (10) This Directive should apply to children who are suspects or accused persons in criminal proceedings and to children who are requested persons. In respect of children who are requested persons, the relevant provisions of this Directive should apply from the time of their arrest in the executing Member State.
- (11) This Directive, or certain provisions thereof, should also apply to suspects or accused persons in criminal proceedings, and to requested persons, who were children when they became subject to the proceedings, but who have subsequently reached the age of 18, and where the application of this Directive is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned.
- (12) When, at the time a person becomes a suspect or accused person in criminal proceedings, that person has reached the age of 18, but the criminal offence was committed when the person was a child, Member States are encouraged to apply the procedural safeguards provided for by this Directive until that person reaches the age of 21, at least as regards criminal offences that are committed by the same suspect or accused person and that are jointly investigated and prosecuted as they are inextricably linked to criminal proceedings which were initiated against that person before the age of 18.
- (13) Member States should determine the age of the child on the basis of the child's own statements, checks of the child's civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, a medical examination. A medical examination should be carried out as a last resort and in strict compliance with the child's rights, physical integrity and human dignity. Where a person's age remains in doubt, that person should, for the purposes of this Directive, be presumed to be a child.
- (14) This Directive should not apply in respect of certain minor offences. However, it should apply where a child who is a suspect or accused person is deprived of liberty.
- (15) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to road traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.
- (16) In some Member States certain minor offences, in particular minor road traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.
- (17) This Directive should apply only to criminal proceedings. It should not apply to other types of proceedings, in particular proceedings which are specially designed for children and which could lead to protective, corrective or educative measures.

- (18) This Directive should be implemented taking into account the provisions of Directives 2012/13/EU and 2013/48/EU. This Directive provides for further complementary safeguards with regard to information to be provided to children and to the holder of parental responsibility in order to take into account the specific needs and vulnerabilities of children.
- (19) Children should receive information about general aspects of the conduct of the proceedings. To that end, they should, in particular, be given a brief explanation about the next procedural steps in the proceedings in so far as this is possible in the light of the interest of the criminal proceedings, and about the role of the authorities involved. The information to be given should depend on the circumstances of the case.
- (20) Children should receive information in respect of the right to a medical examination at the earliest appropriate stage in the proceedings, at the latest upon deprivation of liberty where such a measure is taken in relation to the child.
- (21) Where a child is deprived of liberty, the Letter of Rights provided to the child pursuant to Directive 2012/13/EU should include clear information on the child's rights under this Directive.
- (22) Member States should inform the holder of parental responsibility about applicable procedural rights, in writing, orally, or both. The information should be provided as soon as possible and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the child.
- (23) In certain circumstances, which can also relate to only one of the persons holding parental responsibility, the information should be provided to another appropriate adult nominated by the child and accepted as such by the competent authority. One of those circumstances is where there are objective and factual grounds indicating or giving rise to the suspicion that providing information to the holder of parental responsibility could substantially jeopardise the criminal proceedings, in particular, where evidence might be destroyed or altered, witnesses might be interfered with, or the holder of parental responsibility might have been involved in the alleged criminal activity together with the child.
- (24) Where the circumstances which led the competent authorities to provide information to an appropriate adult other than the holder of parental responsibility cease to exist, any information that the child receives in accordance with this Directive, and which remains relevant in the course of the proceedings, should be provided to the holder of parental responsibility. This requirement should not unnecessarily prolong the criminal proceedings.
- (25) Children who are suspects or accused persons have the right of access to a lawyer in accordance with Directive 2013/48/EU. Since children are vulnerable and not always able to fully understand and follow criminal proceedings, they should be assisted by a lawyer in the situations set out in this Directive. In those situations, Member States should arrange for the child to be assisted by a lawyer where the child or the holder of parental responsibility has not arranged such assistance. Member States should provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer.
- (26) Assistance by a lawyer under this Directive presupposes that the child has the right of access to a lawyer under Directive 2013/48/EU. Therefore, where the application of a provision of Directive 2013/48/EU would make it impossible for the child to be assisted by a lawyer under this Directive, such provision should not apply to the right of children to have access to a lawyer under Directive 2013/48/EU. On the other hand, the derogations and exceptions to assistance by a lawyer laid down in this Directive should not affect the right of access to a lawyer in accordance with Directive 2013/48/EU, or the right to legal aid in accordance with the Charter and the ECHR, and with national and other Union law.
- (27) The provisions laid down in this Directive on assistance by a lawyer should apply without undue delay once children are made aware that they are suspects or accused persons. For the purposes of this Directive, assistance by a lawyer means legal support and representation by a lawyer during the criminal proceedings. Where this Directive provides for the assistance by a lawyer during questioning, a lawyer should be present. Without prejudice to a child's right of access to a lawyer pursuant to Directive 2013/48/EU, assistance by a lawyer does not require a lawyer to be present during each investigative or evidence-gathering act.
- (28) Provided that this complies with the right to a fair trial, the obligation for Member States to provide children who are suspects or accused persons with assistance by a lawyer in accordance with this Directive does not include the following: identifying the child; determining whether an investigation

should be started; verifying the possession of weapons or other similar safety issues; carrying out investigative or evidence-gathering acts other than those specifically referred to in this Directive, such as body checks, physical examinations, blood, alcohol or similar tests, or the taking of photographs or fingerprints; or bringing the child to appear before a competent authority or surrendering the child to the holder of parental responsibility or to another appropriate adult, in accordance with national law.

- (29) Where a child who was not initially a suspect or accused person, such as a witness, becomes a suspect or accused person, that child should have the right not to incriminate him or herself and the right to remain silent, in accordance with Union law and the ECHR, as interpreted by the Court of Justice of the European Union (Court of Justice) and by the European Court of Human Rights. This Directive therefore makes express reference to the practical situation where such a child becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a child other than a suspect or accused person becomes a suspect or accused person, questioning should be suspended until the child is made aware that he or she is a suspect or accused person and is assisted by a lawyer in accordance with this Directive.
- (30) Provided that this complies with the right to a fair trial, Member States should be able to derogate from the obligation to provide assistance by a lawyer where this is not proportionate in the light of the circumstances of the case, it being understood that the child's best interests should always be a primary consideration. In any event, children should be assisted by a lawyer when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive, as well as during detention. Moreover, deprivation of liberty should not be imposed as a criminal sentence unless the child has been assisted by a lawyer in such a way as to allow the child to exercise his or her rights of the defence effectively and, in any event, during the trial hearings before a court. Member States should be able to make practical arrangements in that respect.
- (31) Member States should be able to derogate temporarily from the obligation to provide assistance by a lawyer in the pre-trial phase for compelling reasons, namely where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person, or where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence, inter alia, with a view to obtaining information concerning the alleged co-perpetrators of a serious criminal offence, or in order to avoid the loss of important evidence regarding a serious criminal offence. During a temporary derogation for one of those compelling reasons, the competent authorities should be able to question children without the lawyer being present, provided that they have been informed of their right to remain silent and can exercise that right, and that such questioning does not prejudice the rights of the defence, including the right not to incriminate oneself. It should be possible to carry out questioning, to the extent necessary, for the sole purpose of obtaining information that is essential to avert serious adverse consequences for the life, liberty or physical integrity of a person, or to prevent substantial jeopardy to criminal proceedings. Any abuse of this temporary derogation would, in principle, irretrievably prejudice the rights of the defence.
- (32) Member States should clearly set out in their national law the grounds and criteria for such a temporary derogation, and they should make restricted use thereof. Any temporary derogation should be proportional, strictly limited in time, not based exclusively on the type or the seriousness of the alleged criminal offence, and should not prejudice the overall fairness of the proceedings. Member States should ensure that where the temporary derogation has been authorised pursuant to this Directive by a competent authority which is not a judge or a court, the decision on authorising the temporary derogation can be assessed by a court, at least during the trial stage.
- (33) Confidentiality of communication between children and their lawyer is key to ensuring the effective exercise of the rights of the defence and is an essential part of the right to a fair trial. Member States should therefore respect the confidentiality of meetings and other forms of communication between the lawyer and the child in the context of the assistance by a lawyer provided for in this Directive, without derogation. This Directive is without prejudice to procedures that address the situation where there are objective and factual circumstances giving rise to the suspicion that the lawyer is involved with the child in a criminal offence. Any criminal activity on the part of a lawyer should not be considered to be legitimate assistance to children within the framework of this Directive. The obligation to respect confidentiality not only implies that Member States refrain from interfering with, or accessing,

such communication but also that, where children are deprived of liberty or otherwise find themselves in a place under the control of the State, Member States ensure that arrangements for communication uphold and protect such confidentiality. This is without prejudice to any mechanisms that are in place in detention facilities with the purpose of avoiding illicit enclosures being sent to detainees, such as screening correspondence, provided that such mechanisms do not allow the competent authorities to read the communication between children and their lawyer. This Directive is also without prejudice to procedures under national law according to which forwarding correspondence may be rejected if the sender does not agree to the correspondence first being submitted to a competent court.

- (34) This Directive is without prejudice to a breach of confidentiality that is incidental to a lawful surveillance operation by competent authorities. This Directive is also without prejudice to the work that is carried out, for example, by national intelligence services to safeguard national security in accordance with Article 4(2) of the Treaty on European Union (TEU), or that falls within the scope of Article 72 of the Treaty on the Functioning of the European Union (TFEU) pursuant to which Title V of Part III of the TFEU, on the Area of Freedom, Security and Justice, must not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (35) Children who are suspects or accused persons in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, training and social integration, to determine if and to what extent they would need special measures during the criminal proceedings, the extent of their criminal responsibility and the appropriateness of a particular penalty or educative measure.
- (36) The individual assessment should, in particular, take into account the child's personality and maturity, the child's economic, social and family background, including living environment, and any specific vulnerabilities of the child, such as learning disabilities and communication difficulties.
- (37) It should be possible to adapt the extent and detail of an individual assessment according to the circumstances of the case, taking into account the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence. An individual assessment which has been carried out with regard to the same child in the recent past could be used if it is updated.
- (38) The competent authorities should take information deriving from an individual assessment into account when determining whether any specific measure concerning the child is to be taken, such as providing any practical assistance; when assessing the appropriateness and effectiveness of any precautionary measures in respect of the child, such as decisions on provisional detention or alternative measures; and, taking account of the individual characteristics and circumstances of the child, when taking any decision or course of action in the context of the criminal proceedings, including when sentencing. Where an individual assessment is not yet available, this should not prevent the competent authorities from taking such measures or decisions, provided that the conditions set out in this Directive are complied with, including carrying out an individual assessment at the earliest appropriate stage of the proceedings. The appropriateness and effectiveness of the measures or decisions that are taken before an individual assessment is carried out could be re-assessed when the individual assessment becomes available.
- (39) The individual assessment should take place at the earliest appropriate stage of the proceedings and in due time so that the information deriving from it can be taken into account by the prosecutor, judge or another competent authority, before presentation of the indictment for the purposes of the trial. It should nevertheless be possible to present an indictment in the absence of an individual assessment provided that this is in the child's best interests. This could be the case, for example, where a child is in pre-trial detention and waiting for the individual assessment to become available would risk unnecessarily prolonging such detention.
- (40) Member States should be able to derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, taking into account, inter alia, the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence, provided that the derogation is compatible with the child's best interests. In that context, all relevant elements should be taken into consideration, including whether or not the child has, in the recent past, been the subject of an individual assessment in the context of criminal proceedings or whether the case concerned may be conducted without an indictment.

- (41) The duty of care towards children who are suspects or accused persons underpins a fair administration of justice, in particular where children are deprived of liberty and are therefore in a particularly weak position. In order to ensure the personal integrity of a child who is deprived of liberty, the child should have the right to a medical examination. Such a medical examination should be carried out by a physician or another qualified professional, either on the initiative of the competent authorities, in particular where specific health indications give reasons for such an examination, or in response to a request of the child, of the holder of parental responsibility or of the child's lawyer. Member States should lay down practical arrangements concerning medical examinations that are to be carried out in accordance with this Directive, and concerning access by children to such examinations. Such arrangements could, inter alia, address situations where two or more requests for medical examinations are made in respect of the same child in a short period of time.
- (42) Children who are suspects or accused persons in criminal proceedings are not always able to understand the content of questioning to which they are subject. In order to ensure sufficient protection of such children, questioning by police or by other law enforcement authorities should therefore be audio-visually recorded where it is proportionate to do so, taking into account, inter alia, whether or not a lawyer is present and whether or not the child is deprived of liberty, it being understood that the child's best interests should always be a primary consideration. This Directive does not require Member States to make audiovisual recordings of questioning of children by a judge or a court.
- (43) Where an audiovisual recording is to be made in accordance with this Directive but an insurmountable technical problem renders it impossible to make such a recording, the police or other law enforcement authorities should be able to question the child without it being audio-visually recorded, provided that reasonable efforts have been made to overcome the technical problem, that it is not appropriate to postpone the questioning, and that it is compatible with the child's best interests.
- (44) Whether or not the questioning of children is audio-visually recorded, questioning should in any event be carried out in a manner that takes into account the age and maturity of the children concerned.
- (45) Children are in a particularly vulnerable position when they are deprived of liberty. Special efforts should therefore be undertaken to avoid deprivation of liberty and, in particular, detention of children at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the criminal offence, given the possible risks for their physical, mental and social development, and because deprivation of liberty could lead to difficulties as regards their reintegration into society. Member States could make practical arrangements, such as guidelines or instructions to police officers, on the application of this requirement to situations of police custody. In any case, this requirement is without prejudice to the possibility for police officers or other law enforcement authorities to apprehend a child in situations where it seems, *prima facie*, to be necessary to do so, such as *in flagrante delicto* or immediately after a criminal offence has been committed.
- (46) The competent authorities should always consider measures alternative to detention (alternative measures) and should have recourse to such measures where possible. Such alternative measures could include a prohibition for the child to be in certain places, an obligation for the child to reside in a specific place, restrictions concerning contact with specific persons, reporting obligations to the competent authorities, participation in educational programmes, or, subject to the child's consent, participation in therapeutic or addiction programmes.
- (47) Detention of children should be subject to periodic review by a court, which could also be a judge sitting alone. It should be possible to carry out such periodic review *ex officio* by the court, or at the request of the child, of the child's lawyer or of a judicial authority which is not a court, in particular a prosecutor. Member States should provide for practical arrangements in that respect, including regarding the situation where a periodic review has already been carried out *ex officio* by the court and the child or the child's lawyer requests that another review be carried out.
- (48) Where children are detained they should benefit from special protection measures. In particular, they should be held separately from adults unless it is considered to be in the child's best interests not to do so, in accordance with Article 37(c) of the UN Convention on the Rights of the Child. When a detained child reaches the age of 18, it should be possible to continue separate detention where warranted, taking into account the circumstances of the person concerned. Particular attention should be paid to the manner in which detained children are treated given their inherent vulnerability. Children should have access to educational facilities according to their needs.

- (49) Member States should ensure that children who are suspects or accused persons and kept in police custody are held separately from adults, unless it is considered to be in the child's best interests not to do so, or unless, in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests. For example, in sparsely populated areas, it should be possible, exceptionally, for children to be held in police custody with adults, unless this is contrary to the child's best interests. In such situations, particular vigilance should be required on the part of competent authorities in order to protect the child's physical integrity and well-being.
- (50) It should be possible to detain children with young adults unless this is contrary to the child's best interests. It is for Member States to determine which persons are considered to be young adults in accordance with their national law and procedures. Member States are encouraged to determine that persons older than 24 years do not qualify as young adults.
- (51) Where children are detained, Member States should take appropriate measures as set out in this Directive. Such measures should, inter alia, ensure the effective and regular exercise of the right to family life. Children should have the right to maintain regular contact with their parents, family and friends through visits and correspondence, unless exceptional restrictions are required in the child's best interests or in the interests of justice.
- (52) Member States should also take appropriate measures to ensure respect for the freedom of religion or belief of the child. In that regard, Member States should, in particular, refrain from interfering with the religion or belief of the child. Member States are not, however, required to take active steps to assist children in worshipping.
- (53) Where appropriate, Member States should also take appropriate measures in other situations of deprivation of liberty. The measures taken should be proportionate and appropriate to the nature of the deprivation of liberty, such as police custody or detention, and to its duration.
- (54) Professionals in direct contact with children should take into account the particular needs of children of different age groups and should ensure that the proceedings are adapted to them. For those purposes, those professionals should be specially trained in dealing with children.
- (55) Children should be treated in a manner appropriate to their age, maturity and level of understanding, taking into account any special needs, including any communication difficulties, that they may have.
- (56) Taking into account the differences between the legal traditions and systems across the Member States, the privacy of children during criminal proceedings should be ensured in the best possible way with a view, inter alia, to facilitating the reintegration of children into society. Member States should provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public. This is without prejudice to judgments being pronounced publicly in accordance with Article 6 ECHR.
- (57) Children should have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved. If more than one person holds parental responsibility for the same child, the child should have the right to be accompanied by all of them, unless this is not possible in practice despite the competent authorities' reasonable efforts. Member States should lay down practical arrangements for the exercise by children of the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved and concerning the conditions under which an accompanying person may be temporarily excluded from court hearings. Such arrangements could, inter alia, address the situation where the holder of parental responsibility is temporarily not available to accompany the child or where the holder does not want to make use of the possibility to accompany the child, provided that the child's best interests are taken into account.
- (58) In certain circumstances, which can also relate to only one of the persons holding parental responsibility, the child should have the right to be accompanied during court hearings by an appropriate adult other than the holder of parental responsibility. One of those circumstances is where the holder of parental responsibility accompanying the child could substantially jeopardise the criminal proceedings, in particular where objective and factual circumstances indicate or give rise to the suspicion that evidence may be destroyed or altered, witnesses may be interfered with, or the holder of parental responsibility may have been involved with the child in the alleged criminal activity.

- (59) In accordance with this Directive, children should also have the right to be accompanied by the holder of parental responsibility during other stages of the proceedings at which they are present, such as during police questioning.
- (60) The right of an accused person to appear in person at the trial is based on the right to a fair trial provided for in Article 47 of the Charter and in Article 6 ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights. Member States should take appropriate measures to provide incentives for children to attend their trial, including by summoning them in person and by sending a copy of the summons to the holder of parental responsibility or, where that would be contrary to the child's best interests, to another appropriate adult. Member States should provide for practical arrangements regarding the presence of a child at the trial. Those arrangements could include provisions concerning the conditions under which a child can be temporarily excluded from the trial.
- (61) Certain rights provided for by this Directive should apply to children who are requested persons from the time when they are arrested in the executing Member State.
- (62) The European arrest warrant proceedings are crucial for cooperation between the Member States in criminal matters. Compliance with the time-limits contained in Framework Decision 2002/584/JHA is essential for such cooperation. Therefore, while children who are requested persons should be able to exercise their rights fully under this Directive in European arrest warrant proceedings, those time-limits should be complied with.
- (63) Member States should take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field or have effective access to specific training, in particular with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to children. Member States should also take appropriate measures to promote the provision of such specific training to lawyers who deal with criminal proceedings involving children.
- (64) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of relevant data, from available data, with regard to the implementation of the rights set out in this Directive. Such data include data recorded by the judicial authorities and by law enforcement authorities and, as far as possible, administrative data compiled by healthcare and social welfare services as regards the rights set out in this Directive, in particular in relation to the number of children given access to a lawyer, the number of individual assessments carried out, the number of audiovisual recordings of questioning and the number of children deprived of liberty.
- (65) Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth.
- (66) This Directive upholds the fundamental rights and principles as recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and to a fair trial, the presumption of innocence, and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.
- (67) This Directive lays down minimum rules. Member States should be able to extend the rights laid down in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection provided for by Member States should never fall below the standards provided by the Charter or the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights.
- (68) Since the objectives of this Directive, namely setting common minimum standards on procedural safeguards for children who are suspects or accused persons in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effect, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (69) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU,

and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(70) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.

(71) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down common minimum rules concerning certain rights of children who are:

- (a) suspects or accused persons in criminal proceedings; or
- (b) subject to European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).

Article 2

Scope

1. This Directive applies to children who are suspects or accused persons in criminal proceedings. It applies until the final determination of the question whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal.
 2. This Directive applies to children who are requested persons from the time of their arrest in the executing Member State, in accordance with Article 17.
 3. With the exception of Article 5, point (b) of Article 8(3), and Article 15, insofar as those provisions refer to a holder of parental responsibility, this Directive, or certain provisions thereof, applies to persons as referred to in paragraphs 1 and 2 of this Article, where such persons were children when they became subject to the proceedings but have subsequently reached the age of 18, and the application of this Directive, or certain provisions thereof, is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned. Member States may decide not to apply this Directive when the person concerned has reached the age of 21.
 4. This Directive applies to children who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.
 5. This Directive does not affect national rules determining the age of criminal responsibility.
 6. Without prejudice to the right to a fair trial, in respect of minor offences:
 - (a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or
 - (b) where deprivation of liberty cannot be imposed as a sanction, this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.
- In any event, this Directive shall fully apply where the child is deprived of liberty, irrespective of the stage of the criminal proceedings.

Article 3

Definitions

For the purposes of this Directive the following definitions apply:

- (1) 'child' means a person below the age of 18;
- (2) 'holder of parental responsibility' means any person having parental responsibility over a child;
- (3) 'parental responsibility' means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effects, including rights of custody and rights of access.

With regard to point (1) of the first paragraph, where it is uncertain whether a person has reached the age of 18, that person shall be presumed to be a child.

Article 4

Right to information

1. Member States shall ensure that when children are made aware that they are suspects or accused persons in criminal proceedings, they are informed promptly about their rights in accordance with Directive 2012/13/EU and about general aspects of the conduct of the proceedings.

Member States shall also ensure that children are informed about the rights set out in this Directive. That information shall be provided as follows:

- (a) promptly when children are made aware that they are suspects or accused persons, in respect of:
 - (i) the right to have the holder of parental responsibility informed, as provided for in Article 5;
 - (ii) the right to be assisted by a lawyer, as provided for in Article 6;
 - (iii) the right to protection of privacy, as provided for in Article 14;
 - (iv) the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings, as provided for in Article 15(4);
 - (v) the right to legal aid, as provided for in Article 18;
 - (b) at the earliest appropriate stage in the proceedings, in respect of:
 - (i) the right to an individual assessment, as provided for in Article 7;
 - (ii) the right to a medical examination, including the right to medical assistance, as provided for in Article 8;
 - (iii) the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention, as provided for in Articles 10 and 11;
 - (iv) the right to be accompanied by the holder of parental responsibility during court hearings, as provided for in Article 15(1);
 - (v) the right to appear in person at trial, as provided for in Article 16;
 - (vi) the right to effective remedies, as provided for in Article 19;
 - (c) upon deprivation of liberty in respect of the right to specific treatment during deprivation of liberty, as provided for in Article 12.
2. Member States shall ensure that the information referred to in paragraph 1 is given in writing, orally, or both, in simple and accessible language, and that the information given is noted, using the recording procedure in accordance with national law.
3. Where children are provided with a Letter of Rights pursuant to Directive 2012/13/EU, Member States shall ensure that such a Letter includes a reference to their rights under this Directive.

Article 5

Right of the child to have the holder of parental responsibility informed

1. Member States shall ensure that the holder of parental responsibility is provided, as soon as possible, with the information that the child has a right to receive in accordance with Article 4.

The information referred to in paragraph 1 shall be provided to another appropriate adult who is nominated by the child and accepted as such by the competent authority where providing that information to the holder of parental responsibility:

- (a) would be contrary to the child's best interests;
- (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown;
- (c) could, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate, and provide the information to, another person. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

3. Where the circumstances which led to the application of point (a), (b) or (c) of paragraph 2 cease to exist, any information that the child receives in accordance with Article 4, and which remains relevant in the course of the proceedings, shall be provided to the holder of parental responsibility.

Article 6

Assistance by a lawyer

1. Children who are suspects or accused persons in criminal proceedings have the right of access to a lawyer in accordance with Directive 2013/48/EU. Nothing in this Directive, in particular in this Article, shall affect that right.
2. Member States shall ensure that children are assisted by a lawyer in accordance with this Article in order to allow them to exercise the rights of the defence effectively.
3. Member States shall ensure that children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons. In any event, children shall be assisted by a lawyer from whichever of the following points in time is the earliest:
 - (a) before they are questioned by the police or by another law enforcement or judicial authority;
 - (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 4;
 - (c) without undue delay after deprivation of liberty;
 - (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.
4. Assistance by a lawyer shall include the following:
 - (a) Member States shall ensure that children have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
 - (b) Member States shall ensure that children are assisted by a lawyer when they are questioned, and that the lawyer is able to participate effectively during questioning. Such participation shall be conducted in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise or essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure under national law;
 - (c) Member States shall ensure that children are, as a minimum, assisted by a lawyer during the following investigative or evidence-gathering acts, where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a crime.
5. Member States shall respect the confidentiality of communication between children and their lawyer in the exercise of the right to be assisted by a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

6. Provided that this complies with the right to a fair trial, Member States may derogate from paragraph 3 where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, it being understood that the child's best interests shall always be a primary consideration.

In any event, Member States shall ensure that children are assisted by a lawyer:

- (a) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and
- (b) during detention.

Member States shall also ensure that deprivation of liberty is not imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the rights of the defence effectively and, in any event, during the trial hearings before a court.

7. Where the child is to be assisted by a lawyer in accordance with this Article but no lawyer is present, the competent authorities shall postpone the questioning of the child, or other investigative or evidence-gathering acts provided for in point (c) of paragraph 4, for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

8. In exceptional circumstances, and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.

Member States shall ensure that the competent authorities, when applying this paragraph, shall take the child's best interests into account.

A decision to proceed to questioning in the absence of the lawyer under this paragraph may be taken only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

Article 7

Right to an individual assessment

1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.

For that purpose children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.

3. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.

4. The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:

- (a) determining whether any specific measure to the benefit of the child is to be taken;
- (b) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;
- (c) taking any decision or course of action in the criminal proceedings, including when sentencing.

5. The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to paragraph 6, before indictment.

6. In the absence of an individual assessment, an indictment may nevertheless be presented provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.
7. Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15, and/or a specialised professional.
8. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.
9. Member States may derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests.

Article 8

Right to a medical examination

1. Member States shall ensure that children who are deprived of liberty have the right to a medical examination without undue delay with a view, in particular, to assessing their general mental and physical condition. The medical examination shall be as non-invasive as possible and shall be carried out by a physician or another qualified professional.
2. The results of the medical examination shall be taken into account when determining the capacity of the child to be subject to questioning, other investigative or evidence-gathering acts, or any measures taken or envisaged against the child.
3. The medical examination shall be carried out either on the initiative of the competent authorities, in particular where specific health indications call for such an examination, or on a request by any of the following:
 - (a) the child;
 - (b) the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15;
 - (c) the child's lawyer.
4. The conclusion of the medical examination shall be recorded in writing. Where required, medical assistance shall be provided.
5. Member States shall ensure that another medical examination is carried out where the circumstances so require.

Article 9

Audiovisual recording of questioning

1. Member States shall ensure that questioning of children by police or other law enforcement authorities during the criminal proceedings is audio-visually recorded where this is proportionate in the circumstances of the case, taking into account, inter alia, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration.
2. In the absence of audiovisual recording, questioning shall be recorded in another appropriate manner, such as by written minutes which are duly verified.
3. This Article shall be without prejudice to the possibility to ask questions for the sole purpose of the identification of the child without audiovisual recording.

Article 10

Limitation of deprivation of liberty

1. Member States shall ensure that deprivation of liberty of a child at any stage of the proceedings is limited to the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child, and of the particular circumstances of the case.
2. Member States shall ensure that deprivation of liberty, in particular detention, shall be imposed on children only as a measure of last resort. Member States shall ensure that any detention is based

on a reasoned decision, subject to judicial review by a court. Such a decision shall also be subject to periodic review, at reasonable intervals of time, by a court, either *ex officio* or at the request of the child, of the child's lawyer, or of a judicial authority which is not a court. Without prejudice to judicial independence, Member States shall ensure that decisions to be taken pursuant to this paragraph are taken without undue delay.

Article 11

Alternative measures

Member States shall ensure that, where possible, the competent authorities have recourse to measures alternative to detention (alternative measures).

Article 12

Specific treatment in the case of deprivation of liberty

1. Member States shall ensure that children who are detained are held separately from adults, unless it is considered to be in the child's best interests not to do so.

Member States shall also ensure that children who are kept in police custody are held separately from adults, unless:

- (a) it is considered to be in the child's best interests not to do so; or
 - (b) in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests.
3. Without prejudice to paragraph 1, when a detained child reaches the age of 18, Member States shall provide for the possibility to continue to hold that person separately from other detained adults where warranted, taking into account the circumstances of the person concerned, provided that this is compatible with the best interests of children who are detained with that person.
4. Without prejudice to paragraph 1, and taking into account paragraph 3, children may be detained with young adults, unless this is contrary to the child's best interests.
5. When children are detained, Member States shall take appropriate measures to:
- (a) ensure and preserve their health and their physical and mental development;
 - (b) ensure their right to education and training, including where the children have physical, sensory or learning disabilities;
 - (c) ensure the effective and regular exercise of their right to family life;
 - (d) ensure access to programmes that foster their development and their reintegration into society; and
 - (e) ensure respect for their freedom of religion or belief.

The measures taken pursuant to this paragraph shall be proportionate and appropriate to the duration of the detention.

Points (a) and (e) of the first subparagraph shall also apply to situations of deprivation of liberty other than detention. The measures taken shall be proportionate and appropriate to such situations of deprivation of liberty.

Points (b), (c), and (d) of the first subparagraph shall apply to situations of deprivation of liberty other than detention only to the extent that is appropriate and proportionate in the light of the nature and duration of such situations.

6. Member States shall endeavour to ensure that children who are deprived of liberty can meet with the holder of parental responsibility as soon as possible, where such a meeting is compatible with investigative and operational requirements. This paragraph shall be without prejudice to the nomination or designation of another appropriate adult pursuant to Article 5 or 15.

Article 13

Timely and diligent treatment of cases

1. Member States shall take all appropriate measures to ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.

2. Member States shall take appropriate measures to ensure that children are always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have.

Article 14

Right to protection of privacy

1. Member States shall ensure that the privacy of children during criminal proceedings is protected.
2. To that end, Member States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public.
3. Member States shall take appropriate measures to ensure that the records referred to in Article 9 are not publicly disseminated.
4. Member States shall, while respecting freedom of expression and information, and freedom and pluralism of the media, encourage the media to take self-regulatory measures in order to achieve the objectives set out in this Article.

Article 15

Right of the child to be accompanied by the holder of parental responsibility during the proceedings

1. Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved.
2. A child shall have the right to be accompanied by another appropriate adult who is nominated by the child and accepted as such by the competent authority where the presence of the holder of parental responsibility accompanying the child during court hearings:
 - (a) would be contrary to the child's best interests;
 - (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or
 - (c) would, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate another person to accompany the child. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

3. Where the circumstances which led to an application of point (a), (b) or (c) of paragraph 2 cease to exist, the child shall have the right to be accompanied by the holder of parental responsibility during any remaining court hearings.
4. In addition to the right provided for under paragraph 1, Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult as referred to in paragraph 2, during stages of the proceedings other than court hearings at which the child is present where the competent authority considers that:
 - (a) it is in the child's best interests to be accompanied by that person; and
 - (b) the presence of that person will not prejudice the criminal proceedings.

Article 16

Right of children to appear in person at, and participate in, their trial

1. Member States shall ensure that children have the right to be present at their trial and shall take all necessary measures to enable them to participate effectively in the trial, including by giving them the opportunity to be heard and to express their views.
2. Member States shall ensure that children who were not present at their trial have the right to a new trial or to another legal remedy, in accordance with, and under the conditions set out in, Directive (EU) 2016/343.

Article 17

European arrest warrant proceedings

Member States shall ensure that the rights referred to in Articles 4, 5, 6 and 8, Articles 10 to 15 and Article 18 apply *mutatis mutandis*, in respect of children who are requested persons, upon their arrest pursuant to European arrest warrant proceedings in the executing Member State.

Article 18

Right to legal aid

Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer pursuant to Article 6.

Article 19

Remedies

Member States shall ensure that children who are suspects or accused persons in criminal proceedings and children who are requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.

Article 20

Training

1. Member States shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.
2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Member States, and with due respect for the role of those responsible for the training of judges and prosecutors, Member States shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both.
3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children.
4. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

Article 21

Data collection

Member States shall by 11 June 2021 and every three years thereafter, send to the Commission available data showing how the rights set out in this Directive have been implemented.

Article 22

Costs

Member States shall meet the costs resulting from the application of Articles 7, 8 and 9 irrespective of the outcome of the proceedings, unless, as regards the costs resulting from the application of Article 8, they are covered by medical insurance.

Article 23

Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which

provides a higher level of protection.

Article 24

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11 June 2019. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

Article 25

Report

The Commission shall, by 11 June 2022, submit a report to the European Parliament and to the Council assessing the extent to which the Member States have taken the necessary measures to comply with this Directive, including an evaluation of the application of Article 6, accompanied, if necessary, by legislative proposals.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 11 May 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

J.A. HENNIS-PLASSCHAERT

GUIDELINES OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE ON CHILD-FRIENDLY JUSTICE

**adopted by the Committee of Ministers
of the Council of Europe on 17 November 2010
and explanatory memorandum**

Foreword

Don't walk in front of me; I may not follow.

Don't walk behind me; I may not lead.

Walk beside me and be my friend.

Attributed to Albert Camus

Divorce, adoption, migration, violence. Nowadays, every child is likely to come into contact with the justice system in one way or another. For many, it is a very unpleasant experience, when it could be and should be otherwise and when many obstacles and sources of unnecessary distress could be lifted. Although core principles have been successfully set at international and European levels, it cannot be said that justice is always friendly to children and youth. In direct response to a broad consultation instigated by the Council of Europe, children and youth reported a general mistrust of the system, and pointed out many shortcomings such as intimidating settings, lack of age-appropriate information and explanations, a weak approach to the family as well as proceedings that are either too long or, on the contrary, too expeditious.

The Council of Europe adopted the guidelines on child-friendly justice specifically to ensure that justice is always friendly towards children, no matter who they are or what they have done. Considering that a friend is someone who treats you well, who trusts you and whom you can trust, who listens to what you say and to whom you listen, who understands you and whom you understand. A true friend also has the courage to tell you when you are in the wrong and stands by you to help you work out a solution. A child-friendly justice system should endeavour to replicate these ideals.

A child-friendly justice system must not “walk” in front of children; it must not leave them behind

It treats children with dignity, respect, care and fairness. It is accessible, understandable and reliable. It listens to children, takes their views seriously and makes sure that the interests of those who cannot express themselves (such as babies) are also protected. It adjusts its pace to children: it is neither expeditious nor lengthy, but reasonably speedy. The guidelines on child-friendly justice are intended to ensure all this and to guarantee that all children have adequate access to and treatment in justice in a respectful and responsive manner.

Kindness and friendliness towards children aid in their protection

Repeated interviews, intimidating settings and procedures, discrimination: a plethora of such practices augment the pain and trauma of children who may already be in great distress and in need of protection. A child-friendly justice system brings relief and redress; it does not inflict additional pain and hardship and it does not violate children's rights. Above all, children between birth and the age of 17 – be they a party to proceedings, a victim, a witness or an offender – should benefit from the “children first” approach. The guidelines on child-friendly justice were drafted to protect children and youth from secondary victimisation by the justice system, notably by fostering a holistic approach to the child, based on concerted multidisciplinary working methods.

If a child-friendly justice system does not “walk” in front of children, it does not “walk” behind them either

Europe has witnessed tragic miscarriages of justice where children's views were given disproportionate weight, to the detriment of other parties' rights or of the children's own best interests. In such cases, the better became the enemy of the good. As children and youth themselves declare, child-friendly justice is not about being over- friendly or overprotective. Nor is it about leaving children alone with the burden of making decisions in lieu of adults. A child-friendly system protects the young from hardship, makes sure that they have a place and say, gives due consideration and interpretation to their words without endangering the reliability of justice or the best interests of the child. It is age-sensitive, tailored to children's needs and guarantees an individualised approach without stigmatising or labelling children. Child-friendly justice is about fostering a responsible system solidly anchored in a professionalism that safeguards the good administration of justice and thereby inspires trust among all parties and actors involved in the proceedings.

A child-friendly justice system is on the side of children offering help provided by competent professionals

Justice systems throughout Europe are full of competent and caring policy makers and legal professionals – judges, law enforcement officials, social and health workers, child-rights advocates, parents and caregivers – eager to receive and exchange guidance in order to enhance their daily practice in the best interests of children. Because they stand on the frontline of children's rights and they can make a genuine difference for children on a daily basis, this publication contains – in addition to the core text of the guidelines – an explanatory memorandum setting out samples of case law from the European Court of Human Rights and concrete examples of good practice inspired by and for professionals working with children in justice.

The adoption of the guidelines on child-friendly justice is a significant step forward. However, the task will only be complete when change can be witnessed in practice. To achieve this, it is of paramount importance that the guidelines are promoted, disseminated and monitored, and that they underpin policy making at national level. Key international partners such as the European Union and UNICEF are already involved in the first steps to promote the guidelines, as are a number of national actors and civil society, who are picking up speed in raising awareness of the guidelines among major stakeholders.

It is my hope that this publication will provide encouragement for, and facilitate, the task of the widest possible circle of professionals and policy makers at national and local levels who carry the responsibility of making the justice system more child friendly.

Justice should be children's friend. It should not walk in front of them, as they may not follow. It should not walk behind children, as they should not be burdened with the responsibility to lead. It should just walk beside them and be their friend.

The 47 member states of the Council of Europe adopted the guidelines on child-friendly justice as a promise of justice and friendship to every child. Now is the time to make every effort to honour this promise.

*Maud de Boer Buquicchio Deputy Secretary General
Council of Europe*

First part

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice

Guidelines

(Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

Preamble

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between the member states, in particular by promoting the adoption of common rules in legal matters;

Considering the necessity of ensuring the effective implementation of existing binding universal and European standards protecting and promoting children's rights, including in particular:

- the 1951 United Nations Convention Relating to the Status of Refugees;

- the 1966 International Covenant on Civil and Political Rights;
- the 1966 International Covenant on Economic, Social and Cultural Rights;
- the 1989 United Nations Convention on the Rights of the Child;
- the 2006 United Nations Convention on the Rights of Persons with Disabilities;
- the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5) (hereafter the “ECHR”);
- the European Convention on the Exercise of Children’s Rights (1996, ETS No. 160);
- the revised European Social Charter (1996, ETS No. 163);
- the Council of Europe Convention on Contact concerning Children (2003, ETS No. 192);
- the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007, CETS No. 201);
- the European Convention on the Adoption of Children (Revised) (2008, CETS No. 202);

Considering that, as guaranteed under the ECHR and in line with the case law of the European Court of Human Rights, the right of any person to have access to justice and to a fair trial – in all its components (including in particular the right to be informed, the right to be heard, the right to a legal defence, and the right to be represented) – is necessary in a democratic society and equally applies to children, taking however into account their capacity to form their own views;

Recalling relevant case law of the European Court of Human Rights, decisions, reports or other documents of other Council of Europe institutions and bodies including recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and statements and opinions of the Council of Europe Commissioner for Human Rights and various recommendations of the Parliamentary Assembly of the Council of Europe;

Noting various recommendations of the Committee of Ministers to member states in the area of children’s rights, including Recommendation Rec(2003)5 on measures of detention of asylum seekers, Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, Recommendation Rec(2005)5 on the rights of children living in residential institutions, Recommendation Rec(2006)2 on the European Prison Rules, Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures and Recommendation CM/Rec(2009)10 on integrated national strategies for the protection of children from violence;

Recalling Resolution No. 2 on child-friendly justice, adopted at the 28th Conference of European Ministers of Justice (Lanzarote, October 2007);

Considering the importance of safeguarding children’s rights by United Nations instruments such as:

- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”, 1985);
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana Rules”, 1990);
- the United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”, 1990);
- the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 2005);
- the Guidance Note of the United Nations Secretary-General: United Nations Approach to Justice for Children (2008);
- the United Nations Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009);
- the Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (“The Paris Principles”);

Recalling the need to guarantee the effective implementation of existing binding norms concerning children’s rights, without preventing member states from introducing or applying higher standards or more favourable measures;

Referring to the Council of Europe Programme “Building a Europe for and with children”;

Acknowledging the progress made in member states towards implementing child-friendly justice;

Noting, nonetheless, existing obstacles for children within the justice system such as, among others, the non-existing, partial or conditional legal right to access to justice, the diversity in and complexity of procedures, possible discrimination on various grounds;

Recalling the need to prevent possible secondary victimisation of children by the judicial system in procedures involving or affecting them;

Inviting member states to investigate existing lacunae and problems and identify areas where child-friendly justice principles and practices could be introduced;

Acknowledging the views and opinions of consulted children throughout the member states of the Council of Europe;

Noting that the guidelines aim to contribute to the identification of practical remedies to existing shortcomings in law and in practice;

Adopts the following guidelines to serve as a practical tool for member states in adapting their judicial and non-judicial systems to the specific rights, interests and needs of children and invites member states to ensure that they are widely disseminated among all authorities responsible for or otherwise involved with children's rights in justice.

I. Scope and purpose

1. The guidelines deal with the issue of the place and role, and the views, rights and needs of the child in judicial proceedings and in alternatives to such proceedings.

2. The guidelines should apply to all ways in which children are likely to be, for whatever reason and in whatever capacity, brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law.

3. The guidelines aim to ensure that, in any such proceedings, all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child's level of maturity and understanding and to the circumstances of the case. Respecting children's rights should not jeopardise the rights of other parties involved.

II. Definitions

For the purposes of these guidelines on child-friendly justice (here- after "the guidelines"):

a. a "child" means any person under the age of 18 years;

b. a "parent" refers to the person(s) with parental responsibility, according to national law. In case the parent(s) is/are absent or no longer holding parental responsibility, this can be a guardian or an appointed legal representative;

c. "child-friendly justice" refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.

III. Fundamental principles

1. The guidelines build on the existing principles enshrined in the instruments referred to in the preamble and the case law of the European Court of Human Rights.

2. These principles are further developed in the following sections and should apply to all chapters of these guidelines.

A. Participation

1. The right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children's views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.

Children should be considered and treated as full bearers of rights and should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views and the circumstances of the case.

B. Best interests of the child

1. Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.

2. In assessing the best interests of the involved or affected children:

a. their views and opinions should be given due weight;

b. all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;

c. a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.

3. The best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children.

4. While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should make, where necessary, concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.

C. Dignity

1. Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case.

2. Children shall not be subjected to torture or inhuman or degrading treatment or punishment.

D. Protection from discrimination

1. The rights of children shall be secured without discrimination on any grounds such as sex, race, colour or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parent(s), association with a national minority, property, birth, sexual orientation, gender identity or other status.

2. Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions.

E. Rule of law

1. The rule of law principle should apply fully to children as it does to adults.

2. Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings.

3. Children should have the right to access appropriate independent and effective complaints mechanisms.

IV. Child-friendly justice before, during and after judicial proceedings

A. General elements of child-friendly justice

1. Information and advice

1. From their first involvement with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout that process, children and their parents should be promptly and adequately informed of, *inter alia*:

a. their rights, in particular the specific rights children have with regard to judicial or non-judicial proceedings in which they are or might be involved, and the instruments available to remedy possible violations of their rights including the opportunity to have recourse to either a judicial or non-judicial proceeding or other interventions. This may include information on the likely duration of proceedings, possible access to appeals and independent complaints mechanisms;

b. the system and procedures involved, taking into consideration the particular place the child will have and the role he or she may play in it and the different procedural steps;

c. the existing support mechanisms for the child when participating in the judicial or non-judicial procedures;

d. the appropriateness and possible consequences of given in-court or out-of-court proceedings;

e. where applicable, the charges or the follow-up given to their complaint;

f. the time and place of court proceedings and other relevant events, such as hearings, if the child is personally affected;

g. the general progress and outcome of the proceedings or intervention;

h. the availability of protective measures;

i. the existing mechanisms for review of decisions affecting the child;

j. the existing opportunities to obtain reparation from the offender or from the state through the justice process, through alternative civil proceedings or through other processes;

k. the availability of the services (health, psychological, social, interpretation and translation, and other) or organisations which can provide support and the means of accessing such services along with emergency financial support, where applicable;

l. any special arrangements available in order to protect as far as possible their best interests if they are resident in another state.

2. The information and advice should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive.

3. As a rule, both the child and parents or legal representatives should directly receive the information. Provision of the information to the parents should not be an alternative to communicating the information to the child.

4. Child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines established.

5. Information on any charges against the child must be given promptly and directly after the charges are brought. This information should be given to both the child and the parents in such a way that they understand the exact charge and the possible consequences.

2. Protection of private and family life

6. The privacy and personal data of children who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. This generally implies that no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including images, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc.

7. Member states should prevent violations of the privacy rights as mentioned under guideline 6 above by the media through legislative measures or monitoring self-regulation by the media.

8. Member states should stipulate limited access to all records or documents containing personal and sensitive data of children, in particular in proceedings involving them. If the transfer of personal and sensitive data is necessary, while taking into account the best interests of the child, member states should regulate this transfer in line with relevant data protection legislation.

9. Whenever children are being heard or giving evidence in judicial or non-judicial proceedings or other interventions, where appropriate, this should preferably take place in camera. As a rule, only those directly involved should be present, provided that they do not obstruct children in giving evidence.

10. Professionals working with and for children should abide by the strict rules of confidentiality, except where there is a risk of harm to the child.

3. Safety (special preventive measures)

11. In all judicial and non-judicial proceedings or other interventions, children should be protected from harm, including intimidation, reprisals and secondary victimisation.

12. Professionals working with and for children should, where necessary, be subject to regular vetting, according to national law and without prejudice to the independence of the judiciary, to ensure their suitability to work with children.

13. Special precautionary measures should apply to children when the alleged perpetrator is a parent, a member of the family or a primary caregiver.

4. Training of professionals

14. All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.

15. Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability.

5. Multidisciplinary approach

16. With full respect of the child's right to private and family life, close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation.

17. A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case.

18. While implementing a multidisciplinary approach, professional rules on confidentiality should be respected.

6. Deprivation of liberty

19. Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time.

20. When deprivation of liberty is imposed, children should, as a rule, be held separately from adults. When children are detained with adults, this should be for exceptional reasons and based solely on the best interests of the child. In all circumstances, children should be detained in premises suited to their needs.

21. Given the vulnerability of children deprived of liberty, the importance of family ties and promoting the reintegration into society, competent authorities should ensure respect and actively support the fulfilment of the rights of the child as set out in universal and European instruments. In addition to other rights, children in particular should have the right to:

a. maintain regular and meaningful contact with parents, family and friends through visits and correspondence, except when restrictions are required in the interests of justice and the interests of the child. Restrictions on this right should never be used as a punishment;

b. receive appropriate education, vocational guidance and training, medical care, and enjoy freedom of thought, conscience and religion and access to leisure, including physical education and sport;

c. access programmes that prepare children in advance for their return to their communities, with full attention given to them in respect of their emotional and physical needs, their family relationships, housing, schooling and employment possibilities and socio-economic status.

22. The deprivation of liberty of unaccompanied minors, including those seeking asylum, and separated children should never be motivated or based solely on the absence of residence status.

B. Child-friendly justice before judicial proceedings

23. The minimum age of criminal responsibility should not be too low and should be determined by law.

24. Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. The preliminary use of such alternatives should not be used as an obstacle to the child's access to justice.

25. Children should be thoroughly informed and consulted on the opportunity to have recourse to either a court proceeding or alternatives outside court settings. This information should also explain the possible consequences of each option. Based on adequate information, both legal and otherwise, a choice should be available to use either court procedures or alternatives for these proceedings whenever they exist. Children should be given the opportunity to obtain legal advice and other assistance in determining the appropriateness and desirability of the proposed alternatives. In making this decision, the views of the child should be taken into account.

26. Alternatives to court proceedings should guarantee an equivalent level of legal safeguards. Respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings.

C. Children and the police

27. Police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties.

28. Whenever a child is apprehended by the police, the child should be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been taken into custody. Children should be provided with access to a lawyer and be given the opportunity to contact their parents or a person whom they trust.

29. Save in exceptional circumstances, the parent(s) should be informed of the child's presence in the police station, given details of the reason why the child has been taken into custody and be asked to come to the station.

30. A child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child's parents or, if no parent is available, another person whom the child trusts. The parent or this person may be excluded if suspected of involvement in the criminal behaviour or if engaging in conduct which amounts to an obstruction of justice.

31. Police should ensure that, as far as possible, no child in their custody is detained together with adults.

32. Authorities should ensure that children in police custody are kept in conditions that are safe and appropriate to their needs.

33. In member states where this falls under their mandate, prosecutors should ensure that child-friendly approaches are used throughout the investigation process.

D. Child-friendly justice during judicial proceedings

1. Access to court and to the judicial process

34. As bearers of rights, children should have recourse to remedies to effectively exercise their rights or act upon violations of their rights. The domestic law should facilitate where appropriate the possibility of access to court for children who have sufficient understanding of their rights and of the use of remedies to protect these rights, based on adequately given legal advice.

35. Any obstacles to access to court, such as the cost of the proceedings or the lack of legal counsel, should be removed.

36. In cases of certain specific crimes committed against children, or certain aspects of civil or family law, access to court should be granted for a period of time after the child has reached the age of majority where necessary. Member states are encouraged to review their statutes of limitations.

2. Legal counsel and representation

37. Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties.

38. Children should have access to free legal aid, under the same or more lenient conditions as adults.

39. Lawyers representing children should be trained in and knowledgeable on children's rights and related issues, receive ongoing and indepth training and be capable of communicating with children at their level of understanding.

40. Children should be considered as fully fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.

41. Lawyers should provide the child with all necessary information and explanations concerning the possible consequences of the child's views and/or opinions.

42. In cases where there are conflicting interests between parents and children, the competent authority should appoint either a guardian *ad litem* or another independent representative to represent the views and interests of the child.

43. Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.

3. Right to be heard and to express views

44. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

45. Due weight should be given to the child's views and opinion in accordance with his or her age and maturity.

46. The right to be heard is a right of the child, not a duty of the child.

47. A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.

48. Children should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision.

49. Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed.

4. Avoiding undue delay

50. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.

51. In family law cases (for example parentage, custody, parental abduction), courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations.

52. When necessary, judicial authorities should consider the possibility of taking provisional decisions or making preliminary judgments to be monitored for a certain period of time in order to be reviewed later.

53. In accordance with the law, judicial authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interests of the child.

5. Organisation of the proceedings, child-friendly environment and child-friendly language

54. In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings.

55. Before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved.

56. Language appropriate to children's age and level of understanding should be used.
57. When children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with respect and sensitivity.
58. Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person.
59. Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence.
60. Children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful images or information to the child, the judge should seek advice from other professionals, such as psychologists and social workers.
61. Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.
62. As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.
63. As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office.
6. Evidence/statements by children
64. Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.
65. Audiovisual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.
66. When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.
67. The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.
68. Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.
69. Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.
70. The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.
71. Interview protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.
72. With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify.
73. A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.
74. The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined.

E. Child-friendly justice after judicial proceedings

75. The child's lawyer, guardian *ad litem* or legal representative should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding and

should give the necessary information on possible measures that could be taken, such as appeal or independent complaint mechanisms.

76. National authorities should take all necessary steps to facilitate the execution of judicial decisions/ rulings involving and affecting children without delay.

77. When a decision has not been enforced, children should be informed, possibly through their lawyer, guardian *ad litem* or legal representative, of available remedies either through non-judicial mechanisms or access to justice.

78. Implementation of judgments by force should be a measure of last resort in family cases when children are involved.

79. After judgments in highly conflictual proceedings, guidance and support should be offered, ideally free of charge, to children and their families by specialised services.

80. Particular health care and appropriate social and therapeutic intervention programmes or measures for victims of neglect, violence, abuse or other crimes should be provided, ideally free of charge, and children and their caregivers should be promptly and adequately informed of the availability of such services.

81. The child's lawyer, guardian or legal representative should have a mandate to take all necessary steps to claim for damages during or after criminal proceedings in which the child was a victim. Where appropriate, the costs could be covered by the state and recovered from the perpetrator.

82. Measures and sanctions for children in conflict with the law should always be constructive and individualised responses to the committed acts, bearing in mind the principle of proportionality, the child's age, physical and mental well-being and development and the circumstances of the case. The right to education, vocational training, employment, rehabilitation and reintegration should be guaranteed.

83. In order to promote the reintegration within society, and in accordance with the national law, criminal records of children should be non-disclosable outside the justice system on reaching the age of majority. Exceptions for the disclosure of such information can be permitted in cases of serious offences, *inter alia* for reasons of public safety or when employment with children is concerned.

V. Promoting other child-friendly actions

Member states are encouraged to:

a. promote research into all aspects of child-friendly justice, including child-sensitive interviewing techniques and dissemination of information and training on such techniques;

b. exchange practice and promote co-operation in the field of child-friendly justice internationally;

c. promote the publication and widest possible dissemination of child-friendly versions of relevant legal instruments;

d. set up, or maintain and reinforce where necessary, information offices for children's rights, possibly linked to bar associations, welfare services, (children's) ombudsmen, Non-governmental Organisations (NGOs), etc.;

e. facilitate children's access to courts and complaint mechanisms and further recognise and facilitate the role of NGOs and other independent bodies or institutions such as children's ombudsmen in supporting children's effective access to courts and independent complaint mechanisms, both on a national and international level;

f. consider the establishment of a system of specialised judges and lawyers for children and further develop courts in which both legal and social measures can be taken in favour of children and their families;

g. develop and facilitate the use by children and others acting on their behalf of universal and European human and children's rights protection mechanisms for the pursuit of justice and protection of rights when domestic remedies do not exist or have been exhausted;

h. make human rights, including children's rights, a mandatory component in the school curricula and for professionals working with children;

i. develop and support systems aimed at raising the awareness of parents on children's rights;

j. set up child-friendly, multi-agency and interdisciplinary centres for child victims and witnesses where children could be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services from appropriate professionals;

k. set up specialised and accessible support and information services, such as online consultation, help lines and local community services free of charge;

l. ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children's best interests in all types of procedures involving or affecting them.

VI. Monitoring and assessment

Member states are also encouraged to:

a. review domestic legislation, policies and practices to ensure the necessary reforms to implement these guidelines;

b. to speedily ratify, if not yet done so, relevant Council of Europe conventions concerning children's rights;

c. periodically review and evaluate their working methods within the child-friendly justice setting;

d. maintain or establish a framework, including one or more independent mechanisms, as appropriate, to promote and monitor implementation of the present guidelines, in accordance with their judicial and administrative systems;

e. ensure that civil society, in particular organisations, institutions and bodies which aim to promote and to protect the rights of the child, participate fully in the monitoring process.

Second part

Explanatory memorandum

General comments

Why a new instrument?

1. For the Council of Europe, protecting children's rights and promoting child-friendly justice is a priority. The issue of protection of children was addressed by the Action Plan of the 3rd Summit of Heads of State and Government of the Council of Europe in Warsaw in 2005.

2. While a number of legal instruments exist at the international, European and national levels, gaps remain both in law and in practice, and governments and professionals working with children are requesting guidance to ensure the effective implementation of their standards. In the well-known cases opposing *V. and T.* and the United Kingdom, two 10-year-old boys who had kidnapped and battered to death a 2-year-old, were tried as adults, under massive press coverage. The European Court of Human Rights (hereinafter "the Court") later found that the trial had been incomprehensible and intimidating for the children who had thus been unable to participate effectively in the proceedings against them, and established a breach of Article 6 of the European Convention on Human Rights (hereinafter the "ECHR"), which guarantees the right to a fair trial. In the *Sahin*

v. Germany case, the Court found that the substantive violation was the failure to hear the child's own views, and indicated that the national court had to take considerable steps to ensure direct contact with the child and that, by this means only, can the best interests of the child be ascertained.

3. These cases could have occurred in almost any Council of Europe member state. They illustrate the need to enhance access to justice and improve the treatment of children in judicial and non-judicial proceedings, the importance of raising the knowledge and awareness of professionals working with children in such proceedings and of providing them with adapted training in order to guarantee the best interests of the child, and the good administration of justice.

Background

4. The following guidelines are the Council of Europe's direct response to Resolution No. 2 on child-friendly justice adopted at the 28th Conference of European Ministers of Justice (Lanzarote, 25-26

October 2007), which requested concrete guidance for the member states in this field. The Committee of Ministers thus instructed four Council of Europe bodies to prepare guidelines on child-friendly justice (hereafter “the guidelines”) proposing solutions to assist member states in establishing judicial systems responding to the specific needs of children, with a view to ensuring children’s effective and adequate access to and treatment in justice, in any sphere: civil, administrative or criminal.

Working method

5. With that transversal perspective in mind, the Council of Europe adopted an innovative integrated approach bringing together three of its major intergovernmental committees dealing with civil and administrative law (the European Committee on Legal Co-operation – CDCJ), criminal law (the European Committee on Crime Problems – CDPC), general human rights (the Steering Committee for Human Rights – CDDH), and the European Commission for the Efficiency of Justice (CEPEJ). The guidelines were also drafted in close co-operation with the programme “Building a Europe for and with children”, which made child-friendly justice one of the core pillars of the Council of Europe’s strategy on children’s rights for 2009-11.

6. The Council of Europe started this work in 2008 with the preparation of four expert reports assessing the challenges and obstacles faced by children in accessing justice at national level in all sectors of the judicial system. These reports were presented and used as a basis for discussions at high-level Council of Europe conferences held under the auspices of the Swedish chairmanship of the Committee of Ministers, “Building a Europe for and with Children

– Towards a strategy for 2009-2011”, (Stockholm, 8-10 September 2008), and Spanish chairmanship of the Committee of Ministers, “The protection of children in European justice systems”, (Toledo, 12-13 March 2009). The findings of the reports and the conclusions of the conferences paved the way for the drafting of the guidelines and provided valuable material for the Group of Specialists on child-friendly justice (CJ-S-CH) which was established to prepare the guidelines in 2009-10.

Drafting process

7. This Group of Specialists was composed of 17 independent specialists selected by the Council of Europe in consultation with the CDCJ, CDPC and CDDH on the basis of their personal expertise in children’s rights, while respecting a specialisation balance (between civil and administrative, criminal and human rights law), as well as a geographical and a gender balance. The group had Mr Seamus Carroll (Ireland) – Chair of the CDCJ – as Chair, Ms Ksenija Turković (Croatia) – appointed by the CDPC – as Vice-Chair, and Ms Ankie Vandekerckhove, children’s rights specialist from Belgium, as scientific expert.

8. The group included judges, attorneys, prosecutors, academics, psychologists, police officers, social workers and representatives of the governments of the member states, and was therefore characterised by its multidisciplinary composition. A wide range of observers, including representatives of leading international intergovernmental and non-governmental organisations, also contributed to its work.

9. The draft guidelines and their explanatory memorandum were examined and approved by the CDCJ during its 85th plenary meeting held from 11 to 14 October 2010, before their transmission to the Committee of Ministers for adoption on 17 November 2010. Before that, the CDPC and the CDDH took note of the text and supported it at their plenary sessions (7-10 June and 15-18 June 2010 respectively).

Consultation of stakeholders

10. The consultation of various stakeholders on the draft guidelines was ensured throughout the drafting process through continuous public consultation on the successive drafts of the text from October 2009 to May 2010. A hearing with leading international NGOs and other stakeholders specialised in children’s rights was organised on 7 December 2009 in Strasbourg. The 4th draft of the guidelines was specifically submitted to the member states and focal points for comments, and to a number of internal and external partners, between January and May 2010. The comments were subsequently taken into consideration by the group when finalising the text, thus ensuring a transparent and inclusive process of adoption.

Consultation of children and young people

11. In accordance with the terms of reference of this Group of Specialists, the Council of Europe also organised a direct consultation of children and young people on the topic of justice in 2010. Around 30 partners throughout Europe contributed to it, drafting, translating and disseminating a questionnaire

in 11 languages and organising focus groups. Exactly 3 721 replies from 25 countries were analysed by Dr Ursula Kilkelly, an Irish children's rights expert, and taken into account by the CJ-S-CH in the finalisation of the guidelines. Key themes included family, (mis)trust of authority, need for respect and the importance for children and young people of being listened to.¹

1. The report is available on the website: www.coe.int/childjustice.

12. This consultation was the first attempt of the Council of Europe to directly involve children and young people when drafting a legal instrument and will be extended to further similar activities with a view to ensuring the meaningful participation of children and young people in the normative work of the Organisation. It was carried out with the generous financial support of the Government of Finland.

13. During the drafting process, numerous changes were made to ensure that the guidelines met the needs of children and responded to what children recounted about the justice system. Overall, a very genuine effort was made to ensure that these views were taken into account in the detail, scope and strength of the guidelines.

14. In particular, the views of children have been used to:

- support the extent and manner in which the guidelines recognise the right of children to be heard, to receive information about their rights, to enjoy independent representation and to participate effectively in decisions made about them. The wording in all relevant sections was strengthened in these respects. For example, the guidelines now require judges to respect the right of all children to be heard in all matters affecting them and require that the means used shall be adapted to the child's understanding and ability to communicate and take into account the circumstances of the case;
- ensure that adequate provision is made in the guidelines for children to understand and receive feedback on the weight attached to their views;
- strengthen the provision in the guidelines for support to children before, during and after contact with the justice system. Particular consideration was given to the role of parents and those trusted by children (for example, section on children and the police);
- support provision for an unequivocal right to access independent and effective complaints mechanisms for all parts of the justice system, support specialisation among all professionals and demand appropriate training for all professionals who come into contact with children in the justice system. These issues were considered central to addressing the lack of trust in authority expressed by children during the consultation;
- strengthen provision with regard to confidentiality in professionals' dealings with children;
- promote consultation and partnership with children, where appropriate, with regard to the operation of children's justice systems, and the development and review of law, policy and practice.

Structure and content

15. The guidelines are a non-binding instrument. While in these guidelines the conditional "should" is frequently used where the relevant principles are taken from a binding legal instrument, whether a Council of Europe instrument or other international instrument, the use of the conditional "should" must not be understood as reducing the legal effect of the binding instrument concerned.

16. The guidelines build on existing international, European and national standards. The best interests of the child are their guiding thread, as they take into account the basic principles set out in the ECHR and the related case law of the Court and the United Nations Convention on the Rights of the Child. The guidelines promote and protect, among other things, the rights to information, representation and participation of children in judicial and non-judicial proceedings, and give a place and voice to the child in justice at all stages of the procedures. As a practical tool, they also present good practices and propose practical solutions to remedy legal inconsistencies and lacunae. For instance, specific techniques for listening to the child (including in a courtroom environment) are addressed. The guidelines are not only a declaration of principles, but aspire to be a practical guide to the implementation and advancement of internationally agreed and binding standards.

17. In line with the terms of reference of the CJ-S-CH, the text of the guidelines is structured around various principles applicable before, during and after the proceedings.

18. The attention of those Council of Europe member states that are considering drafting legislation concerning children in judicial and non-judicial proceedings is drawn to the guidelines' relevant principles, standards and recognised good practices.

Information about the Council of Europe's work on child-friendly justice and its progress is available on the website: www.coe.int/childjustice.

Introduction

19. Over the last few decades, many public and private organisations, ombudspersons, policy makers and others have been seeking to ensure that children³ are aware of their rights and that these rights are reinforced in their daily lives. While we recently celebrated 60 years of the ECHR and 20 years of the United Nations Convention on the Rights of the Child, reality at national, regional and international levels demonstrates too often that children's rights are still violated.

20. Children may come into contact with judicial or non-judicial proceedings in many ways: when their parents get divorced or fight custody battles over them, when they commit offences, witness crimes or are victims of crimes, request asylum, etc. Children are bearers of rights and in this context it is necessary that procedures are made more child friendly in order to support them in the best possible way should they need to invoke judicial or non-judicial proceedings to have their rights protected.⁴

21. For children, there are many legal, social, cultural and economic obstacles to their access to court, the lack of legal capacity probably being the most important one. Very often, parents or guardians legally represent them. But when the legal representative does not want to act on their behalf, or is unable to do so, and when competent public authorities do not instigate a procedure, children often have no way to defend their rights or act against violations. In those cases, and if a special representative has not been appointed by the competent authority, they cannot enjoy the

3. Persons up to 18 years of age.

4. U. Kilkelly, "Youth courts and children's rights: the Irish experience", in *Youth Justice*,

p. 41: "The Convention of the Rights of the Child, adopted in 1989, strengthened this protection by providing for a range of due process standards that both recognised the child's right to a fair trial, but went further in recognising the need to adapt the trial process to the needs and rights of children."

basic right to bring a matter to court, even though the ECHR contains several fundamental principles to this effect (see Article 6, which includes, *inter alia*, the right to a fair trial). And while the Convention includes human rights for "everyone", bringing a case to court is particularly difficult for children. Despite the fact that the Court has some case law on children's rights issues, courts, both national and international, are rarely accessible to children, and adults remain the ones who usually initiate proceedings on their behalf.⁵ Therefore, children's access to justice needs to be addressed in the guidelines on child-friendly justice.⁶

22. The guidelines on child-friendly justice aim to deal with the status and position of children and the way in which they are treated in judicial and non-judicial proceedings. However, before bringing cases to court, it may be in the child's best interests to turn to methods of alternative dispute resolution, such as mediation. These guidelines cover proceedings both in and outside court.

23. They are meant to stimulate discussion on children's rights in practice and encourage member states to take further steps in turning them into reality and filling in existing lacunae. They are not intended to affect issues of substantive law or substantive rights of children nor are they of a legally binding nature. Most of the guidelines will only necessitate a change in approach in addressing the views and needs of children.

24. They also aim to serve as a practical means for member states in adapting their judicial and non-judicial systems to specific needs of children in criminal, administrative and civil justice procedures, irrespective of their status or capacity. They should also be used in very specific areas of law, such as youth protection legislation existing in several member states.

25. In this context, the guidelines seek to facilitate the implementation of the guiding principles of the United Nations Convention on the Rights of the Child. Equally, all rights stipulated by the ECHR and confirmed by the Court shall apply with equal force to children as they do to adults.

26. As the gap between these provisions and children's actual rights is striking, the explanatory memorandum makes frequent references to good practices, factual and legal, found in member states and in the case law. They may serve as useful information and inspiration.

Preamble

27. Major international organisations dealing with human rights, such as the United Nations and the Council of Europe, have already developed significant standards and guidelines referring to children's rights. They will be considered in the appropriate place. The preamble mentions those standards which are particularly relevant in this area without preventing member states from introducing or applying higher standards or more favourable measures. It also calls upon member states to speedily ratify relevant Council of Europe conventions concerning children's rights. This is a practical measure as several of these instruments have not been ratified by a high number of states.⁷

I. Scope and purpose

28. The scope and the purpose of the instrument are dealt with in paragraphs 1 to 3. As already indicated, the guidelines apply to criminal, civil or administrative law, and aim to ensure that all of the rights of children in such proceedings are fully respected, while striking the right balance with the rights of other parties involved.

II. Definitions

29. The definition of "child" is formulated in accordance with Article 1 of the United Nations Convention on the Rights of the Child, and Article 1.1 of the European Convention on the Exercise of Children's Rights (ETS No. 160). The ECHR grants rights to "everyone", and does not exclude persons under the age of 18. There may be cases where a person under the age of 18 is not considered a child, for example in cases of emancipation, existing in several member states.

30. The definition of "parent" in paragraph b encompasses all persons with parental responsibilities, who may not always be the biological parents, but also other persons holding parental responsibilities, such as guardians or appointed legal representatives.

31. While "child-friendly" justice is defined in paragraph c, the text also insists that its scope is broader than the actual justice system and court proceedings. It is aimed at all professionals dealing with children in and outside judicial proceedings. Sectors such as police, social and mental health services are also responsible for making justice more child friendly. The guidelines strive to ensure that children's rights are known and scrupulously respected by all these professionals.

III. Fundamental principles

A. Participation⁸

32. The principle of participation, that is, that children have the right to speak their mind and give their views in all matters that affect them is one of the guiding principles of the United Nations Convention on the Rights of the Child.⁹ While this does not mean that their opinion will always be adhered to, the guidelines require that their opinions be taken into account seriously and given due respect, according to their age, maturity and the circumstances of the case, subject to national procedural law.

33. The reference made to the term "capable of forming his or her own views" should not be seen as a limitation, but rather a duty on the authorities to fully assess the child's capacity as far as possible. Instead of assuming too easily that the child is unable to form an opinion, states should presume that a child has, in fact, this capacity. It is not up to the child to prove this. In line with children's rights legislation, the text of Part III A.2 underlines the essential message that children are bearers of rights.

34. States are discouraged from introducing standardised age limits. The United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime also state that "age should not be a barrier to a child's right to participate fully in the justice process."

35. In family cases, children should be included in the discussions prior to any decision which affects their present and/or future well-being. All measures to ensure that children are included in the judicial proceedings should be the responsibility of the judge, who should verify that children have been effectively included in the process and are absent only when children themselves have declined to participate or are of such maturity and understanding that their involvement is not possible. Voluntary organisations and ombudspersons for children should also make all efforts to ensure that children are included in family law proceedings and are not faced with a fait accompli.

B. Best interests of the child

36. The child's best interests should be a primary consideration in all cases involving children. The assessment of the situation needs to be done accurately. These guidelines promote the development of multidisciplinary methods for assessing the best interests of the child acknowledging that this is a complex exercise. This assessment becomes even more difficult when these interests need to be balanced with the interests of other involved parties, such as other children, parents, victims, etc. This should be done professionally, on a case-by-case basis.

37. The best interests of the child must always be considered in combination with other children's rights, for example, the right to be heard, the right to be protected from violence, the right not to be separated from parents, etc.¹⁸ A comprehensive approach must be the rule.

38. It is remarkable how little use is made of the "best interests" principle in cases of juvenile justice, contrary to family law matters. There is a worrying trend in many Council of Europe member states towards treating young offenders like adults.¹⁹ It goes without saying that the rights of all children need to be respected, including the rights of those children who breach the law. A strictly punitive approach is not in accordance with the leading principles of juvenile justice as formulated in Article 40 of the United Nations Convention on the Rights of the Child.²⁰ Interventions of a more socio-educational nature are much more in line with this instrument and have proven to be more effective in practice as well.²¹

In a case dealing with an accused minor with a low level of understanding, the Court found that "effective participation in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence."¹⁴ Moreover, it is "essential that he be tried in a specialist tribunal which is able to give full consideration to, and make proper allowance for, the handicaps under which he labours, and adapt its procedure accordingly".

Similarly, in the case of *Sahin v. Germany*, the Court concluded in a custody case that "it would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned".

Lastly, in another custody case, *Hokkannen v. Finland*, the Court judged a 12-year-old girl "sufficiently mature for her views to be taken into account and that access therefore should not be accorded against her wishes".

In several family law cases, the European Court of Human Rights has stated that domestic courts should assess the difficult question of the child's best interests on the basis of a reasoned, independent and up-to-date psychological report, and that the child, if possible and according to his or her maturity and age, should be heard by the psychologist and the court in access, residence and custody matters.

C. Dignity

39. Respecting dignity is a basic human rights requirement, underlying many existing legal instruments.²⁶ Although various provisions of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime are relevant in this context, particular attention should be paid to its statement that "every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected".²⁷

40. The text of C.2 repeats the provision of Article 3 of the ECHR.

D. Protection from discrimination

41. The prohibition of discrimination is also a well-established principle in international human rights law. Article 2 of the United Nations Convention on the Rights of the Child is viewed as one of its guiding principles. The text of D.1 mentions several well-known grounds for discrimination.

42. On the specific question of “race”, the Council of Europe’s European Commission against Racism and Intolerance (ECRI) in its General Policy Recommendation No. 7 on national legislation to combat racism and discrimination, indicates: “Since all human beings belong to the same species, ECRI rejects theories based on the existence of different ‘races’. However, in this recommendation, ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to ‘another race’ are not excluded from the protection provided for by the legislation.”

43. Some categories of particularly vulnerable children may be in need of special protection in this respect. The text lists some of these categories; however, the list does not purport to be exhaustive, as other grounds for discrimination cannot be excluded.

44. Another important factor of discrimination in the area of children’s rights is age and capacity. Very young children or children without full capacity to pursue their rights are also bearers of rights. For these children, alternative systems of representation need to be developed in order to avoid discrimination.

E. Rule of law

45. Without trying to define the concept of “the rule of law”,²⁹ several of its elements are pointed out in E.1 and E.2. The whole text has been influenced by the opinion of the Court that “the rule of law, one of the fundamental principles of a democratic society, is inherent in all the articles of the Convention”.³⁰ Therefore, its impact should be felt in all proceedings involving children.

46. The rule of law establishes, *inter alia*, the fundamental principle that everyone is accountable to clearly established and published laws and has enforceable rights. This principle applies irrespective of age so that member states are expected to respect and support fundamental rights for all, including children. The application of the rule of law with respect to children necessitates, *inter alia*, enforcement of the right to the presumption of innocence and the right to a fair trial, including independent legal assistance, effective access to a lawyer or other institution or entity which according to national law is responsible for defending children’s rights.

47. For children, the principles of *nullum crimen sine lege* and *nulla poena sine lege* are just as valid as they are for adults and are a cornerstone of a democracy’s criminal law system.³¹ However, when dealing with anti-social – although not criminal – behaviour of children, there has been a trend in some member states to apply far-reaching interventions, including deprivation of liberty. Under the pretext of the protection of society from anti-social behaviour, children are drawn into intervention schemes in a manner that would not be tolerated if applied to adults. Standard legal guarantees, such as the burden of proof attributable to the state and the right to a fair trial, are not always present. In many countries, the basic principles of law in criminal matters are not applied as fully for children as they are for adults. Children are still punished for so-called “status” offences (acts that are not defined as crimes in law and would go unpunished when committed by an adult).³²

48. In order for the rule of law to be effectively and adequately observed, particularly in relation to children, member states are required under E.3 to introduce and/or maintain independent and effective complaints mechanisms, bearing in mind their suitability to the age and understanding of the child.

IV. Child-friendly justice before,

during and after judicial proceedings

A. General elements of child-friendly justice

49. These elements of child-friendly justice are relevant for all possible actors in or outside court proceedings and apply irrespective of the child’s status, and apply also to specific groups of particularly vulnerable children.

1. Information and advice

50. In every individual case, from the very first contact with the justice system and on each and every step of the way, all relevant and necessary information should be given to the child.³³ This right applies

equally to children as victims, alleged perpetrators of offences or as any involved or affected party.³⁴ Although it is not always practical to provide information at the beginning of the child's involvement with the competent authorities, this should be done as soon as possible. However, there might be situations where information should not be provided to children (when contrary to their best interests).

51. Children need to be informed of their rights,³⁵ but also of instruments they can use to actually exercise their rights or defend them where necessary.³⁶ This is the first condition for protecting these rights. In Part IV.A.1., Guideline 1 provides a detailed, but not exhaustive, list of information that children and their parents should receive.

52. Children may experience a lack of objective and complete information. Parents may not always share all pertinent information, and what they give may be biased. In this context, the role of children's lawyers, ombudspersons and legal services for children is very important.

53. Guideline 2 reaffirms the right of the child to receive the information and advice in understandable language, adapted to age, maturity and abilities.

54. Information on the procedural system includes the need for detailed information on how the procedure will take place, what the standing and role of the child will be, how the questioning will be carried out, what the expected timing will be, the importance and impact of any given testimony, the consequences of a certain act, etc. Children need to understand what is happening, how things could or would move forward, what options they have and what the consequences of these options are. They need to be informed of possible alternatives to proceedings. In some cases, mediation instead of court intervention may be more appropriate, while in other circumstances recourse to a court may offer more guarantees to a child. The different consequences of such a choice need to be clearly explained to the child, so that a well-informed decision can be made, although the child may not necessarily be the decision maker in each case. This information could also be provided via a variety of child-friendly material containing relevant legal information (Guideline 4).

55. Guideline 5 imposes the obligation to provide information on all charges against the child, promptly and directly, both to the child and to the parents, and the rights the child shall enjoy in such cases. The child also needs to be given information about prosecutorial decisions, relevant post-trial developments and on how the outcome of the case will be determined. Information should also be given regarding possible complaints mechanisms, available systems of legal aid, representation or other possible advice they may be entitled to. When a judgment is delivered, the motivation ought to be provided in a way that the child can fully understand. This becomes even more important for children with special educational needs or low levels of literacy.³⁷

56. In the case of cross-border civil law and family disputes, depending on maturity and understanding, the child should be provided with professional information relating to access to justice in the various jurisdictions and the implications of the proceedings on his or her life. Children face particular challenges where there is a history of family conflict and/or abuse.

2. Protection of private and family life

57. Anonymity and protection of personal data in relation to the mass media may be necessary for the child, as stipulated by several instruments.⁴⁰ In this respect, special mention should be made of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108),⁴¹ which lists the set of commonly accepted standards concerning in particular the collection and processing of data and data quality. As in the case of the ECHR, children enjoy all rights under this convention even though it does not explicitly refer to children's rights. Additionally, its Article 6 provides for special safeguards when it comes to sensitive data, such as personal data related to criminal convictions. Other categories of data could be defined as sensitive by domestic law or treated as such by public authorities allowing for the better protection of children's privacy. By way of example, one instrument⁴² lists the following categories: disciplinary proceedings, recording cases of violence, medical treatment in school, school orientation, special education for disabled people and social aid to pupils from poor families.

In the cases of both V. and T. against the United Kingdom, the Court noted that effective participation in the courtroom presupposes that the accused has a broad understanding of the nature of the trial process, including the significance of any penalty which may be imposed. Therefore, juvenile defendants must be, in any case, represented by skilled lawyers experienced in dealing with children.

In some Council of Europe member states, private or subsidised services are available for children and young people where they can get information on children's rights in general or basic information on the legal issues of their own case or situation. In certain member states, such as Belgium and the Netherlands, there are "children's rights shops",³⁹ which can refer them to a lawyer, provide them with assistance in exercising their rights (for example, writing to a judge to be heard in a case), etc.

In the case of *B. and P. v. the United Kingdom*, the Court decided that proceedings concerning the residence of children after divorce or separation are prime examples of cases where the exclusion of the press and public may be justified in order to protect the privacy of the child and other parties and to avoid prejudicing the interests of justice.

Furthermore, in the case of *V. v. the United Kingdom* the Court stated: "It follows that, in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition."

58. In its General Comment No. 10 on Children's Rights in Juvenile Justice,⁴³ the United Nations Committee on the Rights of the Child recommends, among others, proceedings in camera, preserving confidentiality of records, delivering judgment which will not reveal the child's identity, etc. The Court includes the possibility of having cases tried behind closed doors when the interests of the child or his or her privacy require it,⁴⁴ and Guideline 9 reminds member states of this good practice. This principle should, however, be reconciled with the principle of free access to judicial proceedings, which exists in many member states.

59. Other possible ways to protect the privacy in the media are, *inter alia*, granting anonymity or a pseudonym, using screens or disguising voices, deletion of names and other elements that can lead to the identification of a child from all documents, prohibiting any form of recording (photo, audio, video), etc.

60. Member states have positive obligations in this respect. Guideline 7 reiterates that monitoring on either legally binding or professional codes of conduct for the press is essential, given the fact that any damage made after publication of names and/or photos is often irreparable.

61. Although the principle of keeping identifiable information inaccessible to the general public and the press remains the guiding one, there might be cases where exceptionally the child may benefit if the case is revealed or even publicised widely, for example, where a child has been abducted. Equally, the issue at stake may benefit from public exposure to stimulate advocacy or awareness raising.

62. The issue of privacy is particularly relevant in some measures intended to tackle anti-social behaviour of children. More specifically, the implementation of so-called Anti-Social Behaviour Orders (ASBOs) in the United Kingdom, including the policy of "naming and shaming", shows that in such cases personal data is not always kept away from the general public. Guideline 10 imposes a strict obligation in this respect on all professionals working with children except where there is a risk of harm to the child (see Article 12 of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, CETS No. 201).

In the above-mentioned cases of *V.* and *T.* against the United Kingdom, of criminal proceedings against two young boys who murdered a toddler, the court stated, *inter alia*: "[...] it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings."⁴⁷ Furthermore, "it follows that, in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition".

3. Safety (special preventive measures)

63. Concerning children as victims, these guidelines are inspired by the principles of the United Nations Guidelines on Justice in

Matters involving Child Victims and Witnesses of Crime,⁴⁹ and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which calls for providing for the safety of children, their families and witnesses on their behalf from intimidation, retaliation and repeated victimisation.⁵⁰

64. Guideline 11 recalls that children, particularly vulnerable ones, should be protected from harm, whatever form it takes. It is inspired by many existing provisions to this effect.

65. Vetting of personnel in children's services for child protection, as recommended by Guideline 12 has been introduced in certain member states, involving a check of criminal records and preliminary measures to be taken when a person has allegedly committed criminal offences against children. This exercise should obviously respect the presumption of innocence and the independence of the judicial system.

66. Guideline 13 recalls the fundamental principle of the special need for protection when the alleged perpetrator is a parent, another member of the family or a primary caregiver.

4. Training of professionals

67. Training in communication skills, in using child-friendly language and developing knowledge on child psychology, is necessary for all professionals working with children (police, lawyers, judges, mediators, social workers and other experts), as stipulated by Guideline 14. However, few of them have knowledge of children's rights and procedural matters in this context.

Safety (special preventive measures)

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68. Children's rights could and should be part of the curriculum, in schools and in specific fields of higher education (law, psychology, social work, police training, etc.). This should cover the specifics of children's rights and legislation pertaining to children's issues, such as family law, juvenile justice, asylum and immigration law, etc. Member states are encouraged to set up specific training courses.

69. The aforementioned conference in Toledo (see paragraph 6 above) concluded: "All professionals – in particular judges, psychologists and lawyers – dealing with children in justice should receive appropriate information, awareness raising and training on appropriate interviewing techniques."⁵¹

For several years now, the Flemish Bar Association and its Youth Lawyer Commission has been offering its members a two-year course on children's rights. The legal information is complemented with basic training in child psychology and development and practical training such as communicating with children. Attendance of all modules is obligatory in order to obtain a certificate as a "youth lawyer". In 2010, some 400 youth lawyers were trained.⁵²

5. Multidisciplinary approach

70. The text of the guidelines as a whole, and in particular Guidelines 16 to 18, encourage member states to strengthen the interdisciplinary approach when working with children.

71. In cases involving children, judges and other legal professionals should benefit from support and advice from other professionals of different disciplines when taking decisions which will impact directly or indirectly on the present or future well-being of the child, for example, assessment of the best interests of the child, possible harmful effects of the procedure on the child, etc.

72. A multidisciplinary approach to children in conflict with the law is particularly necessary. The existing and growing understanding of children's psychology, needs, behaviour and development is not always sufficiently shared with professionals in the law enforcement fields. As indicated in the former instrument, special efforts must be undertaken to avoid pre-trial detention. International children's rights bodies are very critical about its use and are seeking to reduce it.⁵⁴ However, pre-trial detention might in certain cases still be necessary, for example, to avoid the risk of tampering with evidence, influencing witnesses, or when there is a risk of collusion or flight, etc.

6. Deprivation of liberty

73. Particular attention should be paid to the way detained children are treated given their inherent vulnerability. Practical measures for detention of children are suggested in many Council of Europe instruments, for example, Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, or the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Europe member states believe that in large, sparsely populated areas, it may exceptionally be in the best interests of the child to be detained in adult facilities (facilitating visits from parents who may reside hundreds of kilometers away, for example). However, such cases require particular vigilance on the part of detaining authorities, in order to prevent the abuse of children by adults.

In Iceland, Norway and Sweden, cases of abuse and violence can be dealt with in so-called "children's houses". Professionals from social services, forensic medical experts, paediatricians, the police and prosecutors' offices work together, primarily in the initial stages of a police or social services investigation. They organise and allocate the different tasks to be carried out. Interviews with the children concerned take place in these houses, with the possibility of a third party listening in by video link in an adjacent room. There are also rooms for medical examination and counselling.

74. Since there are already numerous standards on the rights of juveniles deprived of their liberty,⁵⁵ the guidelines do not need to repeat them. The main principle is that no other children's right shall be restricted except the right to liberty, as a consequence of the deprivation of liberty. As Guidelines 19 and 20 clearly stipulate, remedies that involve detention, in whatever form, need to be avoided as much as possible and should only be a measure of last resort, used for the shortest time possible and restricted to serious cases.⁵⁶ This is a vital legal obligation. In addition, it is common knowledge that detention does not diminish the risk of recidivism.

75. As already indicated, the sections on the deprivation of liberty and the police do not purport to compile an exhaustive list of rights and safeguards, but represent an absolute minimum of rights children should enjoy. Guideline 21 should be read in this sense.

76. The issue of whether or not to detain children with adults is not a new one. In some cases, such as those involving infants, it can be in their best interests not to be separated from a detained parent, or in the case of children of immigration detainees who should not be separated from their family. Several Council of

77. However, the United Nations Committee on the Rights of the Child has been very clear on this issue, based on Article 37.c, of the United Nations Convention on the Rights of the Child. The above-mentioned Recommendation CM/Rec(2008)11 also states that juveniles shall not be detained in institutions for adults, but in institutions specially designed for them.

78. Several references recall that the guidelines do apply to children seeking asylum and that specific attention should be given to this particularly vulnerable group; unaccompanied minors, whether or not

they are asylum seekers, should not be deprived of their liberty solely as a result of the absence of residence status (Guideline 22).

In the case of *Guvec v. Turkey*, the Court reiterated its comments on excessive periods of detention. It expressly stated: "In at least three judgments concerning Turkey, the Court has expressed its misgivings about the practice of detaining children in pre-trial detention (see *Selçuk v. Turkey*, No. 21768/02, paragraph 35, 10 January 2006; *Koştı and Others v. Turkey*, No. 74321/01, paragraph 30, 3 May 2007; the aforementioned case of *Nart v. Turkey*, 20817/04, paragraph 34) and found violations of Article 5, paragraph 3 of the Convention for considerably shorter periods than that spent by the applicant in the present case. For example, in *Selçuk* the applicant had spent some four months in pre-trial detention when he was 16 years old and in *Nart* the applicant had spent 48 days in detention when he was 17 years old. In the present case, the applicant was detained from the age of 15 and was kept in pre-trial detention for a period in excess of four and a half years. In the light of the foregoing, the Court considers that the length of the applicant's detention on remand was excessive and in violation of Article 5, paragraph 3 of the Convention."⁵⁷

B. Child-friendly justice before judicial proceedings

79. A complex but important issue is that of the minimum age of criminal responsibility. This age ranges among the member states of the Council of Europe from as young as 8 to the age of majority. The text of Guideline 23 was inspired by Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures. The United Nations Convention on the Rights of the Child does not set any age, but General Comment No. 10 on Children's Rights in Juvenile Justice advises member states not to set this minimum age too low. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice conveys a similar message. The European Network of Children's Ombudspersons (ENOC) advocates that the age be raised to 18 and recommends the development of innovative systems to respond to all offenders under the age of majority that genuinely focus on their (re)education, reintegration and rehabilitation.

80. In general, a preventive and reintegrating approach should be promoted and implemented in matters of juvenile justice. The criminal law system should not automatically be set in motion by minor offences committed by children, when more constructive and educational measures can be more successful. Moreover, member states should react to offences in proportion not only to the circumstances and gravity of an offence, but also to age, lesser culpability and needs of the child, and the needs of society.

81. Guidelines 24 to 26 recall that in several member states attention has been focused on the settlement of conflicts outside courts, *inter alia* by family mediation, diversion and restorative justice. This is a positive development and member states are encouraged to ensure that children can benefit from these procedures, providing that they are not used as an obstacle to the child's access to justice.

82. Such practices already exist in many Council of Europe member states and may refer to practices before, during and after judicial proceedings. They become particularly relevant in the area of juvenile justice. These guidelines do not give preference to any non-judicial alternatives, and should also be implemented within them, in particular in family conflicts, which involve not only strictly legal issues. The law has its limitations in this area and may have harmful effects in the long run. Mediated arrangements are reported to be more respected because the concerned parties are actively involved. Children may be able to play a role in them as well. Mandatory referral to mediation services, prior to court procedures, could also be considered: this is not to force people to mediate (which would be contradictory to the whole idea of mediation), but to give everyone the opportunity to be aware of such a possibility.

83. While there is a certain belief that children should be kept out of courts as much as possible, court procedure is not necessarily worse than an outside court alternative, as long as it is in line with the principles of child-friendly justice. Just like court settings, alternatives can also involve risks with regard to children's rights, such as the risk of diminished respect for fundamental principles like the presumption of innocence, the right to legal counsel, etc. Any choice made should therefore look into the distinct quality of a given system.

84. In General Comment No. 12, the United Nations Committee on the Rights of the Child recommended that: "In case of diversion, including mediation, a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance

in determining the appropriateness and desirability of the diversion proposed.” Guideline 26, however, requires that children should be guaranteed equivalent levels of safeguards in both judicial and out-of-court proceedings.

85. To sum up, the text of the guidelines encourages access to national courts for children as bearers of rights, in accordance with the jurisprudence of the Court, to which they have access if they so wish. However, such access is balanced and reconciled with alternatives to judicial proceedings.

In the canton of Fribourg, Switzerland, a mediation scheme has been worked out for children in conflict with the law. Searching for a balance between restoration and retribution, mediation considers the rights and interests of the victim and of the offender. In cases where certain criteria are met, the judge can refer the case to the mediator. While the mediator is in charge of the mediation as such, it is the judge who remains in charge of the criminal case. Whether or not an agreement is found between the parties, the outcome of the mediation would be communicated to the judge, who can either pronounce the agreement (in writing) or continue the proceedings, in case no agreement was reached.

In Norway, couples filing for a divorce with children under 16 must attempt mediation before being able to start a court procedure. The purpose is to help parents to reach an amicable agreement regarding where children should live, concerning the exercise of parental responsibilities and visiting rights, to ensure that the children’s best interests are taken into account.

C. Children and the police

86. The police should also apply the guidelines on child-friendly justice. This applies to all situations where children might come in contact with the police, and it is, as stipulated by Guideline 27, of particular importance when dealing with vulnerable children.

87. It is obvious that a child-friendly attitude should also be present in potentially risky situations, such as the arrest or questioning of children, covered by Guidelines 28 and 29. Save in exceptional cases, parents need to be promptly notified of the arrest of their child, and the child should always have access to a lawyer or any other entity which according to national law is responsible for defending children’s rights, and the right to notify parents or a person whom they trust. Contact with youth protection services should be granted as from the moment of arrest.⁵⁹ Only if the parents are not available should another person whom the child trusts be contacted (for example, his or her grandparents).

88. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has developed a series of standards which apply to detention of children by the police. In addition, in its comments on the European draft rules for juvenile offenders,⁶⁰ it has pointed out that these rules should expressly stipulate that children detained by the police should not be required to make any statement or sign any document related to the offence of which they are suspected without a lawyer or trusted person being present to assist them. These standards are supported by Guideline 30. States might usefully consider introducing special police units that have been trained for these tasks.

In *Okkali v. Turkey*, the Court reviewed the case of a 12-year-old boy under police arrest, who claimed he had suffered ill-treatment. The Court considered that he should have enjoyed greater protection as a minor and that the authorities had failed to take account of his particular vulnerability. The Court added that in cases like this, a lawyer should be assigned to assist the child and the parents (or legal representatives) need to be informed of the detention.⁶¹

In the case of *Salduz v. Turkey*, the Court considered Article 6, paragraph 1, of the ECHR to have been violated since a 17-year-old suspect did not have access to a lawyer during five days in police custody. The Court found that, “in order for the right to a fair trial under Article 6, paragraph 1, to remain sufficiently ‘practical and effective’, access to a lawyer should be provided, as a rule, from the first interrogation of a suspect by the police [...]”⁶² The Court also noted that one of the specific elements of this case was the applicant’s age. Having regard to a significant number of relevant

international legal instruments concerning legal assistance to minors in police custody, the Court stressed the fundamental importance of providing access to a lawyer where the person in police custody was a minor.⁶³

D. Child-friendly justice during judicial proceedings

89. These elements of child-friendly justice should be applied in all proceedings: civil, criminal and administrative.

1. Access to court and to the judicial process

90. Although children are legally considered to be bearers of rights, as stipulated by Guideline 34, they are often not capable of exercising them effectively. In 1990, the Parliamentary Assembly of the Council of Europe underlined in its Recommendation 1121 (1990) on the rights of children that “children have rights they may independently exercise themselves even against opposing adults.”⁶⁴ The United Nations Convention on the Rights of the Child contains a certain right of initiative for court action by the child in Article 37.d, where a child can challenge the legality of his or her deprivation of liberty. At present, there is strong support for the establishment of a complaints procedure under this convention.⁶⁵ This will hopefully give children the same kind of remedies to fight violations of their rights as granted to adults under several other universal human rights conventions.

91. In the same context, the ECHR gives “everyone” whose human rights are violated, the right to “an effective remedy before a national authority”.⁶⁶ This wording clearly includes children. The result is that children can bring their cases to the Court, although they are often not entitled to bring legal proceedings under their domestic law.⁶⁷

92. Given the fact that most legislation on legal incapacity of children is drafted with a view to protecting the children, it is nevertheless essential that this lack of capacity is not used against them when their rights are being violated or when no one else defends these rights.

93. Guideline 34 also recommends that member states’ legislation facilitate, where appropriate, access to court for children with sufficient understanding of their rights. It also recommends the use of remedies to protect these rights, upon receiving adequate legal advice.

94. Attention must be given to the strong link between issues of access to justice, proper legal counselling⁶⁸ and the right to voice an opinion in court procedures. It is not the aim of these guidelines to encourage children to address the courts for no apparent reason or legal ground. It goes without saying that children, like adults, should have a solid legal basis to bring a case to court. Where the child’s rights have been violated or need defending and whenever the legal representative does not do so on behalf of the child, there should be the possibility to have the case reviewed by a judicial authority. Access to court for children may also be necessary in cases where there can be a conflict of interests between the child and the legal representative.

95. Access to court can be based on a set age limit or on the notion of a certain discernment, maturity or level of understanding. Both systems have advantages and disadvantages. A clear age limit has the advantage of objectivity for all children and guarantees legal certainty. However, granting children access based on their own individual discernment gives the opportunity for adaptation to every single child, according to their levels of maturity. This system can pose risks due to the wide margin of appreciation left to the judge in question. A third possibility is a combination of both: a set legal age limit with a possibility for a child under this age to challenge this.⁶⁹ This may, however, raise the additional problem that the burden of proof of capacity or discernment lies with the child.

96. No age limit is set in these guidelines, as it tends to be too rigid and arbitrary and can have truly unjust consequences. It also cannot fully take into account the diversity in capacities and levels of understanding between children. These can vary greatly depending on the individual child’s development capacities, life experiences, cognitive and other skills. A 15-year-old can be less mature than a 12-year-old, while very young children may be intelligent enough to assess and understand their own specific situation. The capability, maturity and level of understanding are more representative of the child’s real capacities than his or her age.

97. While recognising that all children, regardless of age or capacities, are bearers of rights, age is in fact a major issue in practice, as very young children, or children with certain disabilities, will not be able to effectively protect their rights on their own. Member states should therefore set up systems in which

designated adults are able to act on behalf of the child: they can be either parents, lawyers, or other institutions or entities which, according to national law, would be responsible for defending children's rights. These persons or institutions should not only become involved or recognised when procedures are already pending, but they should also have the mandate to actively initiate cases whenever a child's right has been violated or is in danger of being violated.

98. Guideline 35 recommends that member states remove all obstacles for children's access to court. It gives examples such as the cost of proceedings and the lack of legal counsel, but recommends that other obstacles also be removed. Such obstacles may be of a different nature. In case of a possible conflict of interests between children and their parents, the requirement of parental consent should be avoided. A system needs to be developed whereby the undue refusal of a parent cannot keep a child from having recourse to justice. Other obstacles to access to justice may be of a financial or psychological nature. Procedural requirements should be limited as far as possible.⁷⁰

99. In some cases, a child cannot challenge certain acts or decisions during his or her childhood due to trauma in cases of, for example, sexual abuse or highly conflictual family matters.

100. In such cases, Guideline 36 recommends that access to court should be granted for a period of time after the child has reached the age of majority. It therefore encourages member states to review their statutes of limitations. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) could usefully serve as an inspiration in this regard.

The Court, in the case of *Stubbings and Others v. the United Kingdom*, considered that "there has been a developing awareness in recent years of the range of problems caused by child abuse and its psychological effects on victims, and it is possible that the rules on limitation of actions applying in member states of the Council of Europe may have to be amended to make special provision for this group of claimants in the near future."

2. Legal counsel and representation

101. If children are to have access to justice which is genuinely child friendly, member states should facilitate access to a lawyer or other institution or entity which according to national law is responsible for defending children's rights, and be represented in their own name where there is, or could be, a conflict of interest between the child and the parents or other involved parties. This is the main message of the Guideline 37. The European Convention on the Exercise of Children's Rights (ETS No. 160)⁷⁵ states: "Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular [...] a separate representative [...] a lawyer".⁷⁶

102. Guideline 38 recommends providing children with access to free legal aid. This should not necessarily require a completely separate system of legal aid. It might be provided in the same way as legal aid for adults, or under more lenient conditions, and be dependent on the financial means of the holder of the parental responsibility or the child him or herself. In any case, the legal aid system has to be effective in practice.

103. Guideline 39 describes the professional requirements for the lawyers representing children. It is also important that the legal fees of the child's lawyer are not charged to his or her parents, either directly or indirectly. If a lawyer is paid by the parents, in particular in cases with conflicting interests, there is no guarantee that he or she will be able to independently defend the child's views.

104. A system of specialised youth lawyers is recommended, while respecting the child's free choice of a lawyer. It is important to clarify the exact role of the child's lawyer. The lawyer does not have to bring forward what he or she considers to be in the best interests of the child (as does a guardian or a public defender), but should determine and defend the child's views and opinions, as in the case of an adult client. The lawyer should seek the child's informed consent on the best strategy to use. If the lawyer disagrees with the child's opinion, he or she should try to convince the child, as he or she would with any other client.

105. The lawyer's role is different from the guardian *ad litem*, introduced by Guideline 42, as the latter is appointed by the court, not by "a client" as such, and should help the court in defining what is in the best interests of the child. However, combining the functions of a lawyer and a guardian *ad litem*

in one person should be avoided, because of the potential conflict of interests that may arise. The competent authority should in certain cases appoint either a guardian *ad litem* or another independent representative to represent the views of the child. This could be done on the request of the child or another relevant party.

3. Right to be heard and to express views

106. General Comment No. 12 of the United Nations Committee on the Rights of the Child interprets the right of the child to be heard, which is one of the four guiding principles of the United Nations Convention on the Rights of the Child, using the words “shall assure” which is a legal term of special strength which leaves no leeway for states parties’ discretion.⁷⁷ This comment elaborates on the fact that age alone cannot determine the significance of a child’s views.⁷⁸ In its General Comment No. 5, the committee rightly notes that “appearing to listen to children is relatively unchallenging; giving due weight to their views requires real change”.⁷⁹

107. Article 3 of the European Convention on the Exercise of Children’s Rights (ETS No. 160) combines the right to be heard with the right to be informed: in judicial proceedings, children should receive all relevant information, be consulted and express their views and be informed of the possible consequences of compliance with these views and the possible consequences of any decision.

108. In these guidelines, reference is made to concepts such as “age and maturity” and “sufficient understanding”, which implies a certain level of comprehension, but does not go as far as to demand from the child a full comprehensive knowledge of all aspects of the matter at hand.⁸⁰ Children have the right to give their views freely, without any pressure and without manipulation.⁸¹

In Georgia, the right to legal aid for persons under the age of 18 in criminal cases is granted *ex officio*, since they are considered to be “socially vulnerable”. No other condition is required for those children to benefit from this service.

109. The United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime use the wording “child sensitive” as “an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views”.⁸²

110. Laws should be clearly formulated in order to ensure legal equality for all children. Irrespective of age, in particular when a child takes the initiative to be heard, a sufficient level of understanding should be presumed. Age, however, still plays a major role in “granting” children their basic right to be heard in matters that affect them (Guideline 45). However, it must be pointed out that, in some circumstances, it is the child’s duty to be heard (that is, to give evidence).

111. Children need to know precisely what will happen and what the status of their given opinion or statement will be.⁸³ The judge should not refuse to hear the child without good reasons unless this is in the best interests of the child (Guideline 47). They should be clearly informed that if a judge does hear them, this does not mean they will “win” the case. In order to gain or obtain the trust and respect for the given judgment, particular effort should be made by the child’s lawyer to explain why the child’s opinion has not been followed or why the given decision has been made, as is done for adults (Guideline 48).

112. Furthermore, children have the right to express their views and opinion on any issue or case that involves or affects them. They should be able to do so regardless of their age, in a safe environment, respectful of their person. They have to feel at ease when they talk to a judge or other officials. This may require the judge to omit certain formalities, such as wearing a wig and gown or hearing the child in the courtroom itself; by way of example, it can be helpful to hear a child in the judge’s chambers.

113. It is important that the child can speak freely and that there is no disruption. This may in practice mean that no other people should be allowed in the room (for example, the parents or the alleged perpetrator), and that the atmosphere is not disturbed by unwarranted interruption, unruly behaviour or transit of people in and out of the room.

114. Judges are often untrained in communicating with children and specialised professionals are seldom called upon to support them in this task. As already indicated (paragraph 96 above), even young children can state their views clearly, if they are assisted and supported correctly. Judges and other professionals should actually look for the child’s own views, opinions and perspective on a case.

115. Depending on the wishes and the interests of the child, serious consideration should be given to who will listen to the child, presumably either the judge or an appointed expert.⁸⁴ Some children may prefer to be heard by a “specialist” who would then convey his or her point of view to the judge. Others, however, make it clear that they prefer to talk to the judge himself or herself, since he or she is the one who will make the decision.

116. While it is true that there is a risk of children being manipulated when they are heard and express their views (for example, by one parent against the other), all efforts should be made not to let this risk undermine this fundamental right.

117. The United Nations Committee on the Rights of the Child warns against a tokenistic approach and unethical practices,⁸⁵ and lists the basic requirements for effective and meaningful implementation of the right to be heard.⁸⁶ Processes for hearing children should be transparent and informative, voluntary, respectful, relevant, child friendly, inclusive, carried out by trained staff, safe and sensitive to risk and, finally, accountable.

In a case of inter-country adoption with Italian adopters of Romanian children (case of *Pini and Others v. Romania*), the Court was very clear on the right of the children to be heard and that their views be taken seriously: “It must be pointed out that in the instant case the children rejected the idea of joining their adoptive parents in Italy once they had reached an age at which it could be reasonably considered that their personality was sufficiently formed and they had attained the necessary maturity to express their opinion as to the surroundings in which they wished to be brought up.”⁸⁷ “The children’s interests dictated that their opinions on the subject should have been taken into account once they had attained the necessary maturity to express them. The children’s constant refusal, after they had reached the age of 10, to travel to Italy and join their adoptive parents carries a certain weight in this regard.”

In the case of *Hokkanen v. Finland*, a father claimed custody of his daughter who had been living with her grandparents for years. The child did not want to live with her father and the Court agreed that “the child had become sufficiently mature for her views to be taken into account and that access should therefore not be accorded against her wishes”.

4. Avoiding undue delay

118. Cases in which children are involved need to be dealt with expeditiously and a system of prioritising them could be considered.⁹⁰ The urgency principle is set out in Guideline 50. It should be borne in mind that children have a different perception of time from adults and that the time element is very important for them: for example, one year of proceedings in a custody case may seem much longer to a 10-year-old than to an adult. The rules of court should allow for such a system of prioritising in serious and urgent cases, or when possibly irreversible consequences could arise if no immediate action is taken (Guideline 51 covering family law cases).

119. Other examples of this principle can be found in relevant Council of Europe instruments. One of them demands that states ensure that the investigations and criminal proceedings are treated as a priority and carried out without any unjustified delays.⁹¹ This is also very important to allow victims to be able to start their recovery. Another instrument specifically recommends “ensuring that minors are treated more rapidly, avoiding undue delay, so as to ensure effective educational action.”⁹²

120. Respecting the best interests of the child might require flexibility on the part of judicial authorities, while enforcing certain decisions, in accordance with the national law, as indicated by Guideline 53.

In two cases against Germany, the time element was discussed by the Court, which found that in cases of parent–child relationships there is a duty to exercise exceptional diligence in view of the fact that the risk of passage of time may result in a *de facto* determination of the matter and that the relation of a child with one of his or her parents might be curtailed.

In the case of *Paulsen-Medalen and Svensson v. Sweden*, the Court found that Article 6, paragraph 1 of the ECHR had been violated since the authorities had not acted with the required exceptional diligence when handling a dispute on access.⁹⁴

Avoiding undue delay is also important in criminal cases. In the case of *Bouamar v. Belgium*, an especially speedy judicial review was demanded in cases of detention of minors. Unjustified lapses of time were hardly considered to be compatible with the speed required by the terms of Article 5, paragraph 4 of the ECHR.⁹⁵

5. Organisation of the proceedings, child-friendly environment and child-friendly language

121. Child-friendly working methods⁹⁶ should enable children to feel safe. Being accompanied by a person whom they can trust can make them feel more comfortable in the proceedings. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)⁹⁷ stipulates that a child may be accompanied by his or her legal representative or an adult of his or her choice, but that the person should be considered to be suitable. A reasoned decision can be taken against the presence of a given accompanying person.

122. The architectural surroundings can make children very uncomfortable. Court officials should familiarise children, *inter alia*, with the layout of the court, and identities of the officials involved (Guideline 55). Even for adults, courthouses can be rather oppressive or intimidating (Guideline 62). While this is difficult to change, at least for existing court facilities, there are ways in which treatment of children in these courthouses can be improved by working with children in a more child-sensitive way.

123. Court facilities may include, where possible, special interview rooms, which take the best interests of the child into account. Equally, child-friendly court settings may mean that no wigs or gowns or other official uniforms and clothing are worn. This can be implemented in view of the child's age or the function of the official. Depending on the circumstances and on the views of the child, it may well be that, for example, uniforms make it clear to the child that he or she is talking to a police officer and not to a social worker, which has its relevance. This could also add to the feeling of the child that matters affecting him or her are taken seriously by the competent authority. To sum up, the setting may be relatively formal, but the behaviour of officials should be less formal and, in any case, should be child friendly.

124. More importantly, child-friendly justice also implies that children understand the nature and scope of the decision taken, and its effects. While the judgment and the motivation thereof cannot always be recorded and explained in child-friendly wording, due to legal requirements, children should have those decisions explained to them, either by their lawyer or another appropriate person (parent, social worker, etc.).

125. Specific youth courts, or at least youth chambers, could be set up for offences committed by children.⁹⁸ As far as possible, any referral of children to adult courts, adult procedures or adult sentencing should not be allowed.⁹⁹ In line with the requirement of the specialisation in this area, specialised units could be established within law enforcement authorities (Guideline 63).

In several cases against the United Kingdom involving juvenile offenders, the Court stressed that special measures have to be taken to modify the adult courts' procedure in order to attenuate the rigours of an adult trial in view of the defendant's young age. For example, the legal professionals should not wear wigs and gowns and the juvenile defendant should not be seated in a raised dock, but instead be allowed to sit next to his legal representative or social worker. Hearings should be conducted in a way that their feelings of intimidation and inhibition could be reduced as far as possible.

Following the cases of *T. v. the United Kingdom* and *V. v. the United Kingdom*, where the national court settings were considered to be intimidating for a child, a Practice Direction for Trial of Children and Young Persons in the Crown Court was drafted. The aim is to avoid intimidation, humiliation or distress for the child on trial. Elements of this practice direction are, *inter alia*: the possibility for the child to visit the courtroom before the trial to become familiarised with it, the possibility of police support to avoid intimidation or abuse by the press, no wigs or gowns to be worn, the explanation of the procedure in terms the child can understand, restricted attendance of court's hearings, etc.

6. Evidence/statements by children

126. The issue of collecting evidence/statements from children is far from being simple. As standards are rare in this area (such as the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime),¹⁰⁰ the need was felt to address these issues, as the conduct of such interviews with regard to evidence/statements requires practical guidance.

127. As stipulated by Guideline 64, this should as far as possible be carried out by trained professionals. In the same context, Guideline 66 recommends that when more than one interview is needed, they should be carried out preferably by the same person for reasons of consistency and mutual trust, but that the number of interviews should be as limited as possible (Guideline 67).

100. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), paragraph XI, 30, *d.*: “Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child’s testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child’s testimony.” It should be borne in mind that these guidelines are about giving testimony in general, and not only criminal proceedings.

128. For obvious reasons, specific arrangements should be made for gathering evidence, especially from child victims, in the most favourable conditions. Allowing evidence to be given via audio, video or TV link are examples of these practices, as is providing testimony to experts prior to the trial, and avoiding visual or other contact between the victim and the alleged perpetrator (Guideline 68), or giving evidence without the presence of the alleged perpetrator (Guideline 69). However, in particular cases, such as sexual exploitation, video recordings for interviews may be traumatic for victims. The possible harm or secondary victimisation resulting from such recordings therefore needs to be carefully assessed and other methods, such as audio recording, will need to be considered to avoid revictimisation and secondary trauma.

129. Member states’ procedural laws and legislation in this domain vary considerably, and there might be less strict rules on giving evidence by the children. In any case, member states should give priority to the child’s best interests in the application of legislation regarding evidence. Examples provided by Guideline 70 include the absence of the requirement for the child to take an oath or other similar declarations. These guidelines do not intend to affect the guarantees of the right to a defence in the different legal systems; however, they do invite member states to adapt, where necessary, some elements of the rules on evidence so as to avoid additional trauma for children. In the end, it will always be the judge who will consider the seriousness and validity of any given testimony or evidence.

130. Guideline 70 also indicates that these adaptations for children should not in themselves diminish the value of a given testimony. However, preparing a child witness to testify should be avoided because of the risk of influencing the child too much. Establishing model interview protocols (Guideline 71) should not necessarily be the task of the judges, but more that of national judicial authorities.

131. Although using audio or video recording of children’s statements has some advantages, as it serves to avoid repetition of often traumatic experiences, direct testimony in front of an interrogating judge may be more appropriate for children who are not victims, but alleged perpetrators of crimes.

132. As already indicated, age should not be a barrier for the child’s right to fully participate in the judicial process.¹⁰¹ Their testimonies should not be presumed to be invalid or untrustworthy simply on the basis of their age, according to Guideline 73.

133. Where children are to be asked or they express the wish to give evidence in family proceedings, due regard should be given to their vulnerable position in that family and to the effect such testimony may have on present and future relationships. All possible efforts should be made to ensure that the child is made aware of the consequences of the testimony and supported in giving evidence by any of the means already referred to.

The Court has recognised the specific features of proceedings concerning sexual offences. In the case of *S.N. v. Sweden*, the Court found that: “Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant.

These features are even more prominent in a case involving a minor. In the assessment of the question of whether or not in such proceedings an accused has received a fair trial, account must be taken of the right of respect for the private life of the perceived victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence.”¹⁰²

In the same case, attention was also given to the possibly leading nature of some questions. To avoid the negative effects thereof, forensic psychology experts, with specific training and knowledge, could be called upon.¹⁰³

In the case of *W.S. v. Poland*, the Court suggested possible ways to test the reliability of a young child victim and pointed out that this could be done in a less invasive manner than via direct questioning. Several sophisticated methods might be applied, such as having the child interviewed in the presence of a psychologist with questions being put in writing by the defence, or in a studio enabling the applicant or his lawyer to be present at such an interview, via video-link or one-way mirror.¹⁰⁴

In cases of enforcement of decisions on family law issues, such as access and custody rights, the Court held on several occasions that what is decisive is the question of whether national authorities have taken all necessary steps to facilitate the execution as can reasonably be demanded in the special circumstances of each case.

In Austria, the “Besuchscafe” offers children the possibility to stay in touch with both parents after a divorce or separation in a safe and supportive setting. The right of access can be provided in special premises under the supervision of trained staff, to avoid conflicts between the parents, whenever a visitation right is exercised. This kind of accompanied visitation can be ordered by the court or requested by one or both parents. The central issue is the well-being of the child and avoiding a situation where the child is caught in the middle of a conflict between the parents.

E. Child-friendly justice after judicial proceedings

134. There are many measures which may be taken to make justice child friendly after judicial proceedings have taken place. This starts with the communication and explanation of the given decision or judgment to the child (Guideline 75). This information should be supplemented with an explanation of possible measures to be taken, including an appeal or address to an independent complaint mechanism. This should be done by the child’s representative, that is, the lawyer, guardian *ad litem* or legal representative, depending on the legal system. Guidelines 75, 77 and 81 refer to those representatives.

135. Guideline 76 recommends that steps be taken without delay to facilitate the execution of decisions/ rulings involving and affecting children.

136. In many cases, and in particular in civil cases, the judgment does not necessarily mean that the conflict or problem is definitely settled: family matters are a good example, and they are dealt with by Guidelines 78 and 79. In this sensitive area, there should be clear rules on avoiding force, coercion or violence in the implementation of decisions, for example, visitation

arrangements, to avoid further traumatising. Therefore, parents should rather be referred to mediating services or neutral visitation centres to end their disputes instead of having court decisions executed by police. The only exception is when there is a risk to the well-being of the child. Other services, such as family support services, also have a role to play in the follow-up of family conflicts, to ensure the best interests of the child.

137. Guidelines 82 and 83 deal with children in conflict with the law. Particular attention is paid to successful reintegration into society, the importance of non-disclosure of criminal records outside the justice system, and legitimate exceptions to this important

principle. Exceptions could be made for serious offences, *inter alia*, for reasons of public safety, and, when employment of people for jobs working with children is concerned, if a person has a history of committing child abuse, for example. Guideline 83 aims at protecting all categories of children, not only the particularly vulnerable ones.

138. In the case of *Bouamar v. Belgium*, the Court reviewed the issue of a juvenile offender who was put in and out of an adult prison nine times. Although detaining minors in adult prisons was at the time allowed under the youth protection law, the European Court of Human Rights concluded that: “The nine placement orders, taken together, were not compatible with under sub-paragraph *d*, Article 5.1. The repeated incarceration had the effect of making each placement order less and less ‘lawful’ under sub-paragraph *d*, Article 5.1, especially as the Crown Counsel never instituted criminal proceedings against the applicant in respect of the offences alleged against him.”

V. Promoting other child-friendly actions

139. It goes without saying that a real improvement in the area of children’s rights and child-friendly justice requires a proactive approach by the Council of Europe member states, which are being encouraged to carry out a number of different measures.

140. Sub-paragraphs *a* to *d* encourage research into this area, exchange of practices, co-operation and awareness-raising activities in particular by creating child-friendly versions of legal instruments. They also express support for well-functioning information offices for children’s rights.

141. Investing in children’s rights education and the dissemination of children’s rights information is not only an obligation under the United Nations Convention on the Rights of the Child,¹⁰⁶ but is also a preventive measure against violations of children’s rights. Knowing one’s rights is the first prerequisite of “living” one’s rights and being able to recognise their violation or potential violation.¹⁰⁷

The British foundation Barnardo’s developed the Children’s Advocacy Service for young people in several institutions for young offenders throughout the United Kingdom, providing them with independent advocacy, assisting them with issues relating to welfare, care, treatment and planning for resettlement while they are detained. Besides face-to-face meetings within one week of incarceration, young people can contact the service or rely on a free helpline. The advocacy service helps young people to understand the system and get in contact with the relevant professionals to help them solve their problems.

Many organisations have been making child-friendly versions of the United Nations Convention on the Rights of the Child and other relevant documents on children’s rights. One example is the child-friendly version of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, by UNICEF and the United Nations Office on Drugs and Crime.

142. Measures envisaged under sub-paragraphs *e* to *g* aim to facilitate children’s access to courts and complaints mechanisms, and consider a number of possible measures in this respect (establishment of specialised judges and lawyers, facilitation of the role of civil society and independent bodies at national, regional and universal level). In this domain, states should envisage the use of collective complaints. A good example of the collective complaints mechanism of the revised European Social Charter (ETS No. 163) is that it is accessible, no individual victim is needed and not all domestic remedies need to be exhausted. Children’s ombudspersons, children’s rights NGOs, social services, etc. should be able to lodge complaints or start procedures in the name of a specific child.

143. It is worth noting that new strategies are also promoted at international level, such as the aforementioned campaign in favour of a complaints procedure under the United Nations Convention on the Rights of the Child.

144. Sub-paragraphs *h* to *i* focus attention on the need for appropriate education, training and awareness-raising measures, while sub-paragraphs *j* to *k* express support for appropriate specialised structures and services.

VI. Monitoring and assessment

145. Member states are encouraged to carry out a number of measures to implement these guidelines. They should ensure their wide dissemination among all authorities responsible for or otherwise involved with the defence of children's rights. One possibility would be the dissemination of the guidelines in its child-friendly versions.

146. Member states should also ensure a review of domestic legislation, policies and practice in keeping with these guidelines, and a periodic review of working methods in this area. They are also invited to prescribe specific measures for complying with the letter and spirit of these guidelines.

147. In this respect, the maintenance or establishment of a framework, including one or more independent mechanisms (such as ombudspersons or children's ombudspersons) is of paramount importance for the promotion and monitoring of the implementation of these guidelines.

148. Lastly, it is plain that the civil society organisations, institutions and bodies promoting and protecting the right of the child should be given an active role in the monitoring process.

Commission on Crime Prevention and Criminal Justice Fourteenth session

Vienna, 23-27 May 2005

Agenda item 8

Use and application of United Nations standards and norms in crime prevention and criminal justice

Algeria, Bolivia, Brazil, Burkina Faso, Canada, China, Côte d'Ivoire, Czech Republic, Egypt, El Salvador, Lebanon, Luxembourg,* Mexico, Morocco, Namibia, Nigeria, Norway, Oman, Paraguay, Philippines, Qatar, South Africa, Sudan, Syrian Arab Republic, Turkey, United Arab Emirates, Yemen, Zambia and Zimbabwe: revised draft resolution

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the adoption of the following resolution:

GUIDELINES ON JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIME

The Economic and Social Council,

Recalling its resolution 1996/16 of 23 July 1996, in which it requested the Secretary-General to continue to promote the use and application of United Nations standards and norms in crime prevention and criminal justice,

Recalling also its resolution 2004/27 of 21 July 2004 on guidelines on justice for child victims and witnesses of crime, in which it requested the Secretary-General to convene an intergovernmental expert group in order to develop guidelines on justice in matters involving child victims and witnesses of crime,

Recalling further General Assembly resolution 40/34 of 29 November 1985, by which the Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the resolution,

* On behalf of the States Members of the United Nations that are members of the European Union.

Recalling the provisions of the Convention on the Rights of the Child, adopted by the General Assembly by its resolution 44/25 of 20 November 1989, in particular articles 3 and 39 thereof, as well as the provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the Assembly by its resolution 54/263 of 25 May 2000, in particular article 8 thereof,

Recognizing that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused persons,

Recognizing also that children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process,

Mindful of the serious physical, psychological and emotional consequences of crime and victimization for child victims and witnesses, in particular in cases involving sexual exploitation,

Mindful also of the fact that the participation of child victims and witnesses in the criminal justice process is necessary for effective prosecutions, in particular where the child victim may be the only witness,

Recognizing the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice in matters involving child victims and witnesses of crime,

Noting with appreciation the work of the Intergovernmental Expert Group Meeting to Develop Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, held in Vienna on 15 and 16 March 2005, for which extrabudgetary resources were provided by the Government of Canada, and taking note of the report of the Intergovernmental Expert Group,¹

Taking note of the report of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005, regarding the item entitled "Making standards work: fifty years of standard-setting in crime prevention and criminal justice",

Welcoming the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,² adopted at the high-level segment of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, in particular paragraphs 17 and 33 thereof, in which the importance of providing support and services to witnesses and victims of crime is recognized,

1. *Adopts* the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, annexed to the present resolution, as a useful framework that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system;

2. *Invites* Member States to draw, where appropriate, on the Guidelines in the development of legislation, procedures, policies and practices for children who are victims of crime or witnesses in criminal proceedings;

3. *Calls upon* Member States that have developed legislation, procedures, policies or practices for child victims and witnesses to make information available to other States, upon request and where appropriate, and to assist them in developing and implementing training or other activities in relation to the use of the

Guidelines;

4. *Calls upon* the United Nations Office on Drugs and Crime to provide technical assistance, subject to the availability of extrabudgetary resources, as well as advisory services, to Member States, upon request, to assist them in the use of the

Guidelines;

5. *Requests* the Secretary-General to ensure the widest possible

dissemination of the Guidelines among Member States, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other international, regional and non-governmental organizations and institutions;

6. *Recommends* that Member States bring the Guidelines to the attention of relevant governmental and non-governmental institutions;

7. *Invites* the institutes of the United Nations Crime Prevention and

Criminal Justice Programme network to provide training in relation to the Guidelines and to consolidate and disseminate information on successful models at the national level;

8. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its seventeenth session on the implementation of the present resolution.

1 E/CN.15/2005/14/Add.1.

2 A/CONF.203/18, chap. I, resolution 1.

Annex

Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

I. Objectives

1. The present Guidelines on Justice for Child Victims and Witnesses of Crime set forth good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.

2. The Guidelines should be implemented in accordance with relevant national legislation and judicial procedures as well as take into consideration legal, social, economic, cultural and geographical conditions. However, States should constantly endeavour to overcome practical difficulties in the application of the Guidelines.

3. The Guidelines provide a practical framework to achieve the following objectives:

(a) To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the

Rights of the Child,³ by parties to that Convention;

(b) To assist Governments, international organizations, public agencies, nongovernmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;

(c) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;⁴

(d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

4. In implementing the Guidelines, each jurisdiction should ensure that adequate training, selection and procedures are put in place to protect and meet the special needs of child victims and witnesses of crime, where the nature of the victimization affects categories of children differently, such as sexual assault of children, especially girls.

5. The Guidelines cover a field in which knowledge and practice are growing and improving. They are neither intended to be exhaustive nor to preclude further development, provided it is in harmony with their underlying objectives and principles.

6. The Guidelines could also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.

II. Special considerations

7. The Guidelines were developed:

(a) Cognizant that millions of children throughout the world suffer harm as a result of crime and abuse of power and that the rights of those children have not been adequately recognized and that they may suffer additional hardship when assisting in the justice process;

(b) Recognizing that children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs;

(c) Recognizing that girls are particularly vulnerable and may face discrimination at all stages of the justice system;

(d) Reaffirming that every effort must be made to prevent victimization of children, including, among other things, through implementation of the Guidelines for the Prevention of Crime;⁵

3 United Nations, *Treaty Series*, vol. 1577, No. 27531.

4 General Assembly resolution 40/34, annex.

5 Economic and Social Council resolution 2002/13, annex.

- (e) Cognizant that children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses;
- (f) Recalling that the Convention on the Rights of the Child sets forth requirements and principles to secure effective recognition of the rights of children and that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power sets forth principles to provide victims with the right to information, participation, protection, reparation and assistance;
- (g) Recalling international and regional initiatives that implement the principles of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including the *Handbook on Justice for Victims* and the *Guide for Policy Makers on the Declaration of Basic Principles*, both issued by the United Nations Office for Drug Control and Crime Prevention in 1999;
- (h) Recognizing the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice for child victims and witnesses of crime;
- (i) Considering that improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process;
- (j) Recalling that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders;
- (k) Bearing in mind the variety of legal systems and traditions, and noting that crime is increasingly transnational in nature and that there is a need to ensure that child victims and witnesses of crime receive equivalent protection in all countries.

III. Principles

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

- (a) *Dignity*. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;
- (b) *Non-discrimination*. Every child has the right to be treated fairly and equally, regardless of his or her or the parent or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;
- (c) *Best interests of the child*. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:
 - (i) *Protection*. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;
 - (ii) *Harmonious development*. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;
- (d) *Right to participation*. Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

IV. Definitions

9. Throughout these Guidelines, the following definitions apply:

- (a) "Child victims and witnesses" denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders;
- (b) "Professionals" refers to persons who, within the context of their work, are in contact with child victims

and witnesses of crime or are responsible for addressing the needs of children in the justice system and for whom these Guidelines are applicable. This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and, where appropriate, defence lawyers; diplomatic and consular staff; domestic violence programme staff; judges; court staff; law enforcement officials; medical and mental health professionals; and social workers;

(c) “Justice process” encompasses detection of the crime, making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice;

(d) “Child-sensitive” denotes an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views.

V. The right to be treated with dignity and compassion

10. Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.

11. Every child should be treated as an individual with his or her individual needs, wishes and feelings.

12. Interference in the child’s private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process.

13. In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.

14. All interactions described in these Guidelines should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands.

VI. The right to be protected from discrimination

15. Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child’s, parent’s or legal guardian’s race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.

16. The justice process and support services available to child victims and witnesses and their families should be sensitive to the child’s age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.

17. In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.

18. Age should not be a barrier to a child’s right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

VII. The right to be informed

19. Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, inter alia:

(a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;

- (b) The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which “questioning” will be conducted during the investigation and trial;
- (c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
- (d) The specific places and times of hearings and other relevant events;
- (e) The availability of protective measures;
- (f) The existing mechanisms for review of decisions affecting child victims and witnesses;
- (g) The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

20. In addition, child victims, their parents or guardians and legal representatives should be promptly and adequately informed, to the extent feasible and appropriate, of:

- (a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case;
- (b) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes.

VIII. The right to be heard and to express views and concerns

21. Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by:

- (a) Ensuring that child victims and where appropriate witnesses are consulted on the matters set forth in paragraph 19 above;
- (b) Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;
- (c) Giving due regard to the child’s views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

IX. The right to effective assistance

22. Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training as set out in paragraphs 40-42 below. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s reintegration. All such assistance should address the child’s needs and enable him or her to participate effectively at all stages of the justice process.

23. In assisting child victims and witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.

24. Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.

25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:

- (a) Child victim and witness specialists to address the child’s special needs;
- (b) Support persons, including specialists and appropriate family members to accompany the child during testimony;
- (c) Where appropriate, to appoint guardians to protect the child’s legal interests.

X. The right to privacy

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.
27. Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.
28. Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.

XI. The right to be protected from hardship during the justice process

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.
30. Professionals should approach child victims and witnesses with sensitivity, so that they:
- (a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;
 - (b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;
 - (c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;
 - (d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.
31. Professionals should also implement measures:
- (a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;
 - (b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;
 - (c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

XII. The right to safety

32. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.
33. Professionals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed or is likely to be harmed.
34. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include:

- (a) Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process;
- (b) Using court-ordered restraining orders supported by a registry system;
- (c) Ordering pre-trial detention of the accused and setting special “no contact” bail conditions;
- (d) Placing the accused under house arrest;
- (e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

XIII. The right to reparation

35. Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.

36. Provided the proceedings are child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.

37. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.

XIV. The right to special preventive measures

38. In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.

39. Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks that child victims may be victimized further. These strategies and interventions should take into account the nature of the victimization, including victimization related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking. The strategies may include those based on government, neighbourhood and citizen initiatives.

XV. Implementation

40. Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and witnesses.

41. Professionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services.

42. This training should include:

- (a) Relevant human rights norms, standards and principles, including the rights of the child;
- (b) Principles and ethical duties of their office;
- (c) Signs and symptoms that indicate crimes against children;
- (d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
- (e) Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;
- (f) Special measures and techniques to assist child victims and witnesses in the justice process;
- (g) Cross-cultural and age-related linguistic, religious, social and gender issues;
- (h) Appropriate adult-child communication skills;
- (i) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;

(j) Skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner;

(k) Methods to protect and present evidence and to question child witnesses;

(l) Roles of, and methods used by, professionals working with child victims and witnesses.

43. Professionals should make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel working in the same location.

44. International cooperation should be enhanced between States and all sectors of society, both at the national and international levels, including mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims and witnesses.

45. Professionals should consider utilizing the present Guidelines as a basis for developing laws and written policies, standards and protocols aimed at assisting child victims and witnesses involved in the justice process.

46. Professionals should be enabled to periodically review and evaluate their role, together with other agencies in the justice process, in ensuring the protection of the rights of the child and the effective implementation of the present Guidelines.

UN Committee on the Rights of the Child

General Comment N°12, 2009

THE RIGHT OF THE CHILD TO BE HEARD

Article 12 of the Convention on the Rights of the Child provides:

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

I. INTRODUCTION

1. Article 12 of the Convention on the Rights of the Child (the Convention) is a unique provision in a human rights treaty; it addresses the legal and social status of children, who, on the one hand lack the full autonomy of adults but, on the other, are subjects of rights. Paragraph 1 assures, to every child capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity. Paragraph 2 states, in particular, that the child shall be afforded the right to be heard in any judicial or administrative proceedings affecting him or her.

2. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child (the

Committee) has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.

3. Since the adoption of the Convention in 1989, considerable progress has been achieved at the local, national, regional and global levels in the development of legislation, policies and methodologies to promote the implementation of article 12. A widespread practice has emerged in recent years, which has been broadly conceptualized as “participation”, although this term itself does not appear in the text of article 12. This term has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.

4. States parties reaffirmed their commitment to the realization of article 12 at the twenty-seventh special session of the General Assembly on children in 2002.¹ However, the Committee notes that, in most societies around the world, implementation of the child's right to express her or his view on the wide range of issues that affect her or him, and to have those views duly taken into account, continues to be impeded by many long-standing practices and attitudes, as well as political and economic barriers. While difficulties are experienced by many children, the Committee particularly recognizes that certain groups of children, including younger boys and girls, as well as children belonging to marginalized and disadvantaged groups, face particular barriers in the realization of this right. The Committee also remains concerned about the quality of many of the practices that do exist. There is a need for a better understanding of what article 12 entails and how to fully implement it for every child.

¹ Resolution S-27/2 “A world fit for children”, adopted by the General Assembly in 2002.

5. In 2006, the Committee held a day of general discussion on the right of the child to be heard in order to explore the meaning and significance of article 12, its linkages to other articles, and the gaps, good practices and priority issues that need to be addressed in order to further the enjoyment of this right.² The present general comment arises from the exchange of information which took place on that day, including with children, the accumulated experience of the Committee in reviewing States parties' reports, and the very significant expertise and experience of translating the right embodied in article 12 into practice by governments, non-governmental organizations (NGOs), community organizations, development agencies, and children themselves.

6. The present general comment will first present a legal analysis of the two paragraphs of article 12 and will then explain the requirements to fully realize this right, including in judicial and administrative proceedings in particular (sect. A). In section B, the connection of article 12 with the three other general principles of the Convention, as well as its relation to other articles, will be discussed. The requirements and the impact of the child's right to be heard in different situations and settings are outlined in section C. Section D sets out the basic requirements for the implementation of this right, and the conclusions are presented in section E.

7. The Committee recommends that States parties widely disseminate the present general comment within government and administrative structures as well as to children and civil society. This will necessitate translating it into the relevant languages, making child-friendly versions available, holding workshops and seminars to discuss its implications and how best to implement it, and incorporating it into the training of all professionals working for and with children.

II. OBJECTIVES

8. The overall objective of the general comment is to support States parties in the effective implementation of article 12. In so doing it seeks to:

- Strengthen understanding of the meaning of article 12 and its implications for governments, stakeholders, NGOs and society at large;
- Elaborate the scope of legislation, policy and practice necessary to achieve full implementation of article 12;
- Highlight the positive approaches in implementing article 12, benefitting from the monitoring experience of the Committee;
- Propose basic requirements for appropriate ways to give due weight to children's views in all matters that affect them.

III. THE RIGHT TO BE HEARD: A RIGHT OF THE INDIVIDUAL CHILD AND A RIGHT OF GROUPS OF CHILDREN

9. The general comment is structured according to the distinction made by the Committee between the right to be heard of an individual child and the right to be heard as applied to a group of children (e.g. a class of schoolchildren, the children in a neighbourhood, the children of a country, children with disabilities, or girls). This is a relevant distinction because the Convention stipulates that States parties must assure the right of the child to be heard according to the age and maturity of the child (see the following legal analysis of paragraphs 1 and 2 of article 12).

10. The conditions of age and maturity can be assessed when an individual child is heard and also when a group of children chooses to express its views. The task of assessing a child's age and maturity is facilitated when the group in question is a component of an enduring structure, such as a family, a class of schoolchildren or the residents of a particular neighbourhood, but is made more difficult when children express themselves collectively. Even when confronting difficulties in assessing age and maturity, States parties should consider children as a group to be heard, and the Committee strongly recommends that States parties exert all efforts to listen to or seek the views of those children speaking collectively.

11. States parties should encourage the child to form a free view and should provide an environment that enables the child to exercise her or his right to be heard.

12. The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures as well as their evaluation.

2 See the recommendations of the day of general discussion in 2006 on the right of the child to be heard, available at: www2.ohchr.org/english/bodies/crc/docs/discussion/Final_Recommendations_after_DGD.doc

13. These processes are usually called participation. The exercise of the child's or children's right to be heard is a crucial element of such processes. The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives.

14. In section A (Legal analysis) of the general comment, the Committee deals with the right to be heard of the individual child. In section C (The implementation of the right to be heard in different settings and situations), the Committee considers the right to be heard of both the individual child and children as a group.

A. Legal analysis

15. Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity. This right imposes a clear legal obligation on States parties to recognize this right and ensure its implementation by listening to the views of the child and according them due weight. This obligation requires that States parties, with respect to their particular judicial system, either directly guarantee this right, or adopt or revise laws so that this right can be fully enjoyed by the child.

16. The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. States parties have to ensure that the child receives all necessary information and advice to make a decision in favour of her or his best interests.

17. Article 12 as a general principle provides that States parties should strive to ensure that the interpretation and implementation of all other rights incorporated in the Convention are guided by it.³

18. Article 12 manifests that the child holds rights which have an influence on her or his life, and not only rights derived from her or his vulnerability (protection) or dependency on adults (provision).⁴ The Convention recognizes the child as a subject of rights, and the nearly universal ratification of this international instrument by States parties emphasizes this status of the child, which is clearly expressed in article 12.

1. Literal analysis of article 12

(a) Paragraph 1 of article 12

(i) "Shall assure"

19. Article 12, paragraph 1, provides that States parties "shall assure" the right of the child to freely express her or his views. "Shall assure" is a legal term of special strength, which leaves no leeway for State parties' discretion. Accordingly, States parties are under strict obligation to undertake appropriate measures to fully implement this right for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.

(ii) "Capable of forming his or her own views"

20. States parties shall assure the right to be heard to every child "capable of forming his or her own views". This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

21. The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him. In this respect, the Committee underlines the following:

– First, in its recommendations following the day of general discussion on implementing child rights in early childhood in 2004, the Committee underlined that the concept of the child as rights holder is

³ See the Committee's general comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child (CRC/GC/2003/5).

⁴ The Convention is commonly referred to by the three "ps": provision, protection and participation.

“... anchored in the child’s daily life from the earliest stage”.⁵ Research shows that the child is able to form views from the youngest age, even when she or he may be unable to express them verbally.⁶ Consequently, full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences;

- Second, it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter;

- Third, States parties are also under the obligation to ensure the implementation of this right for children experiencing difficulties in making their views heard. For instance, children with disabilities should be equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views. Efforts must also be made to recognize the right to expression of views for minority, indigenous and migrant children and other children who do not speak the majority language;

- Lastly, States parties must be aware of the potential negative consequences of an inconsiderate practice of this right, particularly in cases involving very young children, or in instances where the child has been a victim of a criminal offence, sexual abuse, violence, or other forms of mistreatment. States parties must undertake all necessary measures to ensure that the right to be heard is exercised ensuring full protection of the child.

(iii) “The right to express those views freely”

22. The child has the right “to express those views freely”. “Freely” means that the child can express her or his views without pressure and can choose whether or not she or he wants to exercise her or his right to be heard. “Freely” also means that the child must not be manipulated or subjected to undue influence or pressure. “Freely” is further intrinsically related to the child’s “own” perspective: the child has the right to express her or his own views and not the views of others.

23. States parties must ensure conditions for expressing views that account for the child’s individual and social situation and an environment in which the child feels respected and secure when freely expressing her or his opinions.

24. The Committee emphasizes that a child should not be interviewed more often than necessary, in particular when harmful events are explored. The “hearing” of a child is a difficult process that can have a traumatic impact on the child.

25. The realization of the right of the child to express her or his views requires that the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child, and by the child’s parents or guardian. The child must also be informed about the conditions under which she or he will be asked to express her or his views. This right to information is essential, because it is the precondition of the child’s clarified decisions.

(iv) “In all matters affecting the child”

26. States parties must assure that the child is able to express her or his views “in all matters affecting” her or him. This represents a second qualification of this right: the child must be heard if the matter under discussion affects the child. This basic condition has to be respected and understood broadly.

27. The Open-ended Working Group established by the Commission on Human Rights, which drafted the text of the Convention, rejected a proposal to define these matters by a list limiting the consideration of a child’s or children’s views. Instead, it was decided that the right of the child to be heard should refer to “all matters affecting the child”. The Committee is concerned that children are often denied the right to be heard, even though it is obvious that the matter under consideration is affecting them and they are capable of expressing their own views with regard to this matter. While the Committee supports a broad definition of “matters”, which also covers issues not explicitly mentioned in the Convention, it recognizes the clause “affecting the child”, which was added in order to make clear that no general political mandate was intended. The practice, however, including the World Summit for Children, demonstrates that a wide interpretation of matters affecting the child and children helps to include children in the social processes

5 CRC/C/GC/7/Rev.1, para. 14.

6 Cf. Lansdown G., “The evolving capacities of the child”, Innocenti Research Centre, UNICEF/ Save the Children, Florence (2005).

of their community and society. Thus, States parties should carefully listen to children's views wherever their perspective can enhance the quality of solutions.

(v) “Being given due weight in accordance with the age and maturity of the child”

28. The views of the child must be “given due weight in accordance with the age and maturity of the child”. This clause refers to the capacity of the child, which has to be assessed in order to give due weight to her or his views, or to communicate to the child the way in which those views have influenced the outcome of the process. Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.

29. By requiring that due weight be given in accordance with age and maturity, article 12 makes it clear that age alone cannot determine the significance of a child's views. Children's levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child's capacities to form a view. For this reason, the views of the child have to be assessed on a case-by-case examination.

30. Maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner. The impact of the matter on the child must also be taken into consideration.

The greater the impact of the outcome on the life of the child, the more relevant the appropriate assessment of the maturity of that child.

31. Consideration needs to be given to the notion of the evolving capacities of the child, and direction and guidance from parents (see para. 84 and sect. C below)

(b) Paragraph 2 of article 12

(i) The right “to be heard in any judicial and administrative proceedings affecting the child”

32. Article 12, paragraph 2, specifies that opportunities to be heard have to be provided in particular “in any judicial and administrative proceedings affecting the child”. The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies. Typical administrative proceedings include, for example, decisions about children's education, health, environment, living conditions, or protection. Both kinds of proceedings may involve alternative dispute mechanisms such as mediation and arbitration.

33. The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those initiated by others which affect the child, such as parental separation or adoption. States parties are encouraged to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.

34. A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.

(ii) “Either directly, or through a representative or an appropriate body”

35. After the child has decided to be heard, he or she will have to decide how to be heard: “either directly, or through a representative or appropriate body.” The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.

36. The representative can be the parent(s), a lawyer, or another person (inter alia, a social worker). However, it must be stressed that in many cases (civil, penal or administrative), there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child's views

are transmitted correctly to the decision maker by the representative. The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation. Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.

37. The representative must be aware that she or he represents exclusively the interests of the child and not the interests of other persons (parent(s)), institutions or bodies (e.g. residential home, administration or society). Codes of conduct should be developed for representatives who are appointed to represent the child's views.

(iii) "In a manner consistent with the procedural rules of national law"

38. The opportunity for representation must be "in a manner consistent with the procedural rules of national law". This clause should not be interpreted as permitting the use of procedural legislation which restricts or prevents enjoyment of this fundamental right. On the contrary, States parties are encouraged to comply with the basic rules of fair proceedings, such as the right to a defence and the right to access one's own files.

39. When rules of procedure are not adhered to, the decision of the court or the administrative authority can be challenged and may be overturned, substituted, or referred back for further juridical consideration.

2. Steps for the implementation of the child's right to be heard

40. Implementation of the two paragraphs of article 12 requires five steps to be taken in order to effectively realize the right of the child to be heard whenever a matter affects a child or when the child is invited to give her or his views in a formal proceeding as well as in other settings. These requirements have to be applied in a way which is appropriate for the given context.

(a) Preparation

41. Those responsible for hearing the child have to ensure that the child is informed about her or his right to express her or his opinion in all matters affecting the child and, in particular, in any judicial and administrative decision-making processes, and about the impact that his or her expressed views will have on the outcome. The child must, furthermore, receive information about the option of either communicating directly or through a representative. She or he must be aware of the possible consequences of this choice. The decision maker must adequately prepare the child before the hearing, providing explanations as to how, when and where the hearing will take place and who the participants will be, and has to take account of the views of the child in this regard.

(b) The hearing

42. The context in which a child exercises her or his right to be heard has to be enabling and encouraging, so that the child can be sure that the adult who is responsible for the hearing is willing to listen and seriously consider what the child has decided to communicate. The person who will hear the views of the child can be an adult involved in the matters affecting the child (e.g. a teacher, social worker or caregiver), a decision maker in an institution (e.g. a director, administrator or judge), or a specialist (e.g. a psychologist or physician).

43. Experience indicates that the situation should have the format of a talk rather than a one-sided examination. Preferably, a child should not be heard in open court, but under conditions of confidentiality.

(c) Assessment of the capacity of the child

44. The child's views must be given due weight, when a case-by-case analysis indicates that the child is capable of forming her or his own views. If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue. Good practice for assessing the capacity of the child has to be developed.

(d) Information about the weight given to the views of the child (the feedback)

45. Since the child enjoys the right that her or his views are given due weight, the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously. The information may prompt the child to insist, agree or make another proposal or, in the case of a judicial or administrative procedure, file an appeal or a complaint.

(e) Complaints, remedies and redress

46. Legislation is needed to provide children with complaint procedures and remedies when their right to be heard and for their views to be given due weight is disregarded and violated.⁷ Children should have the possibility of addressing an ombudsman or a person of a comparable role in all children's institutions, inter alia, in schools and day-care centres, in order to voice their complaints. Children should know who these persons are and how to access them. In the case of family conflicts about consideration of children's views, a child should be able to turn to a person in the youth services of the community.

47. If the right of the child to be heard is breached with regard to judicial and administrative proceedings (art. 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment.

3. Obligations of States parties

(a) Core obligations of States parties

48. The child's right to be heard imposes the obligation on States parties to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress.

49. In order to fulfil these obligations, States parties should adopt the following strategies:

- Review and withdraw restrictive declarations and reservations to article 12;
- Establish independent human rights institutions, such as children's ombudsmen or commissioners with a broad children's rights mandate;⁸
- Provide training on article 12, and its application in practice, for all professionals working with, and for, children, including lawyers, judges, police, social workers, community workers, psychologists, caregivers, residential and prison officers, teachers at all levels of the educational system, medical doctors, nurses and other health professionals, civil servants and public officials, asylum officers and traditional leaders;
- Ensure appropriate conditions for supporting and encouraging children to express their views, and make sure that these views are given due weight, by regulations and arrangements which are firmly anchored in laws and institutional codes and are regularly evaluated with regard to their effectiveness;
- Combat negative attitudes, which impede the full realization of the child's right to be heard, through public campaigns, including opinion leaders and the media, to change widespread customary conceptions of the child.

(b) Specific obligations with regard to judicial and administrative proceedings

(i) The child's right to be heard in civil judicial proceedings

50. The main issues which require that the child be heard are detailed below:

Divorce and separation

51. In cases of separation and divorce, the children of the relationship are unequivocally affected by decisions of the courts. Issues of maintenance for the child as well as custody and access are determined by the judge either at trial or through court-directed mediation. Many jurisdictions have included in their laws, with respect to the dissolution of a relationship, a provision that the judge must give paramount consideration to the "best interests of the child".

52. For this reason, all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes. Some jurisdictions, either as a matter of policy or legislation, prefer to state an age at which the child is regarded as capable of expressing her or his own views. The Convention, however, anticipates that this matter be determined on a case-by-case basis, since it refers to age and maturity, and for this reason requires an individual assessment of the capacity of the child.

⁷ See the Committee's general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 24.

⁸ See the Committee's general comment No. 2 (2002) on the role of independent human rights institutions.

Separation from parents and alternative care

53. Whenever a decision is made to remove a child from her or his family because the child is a victim of abuse or neglect within his or her home, the view of the child must be taken into account in order to determine the best interests of the child. The intervention may be initiated by a complaint from a child, another family member or a member of the community alleging abuse or neglect in the family.

54. The Committee's experience is that the child's right to be heard is not always taken into account by States parties. The Committee recommends that States parties ensure, through legislation, regulation and policy directives, that the child's views are solicited and considered, including decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family.

Adoption and *kafalah* of Islamic law

55. When a child is to be placed for adoption or *kafalah* of Islamic law and finally will be adopted or placed in *kafalah*, it is vitally important that the child is heard. Such a process is also necessary when step-parents or foster families adopt a child, although the child and the adopting parents may have already been living together for some time.

56. Article 21 of the Convention states that the best interests of the child shall be the paramount consideration. In decisions on adoption, *kafalah* or other placement, the "best interests" of the child cannot be defined without consideration of the child's views. The Committee urges all States parties to inform the child, if possible, about the effects of adoption, *kafalah* or other placement, and to ensure by legislation that the views of the child are heard.

(ii) The child's right to be heard in penal judicial proceedings

57. In penal proceedings, the right of child to express her or his views freely in all matters affecting the child has to be fully respected and implemented throughout every stage of the process of juvenile justice.⁹

The child offender

58. Article 12, paragraph 2, of the Convention requires that a child alleged to have, accused of, or recognized as having, infringed the penal law, has the right to be heard. This right has to be fully observed during all stages of the judicial process, from the pretrial stage when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. It also applies through the stages of adjudication and disposition, as well as implementation of the imposed measures.

59. In case of diversion, including mediation, a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance in determining the appropriateness and desirability of the diversion proposed.

60. In order to effectively participate in the proceedings, every child must be informed promptly and directly about the charges against her or him in a language she or he understands, and also about the juvenile justice process and possible measures taken by the court. The proceedings should be conducted in an atmosphere enabling the child to participate and to express her/himself freely.

61. The court and other hearings of a child in conflict with the law should be conducted behind closed doors. Exceptions to this rule should be very limited, clearly outlined in national legislation and guided by the best interests of the child.

The child victim and child witness

62. The child victim and child witness of a crime must be given an opportunity to fully exercise her or his right to freely express her or his view in accordance with United Nations Economic and Social Council resolution 2005/20, "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime".¹⁰

63. In particular, this means that every effort has to be made to ensure that a child victim or/and witness is consulted on the relevant matters with regard to involvement in the case under scrutiny, and enabled

⁹ See the Committee's general comment No. 10 (2007) on children's rights in juvenile justice (CRC/C/GC/10).

¹⁰ United Nations Economic and Social Council resolution 2005/20, in particular arts. 8, 19 and 20. Available at: www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf

to express freely, and in her or his own manner, views and concerns regarding her or his involvement in the judicial process.

64. The right of the child victim and witness is also linked to the right to be informed about issues such as availability of health, psychological and social services, the role of a child victim and/or witness, the ways in which “questioning” is conducted, existing support mechanisms in place for the child when submitting a complaint and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation, and the provisions for appeal.

(iii) The child’s right to be heard in administrative proceedings

65. All States parties should develop administrative procedures in legislation which reflect the requirements of article 12 and ensure the child’s right to be heard along with other procedural rights, including the rights to disclosure of pertinent records, notice of hearing, and representation by parents or others.

66. Children are more likely to be involved with administrative proceedings than court proceedings, because administrative proceedings are less formal, more flexible and relatively easy to establish through law and regulation. The proceedings have to be child-friendly and accessible.

67. Specific examples of administrative proceedings relevant for children include mechanisms to address discipline issues in schools (e.g. suspensions and expulsions), refusals to grant school certificates and performance-related issues, disciplinary measures and refusals to grant privileges in juvenile detention centres, asylum requests from unaccompanied children, and applications for driver’s licences. In these matters a child should have the right to be heard and enjoy the other rights “consistent with the procedural rules of national law”.

B. The right to be heard and the links with other provisions of the Convention

68. Article 12, as a general principle, is linked to the other general principles of the Convention, such as article 2 (the right to non-discrimination), article 6 (the right to life, survival and development) and, in particular, is interdependent with article 3 (primary consideration of the best interests of the child). The article is also closely linked with the articles related to civil rights and freedoms, particularly article 13 (the right to freedom of expression) and article 17 (the right to information). Furthermore, article 12 is connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation.

69. The connection of article 12 to article 5 (evolving capacities of the child and appropriate direction and guidance from parents, see para. 84 of the present general comment) is of special relevance, since it is crucial that the guidance given by parents takes account of the evolving capacities of the child.

1. Articles 12 and 3

70. The purpose of article 3 is to ensure that in all actions undertaken concerning children, by a public or private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration. It means that every action taken on behalf of the child has to respect the best interests of the child. The best interests of the child is similar to a procedural right that obliges States parties to introduce steps into the action process to ensure that the best interests of the child are taken into consideration. The Convention obliges States parties to assure that those responsible for these actions hear the child as stipulated in article 12. This step is mandatory.

71. The best interests of the child, established in consultation with the child, is not the only factor to be considered in the actions of institutions, authorities and administration. It is, however, of crucial importance, as are the views of the child.

72. Article 3 is devoted to individual cases, but, explicitly, also requires that the best interests of children as a group are considered in all actions concerning children. States parties are consequently under an obligation to consider not only the individual situation of each child when identifying their best interests, but also the interests of children as a group. Moreover, States parties must examine the actions of private and public institutions, authorities, as well as legislative bodies. The extension of the obligation to “legislative bodies” clearly indicates that every law, regulation or rule that affects children must be guided by the “best interests” criterion.

73. There is no doubt that the best interests of children as a defined group have to be established in the same way as when weighing individual interests. If the best interests of large numbers of children are at stake, heads of institutions, authorities, or governmental bodies should also provide opportunities to hear the concerned children from such undefined groups and to give their views due weight when they plan actions, including legislative decisions, which directly or indirectly affect children.

74. There is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.

2. Articles 12, 2 and 6

75. The right to non-discrimination is an inherent right guaranteed by all human rights instruments including the Convention on the Rights of the Child. According to article 2 of the Convention, every child has the right not to be discriminated against in the exercise of his or her rights including those provided under article 12. The Committee stresses that States parties shall take adequate measures to assure to every child the right to freely express his or her views and to have those views duly taken into account without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States parties shall address discrimination, including against vulnerable or marginalized groups of children, to ensure that children are assured their right to be heard and are enabled to participate in all matters affecting them on an equal basis with all other children.

76. In particular, the Committee notes with concern that, in some societies, customary attitudes and practices undermine and place severe limitations on the enjoyment of this right. States parties shall take adequate measures to raise awareness and educate the society about the negative impact of such attitudes and practices and to encourage attitudinal changes in order to achieve full implementation of the rights of every child under the Convention.

77. The Committee urges States parties to pay special attention to the right of the girl child to be heard, to receive support, if needed, to voice her view and her view be given due weight, as gender stereotypes and patriarchal values undermine and place severe limitations on girls in the enjoyment of the right set forth in article 12.

78. The Committee welcomes the obligation of States parties in article 7 of the Convention on the Rights of Persons with Disabilities to ensure that children with disabilities are provided with the necessary assistance and equipment to enable them to freely express their views and for those views to be given due weight.

79. Article 6 of the Convention on the Rights of the Child acknowledges that every child has an inherent right to life and that States parties shall ensure, to the maximum extent possible, the survival and development of the child. The Committee notes the importance of promoting opportunities for the child's right to be heard, as child participation is a tool to stimulate the full development of the personality and the evolving capacities of the child consistent with article 6 and with the aims of education embodied in article 29.

3. Articles 12, 13 and 17

80. Article 13, on the right to freedom of expression, and article 17, on access to information, are crucial prerequisites for the effective exercise of the right to be heard. These articles establish that children are subjects of rights and, together with article 12, they assert that the child is entitled to exercise those rights on his or her own behalf, in accordance with her or his evolving capacities.

81. The right to freedom of expression embodied in article 13 is often confused with article 12. However, while both articles are strongly linked, they do elaborate different rights. Freedom of expression relates to the right to hold and express opinions, and to seek and receive information through any media. It asserts the right of the child not to be restricted by the State party in the opinions she or he holds or expresses. As such, the obligation it imposes on States parties is to refrain from interference in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue. Article 12, however, relates to the right of expression of views specifically about matters which affect the child, and the right to be involved in actions and decisions

that impact on her or his life. Article 12 imposes an obligation on States parties to introduce the legal framework and mechanisms necessary to facilitate active involvement of the child in all actions affecting the child and in decision-making, and to fulfil the obligation to give due weight to those views once expressed. Freedom of expression in article 13 requires no such engagement or response from States parties. However, creating an environment of respect for children to express their views, consistent with article 12, also contributes towards building children's capacities to exercise their right to freedom of expression.

82. Fulfilment of the child's right to information, consistent with article 17 is, to a large degree, a prerequisite for the effective realization of the right to express views. Children need access to information in formats appropriate to their age and capacities on all issues of concern to them. This applies to information, for example, relating to their rights, any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures. Consistent with articles 17 and 42, States parties should include children's rights in the school curricula.

83. The Committee also reminds States parties that the media are an important means both of promoting awareness of the right of children to express their views, and of providing opportunities for the public expression of such views. It urges various forms of the media to dedicate further resources to the inclusion of children in the development of programmes and the creation of opportunities for children to develop and lead media initiatives on their rights.¹¹

4. Articles 12 and 5

84. Article 5 of the Convention states that States parties shall respect the responsibilities, rights and duties of parents, legal guardians, or members of the extended family or community as provided for by local custom, to give direction and guidance to the child in her or his exercise of the rights recognized in the Convention. Consequently, the child has a right to direction and guidance, which have to compensate for the lack of knowledge, experience and understanding of the child and are restricted by his or her evolving capacities, as stated in this article. The more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in a child's development, but will steadily increase as the child is encouraged to contribute her or his views.

85. This requirement is stimulated by article 12 of the Convention, which stipulates that the child's views must be given due weight, whenever the child is capable of forming her or his own views. In other words, as children acquire capacities, so they are entitled to an increasing level of responsibility for the regulation of matters affecting them.¹²

5. Article 12 and the implementation of child rights in general

86. In addition to the articles discussed in the preceding paragraphs, most other articles of the Convention require and promote children's involvement in matters affecting them. For these manifold involvements, the concept of participation is ubiquitously used. Unquestionably, the lynchpin of these involvements is article 12, but the requirement of planning, working and developing in consultation with children is present throughout the Convention.

87. The practice of implementation deals with a broad range problems, such as health, the economy, education or the environment, which are of interest not only to the child as an individual, but to groups of children and children in general. Consequently, the Committee has always interpreted participation broadly in order to establish procedures not only for individual children and clearly defined groups of children, but also for groups of children, such as indigenous children, children with disabilities, or children in general, who are affected directly or indirectly by social, economic or cultural conditions of living in their society.

88. This broad understanding of children's participation is reflected in the outcome document adopted by the twenty-seventh special session of the General Assembly entitled "A world fit for children". States

11 Day of general discussion on the child and the media (1996): www.unhchr.ch/html/menu2/6/crc/doc/days/media.pdf

12 General comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child.

parties have promised “to develop and implement programmes to promote meaningful participation by children, including adolescents, in decision-making processes, including in families and schools and at the local and national levels” (para. 32, subpara. 1). The Committee has stated in its general comment No. 5 on general measures of implementation for the Convention on the Rights of the Child: “It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions.”¹³

C. The implementation of the right to be heard in different settings and situations

89. The right of the child to be heard has to be implemented in the diverse settings and situations in which children grow up, develop and learn. In these settings and situations, different concepts of the child and her or his role exist, which may invite or restrict children’s involvement in everyday matters and crucial decisions. Various ways of influencing the implementation of the child’s right to be heard are available, which States parties may use to foster children’s participation.

1. In the family

90. A family where children can freely express views and be taken seriously from the earliest ages provides an important model, and is a preparation for the child to exercise the right to be heard in the wider society.¹⁴ Such an approach to parenting serves to promote individual development, enhance family relations and support children’s socialization and plays a preventive role against all forms of violence in the home and family.

91. The Convention recognizes the rights and responsibilities of parents, or other legal guardians, to provide appropriate direction and guidance to their children (see para. 84 above), but underlines that this is to enable the child to exercise his or her rights and requires that direction and guidance are undertaken in a manner consistent with the evolving capacities of the child.

92. States parties should encourage, through legislation and policy, parents, guardians and childminders to listen to children and give due weight to their views in matters that concern them. Parents should also be advised to support children in realizing the right to express their views freely and to have children’s views duly taken into account at all levels of society.

93. In order to support the development of parenting styles respecting the child’s right to be heard, the Committee recommends that States parties promote parent education programmes, which build on existing positive behaviours and attitudes and disseminate information on the rights of children and parents enshrined in the Convention.

94. Such programmes need to address:

- The relationship of mutual respect between parents and children;
- The involvement of children in decision-making;
- The implication of giving due weight to the views of every family member;
- The understanding, promotion and respect for children’s evolving capacities;
- Ways of dealing with conflicting views within the family.

96. These programmes have to reinforce the principle that girls and boys have equal rights to express their views.

97. The media should play a strong role in communicating to parents that their children’s participation is of high value for the children themselves, their families and society.

2. In alternative care

97. Mechanisms must be introduced to ensure that children in all forms of alternative care, including in institutions, are able to express their views and that those views be given due weight in matters of their placement, the regulations of care in foster families or homes and their daily lives. These should include:

- Legislation providing the child with the right to information about any placement, care and/or treatment plan and meaningful opportunities to express her or his views and for those views to be given due weight throughout the decision-making process;
- Legislation ensuring the right of the child to be heard, and that her or his views be given due weight in the development and establishment of child-friendly care services;

¹³ Ibid., para. 12.

- Establishment of a competent monitoring institution, such as a children's ombudsperson, commissioner or inspectorate, to monitor compliance with the rules and regulations governing the provision of care, protection or treatment of children in accordance with the obligations under article 3. The monitoring body should be mandated to have unimpeded access to residential facilities (including those for children in conflict with the law), to hear the views and concerns of the child directly, and to monitor the extent to which his or her views are listened to and given due weight by the institution itself;
- Establishment of effective mechanisms, for example, a representative council of the children, both girls and boys, in the residential care facility, with the mandate to participate in the development and implementation of the policy and any rules of the institution.

3. In health care

98. The realization of the provisions of the Convention requires respect for the child's right to express his or her views and to participate in promoting the healthy development and well-being of children. This applies to individual health-care decisions, as well as to children's involvement in the development of health policy and services.

99. The Committee identifies several distinct but linked issues that need consideration in respect of the child's involvement in practices and decisions relating to her or his own health care.

100. Children, including young children, should be included in decision-making processes, in a manner consistent with their evolving capacities. They should be provided with information about proposed treatments and their effects and outcomes, including in formats appropriate and accessible to children with disabilities.

101. States parties need to introduce legislation or regulations to ensure that children have access to confidential medical counselling and advice without parental consent, irrespective of the child's age, where this is needed for the child's safety or well-being. Children may need such access, for example, where they are experiencing violence or abuse at home, or in need of reproductive health education or services, or in case of conflicts between parents and the child over access to health services. The right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit.

102. The Committee welcomes the introduction in some countries of a fixed age at which the right to consent transfers to the child, and encourages States parties to give consideration to the introduction of such legislation. Thus, children above that age have an entitlement to give consent without the requirement for any individual professional assessment of capacity after consultation with an independent and competent expert. However, the Committee strongly recommends that States parties ensure that, where a younger child can demonstrate capacity to express an informed view on her or his treatment, this view is given due weight.

103. Physicians and health-care facilities should provide clear and accessible information to children on their rights concerning their participation in paediatric research and clinical trials. They have to be informed about the research, so that their informed consent can be obtained in addition to other procedural safeguards.

104. States parties should also introduce measures enabling children to contribute their views and experiences to the planning and programming of services for their health and development. Their views should be sought on all aspects of health provision, including what services are needed, how and where they are best provided, discriminatory barriers to accessing services, quality and attitudes of health professionals, and how to promote children's capacities to take increasing levels of responsibility for their own health and development. This information can be obtained through, inter alia, feedback systems for children using services or involved in research and consultative processes, and can be transmitted to local or national children's councils or parliaments to develop standards and indicators of health services that respect the rights of the child.¹⁴

4. In education and school

105. Respect for right of the child to be heard within education is fundamental to the realization of the right to education. The Committee notes with concern continuing authoritarianism, discrimination, disrespect

¹⁴ The Committee also draws attention to its general comment No. 3 (2003) on HIV/Aids and the rights of the child, paras. 11 and 12, and its general comment No. 4 (2003) on adolescent health, para. 6.

and violence which characterize the reality of many schools and classrooms. Such environments are not conducive to the expression of children's views and the due weight to be given these views.

106. The Committee recommends that States parties take action to build opportunities for children to express their views and for those views to be given due weight with regard to the following issues.

107. In all educational environments, including educational programmes in the early years, the active role of children in a participatory learning environment should be promoted.¹⁵ Teaching and learning must take into account life conditions and prospects of the children. For this reason, education authorities have to include children's and their parents' views in the planning of curricula and school programmes.

108. Human rights education can shape the motivations and behaviours of children only when human rights are practised in the institutions in which the child learns, plays and lives together with other children and adults.¹⁶ In particular, the child's right to be heard is under critical scrutiny by children in these institutions, where children can observe, whether in fact due weight is given to their views as declared in the Convention.

109. Children's participation is indispensable for the creation of a social climate in the classroom, which stimulates cooperation and mutual support needed for childcentred interactive learning. Giving children's views weight is particularly important in the elimination of discrimination, prevention of bullying and disciplinary measures. The Committee welcomes the expansion of peer education and peer counselling.

110. Steady participation of children in decision-making processes should be achieved through, inter alia, class councils, student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour. These rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them.

111. Beyond the school, States parties should consult children at the local and national levels on all aspects of education policy, including, inter alia, the strengthening of the child-friendly character of the educational system, informal and non-formal facilities of learning, which give children a "second chance", school curricula, teaching methods, school structures, standards, budgeting and child-protection systems.

112. The Committee encourages States parties to support the development of independent student organizations, which can assist children in competently performing their participatory roles in the education system.

113. In decisions about the transition to the next level of schools or choice of tracks or streams, the right of the child to be heard has to be assured as these decisions deeply affect the child's best interests. Such decisions must be subject to administrative or judicial review. Additionally, in disciplinary matters, the right of the child to be heard has to be fully respected.¹⁷ In particular, in the case of exclusion of a child from instruction or school, this decision must be subject to judicial review as it contradicts the child's right to education.

114. The Committee welcomes the introduction of child-friendly school programmes in many countries, which seek to provide interactive, caring, protective and participatory environments that prepare children and adolescents for active roles in society and responsible citizenship within their communities.

5. In play, recreation, sports and cultural activities

115. Children require play, recreation, physical and cultural activities for their development and socialization. These should be designed taking into account children's preferences and capacities. Children who are able to express their views should be consulted regarding the accessibility and appropriateness of play and recreation facilities. Very young children and some children with disabilities,

15 "A human rights-based approach to Education for All: A framework for the realization of children's right to education and rights within education", UNICEF/UNESCO (2007).

16 Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education (art. 29, para. 1 of the Convention), (CRC/GC/2001/1).

17 States parties should refer to the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, which explains participatory strategies to eliminate corporal punishment (CRC/C/GC/8).

who are unable to participate in formal consultative processes, should be provided with particular opportunities to express their wishes.

6. In the workplace

116. Children working at younger ages than permitted by laws and International Labour Organization Conventions Nos. 138 (1973) and 182 (1999) have to be heard in child-sensitive settings in order to understand their views of the situation and their best interests. They should be included in the search for a solution, which respects the economic and socio-structural constraints as well as the cultural context under which these children work. Children should also be heard when policies are developed to eliminate the root causes of child labour, in particular regarding education.

117. Working children have a right to be protected by law against exploitation and should be heard when worksites and conditions of work are examined by inspectors investigating the implementation of labour laws. Children and, if existing, representatives of working children's associations should also be heard when labour laws are drafted or when the enforcement of laws is considered and evaluated.

7. In situations of violence

118. The Convention establishes the right of the child to be protected from all forms of violence and the responsibility of States parties to ensure this right for every child without any discrimination. The Committee encourages States parties to consult with children in the development and implementation of legislative, policy, educational and other measures to address all forms of violence. Particular attention needs to be paid to ensuring that marginalized and disadvantaged children, such as exploited children, street children or refugee children, are not excluded from consultative processes designed to elicit views on relevant legislation and policy processes.

119. In this regard, the Committee welcomes the findings of the Secretary-General's Study on Violence against Children, and urges States Parties to implement fully its recommendations, including the recommendation to provide the space for children to freely express their views and give these views due weight in all aspects of prevention, reporting and monitoring violence against them.¹⁸

120. Much of the violence perpetrated against children goes unchallenged both because certain forms of abusive behaviour are understood by children as accepted practices, and due to the lack of child-friendly reporting mechanisms. For example, they have no one to whom they can report in confidence and safety about experienced maltreatment, such as corporal punishment, genital mutilation or early marriage, and no channel to communicate their general observations to those accountable for implementation of their rights. Thus, effective inclusion of children in protective measures requires that children be informed about their right to be heard and to grow up free from all forms of physical and psychological violence. States parties should oblige all children's institutions to establish easy access to individuals or organizations to which they can report in confidence and safety, including through telephone helplines, and to provide places where children can contribute their experience and views on combating violence against children.

121. The Committee also draws the attention of States parties to the recommendation in the Secretary-General's Study on Violence against Children to support and encourage children's organizations and child-led initiatives to address violence and to include these organizations in the elaboration, establishment and evaluation of anti-violence programmes and measures, so that children can play a key role in their own protection.

8. In the development of prevention strategies

122. The Committee notes that the voices of children have increasingly become a powerful force in the prevention of child rights violations. Good practice examples are available, inter alia, in the fields of violence prevention in schools, combating child exploitation through hazardous and extensive labour, providing health services and education to street children, and in the juvenile justice system. Children should be consulted in the formulation of legislation and policy related to these and other problem areas and involved in the drafting, development and implementation of related plans and programmes.

9. In immigration and asylum proceedings

123. Children who come to a country following their parents in search of work or as refugees are in a particularly vulnerable situation. For this reason it is urgent to fully implement their right to express their

¹⁸ Report of the independent expert for the United Nations Study on Violence against Children (A/61/299).

views on all aspects of the immigration and asylum proceedings. In the case of migration, the child has to be heard on his or her educational expectations and health conditions in order to integrate him or her into school and health services. In the case of an asylum claim, the child must additionally have the opportunity to present her or his reasons leading to the asylum claim.

124. The Committee emphasizes that these children have to be provided with all relevant information, in their own language, on their entitlements, the services available, including means of communication, and the immigration and asylum process, in order to make their voice heard and to be given due weight in the proceedings. A guardian or adviser should be appointed, free of charge. Asylum-seeking children may also need effective family tracing and relevant information about the situation in their country of origin to determine their best interests. Particular assistance may be needed for children formerly involved in armed conflict to allow them to pronounce their needs. Furthermore, attention is needed to ensure that stateless children are included in decision-making processes within the territories where they reside.¹⁹

10. In emergency situations

125. The Committee underlines that the right embodied in article 12 does not cease in situations of crisis or in their aftermath. There is a growing body of evidence of the significant contribution that children are able to make in conflict situations, postconflict resolution and reconstruction processes following emergencies.²⁰ Thus, the Committee emphasized in its recommendation after the day of general discussion in 2008 that children affected by emergencies should be encouraged and enabled to participate in analysing their situation and future prospects. Children's participation helps them to regain control over their lives, contributes to rehabilitation, develops organizational skills and strengthens a sense of identity. However, care needs to be taken to protect children from exposure to situations that are likely to be traumatic or harmful.

126. Accordingly, the Committee encourages States parties to support mechanisms which enable children, in particular adolescents, to play an active role in both postemergency reconstruction and post-conflict resolution processes. Their views should be elicited in the assessment, design, implementation, monitoring and evaluation of programmes. For example, children in refugee camps can be encouraged to contribute to their own safety and well-being through the establishment of children's forums. Support needs to be given to enable children to establish such forums, while ensuring that their operation is consistent with children's best interests and their right to protection from harmful experiences.

11. In national and international settings

127. Much of the opportunity for children's participation takes place at the community level. The Committee welcomes the growing number of local youth parliaments, municipal children's councils and ad hoc consultations where children can voice their views in decision-making processes. However, these structures for formal representative participation in local government should be just one of many approaches to the implementation of article 12 at the local level, as they only allow for a relatively small number of children to engage in their local communities. Consulting hours of politicians and officials, open house and visits in schools and kindergartens create additional opportunities for communication.

128. Children should be supported and encouraged to form their own child-led organizations and initiatives, which will create space for meaningful participation and representation. In addition, children can contribute their perspectives, for example, on the design of schools, playgrounds, parks, leisure and cultural facilities, public libraries, health facilities and local transport systems in order to ensure more appropriate services. In community development plans that call for public consultation, children's views should be explicitly included.

129. Such participation opportunities are, meanwhile, established in many countries also on the district, regional, federal state and national levels, where youth parliaments, councils and conferences provide forums for children to present their views and make them known to relevant audiences. NGOs and civil society organizations have developed practices to support children, which safeguard the transparency of representation and counter the risks of manipulation or tokenism.

130. The Committee welcomes the significant contributions by UNICEF and NGOs in promoting awareness-raising on children's right to be heard and their participation in all domains of their lives,

¹⁹ Cf. the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6).

²⁰ "The participation of children and young people in emergencies: a guide for relief agencies", UNICEF, Bangkok (2007).

and encourages them to further promote child participation in all matters affecting them, including at the grass-roots, community, and national or international levels, and to facilitate exchanges of best practices. Networking among child-led organizations should be actively encouraged to increase opportunities for shared learning and platforms for collective advocacy.

131. At the international level, children's participation at the World Summits for

Children convened by the General Assembly in 1990 and 2002, and the involvement of children in the reporting process to the Committee on the Rights of the Child have particular relevance. The Committee welcomes written reports and additional oral information submitted by child organizations and children's representatives in the monitoring process of child rights implementation by States parties, and encourages States parties and NGOs to support children to present their views to the Committee.

D. Basic requirements for the implementation of the right of the child to be heard

132. The Committee urges States parties to avoid tokenistic approaches, which limit children's expression of views, or which allow children to be heard, but fail to give their views due weight. It emphasizes that adult manipulation of children, placing children in situations where they are told what they can say, or exposing children to risk of harm through participation are not ethical practices and cannot be understood as implementing article 12.

133. If participation is to be effective and meaningful, it needs to be understood as a process, not as an individual one-off event. Experience since the Convention on the Rights of the Child was adopted in 1989 has led to a broad consensus on the basic requirements which have to be reached for effective, ethical and meaningful implementation of article 12. The Committee recommends that States parties integrate these requirements into all legislative and other measures for the implementation of article 12.

134. All processes in which a child or children are heard and participate, must be:

(a) Transparent and informative – children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact;

(b) Voluntary – children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage;

(c) Respectful – children's views have to be treated with respect and they should be provided with opportunities to initiate ideas and activities. Adults working with children should acknowledge, respect and build on good examples of children's participation, for instance, in their contributions to the family, school, culture and the work environment. They also need an understanding of the socioeconomic, environmental and cultural context of children's lives. Persons and organizations working for and with children should also respect children's views with regard to participation in public events;

(d) Relevant – the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. In addition, space needs to be created to enable children to highlight and address the issues they themselves identify as relevant and important;

(e) Child-friendly – environments and working methods should be adapted to children's capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities;

(f) Inclusive – participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved (see also para. 88 above). Children are not a homogenous group and participation needs to provide for equality of opportunity for all, without discrimination on any grounds. Programmes also need to ensure that they are culturally sensitive to children from all communities;

(g) Supported by training – adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities. Children themselves can be involved as trainers and facilitators on how to promote effective participation; they require capacity-building to

strengthen their skills in, for example, effective participation awareness of their rights, and training in organizing meetings, raising funds, dealing with the media, public speaking and advocacy;

(h) Safe and sensitive to risk – in certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation or any other negative consequence of their participation. Action necessary to provide appropriate protection will include the development of a clear childprotection strategy which recognizes the particular risks faced by some groups of children, and the extra barriers they face in obtaining help. Children must be aware of their right to be protected from harm and know where to go for help if needed. Investment in working with families and communities is important in order to build understanding of the value and implications of participation, and to minimize the risks to which children may otherwise be exposed;

(i) Accountable – a commitment to follow-up and evaluation is essential. For example, in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities. Monitoring and evaluation of children's participation needs to be undertaken, where possible, with children themselves.

E. Conclusions

135. Investment in the realization of the child's right to be heard in all matters of concern to her or him and for her or his views to be given due consideration, is a clear and immediate legal obligation of States parties under the Convention. It is the right of every child without any discrimination. Achieving meaningful opportunities for the implementation of article 12 will necessitate dismantling the legal, political, economic, social and cultural barriers that currently impede children's opportunity to be heard and their access to participation in all matters affecting them. It requires a preparedness to challenge assumptions about children's capacities, and to encourage the development of environments in which children can build and demonstrate capacities. It also requires a commitment to resources and training.

136. Fulfilling these obligations will present a challenge for States parties. But it is an attainable goal if the strategies outlined in this general comment are systematically implemented and a culture of respect for children and their views is built.

UN Committee on the Rights of the Child
General comment No. 14 (2013)
ON THE RIGHT OF THE CHILD TO HAVE
HIS OR HER BEST INTERESTS TAKEN
AS A PRIMARY CONSIDERATION
(art. 3, para. 1)*

* Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Convention on the Rights of the Child (art. 3, para. 1)

I. Introduction

A. The best interests of the child: a right, a principle and a rule of procedure

1. Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Moreover, it expresses one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child,¹ and applies it as a dynamic concept that requires an assessment appropriate to the specific context.

2. The concept of the “child’s best interests” is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child (para. 2), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 5 (b) and 16, para. 1 (d)), as well as in regional instruments and many national and international laws.

3. The Convention also explicitly refers to the child’s best interests in other articles: article 9: separation from parents; article 10: family reunification; article 18: parental responsibilities; article 20: deprivation of family environment and alternative care; article 21: adoption; article 37(c): separation from adults in detention; article 40, paragraph 2 (b) (iii): procedural guarantees, including presence of parents at court hearings for penal matters involving children in conflict with the law. Reference is also made to the child’s best interests in the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (preamble and art. 8) and in the Optional Protocol to the Convention on a communications procedure (preamble and arts. 2 and 3).

4. The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.² The Committee has already pointed out³ that “an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.” It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the “child’s best interests” and no right could be compromised by a negative interpretation of the child’s best interests.

5. The full application of the concept of the child’s best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.

6. The Committee underlines that the child's best interests is a threefold concept:

(a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

7. In the present general comment, the expression "the child's best interests" or "the best interests of the child" covers the three dimensions developed above.

B. Structure

8. The scope of the present general comment is limited to article 3, paragraph 1, of the Convention and does not cover article 3, paragraph 2, which pertains to the well-being of the child, nor article 3, paragraph 3, which concerns the obligation of States parties to ensure that institutions, services and facilities for children comply with the established standards, and that mechanisms are in place to ensure that the standards are respected.

9. The Committee states the objectives (chapter II) of the present general comment and presents the nature and scope of the obligation of States parties (chapter III). It also provides a legal analysis of article 3, paragraph 1 (chapter IV), showing the links to other general principles of the Convention. Chapter V is dedicated to the implementation, in practice, of the principle of best interests of the child, while chapter VI provides guidelines on disseminating the general comment.

II. Objectives

10. The present general comment seeks to ensure the application of and respect for the best interests of the child by the States parties to the Convention. It defines the requirements for due consideration, especially in judicial and administrative decisions as well as in other actions concerning the child as an individual, and at all stages of the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives and guidelines – that is, all implementation measures – concerning children in general or as a specific group. The Committee expects that this general comment will guide decisions by all those concerned with children, including parents and caregivers.

11. The best interests of the child is a dynamic concept that encompasses various issues which are continuously evolving. The present general comment provides a framework for assessing and determining the child's best interests; it does not attempt to prescribe what is best for the child in any given situation at any point in time.

12. The main objective of this general comment is to strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration or, in some cases, the paramount consideration (see paragraph 38 below). Its overall objective is to promote a real change in attitudes leading to the full respect of children as rights holders. More specifically, this has implications for:

(a) The elaboration of all implementation measures taken by governments;

(b) Individual decisions made by judicial or administrative authorities or public entities through their agents that concern one or more identified children;

- (c) Decisions made by civil society entities and the private sector, including profit and non-profit organizations, which provide services concerning or impacting on children;
- (d) Guidelines for actions undertaken by persons working with and for children, including parents and caregivers.

III. Nature and scope of the obligations of States parties

13. Each State party must respect and implement the right of the child to have his or her best interests assessed and taken as a primary consideration, and is under the obligation to take all necessary, deliberate and concrete measures for the full implementation of this right.

14. Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties:

(a) The obligation to ensure that the child's best interests are *appropriately integrated and consistently applied* in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;

(b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.

(c) The obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.

15. To ensure compliance, States parties should undertake a number of implementation measures in accordance with articles 4, 42 and 44, paragraph 6, of the Convention, and ensure that the best interests of the child are a primary consideration in all actions, including:

(a) Reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure;

(b) Upholding the child's best interests in the coordination and implementation of policies at the national, regional and local levels;

(c) Establishing mechanisms and procedures for complaints, remedy or redress in order to fully realize the right of the child to have his or her best interests appropriately integrated and consistently applied in all implementation measures, administrative and judicial proceedings relevant to and with an impact on him or her;

(d) Upholding the child's best interests in the allocation of national resources for programmes and measures aimed at implementing children's rights, and in activities receiving international assistance or development aid;

(e) When establishing, monitoring and evaluating data collection, ensure that the child's best interests are explicitly spelled out and, where required, support research on children's rights issues;

(f) Providing information and training on article 3, paragraph 1, and its application in practice to all those making decisions that directly or indirectly impact on children, including professionals and other people working for and with children;

(g) Providing appropriate information to children in a language they can understand, and to their families and caregivers, so that they understand the scope of the right protected under article 3, paragraph 1, as well as creating the necessary conditions for children to express their point of view and ensuring that their opinions are given due weight;

(h) Combating all negative attitudes and perceptions which impede the full realization of the right of the child to have his or her best interests assessed and taken as a primary consideration, through communication programmes involving mass media and social networks as well as children, in order to have children recognized as rights holders.

16. In giving full effect to the child's best interests, the following parameters should be borne in mind:

- (a) The universal, indivisible, interdependent and interrelated nature of children's rights;
- (b) Recognition of children as right holders;
- (c) The global nature and reach of the Convention;
- (d) The obligation of States parties to respect, protect and fulfill all the rights in the Convention;
- (e) Short-, medium- and long-term effects of actions related to the development of the child over time.

IV. Legal analysis and links with the general principles of the Convention

A. Legal analysis of article 3, paragraph 1

1. "In all actions concerning children"

(a) "in all actions"

17. Article 3, paragraph 1 seeks to ensure that the right is guaranteed in all decisions and actions concerning children. This means that every action relating to a child or children has to take into account their best interests as a primary consideration. The word "action" does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures.

18. Inaction or failure to take action and omissions are also "actions", for example, when social welfare authorities fail to take action to protect children from neglect or abuse.

(b) "concerning"

19. The legal duty applies to all decisions and actions that directly or indirectly affect children. Thus, the term "concerning" refers first of all, to measures and decisions directly concerning a child, children as a group or children in general, and secondly, to other measures that have an effect on an individual child, children as a group or children in general, even if they are not the direct targets of the measure. As stated in the Committee's general comment No. 7 (2005), such actions include those aimed at children (e.g. related to health, care or education), as well as actions which include children and other population groups (e.g. related to the environment, housing or transport) (para. 13 (b)). Therefore, "concerning" must be understood in a very broad sense.

20. Indeed, all actions taken by a State affect children in one way or another. This does not mean that every action taken by the State needs to incorporate a full and formal process of assessing and determining the best interests of the child. However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate.

Thus, in relation to measures that are not directly aimed at the child or children, the term "concerning" would need to be clarified in the light of the circumstances of each case in order to be able to appreciate the impact of the action on the child or children.

(c) "children"

21. The term "children" refers to all persons under the age of 18 within the jurisdiction of a State party, without discrimination of any kind, in line with articles 1 and 2 of the Convention.

22. Article 3, paragraph 1, applies to children as individuals and places an obligation on States parties to assess and take the child's best interests as a primary consideration in individual decisions.

23. However, the term "children" implies that the right to have their best interests duly considered applies to children not only as individuals, but also in general or as a group. Accordingly, States have the obligation to assess and take as a primary consideration the best interests of children as a group or in general in all actions concerning them. This is particularly evident for all implementation measures. The Committee⁴ underlines that the child's best interests is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights.

24. That is not to say that in a decision concerning an individual child, his or her interests must be understood as being the same as those of children in general. Rather, article 3, paragraph 1, implies that the best interests of a child must be assessed individually. Procedures for establishing the best interests of children individually and as a group can be found in chapter V below.

2. “By public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”

25. The obligation of the States to duly consider the child's best interests is a comprehensive obligation encompassing all public and private social welfare institutions, courts of law, administrative authorities and legislative bodies involving or concerning children. Although parents are not explicitly mentioned in article 3, paragraph 1, the best interests of the child “will be their basic concern” (art. 18, para. 1).

(a) “public or private social welfare institutions”

26. These terms should not be narrowly construed or limited to social institutions *stricto sensu*, but should be understood to mean all institutions whose work and decisions impact on children and the realization of their rights. Such institutions include not only those related to economic, social and cultural rights (e.g. care, health, environment, education, business, leisure and play, etc.), but also institutions dealing with civil rights and freedoms (e.g. birth registration, protection against violence in all settings, etc.). Private social welfare institutions include private sector organizations – either for-profit or non-profit – which play a role in the provision of services that are critical to children's enjoyment of their rights, and which act on behalf of or alongside Government services as an alternative.

(b) “courts of law”

27. The Committee underlines that “courts” refer to all judicial proceedings, in all instances – whether staffed by professional judges or lay persons – and all relevant procedures concerning children, without restriction. This includes conciliation, mediation and arbitration processes.

28. In criminal cases, the best interests principle applies to children in conflict (i.e. alleged, accused or recognized as having infringed) or in contact (as victims or witnesses) with the law, as well as children affected by the situation of their parents in conflict with the law. The Committee⁵ underlines that protecting the child's best interests means that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders.

29. In civil cases, the child may be defending his or her interests directly or through a representative, in the case of paternity, child abuse or neglect, family reunification, accommodation, etc. The child may be affected by the trial, for example in procedures concerning adoption or divorce, decisions regarding custody, residence, contact or other issues which have an important impact on the life and development of the child, as well as child abuse or neglect proceedings. The courts must provide for the best interests of the child to be considered in all such situations and decisions, whether of a procedural or substantive nature, and must demonstrate that they have effectively done so.

(c) “administrative authorities”

30. The Committee emphasizes that the scope of decisions made by administrative authorities at all levels is very broad, covering decisions concerning education, care, health, the environment, living conditions, protection, asylum, immigration, access to nationality, among others. Individual decisions taken by administrative authorities in these areas must be assessed and guided by the best interests of the child, as for all implementation measures.

(d) “legislative bodies”

31. The extension of States parties' obligation to their “legislative bodies” shows clearly that article 3, paragraph 1, relates to children in general, not only to children as individuals. The adoption of any law or regulation as well as collective agreements – such as bilateral or multilateral trade or peace treaties which affect children – should be governed by the best interests of the child. The right of the child to have his or her best interests assessed and taken as a primary consideration should be explicitly included in all relevant legislation, not only in laws that specifically concern children. This obligation extends also to the approval of budgets, the preparation and development of which require the adoption of a best-interests-of-the-child perspective for it to be child-rights sensitive.

3. “The best interests of the child”

32. The concept of the child's best interests is complex and its content must be determined on a case-by-case basis. It is through the interpretation and implementation of article 3, paragraph 1, in line with the other provisions of the Convention, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of

the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and its Optional Protocols.

33. The child's best interests shall be applied to all matters concerning the child or children, and taken into account to resolve any possible conflicts among the rights enshrined in the Convention or other human rights treaties. Attention must be placed on identifying possible solutions which are in the child's best interests. This implies that States are under the obligation to clarify the best interests of all children, including those in vulnerable situations, when adopting implementation measures.

34. The flexibility of the concept of the child's best interests allows it to be responsive to the situation of individual children and to evolve knowledge about child development. However, it may also leave room for manipulation; the concept of the child's best interests has been abused by Governments and other State authorities to justify racist policies, for example; by parents to defend their own interests in custody disputes; by professionals who could not be bothered, and who dismiss the assessment of the child's best interests as irrelevant or unimportant.

35. With regard to implementation measures, ensuring that the best interests of the child are a primary consideration in legislation and policy development and delivery at all levels of Government demands a continuous process of child rights impact assessment (CRIA) to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, and child rights impact evaluation to evaluate the actual impact of implementation.⁶

4. “Shall be a primary consideration”

36. The best interests of a child shall be a primary consideration in the adoption of all measures of implementation. The words “shall be” place a strong legal obligation on States and mean that States may not exercise discretion as to whether children's best interests are to be assessed and ascribed the proper weight as a primary consideration in any action undertaken.

37. The expression “primary consideration” means that the child's best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked.

38. In respect of adoption (art. 21), the right of best interests is further strengthened; it is not simply to be **“a primary consideration”** but **“the paramount consideration”**. Indeed, the best interests of the child are to be the determining factor when taking a decision on adoption, but also on other issues.

39. However, since article 3, paragraph 1, covers a wide range of situations, the Committee recognizes the need for a degree of flexibility in its application. The best interests of the child – once assessed and determined – might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.

40. Viewing the best interests of the child as “primary” requires a consciousness about the place that children's interests must occupy in all actions and a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned.

B. The best interests of the child and links with other general principles of the Convention

1. The child's best interests and the right to non-discrimination (art. 2)

41. The right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.

2. The child's best interests and the right to life, survival and development (art. 6)

42. States must create an environment that respects human dignity and ensures the holistic development of every child. In the assessment and determination of the child's best interests, the State must ensure full respect for his or her inherent right to life, survival and development.

3. The child's best interests and the right to be heard (art. 12)

43. Assessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight given to said views in all matters affecting the child. This is clearly set out in the Committee's general comment No. 12 which also highlights the inextricable links between articles 3, paragraph 1, and 12. The two articles have complementary roles: the first aims to realize the child's best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives⁷.

44. The evolving capacities of the child (art. 5) must be taken into consideration when the child's best interests and right to be heard are at stake. The Committee has already established that the more the child knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for him or her have to transform direction and guidance into reminders and advice, and later to an exchange on an equal footing.⁸ Similarly, as the child matures, his or her views shall have increasing weight in the assessment of his or her best interests. Babies and very young children have the same rights as all children to have their best interests assessed, even if they cannot express their views or represent themselves in the same way as older children. States must ensure appropriate arrangements, including representation, when appropriate, for the assessment of their best interests; the same applies for children who are not able or willing to express a view.

45. The Committee recalls that article 12, paragraph 2, of the Convention provides for the right of the child to be heard, either directly or through a representative, in any judicial or administrative proceeding affecting him or her (see further chapter V.B below).

V. Implementation: assessing and determining the child's best interests

46. As stated earlier, the "best interests of the child" is a right, a principle and a rule of procedure based on an assessment of all elements of a child's or children's interests in a specific situation. When assessing and determining the best interests of the child in order to make a decision on a specific measure, the following steps should be followed:

(a) First, within the specific factual context of the case, find out what are the relevant elements in a best-interests assessment, give them concrete content, and assign a weight to each in relation to one another;

(b) Secondly, to do so, follow a procedure that ensures legal guarantees and proper application of the right.

47. Assessment and determination of the child's best interests are two steps to be followed when required to make a decision. The "best-interests assessment" consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision-maker and his or her staff – if possible a multidisciplinary team –, and requires the participation of the child. The "best-interests determination" describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment.

A. Best interests assessment and determination

48. Assessing the child's best interests is a unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned, such as, *inter alia*, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc.

49. Determining what is in the best interests of the child should start with an assessment of the specific circumstances that make the child unique. This implies that some elements will be used and others will not, and also influences how they will be weighted against each other. For children in general, assessing best interests involves the same elements.

50. The Committee considers it useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment by any decision-maker having to determine a child's best interests. The non-exhaustive nature of the elements in the list implies that it is possible to go beyond those and consider other factors relevant in the specific circumstances of the individual child or group of children. All the elements of the list must be taken into consideration and balanced in light of each situation. The list should provide concrete guidance, yet flexibility.

51. Drawing up such a list of elements would provide guidance for the State or decision-maker in regulating specific areas affecting children, such as family, adoption and juvenile justice laws, and if necessary, other elements deemed appropriate in accordance with its legal tradition may be added. The Committee would like to point out that, when adding elements to the list, the ultimate purpose of the child's best interests should be to ensure the full and effective enjoyment of the rights recognized in the Convention and the holistic development of the child. Consequently, elements that are contrary to the rights enshrined in the Convention or that would have an effect contrary to the rights under the Convention cannot be considered as valid in assessing what is best for a child or children.

1. Elements to be taken into account when assessing the child's best interests

52. Based on these preliminary considerations, the Committee considers that the elements to be taken into account when assessing and determining the child's best interests, as relevant to the situation in question, are as follows:

(a) The child's views

53. Article 12 of the Convention provides for the right of children to express their views in every decision that affects them. Any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests.

54. The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation⁹ and support, where necessary, to ensure their full participation in the assessment of their best interests.

(b) The child's identity

55. Children are not a homogeneous group and therefore diversity must be taken into account when assessing their best interests. The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his or her identity is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests.

56. Regarding religious and cultural identity, for example, when considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child's upbringing

and to the child's ethnic, religious, cultural and linguistic background (art. 20, para. 3), and the decision-maker must take into consideration this specific context when assessing and determining the child's best interests. The same applies in cases of adoption, separation from or divorce of parents. Due consideration of the child's best interests implies that children have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country (see art. 9, para. 4).

57. Although preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration, practices that are inconsistent or incompatible with the rights established in the Convention are not in the child's best interests. Cultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention.

(c) Preservation of the family environment and maintaining relations

58. The Committee recalls that it is indispensable to carry out the assessment and determination of the child's best interests in the context of potential separation of a child from his or her parents (arts. 9, 18 and 20). It also underscores that the elements mentioned above are concrete rights and not only elements in the determination of the best interests of the child.

59. The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children (preamble of the Convention). The right of the child to family life is protected under the Convention (art. 16). The term "family" must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5).

60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child". Furthermore, the child who is separated from one or both parents is entitled "to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (art. 9, para. 3). This also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.

61. Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.

62. The Guidelines for the Alternative Care of Children¹⁰ aims to ensure that children are not placed in alternative care unnecessarily; and that where alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child. In particular, "financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care [...] but should be seen as a signal for the need to provide appropriate support to the family" (para. 15).

63. Likewise, a child may not be separated from his or her parents on the grounds of a disability of either the child or his or her parents.¹¹ Separation may be considered only in cases where the necessary assistance to the family to preserve the family unit is not effective enough to avoid a risk of neglect or abandonment of the child or a risk to the child's safety.

64. In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child's best interests.

65. When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests.

The quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family.

66. When the child's relations with his or her parents are interrupted by migration (of the parents without the child, or of the child without his or her parents), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification.

67. The Committee is of the view that shared parental responsibilities are generally in the child's best interests. However, in decisions regarding parental responsibilities, the only criterion shall be what is in the best interests of the particular child. It is contrary to those interests if the law automatically gives parental responsibilities to either or both parents. In assessing the child's best interests, the judge must take into consideration the right of the child to preserve his or her relationship with both parents, together with the other elements relevant to the case.

68. The Committee encourages the ratification and implementation of the conventions of the Hague Conference on Private International Law,¹² which facilitate the application of the child's best interests and provide guarantees for its implementation in the event that the parents live in different countries.

69. In cases where the parents or other primary caregivers commit an offence, alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child or children.¹³

70. Preservation of the family environment encompasses the preservation of the ties of the child in a wider sense. These ties apply to the extended family, such as grandparents, uncles/aunts as well friends, school and the wider environment and are particularly relevant in cases where parents are separated and live in different places.

(d) Care, protection and safety of the child

71. When assessing and determining the best interests of a child or children in general, the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being (art. 3, para. 2) should be taken into consideration. The terms "protection and care" must also be read in a broad sense, since their objective is not stated in limited or negative terms (such as "to protect the child from harm"), but rather in relation to the comprehensive ideal of ensuring the child's "well-being" and development. Children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.

72. Emotional care is a basic need of children; if parents or other primary caregivers do not fulfil the child's emotional needs, action must be taken so that the child develops a secure attachment. Children need to form an attachment to a caregiver at a very early age, and such attachment, if adequate, must be sustained over time in order to provide the child with a stable environment.

73. Assessment of the child's best interests must also include consideration of the child's safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (art. 19), sexual harassment, peer pressure, bullying, degrading treatment, etc.,¹⁴ as well as protection against sexual, economic and other exploitation, drugs, labour, armed conflict, etc.(arts. 32-39).

74. Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety.

(e) Situation of vulnerability

75. An important element to consider is the child's situation of vulnerability, such as disability, belonging to a minority group, being a refugee or asylum seeker, victim of abuse, living in a street situation, etc. The purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees, among others.

76. The best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision-makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness. An individualized assessment of each

child's history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child's development process.

(f) The child's right to health

77. The child's right to health (art. 24) and his or her health condition are central in assessing the child's best interest. However, if there is more than one possible treatment for a health condition or if the outcome of a treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side effects, and the views of the child must also be given due weight based on his or her age and maturity. In this respect, children should be provided with adequate and appropriate information in order to understand the situation and all the relevant aspects in relation to their interests, and be allowed, when possible, to give their consent in an informed manner.

78. For example, as regards adolescent health, the Committee has stated that States parties have the obligation to ensure that all adolescents, both in and out of school, have access to adequate information that is essential for their health and development in order to make appropriate health behaviour choices. This should include information on use and abuse of tobacco, alcohol and other substances, diet, appropriate sexual and reproductive information, dangers of early pregnancy, prevention of HIV/AIDS and of sexually transmitted diseases. Adolescents with a psycho-social disorder have the right to be treated and cared for in the community in which he or she lives, to the extent possible. Where hospitalization or placement in a residential institution is necessary, the best interests of the child must be assessed prior to taking a decision and with respect for the child's views; the same considerations are valid for younger children. The health of the child and possibilities for treatment may also be part of a best-interests assessment and determination with regard to other types of significant decisions (e.g. granting a residence permit on humanitarian grounds).

(g) The child's right to education

79. It is in the best interests of the child to have access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge. All decisions on measures and actions concerning a specific child or a group of children must respect the best interests of the child or children, with regard to education. In order to promote education, or better quality education, for more children, States parties need to have well-trained teachers and other professionals working in different education-related settings, as well as a child-friendly environment and appropriate teaching and learning methods, taking into consideration that education is not only an investment in the future, but also an opportunity for joyful activities, respect, participation and fulfilment of ambitions. Responding to this requirement and enhancing children's responsibilities to overcome the limitations of their vulnerability of any kind, will be in their best interests.

2. Balancing the elements in the best-interests assessment

80. It should be emphasized that the basic best-interests assessment is a general assessment of all relevant elements of the child's best interests, the weight of each element depending on the others. Not all the elements will be relevant to every case, and different elements can be used in different ways in different cases. The content of each element will necessarily vary from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment.

81. The elements in the best-interests assessment may be in conflict when considering a specific case and its circumstances. For example, preservation of the family environment may conflict with the need to protect the child from the risk of violence or abuse by parents. In such situations, the elements will have to be weighted against each other in order to find the solution that is in the best interests of the child or children.

82. In weighing the various elements, one needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child.

83. There might be situations where „protection“ factors affecting a child (e.g. which may imply limitation or restriction of rights) need to be assessed in relation to measures of „empowerment“ (which implies full exercise of rights without restriction). In such situations, the age and maturity of the child should guide the balancing of the elements. The physical, emotional, cognitive and social development of the child should be taken into account to assess the level of maturity of the child.

84. In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child's development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation.

B. Procedural safeguards to guarantee the implementation of the child's best interests

85. To ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure (see para. 6 (b) above).

86. While public authorities and organizations making decisions that concern children must act in conformity with the obligation to assess and determine the child's best interests, people who make decisions concerning children on a daily basis (e.g. parents, guardians, teachers, etc.) are not expected to follow strictly this two-step procedure, even though decisions made in everyday life must also respect and reflect the child's best interests.

87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children.

88. The Committee invites States and all persons who are in a position to assess and determine the child's best interests to pay special attention to the following safeguards and guarantees:

(a) Right of the child to express his or her own views

89. A vital element of the process is communicating with children to facilitate meaningful child participation and identify their best interests. Such communication should include informing children about the process and possible sustainable solutions and services, as well as collecting information from children and seeking their views.

90. Where the child wishes to express his or her views and where this right is fulfilled through a representative, the latter's obligation is to communicate accurately the views of the child. In situations where the child's views are in conflict with those of his or her representative, a procedure should be established to allow the child to approach an authority to establish a separate representation for the child (e.g. a guardian ad litem), if necessary.

91. The procedure for assessing and determining the best interests of children as a group is, to some extent, different from that regarding an individual child. When the interests of a large number of children are at stake, Government institutions must find ways to hear the views of a representative sample of children and give due consideration to their opinions when planning measures or making legislative decisions which directly or indirectly concern the group, in order to ensure that all categories of children are covered. There are many examples of how to do this, including children's hearings, children's parliaments, children-led organizations, children's unions or other representative bodies, discussions at school, social networking websites, etc.

(b) Establishment of facts

92. Facts and information relevant to a particular case must be obtained by well-trained professionals in order to draw up all the elements necessary for the best-interests assessment. This could involve interviewing persons close to the child, other people who are in contact with the child on a daily basis, witnesses to certain incidents, among others. Information and data gathered must be verified and analysed prior to being used in the child's or children's best-interests assessment.

(c) Time perception

93. The passing of time is not perceived in the same way by children and adults. Delays in or prolonged decision-making have particularly adverse effects on children as they evolve. It is therefore advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible. The timing of the decision should, as far as possible, correspond to the

child's perception of how it can benefit him or her, and the decisions taken should be reviewed at reasonable intervals as the child develops and his or her capacity to express his or her views evolves. All decisions on care, treatment, placement and other measures concerning the child must be reviewed periodically in terms of his or her perception of time, and his or her evolving capacities and development (art. 25).

(d) Qualified professionals

94. Children are a diverse group, with each having his or her own characteristics and needs that can only be adequately assessed by professionals who have expertise in matters related to child and adolescent development. This is why the formal assessment process should be carried out in a friendly and safe atmosphere by professionals trained in, inter alia, child psychology, child development and other relevant human and social development fields, who have experience working with children and who will consider the information received in an objective manner. As far as possible, a multidisciplinary team of professionals should be involved in assessing the child's best interests.

95. The assessment of the consequences of alternative solutions must be based on general knowledge (i.e. in the areas of law, sociology, education, social work, psychology, health, etc.) of the likely consequences of each possible solution for the child, given his or her individual characteristics and past experience.

(e) Legal representation

96. The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies. In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision.

(f) Legal reasoning

97. In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a credible way, why the best interests of the child were not strong enough to outweigh the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration (see paragraph 38 above).

(g) Mechanisms to review or revise decisions

98. States should establish mechanisms within their legal systems to appeal or revise decisions concerning children when a decision seems not to be in accordance with the appropriate procedure of assessing and determining the child's or children's best interests. There should always be the possibility to request a review or to appeal such a decision at the national level. Mechanisms should be made known to the child and be accessible by him or her directly or by his or her legal representative, if it is considered that the procedural safeguards had not been respected, the facts are wrong, the best-interests assessment had not been adequately carried out or that competing considerations had been given too much weight. The reviewing body must look into all these aspects.

(h) Child-rights impact assessment (CRIA)

99. As mentioned above, the adoption of all measures of implementation should also follow a procedure that ensures that the child's best interests are a primary consideration. The child-rights impact assessment (CRIA) can predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision which affect children and the enjoyment of their rights and should complement ongoing monitoring and evaluation of the impact of measures on children's rights.¹⁷ CRIA

needs to be built into Government processes at all levels and as early as possible in the development of policy and other general measures in order to ensure good governance for children's rights. Different methodologies and practices may be developed when undertaking CRIA. At a minimum, they must use the Convention and its Optional Protocols as a framework, in particular ensuring that the assessments are underpinned by the general principles and have special regard for the differentiated impact of the measure(s) under consideration on children. The impact assessment itself could be based on input from children, civil society and experts, as well as from relevant Government departments, academic research and experiences

VI. Dissemination

100. The Committee recommends that States widely disseminate the present general comment to parliaments, governments and the judiciary, nationally and locally. It should also be made known to children – including those in situations of exclusion –, all professionals working for and with children (including judges, lawyers, teachers, guardians, social workers, staff of public or private welfare institutions, health staff, teachers, etc.) and civil society at large. To do this, the general comment should be translated into relevant languages, child-friendly/appropriate versions should be made available, conferences, seminars, workshops and other events should be held to share best practices on how best to implement it. It should also be incorporated into the formal pre- and in-service training of all concerned professionals and technical staff.

101. States should include information in their periodic reporting to the Committee on the challenges they face and the measures they have taken to apply and respect the child's best interests in all judicial and administrative decisions and other actions concerning the child as an individual, as well as at all stages of the adoption of implementation measures concerning children in general or as a specific group.

UN Committee on the Rights of the Child

General comment No. 24 (2019) ON CHILDREN'S RIGHTS IN THE CHILD JUSTICE SYSTEM

I. Introduction

1. The present general comment replaces general comment No. 10 (2007) on children's rights in juvenile justice. It reflects the developments that have occurred since 2007 as a result of the promulgation of international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to restorative justice. It also reflects concerns such as the trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty. The general comment covers specific issues, such as issues relating to children recruited and used by non-State armed groups, including those designated as terrorist groups, and children in customary, indigenous or other non-State justice systems.
2. Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.
3. The Committee acknowledges that preservation of public safety is a legitimate aim of the justice system, including the child justice system. However, States parties should serve this aim subject to their obligations to respect and implement the principles of child justice as enshrined in the Convention on the Rights of the Child. As the Convention clearly states in article 40, every child alleged as, accused of or recognized as having infringed criminal law should always be treated in a manner consistent with the promotion of the child's sense of dignity and worth. Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles.
4. The Committee welcomes the many efforts made to establish child justice systems in compliance with the Convention. Those States having provisions that are more conducive to the rights of children than those contained in the Convention and the present general comment are commended, and reminded that, in accordance with article 41 of the Convention, they should not take any retrogressive steps. State party reports indicate that many States parties still require significant investment to achieve full compliance with the Convention, particularly regarding prevention, early intervention, the development and implementation of diversion measures, a multidisciplinary approach, the minimum age of criminal responsibility and the reduction of deprivation of liberty. The Committee draws States' attention to the report of the Independent Expert leading the United Nations global study on children deprived of their liberty (A/74/136), submitted pursuant to General Assembly resolution 69/157, which had been initiated by the Committee.
5. In the past decade, several declarations and guidelines that promote access to justice and child-friendly justice have been adopted by international and regional bodies. These frameworks cover children in all aspects of the justice systems, including child victims and witnesses of crime, children in welfare proceedings and children before administrative tribunals. These developments, valuable though they are, fall outside of the scope of the present general comment, which is focused on children alleged as, accused of or recognized as having infringed criminal law.

II. Objectives and scope

6. The objectives and scope of the present general comment are:
 - (a) To provide a contemporary consideration of the relevant articles and principles in the Convention on the Rights of the Child, and to guide States towards a holistic implementation of child justice systems that promote and protect children's rights;

- (b) To reiterate the importance of prevention and early intervention, and of protecting children's rights at all stages of the system;
- (c) To promote key strategies for reducing the especially harmful effects of contact with the criminal justice system, in line with increased knowledge about children's development, in particular:
 - (i) Setting an appropriate minimum age of criminal responsibility and ensuring the appropriate treatment of children on either side of that age;
 - (ii) Scaling up the diversion of children away from formal justice processes and to effective programmes;
 - (iii) Expanding the use of non-custodial measures to ensure that detention of children is a measure of last resort;
 - (iv) Ending the use of corporal punishment, capital punishment and life sentences;
 - (v) For the few situations where deprivation of liberty is justified as a last resort, ensuring that its application is for older children only, is strictly time limited and is subject to regular review;
- (d) To promote the strengthening of systems through improved organization, capacity-building, data collection, evaluation and research;
- (e) To provide guidance on new developments in the field, in particular the recruitment and use of children by non-State armed groups, including those designated as terrorist groups, and children coming into contact with customary, indigenous and non-State justice systems.

III. Terminology

7. The Committee encourages the use of non-stigmatizing language relating to children alleged as, accused of or recognized as having infringed criminal law.

8. Important terms used in the present general comment are listed below:

- Appropriate adult: in situations where the parent or legal guardian is not available to assist the child, States parties should allow for an appropriate adult to assist the child. An appropriate adult may be a person who is nominated by the child and/or by the competent authority.
- Child justice system:¹ the legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders.
- Deprivation of liberty: any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.²
- Diversion: measures for referring children away from the judicial system, at any time prior to or during the relevant proceedings.
- Minimum age of criminal responsibility: the minimum age below which the law determines that children do not have the capacity to infringe the criminal law.
- Pretrial detention: detention from the moment of the arrest to the stage of the disposition or sentence, including detention throughout the trial.
- Restorative justice: any process in which the victim, the offender and/or any other individual or community member affected by a crime actively participates together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative process include mediation, conferencing, conciliation and sentencing circles.³

IV. Core elements of a comprehensive child justice policy

A. Prevention of child offending, including early intervention directed at children below the minimum age of criminal responsibility

9. States parties should consult the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and comparative national and international research on root causes of children's involvement in the child justice system and undertake their own research to inform the development of a prevention strategy. Research has demonstrated that intensive family- and community-based treatment programmes

designed to make positive changes in aspects of the various social systems (home, school, community, peer relations) that contribute to the serious behavioural difficulties of children reduce the risk of children coming into child justice systems. Prevention and early intervention programmes should be focused on support for families, in particular those in vulnerable situations or where violence occurs. Support should be provided to children at risk, particularly children who stop attending school, are excluded or otherwise do not complete their education. Peer group support and a strong involvement of parents are recommended. States parties should also develop community-based services and programmes that respond to the specific needs, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.

10. Articles 18 and 27 of the Convention confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the Convention requires States parties to provide the assistance to parents (or other caregivers) necessary to carry out their child-rearing responsibilities. Investment in early childhood care and education correlates with lower rates of future violence and crime. This can commence when the child is very young, for example with home visitation programmes to enhance parenting capacity. Measures of assistance should draw on the wealth of information on community and family-based prevention programmes, such as programmes to improve parent-child interaction, partnerships with schools, positive peer association and cultural and leisure activities.
11. Early intervention for children who are below the minimum age of criminal responsibility requires child-friendly and multidisciplinary responses to the first signs of behaviour that would, if the child were above the minimum age of criminal responsibility, be considered an offence. Evidence-based intervention programmes should be developed that reflect not only the multiple psychosocial causes of such behaviour, but also the protective factors that may strengthen resilience. Interventions must be preceded by a comprehensive and interdisciplinary assessment of the child's needs. As an absolute priority, children should be supported within their families and communities. In the exceptional cases that require an out-of-home placement, such alternative care should preferably be in a family setting, although placement in residential care may be appropriate in some instances, to provide the necessary array of professional services. It is to be used only as a measure of last resort and for the shortest appropriate period of time and should be subject to judicial review.
12. A systemic approach to prevention also includes closing pathways into the child justice system through the decriminalization of minor offences such as school absence, running away, begging or trespassing, which often are the result of poverty, homelessness or family violence. Child victims of sexual exploitation and adolescents who engage with one another in consensual sexual acts are also sometimes criminalized. These acts, also known as status offences, are not considered crimes if committed by adults. The Committee urges States parties to remove status offences from their statutes.

B. Interventions for children above the minimum age of criminal responsibility⁴

13. Under article 40 (3) (b) of the Convention, States parties are required to promote the establishment of measures for dealing with children without resorting to judicial proceedings, whenever appropriate. In practice, the measures generally fall into two categories:
 - (a) Measures referring children away from the judicial system, any time prior to or during the relevant proceedings (diversion);
 - (b) Measures in the context of judicial proceedings.
14. The Committee reminds States parties that, in applying measures under both categories of intervention, utmost care should be taken to ensure that the child's human rights and legal safeguards are fully respected and protected.

Interventions that avoid resorting to judicial proceedings

15. Measures dealing with children that avoid resorting to judicial proceedings have been introduced into many systems around the world, and are generally referred to as diversion. Diversion involves the referral of matters away from the formal criminal justice system, usually to programmes or activities. In addition to avoiding stigmatization and criminal records, this approach yields good results for children, is congruent with public safety and has proved to be cost-effective.
16. Diversion should be the preferred manner of dealing with children in the majority of cases. States parties should continually extend the range of offences for which diversion is possible, including

serious offences where appropriate. Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process. Diversion should be an integral part of the child justice system, and, in accordance with art. 40 (3) (b) of the Convention, children's human rights and legal safeguards are to be fully respected and protected in all diversion processes and programmes

17. It is left to the discretion of States parties to decide on the exact nature and content of measures of diversion, and to take the necessary legislative and other measures for their implementation. The Committee takes note that a variety of community-based programmes have been developed, such as community service, supervision and guidance by designated officials, family conferencing and other restorative justice options, including reparation to victims.

18. The Committee emphasizes the following:

- (a) Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or she freely and voluntarily admits responsibility, without intimidation or pressure, and that the admission will not be used against the child in any subsequent legal proceeding;
- (b) The child's free and voluntary consent to diversion should be based on adequate and specific information on the nature, content and duration of the measure, and on an understanding of the consequences of a failure to cooperate or complete the measure;
- (c) The law should indicate the cases in which diversion is possible, and the relevant decisions of the police, prosecutors and/or other agencies should be regulated and reviewable. All State officials and actors participating in the diversion process should receive the necessary training and support;
- (d) The child is to be given the opportunity to seek legal or other appropriate assistance relating to the diversion offered by the competent authorities, and the possibility of review of the measure;
- (e) Diversion measures should not include the deprivation of liberty;
- (f) The completion of the diversion should result in a definite and final closure of the case. Although confidential records of diversion can be kept for administrative, review, investigative and research purposes, they should not be viewed as criminal convictions or result in criminal records.

Interventions in the context of judicial proceedings (disposition)

19. When judicial proceedings are initiated by the competent authority, the principles of a fair and just trial are applicable (see section D below). The child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing. States parties should have in place a probation service or similar agency with well-trained staff to ensure the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day reporting centres, and the possibility of early release from detention.

C. Age and child justice systems

Minimum age of criminal responsibility

20. Children who are below the minimum age of criminal responsibility at the time of the commission of an offence cannot be held responsible in criminal law proceedings. Children at or above the minimum age at the time of the commission of an offence but younger than 18 years can be formally charged and subjected to child justice procedures, in full compliance with the Convention. The Committee reminds States parties that the relevant age is the age at the time of the commission of the offence.

21. Under article 40 (3) of the Convention, States parties are required to establish a minimum age of criminal responsibility, but the article does not specify the age. Over 50 States parties have raised the minimum age following ratification of the Convention, and the most common minimum age of criminal responsibility internationally is 14. Nevertheless, reports submitted by States parties indicate that some States retain an unacceptably low minimum age of criminal responsibility.

22. Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence. As the Committee notes in its general comment No. 20 (2016) on the implementation

of the rights of the child during adolescence, adolescence is a unique defining stage of human development characterized by rapid brain development, and this affects risk-taking, certain kinds of decision-making and the ability to control impulses. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.

23. The Committee recognizes that although the setting of a minimum age of criminal responsibility at a reasonably high level is important, an effective approach also depends on how each State deals with children above and below that age. The Committee will continue to scrutinize this in reviews of State party reports. Children below the minimum age of criminal responsibility are to be provided with assistance and services according to their needs, by the appropriate authorities, and should not be viewed as children who have committed criminal offences.

24. If there is no proof of age and it cannot be established that the child is below or above the minimum age of criminal responsibility, the child is to be given the benefit of the doubt and is not to be held criminally responsible.

Systems with exceptions to the minimum age

25. The Committee is concerned about practices that permit exceptions to the use of a lower minimum age of criminal responsibility in cases where, for example, the child is accused of committing a serious offence. Such practices are usually created to respond to public pressure and are not based on a rational understanding of children's development. The Committee strongly recommends that States parties abolish such approaches and set one standardized age below which children cannot be held responsible in criminal law, without exception.

Systems with two minimum ages

26. Several States parties apply two minimum ages of criminal responsibility (for example, 7 and 14 years), with a presumption that a child who is at or above the lower age but below the higher age lacks criminal responsibility unless sufficient maturity is demonstrated. Initially devised as a protective system, it has not proved so in practice. Although there is some support for the idea of individualized assessment of criminal responsibility, the Committee has observed that this leaves much to the discretion of the court and results in discriminatory practices.

27. States are urged to set one appropriate minimum age and to ensure that such legal reform does not result in a retrogressive position regarding the minimum age of criminal responsibility.

Children lacking criminal responsibility for reasons related to developmental delays or neurodevelopmental disorders or disabilities

28. Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.

Application of the child justice system

29. The child justice system should apply to all children above the minimum age of criminal responsibility but below the age of 18 years at the time of the commission of the offence.

30. The Committee recommends that those States parties that limit the applicability of their child justice system to children under the age of 16 years (or lower), or that allow by way of exception that certain children are treated as adult offenders (for example, because of the offence category), change their laws to ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence (see also general comment No. 20, para. 88).

31. Child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.

32. The Committee commends States parties that allow the application of the child justice system to persons aged 18 and older whether as a general rule or by way of exception. This approach is in

keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties.

Birth certificates and age determination

33. A child who does not have a birth certificate should be provided with one promptly and free of charge by the State, whenever it is required to prove age. If there is no proof of age by birth certificate, the authority should accept all documentation that can prove age, such as notification of birth, extracts from birth registries, baptismal or equivalent documents or school reports. Documents should be considered genuine unless there is proof to the contrary. Authorities should allow for interviews with or testimony by parents regarding age,

or for permitting affirmations to be filed by teachers or religious or community leaders who know the age of the child.

34. Only if these measures prove unsuccessful may there be an assessment of the child's physical and psychological development, conducted by specialist pediatricians or other professionals skilled in evaluating different aspects of development. Such assessments should be carried out in a prompt, child- and gender-sensitive and culturally appropriate manner, including interviews of children and parents or caregivers in a language the child understands. States should refrain from using only medical methods based on, inter alia, bone and dental analysis, which is often inaccurate, due to wide margins of error, and can also be traumatic. The least invasive method of assessment should be applied. In the case of inconclusive evidence, the child or young person is to have the benefit of the doubt.

Continuation of child justice measures

35. The Committee recommends that children who turn 18 before completing a diversion programme or non-custodial or custodial measure be permitted to complete the programme, measure or sentence, and not be sent to centres for adults.

Offences committed before and after 18 years and offences committed with adults

36. In cases where a young person commits several offences, some occurring before and some after the age of 18 years, States parties should consider providing for procedural rules that allow the child justice system to be applied in respect of all the offences when there are reasonable grounds to do so.

37. In cases where a child commits an offence together with one or more adults, the rules of the child justice system applies to the child, whether they are tried jointly or separately.

D. Guarantees for a fair trial

38. Article 40 (2) of the Convention contains an important list of rights and guarantees aimed at ensuring that every child receives fair treatment and trial (see also article 14 of the International Covenant on Civil and Political Rights). It should be noted that these are minimum standards. States parties can and should try to establish and observe higher standards.

39. The Committee emphasizes that continuous and systematic training of professionals in the child justice system is crucial to uphold those guarantees. Such professionals should be able to work in interdisciplinary teams, and should be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children.

40. Safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress. In particular, gender-sensitive attention should be paid to girls and to children who are discriminated against on the basis of sexual orientation or gender identity. Accommodation should be made for children with disabilities, which may include physical access to court and other buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, and procedural adjustments for testimony.

41. States parties should enact legislation and ensure practices that safeguard children's rights from the moment of contact with the system, including at the stopping, warning or arrest stage, while in custody of police or other law enforcement agencies, during transfers to and from police stations, places of detention and courts, and during questioning, searches and the taking of evidentiary samples. Records should be kept on the location and condition of the child in all phases and processes.

No retroactive application of child justice (art. 40 (2) (a))

42. No child shall be held guilty of any criminal offence that did not constitute a criminal offence, under national or international law, at the time it was committed. States parties that expand their criminal law provisions to prevent and combat terrorism should ensure that those changes do not result in the retroactive or unintended punishment of children. No child should be punished with a heavier penalty than the one applicable at the time of the offence, but if a change of law after the offence provides for a lighter penalty, the child should benefit.

Presumption of innocence (art. 40 (2) (b) (i))

43. The presumption of innocence requires that the burden of proof of the charge is on the prosecution, regardless of the nature of the offence. The child has the benefit of the doubt and is guilty only if the charges have been proved beyond reasonable doubt. Suspicious behaviour on the part of the child should not lead to assumptions of guilt, as it may be due to a lack of understanding of the process, immaturity, fear or other reasons.

Right to be heard (art. 12)

44. In paragraphs 57 to 64 of general comment No. 12 (2009) on the right of the child to be heard, the Committee explained the fundamental right of the child to be heard in the context of child justice.

45. Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact. The child has the right to remain silent and no adverse inference should be drawn when children elect not to make statements.

Effective participation in the proceedings (art. 40 (2) (b) (iv))

46. A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice process. To effectively participate, a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge. Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate. Developments in child-friendly justice provide an impetus towards child-friendly language at all stages, child-friendly layouts of interviewing spaces and courts, support by appropriate adults, removal of intimidating legal attire and adaptation of proceedings, including accommodation for children with disabilities.

Prompt and direct information of the charge(s) (art. 40 (2) (b) (ii))

47. Every child has the right to be informed promptly and directly (or where appropriate through his or her parent or guardian) of the charges brought against him or her. Promptly means as soon as possible after the first contact of the child with the justice system. Notification of parents should not be neglected on the grounds of convenience or resources. Children who are diverted at the charge stage need to understand their legal options, and legal safeguards should be fully respected.

48. Authorities should ensure that the child understands the charges, options and processes. Providing the child with an official document is insufficient and an oral explanation is necessary. Although children should be assisted in understanding any document by a parent or appropriate adult, authorities should not leave the explanation of the charges to such persons.

Legal or other appropriate assistance (art. 40 (2) (b) (ii))

49. States should ensure that the child is guaranteed legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted. The Committee requests States parties to withdraw any reservation made in respect of article 40 (2) (b) (ii).

50. The Committee remains concerned that many children face criminal charges before judicial, administrative or other public authorities, and are deprived of liberty, without having the benefit of legal representation. The Committee notes that in article 14 (3) (d) of the International Covenant on Civil and Political Rights, the right to legal representation is a minimum guarantee in the criminal justice system for all persons, and this should equally apply to children. While the article allows the person to defend himself or herself in person, in any case where the interests of justice so require the person is to be assigned legal assistance.

51. In the light of the above, the Committee is concerned that children are provided less protection than international law guarantees for adults. The Committee recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities. Child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision.
52. If children are diverted to programmes or are in a system that does not result in convictions, criminal records or deprivation of liberty, “other appropriate assistance” by well-trained officers may be an acceptable form of assistance, although States that can provide legal representation for children during all processes should do so, in accordance with article
41. Where other appropriate assistance is permissible, the person providing the assistance is required to have sufficient knowledge of the legal aspects of the child justice process and receive appropriate training.
53. As required under article 14 (3) (b) of the International Covenant on Civil and Political Rights, there is to be adequate time and facilities for the preparation of the defence. Under the Convention on the Rights of the Child, the confidentiality of communications between the child and his or her legal representative or other assistant is to be guaranteed (art. 40 (2) (b) (vii)), and the child’s right of protection against interference with his or her privacy and correspondence is to be respected (art. 16).

Decisions without delay and with the involvement of parents or guardians (art. 40 (2) (b) (iii))

54. The Committee reiterates that the time between the commission of the offence and the conclusion of proceedings should be as short as possible. The longer this period, the more likely it is that the response loses its desired outcome.
55. The Committee recommends that States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to institute charges, and the final decision by the court or other judicial body. These time limits should be much shorter than those set for adults, but should still allow legal safeguards to be fully respected. Similar speedy time limits should apply to diversion measures.
56. Parents or legal guardians should be present throughout the proceedings. However, the judge or competent authority may decide to limit, restrict or exclude their presence in the proceedings, at the request of the child or of his or her legal or other appropriate assistant or because it is not in the child’s best interests.
57. The Committee recommends that States parties explicitly legislate for the maximum possible involvement of parents or legal guardians in the proceedings because they can provide general psychological and emotional assistance to the child and contribute to effective outcomes. The Committee also recognizes that many children are informally living with relatives who are neither parents nor legal guardians, and that laws should be adapted to allow genuine caregivers to assist children in proceedings, if parents are unavailable.

Freedom from compulsory self-incrimination (art. 40 (2) (b) (iv))

58. States parties must ensure that a child is not compelled to give testimony or to confess or acknowledge guilt. The commission of acts of torture or cruel, inhuman or degrading treatment in order to extract an admission or confession constitutes a grave violation of the child’s rights (Convention on the Rights of the Child, art. 37 (a)). Any such admission or confession is inadmissible as evidence (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15).
59. Coercion leading a child to a confession or self-incriminatory testimony is impermissible. The term “compelled” should be interpreted broadly and not be limited to physical force. The risk of false confession is increased by the child’s age and development, lack of understanding, and fear of unknown consequences, including a suggested possibility of imprisonment, as well as by the length and circumstances of the questioning.
60. The child must have access to legal or other appropriate assistance, and should be supported by a parent, legal guardian or other appropriate adult during questioning. The court or other judicial body, when considering the voluntariness and reliability of an admission or confession by a child, should take all factors into account, including the child’s age and maturity, the length of questioning or

custody and the presence of legal or other independent assistance and of the parent(s), guardian or appropriate adult. Police officers and other investigating authorities should be well trained to avoid questioning techniques and practices that result in coerced or unreliable confessions or testimonies, and audiovisual techniques should be used where possible.

Presence and examination of witnesses (art. 40 (2) (b) (iv))

61. Children have the right to examine witnesses who testify against them and to involve witnesses to support their defence, and child justice processes should favour the child's participation, under conditions of equality, with legal assistance.

Right of review or appeal (art. 40 (2) (b) (v))

62. The child has the right to have any finding of guilt or the measures imposed reviewed by a higher competent, independent and impartial authority or judicial body. This right of review is not limited to the most serious offences. States parties should consider introducing automatic measures of review, particularly in cases that result in criminal records or deprivation of liberty. Furthermore, access to justice requires a broader interpretation, allowing reviews or appeals on any procedural or substantive misdirection, and ensuring that effective remedies are available.⁵

63. The Committee recommends that States parties withdraw any reservation made in respect of article 40 (2) (b) (v).

Free assistance of an interpreter (art. 40 (2) (b) (vi))

64. A child who cannot understand or speak the language used in the child justice system has the right to the free assistance of an interpreter at all stages of the process. Such interpreters should be trained to work with children.

65. States parties should provide adequate and effective assistance by well-trained professionals to children who experience communication barriers.

Full respect of privacy (arts. 16 and 40 (2) (b) (vii))

66. The right of a child to have his or her privacy fully respected during all stages of the proceedings, set out in article 40 (2) (b) (vii), should be read with articles 16 and 40 (1).

67. States parties should respect the rule that child justice hearings are to be conducted behind closed doors. Exceptions should be very limited and clearly stated in the law. If the verdict and/or sentence is pronounced in public at a court session, the identity of the child should not be revealed. Furthermore, the right to privacy also means that the court files and

⁵ Human Rights Council resolution 25/6.

records of children's should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case.

68. Case-law reports relating to children should be anonymous, and such reports placed online should adhere to this rule.

69. The Committee recommends that States refrain from listing the details of any child, or person who was a child at the time of the commission of the offence, in any public register of offenders. The inclusion of such details in other registers that are not public but impede access to opportunities for reintegration should be avoided.

70. In the Committee's view, there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media.

71. Furthermore, the Committee recommends that States parties introduce rules permitting the removal of children's criminal records when they reach the age of 18, automatically or, in exceptional cases, following independent review.

E. Measures

Diversion throughout the proceedings

72. The decision to bring a child into the justice system does not mean the child must go through a formal court process. In line with the observations made above in section IV.B, the Committee emphasizes that the competent authorities – in most States the public prosecutor

- should continuously explore the possibilities of avoiding a court process or conviction, through diversion and other measures. In other words, diversion options should be offered from the earliest point of contact, before a trial commences, and be available throughout the proceedings. In the process of offering diversion, the child's human rights and legal safeguards should be fully respected, bearing in mind that the nature and duration of diversion measures may be demanding, and that legal or other appropriate assistance is therefore necessary. Diversion should be presented to the child as a way to suspend the formal court process, which will be terminated if the diversion programme is carried out in a satisfactory manner.

Dispositions by the child justice court

73. After proceedings in full compliance with article 40 of Convention are conducted (see section IV.D above), a decision on dispositions is made. The laws should contain a wide variety of non-custodial measures and should expressly prioritize the use of such measures to ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time.

74. A wide range of experience with the use and implementation of non-custodial measures, including restorative justice measures, exists. States parties should benefit from this experience, and develop and implement such measures by adjusting them to their own culture and tradition. Measures amounting to forced labour or to torture or inhuman and degrading treatment are to be explicitly prohibited and penalized.

75. The Committee reiterates that corporal punishment as a sanction is a violation of article 37 (a) of the Convention, which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment).

76. The Committee emphasizes that the reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions. Weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society.

77. Recognizing the harm caused to children and adolescents by deprivation of liberty, and its negative effects on their prospects for successful reintegration, the Committee recommends that States parties set a maximum penalty for children accused of crimes that reflects the principle of the "shortest appropriate period of time" (Convention on the Rights of the Child, art. 37 (b)).

78. Mandatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time. Courts sentencing children should start with a clean slate; even discretionary minimum sentence regimes impede proper application of international standards.

Prohibition of the death penalty

79. Article 37 (a) of the Convention reflects the customary international law prohibition of the imposition of the death penalty for a crime committed by a person who is under 18 years of age. A few States parties assume that the rule prohibits only the execution of persons who are below the age of 18 years at the time of execution. Other States defer the execution until the age of 18. The Committee reiterates that the explicit and decisive criterion is the age at the time of the commission of the offence. If there is no reliable and conclusive proof that the person was below the age of 18 at the time the crime was committed, he or she should have the benefit of the doubt and the death penalty cannot be imposed.

80. The Committee calls upon the few States parties that have not yet abolished the imposition of the death penalty for all offences committed by persons below the age of 18 years to do so urgently and without exceptions. Any death penalty imposed on a person who was below the age of 18 at the time of the commission of the offence should be commuted to a sanction that is in full conformity with Convention.

No life imprisonment without parole

81. No child who was below the age of 18 at the time he or she committed an offence should be sentenced to life imprisonment without the possibility of release or parole. The period to be served before consideration of parole should be substantially shorter than that for adults and should be realistic, and the possibility of parole should be regularly reconsidered. The Committee reminds States parties that sentence children to life imprisonment with the possibility of release or parole that in applying this sanction they should strive for the realization of the aims of article 40 (1) of the Convention. This means, *inter alia*, that a child sentenced to life imprisonment should receive education, treatment and care aiming at his or her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his or her possible release. Life imprisonment makes it very difficult, if not impossible, to achieve the aims of reintegration. The Committee notes the 2015 report in which the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment finds that life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child (A/HRC/28/68, para. 74). The Committee strongly recommends that States parties abolish all forms of life imprisonment, including indeterminate sentences, for all offences committed by persons who were below the age of 18 at the time of commission of the offence.

F. Deprivation of liberty, including pretrial detention and post-trial incarceration

82. Article 37 of the Convention contains important principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty and provisions concerning the treatment of and conditions for children deprived of their liberty. The Committee draws the attention of States parties to the 2018 report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which the Special Rapporteur noted that the scale and magnitude of children's suffering in detention and confinement called for a global commitment to the abolition of child prisons and large care institutions, alongside scaled-up investment in community-based services (A/HRC/38/36, para. 53).

83. States parties should immediately embark on a process to reduce reliance on detention to a minimum.

84. Nothing in the present general comment should be construed as promoting or supporting the use of deprivation of liberty, but rather as providing correct procedures and conditions in the minority of cases where deprivation of liberty is deemed necessary.

Leading principles

85. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child is to be used only in conformity with the law, only as a measure of last resort and for the shortest appropriate period of time; and (b) no child is to be deprived of his or her liberty unlawfully or arbitrarily. Arrest is often the starting point of pretrial detention, and States should ensure that the law places clear obligations on law enforcement officers to apply article 37 in the context of arrest. States should further ensure that children are not held in transportation or in police cells, except as a measure of last resort and for the shortest period of time, and that they are not held with adults, except where that is in their best interests. Mechanisms for swift release to parents or appropriate adults should be prioritized.

86. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of the Convention. Pretrial detention should not be used except in the most serious cases, and even then only after community placement has been carefully considered. Diversion at the pretrial stage reduces the use of detention, but even where the child is to be tried in the child justice system, non-custodial measures should be carefully targeted to restrict the use of pretrial detention.

87. The law should clearly state the criteria for the use of pretrial detention, which should be primarily for ensuring appearance at the court proceedings and if the child poses an immediate danger

to others. If the child is considered a danger (to himself or herself or others) child protection measures should be applied. Pretrial detention should be subject to regular review and its duration limited by law. All actors in the child justice system should prioritize cases of children in pretrial detention.

88. In application of the principle that deprivation of liberty should be imposed for the shortest appropriate period of time, States parties should provide regular opportunities to permit early release from custody, including police custody, into the care of parents or other appropriate adults. There should be discretion to release with or without conditions, such as reporting to an authorized person or place. The payment of monetary bail should not be a requirement, as most children cannot pay and because it discriminates against poor and marginalized families. Furthermore, where bail is set it means that there is a recognition in principle by the court that the child should be released, and other mechanisms can be used to secure attendance.

Procedural rights (art. 37 (d))

89. Every child deprived of his or her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation

of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. The Committee recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age.

90. Every child arrested and deprived of his or her liberty should be brought before a competent authority within 24 hours to examine the legality of the deprivation of liberty or its continuation. The Committee also recommends that States parties ensure that pretrial detention is reviewed regularly with a view to ending it. In cases where conditional release of the child at or before the first appearance (within 24 hours) is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body for the case to be dealt with as soon as possible but not later than 30 days after pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings many times and/or for long periods, urges States parties to adopt maximum limits for the number and length of postponements and introduce legal or administrative provisions to ensure that the court or other competent body makes a final decision on the charges not later than six months from the initial date of detention, failing which the child should be released.

91. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal court decisions, but also the right of access to a court for review of an administrative decision (taken by, for example, the police, the prosecutor and other competent authorities). States parties should set short time limits for the finalization of appeals and reviews to ensure prompt decisions, as required by the Convention.

Treatment and conditions (art. 37 (c))

92. Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison for adults, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – “unless it is considered in the child’s best interests not to do so” – should be interpreted narrowly and the convenience of the States parties should not override best interests. States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.

93. The above rule does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility.

94. Every child deprived of liberty has the right to maintain contact with his or her family through correspondence and visits. To facilitate visits, the child should be placed in a facility as close as possible to his or her family’s place of residence. Exceptional circumstances that may limit this contact should be clearly described in law and not be left to the discretion of the authorities.

95. The Committee emphasizes that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

- (a) Incommunicado detention is not permitted for persons below the age of 18;
- (b) Children should be provided with a physical environment and accommodation conducive to the reintegrative aims of residential placement. Due regard should be given to their needs for privacy, for sensory stimuli and for opportunities to associate with their peers and to participate in sports, physical exercise, arts and leisure-time activities;
- (c) Every child has the right to education suited to his or her needs and abilities, including with regard to undertaking exams, and designed to prepare him or her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him or her for future employment;
- (d) Every child has the right to be examined by a physician or a health practitioner upon admission to the detention or correctional facility and is to receive adequate physical and mental health care throughout his or her stay in the facility, which should be provided, where possible, by the health facilities and services of the community;
- (e) The staff of the facility should promote and facilitate frequent contact by the child with the wider community, including communications with his or her family, friends and other persons, including representatives of reputable outside organizations, and the opportunity to visit his or her home and family. There is to be no restriction on the child's ability to communicate confidentially and at any time with his or her lawyer or other assistant;
- (f) Restraint or force can be used only when the child poses an imminent threat of injury to himself or herself or others, and only when all other means of control have been exhausted. Restraint should not be used to secure compliance and should never involve deliberate infliction of pain. It is never to be used as a means of punishment. The use of restraint or force, including physical, mechanical and medical or pharmacological restraints, should be under close, direct and continuous control of a medical and/or psychological professional. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately. States should record, monitor and evaluate all incidents of restraint or use of force and ensure that it is reduced to a minimum;
- (g) Any disciplinary measure is to be consistent with upholding the inherent dignity of the child and the fundamental objectives of institutional care. Disciplinary measures in violation of article 37 of the Convention must be strictly forbidden, including corporal punishment, placement in a dark cell, solitary confinement or any other punishment that may compromise the physical or mental health or well-being of the child concerned, and disciplinary measures should not deprive children of their basic rights, such as visits by legal representative, family contact, food, water, clothing, bedding, education, exercise or meaningful daily contact with others;
- (h) Solitary confinement should not be used for a child. Any separation of the child from others should be for the shortest possible time and used only as a measure of last resort for the protection of the child or others. Where it is deemed necessary to hold a child separately, this should be done in the presence or under the close supervision of a suitably trained staff member, and the reasons and duration should be recorded;
- (i) Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or any other proper independent authority, and to be informed of the response without delay. Children need to know their rights and to know about and have easy access to request and complaints mechanisms;
- (j) Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting;
- (k) States parties should ensure that there are no incentives to deprive children of their liberty and no opportunities for corruption regarding placement, or regarding the provision of goods and services or contact with family.

G. Specific issues

Military courts and State security courts

96. There is an emerging view that trials of civilians by military tribunals and State security courts contravene the non-derogable right to a fair trial by a competent, independent and impartial court. This is an even more concerning breach of rights for children, who should always be dealt with in specialized child justice systems. The Committee has raised concerns about this in several concluding observations.

Children recruited and used by non-State armed groups, including those designated as terrorist groups, and children charged in counter-terrorism contexts

97. The United Nations has verified numerous cases of recruitment and exploitation of children by non-State armed groups, including those designated as terrorist groups, not only in conflict areas but also in non-conflict areas, including children's countries of origin and countries of transit or return.

98. When under the control of such groups, children may become victims of multiple forms of violations, such as conscription; military training; being used in hostilities and/or terrorist acts, including suicide attacks; being forced to carry out executions; being used as human shields; abduction; sale; trafficking; sexual exploitation; child marriage; being used for the transport or sale of drugs; or being exploited to carry out dangerous tasks, such as spying, conducting surveillance, guarding checkpoints, conducting patrols or transporting military equipment. It has been reported that non-State armed groups and those designated as terrorist groups also force children to commit acts of violence against their own families or within their own communities to demonstrate loyalty and to discourage future defection.

99. The authorities of States parties face a number of challenges when dealing with these children. Some States parties have adopted a punitive approach with no or limited consideration of children's rights, resulting in lasting consequences for the development of the child and having a negative impact on the opportunities for social reintegration, which in turn may have serious consequences for the broader society. Often, these children are arrested, detained, prosecuted and put on trial for their actions in conflict areas and, to a lesser extent, also in their countries of origin or return.

100. The Committee draws the attention of States parties to Security Council resolution 2427 (2018). In the resolution, the Council stressed the need to establish standard operating procedures for the rapid handover of children associated or allegedly associated with all non-State armed groups, including those who committed acts of terrorism, to relevant civilian child protection actors. The Council emphasized that children who had been recruited in violation of applicable international law by armed forces and armed groups and were accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law. The Council also urged Member States to consider non-judicial measures as alternatives to prosecution and detention that were focused on reintegration, and called on them to apply due process for all children detained for association with armed forces and armed groups.

101. States parties should ensure that all children charged with offences, regardless of the gravity or the context, are dealt with in terms of articles 37 and 40 of the Convention, and should refrain from charging and prosecuting them for expressions of opinion or for mere association with a non-State armed group, including those designated as terrorist groups. In line with paragraph 88 of its general comment No. 20, the Committee further recommends that States parties adopt preventive interventions to tackle social factors and root causes, as well as social reintegration measures, including when implementing Security Council resolutions related to counter-terrorism, such as resolutions 1373 (2001), 2178 (2014), 2396 (2017) and 2427 (2018), and General Assembly resolution 72/284, in particular the recommendations contained in paragraph 18.

Customary, indigenous and non-State forms of justice

102. Many children come into contact with plural justice systems that operate parallel to or on the margins of the formal justice system. These may include customary, tribal, indigenous or other justice systems. They may be more accessible than the formal mechanisms and have the advantage of quickly and relatively inexpensively proposing responses tailored to cultural specificities. Such systems can serve as an alternative to official proceedings against children, and are likely to contribute favourably to the change of cultural attitudes concerning children and justice.

103. There is an emerging consensus that reforms of justice sector programmes should be attentive to such systems. Considering the potential tension between State and non-State justice, in addition to concerns about procedural rights and risks of discrimination or marginalization, reforms should proceed in stages, with a methodology that involves a full

understanding of the comparative systems concerned and that is acceptable to all stakeholders. Customary justice processes and outcomes should be aligned with constitutional law and with legal and procedural guarantees. It is important that unfair discrimination does not occur, if children committing similar crimes are being dealt with differently in parallel systems or forums.

104. The principles of the Convention should be infused into all justice mechanisms dealing with children, and States parties should ensure that the Convention is known and implemented. Restorative justice responses are often achievable through customary, indigenous or other non-State justice systems, and may provide opportunities for learning for the formal child justice system. Furthermore, recognition of such justice systems can contribute to increased respect for the traditions of indigenous societies, which could have benefits for indigenous children. Interventions, strategies and reforms should be designed for specific contexts and the process should be driven by national actors.

V. Organization of the child justice system

105. In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of child justice.

106. A comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

107. The Committee recommends that States parties establish child justice courts either as separate units or as part of existing courts. Where that is not feasible for practical reasons, States parties should ensure the appointment of specialized judges for dealing with cases concerning child justice.

108. Specialized services such as probation, counselling or supervision should be established together with specialized facilities, for example day treatment centres and, where necessary, small-scale facilities for residential care and treatment of children referred by the child justice system. Effective inter-agency coordination of the activities of all these specialized units, services and facilities should be continuously promoted.

109. In addition, individual assessments of children and a multidisciplinary approach are encouraged. Particular attention should be paid to specialized community-based services for children who are below the age of criminal responsibility, but who are assessed to be in need of support.

110. Non-governmental organizations can and do play an important role in child justice. The Committee therefore recommends that States parties seek the active involvement of such organizations in the development and implementation of their comprehensive child justice policy and, where appropriate, provide them with the necessary resources for this involvement.

VI. Awareness-raising and training

111. Children who commit offences are often subjected to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of those children. This negative presentation or criminalization of children is often based on a misrepresentation and/or misunderstanding of the causes of crime, and regularly results in calls for tougher approaches (zero-tolerance and "three strikes" approaches, mandatory sentences, trial in adult courts and other primarily punitive measures). States parties should seek the active and positive involvement of Members of Parliament, non-governmental organizations and the media to promote and support education and other campaigns to ensure that all aspects of the Convention are upheld for children who are in the child justice system. It is crucial for children, in particular those who have experience with the child justice system, to be involved in these awareness-raising efforts.

112. It is essential for the quality of the administration of child justice that all the professionals involved receive appropriate multidisciplinary training on the content and meaning of the Convention. The training should be systematic and continuous and should not be limited to information on the relevant national and international legal provisions. It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological

development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalized groups such as children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities and the available diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings. Consideration should also be given to the possible use of new technologies such as video “court appearances”, while noting the risks of others, such as DNA profiling. There should be a constant reappraisal of what works.

VII. Data collection, evaluation and research

113. The Committee urges States parties to systematically collect disaggregated data, including on the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children, the nature of the sanctions imposed on them and the number of children deprived of their liberty.

114. The Committee recommends that States parties ensure regular evaluations of their child justice systems, in particular of the effectiveness of the measures taken, and in relation to matters such as discrimination, reintegration and patterns of offending, preferably carried out by independent academic institutions.

115. It is important that children are involved in this evaluation and research, in particular those who are or who have previously had contact with the system, and that the evaluation and research are undertaken in line with existing international guidelines on the involvement of children in research.

UN Committee on the Rights of the Child

General comment No. 25 (2021) ON CHILDREN'S RIGHTS IN RELATION TO THE DIGITAL ENVIRONMENT

I. Introduction

1. The children consulted for the present general comment reported that digital technologies were vital to their current lives and to their future: "By the means of digital technology, we can get information from all around the world"; "[Digital technology] introduced me to major aspects of how I identify myself"; "When you are sad, the Internet can help you [to] see something that brings you joy".¹
2. The digital environment is constantly evolving and expanding, encompassing information and communications technologies, including digital networks, content, services and applications, connected devices and environments, virtual and augmented reality, artificial intelligence, robotics, automated systems, algorithms and data analytics, biometrics and implant technology.²
3. The digital environment is becoming increasingly important across most aspects of children's lives, including during times of crisis, as societal functions, including education, government services and commerce, progressively come to rely upon digital technologies. It affords new opportunities for the realization of children's rights, but also poses the risks of their violation or abuse. During consultations, children expressed the view that the digital environment should support, promote and protect their safe and equitable engagement: "We would like the government, technology companies and teachers to help us [to] manage untrustworthy information online."; "I would like to obtain clarity about what really happens with my data ... Why collect it? How is it being collected?"; "I am ... worried about my data being shared".³
4. The rights of every child must be respected, protected and fulfilled in the digital environment. Innovations in digital technologies affect children's lives and their rights in ways that are wide-ranging and interdependent, even where children do not themselves access the Internet. Meaningful access to digital technologies can support children to realize the full range of their civil, political, cultural, economic and social rights. However, if digital inclusion is not achieved, existing inequalities are likely to increase, and new ones may arise.
5. The present general comment draws on the Committee's experience in reviewing States parties' reports, its day of general discussion on digital media and children's rights, the jurisprudence of the human rights treaty bodies, the recommendations of the Human Rights Council and the special procedures of the Council, two rounds of consultations with States, experts and other stakeholders on the concept note and advanced draft and an international consultation with 709 children living in a wide variety of circumstances in 28 countries in several regions.
6. The present general comment should be read in conjunction with other relevant general comments of the Committee and its guidelines regarding the implementation of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.

II. Objective

7. In the present general comment, the Committee explains how States parties should implement the Convention in relation to the digital environment and provides guidance on relevant legislative,

1 "Our rights in a digital world", summary report on the consultation of children for the present general comment, pp. 14 and 22. Available from <https://5rightsfoundation.com/uploads/Our%20Rights%20in%20a%20Digital%20World.pdf>. All references to children's views refer to that report.

2 A terminology glossary is available on the Committee's webpage: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fINF%2f9314&Lang=en.

3 "Our rights in a digital world", pp. 14, 16, 22 and 25.

policy and other measures to ensure full compliance with their obligations under the Convention and the Optional Protocols thereto in the light of the opportunities, risks and challenges in promoting, respecting, protecting and fulfilling all children's rights in the digital environment.

III. General principles

8. The following four principles provide a lens through which the implementation of all other rights under the Convention should be viewed. They should serve as a guide for determining the measures needed to guarantee the realization of children's rights in relation to the digital environment.

A. Non-discrimination

9. The right to non-discrimination requires that States parties ensure that all children have equal and effective access to the digital environment in ways that are meaningful for them.⁴ States parties should take all measures necessary to overcome digital exclusion. That includes providing free and safe access for children in dedicated public locations and investing in policies and programmes that support all children's affordable access to, and knowledgeable use of, digital technologies in educational settings, communities and homes.
10. Children may be discriminated against by their being excluded from using digital technologies and services or by receiving hateful communications or unfair treatment through use of those technologies. Other forms of discrimination can arise when automated processes that result in information filtering, profiling or decision-making are based on biased, partial or unfairly obtained data concerning a child.
11. The Committee calls upon States parties to take proactive measures to prevent discrimination on the basis of sex, disability, socioeconomic background, ethnic or national origin, language or any other grounds, and discrimination against minority and indigenous children, asylum-seeking, refugee and migrant children, lesbian, gay, bisexual, transgender and intersex children, children who are victims and survivors of trafficking or sexual exploitation, children in alternative care, children deprived of liberty and children in other vulnerable situations. Specific measures will be required to close the gender-related digital divide for girls and to ensure that particular attention is given to access, digital literacy, privacy and online safety.

B. Best interests of the child

12. The best interests of the child is a dynamic concept that requires an assessment appropriate to the specific context.⁵ The digital environment was not originally designed for children, yet it plays a significant role in children's lives. States parties should ensure that, in all actions regarding the provision, regulation, design, management and use of the digital environment, the best interests of every child is a primary consideration.
13. States parties should involve the national and local bodies that oversee the fulfilment of the rights of children in such actions. In considering the best interests of the child, they should have regard for all children's rights, including their rights to seek, receive and impart information, to be protected from harm and to have their views given due weight, and ensure transparency in the assessment of the best interests of the child and the criteria that have been applied.

C. Right to life, survival and development

14. Opportunities provided by the digital environment play an increasingly crucial role in children's development and may be vital for children's life and survival, especially in situations of crisis. States parties should take all appropriate measures to protect children from risks to their right to life, survival and development. Risks relating to content, contact, conduct and contract encompass, among other things, violent and sexual content, cyberaggression and harassment, gambling, exploitation and abuse, including sexual exploitation and abuse, and the promotion of or incitement to suicide or life-threatening activities, including by criminals or armed groups designated as terrorist or violent extremist. States parties should identify and address the emerging risks that children face in diverse contexts, including by listening to their views on the nature of the particular risks that they face.
15. The use of digital devices should not be harmful, nor should it be a substitute for in-person interactions among children or between children and parents or caregivers. States parties should pay specific attention to the effects of technology in the earliest years of life, when brain plasticity is

⁴ General comment No. 9 (2006), paras. 37–38.

⁵ General comment No. 14 (2013), para. 1.

maximal and the social environment, in particular relationships with parents and caregivers, is crucial to shaping children's cognitive, emotional and social development. In the early years, precautions may be required, depending on the design, purpose and uses of technologies. Training and advice on the appropriate use of digital devices should be given to parents, caregivers, educators and other relevant actors, taking into account the research on the effects of digital technologies on children's development, especially during the critical neurological growth spurts of early childhood and adolescence.⁶

D. Respect for the views of the child

16. Children reported that the digital environment afforded them crucial opportunities for their voices to be heard in matters that affected them.⁷ The use of digital technologies can help to realize children's participation at the local, national and international levels.⁸ States parties should promote awareness of, and access to, digital means for children to express their views and offer training and support for children to participate on an equal basis with adults, anonymously where needed, so that they can be effective advocates for their rights, individually and as a group.
17. When developing legislation, policies, programmes, services and training on children's rights in relation to the digital environment, States parties should involve all children, listen to their needs and give due weight to their views. They should ensure that digital service providers actively engage with children, applying appropriate safeguards, and give their views due consideration when developing products and services.
18. States parties are encouraged to utilize the digital environment to consult with children on relevant legislative, administrative and other measures and to ensure that their views are considered seriously and that children's participation does not result in undue monitoring or data collection that violates their right to privacy, freedom of thought and opinion. They should ensure that consultative processes are inclusive of children who lack access to technology or the skills to use it.

IV. Evolving capacities

19. States parties should respect the evolving capacities of the child as an enabling principle that addresses the process of their gradual acquisition of competencies, understanding and agency.⁹ That process has particular significance in the digital environment, where children can engage more independently from supervision by parents and caregivers. The risks and opportunities associated with children's engagement in the digital environment change depending on their age and stage of development. They should be guided by those considerations whenever they are designing measures to protect children in, or facilitate their access to, that environment. The design of age-appropriate measures should be informed by the best and most up-to-date research available, from a range of disciplines.
20. States parties should take into account the changing position of children and their agency in the modern world, children's competence and understanding, which develop unevenly across areas of skill and activity, and the diverse nature of the risks involved. Those considerations must be balanced with the importance of exercising their rights in supported environments and the range of individual experiences and circumstances.¹⁰ States parties should ensure that digital service providers offer services that are appropriate for children's evolving capacities.
21. In accordance with States' duty to render appropriate assistance to parents and caregivers in the performance of their child-rearing responsibilities, States parties should promote awareness among parents and caregivers of the need to respect children's evolving autonomy, capacities and privacy. They should support parents and caregivers in acquiring digital literacy and awareness of the risks to children in order to help them to assist children in the realization of their rights, including to protection, in relation to the digital environment.

V. General measures of implementation by States parties

22. Opportunities for the realization of children's rights and their protection in the digital environment require a broad range of legislative, administrative and other measures, including precautionary ones.

⁶ General comment No. 24 (2019), para. 22; and general comment No. 20 (2016), paras. 9–11.

⁷ "Our rights in a digital world", p. 17.

⁸ General comment No. 14 (2013), paras. 89–91.

⁹ General comment No. 7 (2005), para. 17; and general comment No. 20 (2016), paras. 18 and 20.

¹⁰ General comment No. 20 (2016), para. 20.

A. Legislation

23. States parties should review, adopt and update national legislation in line with international human rights standards, to ensure that the digital environment is compatible with the rights set out in the Convention and the Optional Protocols thereto. Legislation should remain relevant, in the context of technological advances and emerging practices. They should mandate the use of child rights impact assessments to embed children's rights into legislation, budgetary allocations and other administrative decisions relating to the digital environment and promote their use among public bodies and businesses relating to the digital environment.¹¹

B. Comprehensive policy and strategy

24. States parties should ensure that national policies relating to children's rights specifically address the digital environment, and they should implement regulation, industry codes, design standards and action plans accordingly, all of which should be regularly evaluated and updated. Such national policies should be aimed at providing children with the opportunity to benefit from engaging with the digital environment and ensuring their safe access to it.

25. Children's online protection should be integrated within national child protection policies. States parties should implement measures that protect children from risks, including cyberaggression and digital technology-facilitated and online child sexual exploitation and abuse, ensure the investigation of such crimes and provide remedy and support for children who are victims. They should also address the needs of children in disadvantaged or vulnerable situations, including by providing child-friendly information that is, when necessary, translated into relevant minority languages.

26. States parties should ensure the operation of effective child protection mechanisms online and safeguarding policies, while also respecting children's other rights, in all settings where children access the digital environment, which includes the home, educational settings, cybercafés, youth centres, libraries and health and alternative care settings.

C. Coordination

27. To encompass the cross-cutting consequences of the digital environment for children's rights, States parties should identify a government body that is mandated to coordinate policies, guidelines and programmes relating to children's rights among central government departments and the various levels of government.¹² Such a national coordination mechanism should engage with schools and the information and communications technology sector and cooperate with businesses, civil society, academia and organizations to realize children's rights in relation to the digital environment at the cross-sectoral, national, regional and local levels.¹³ It should draw on technological and other relevant expertise within and beyond government, as needed, and be independently evaluated for its effectiveness in meeting its obligations.

D. Allocation of resources

28. States parties should mobilize, allocate and utilize public resources to implement legislation, policies and programmes to fully realize children's rights in the digital environment and to improve digital inclusion, which is needed to address the increasing impact of the digital environment on children's lives and to promote the equality of access to, and affordability of, services and connectivity.¹⁴

29. Where resources are contributed from the business sector or obtained through international cooperation, States parties should ensure that their own mandate, revenue mobilization, budget allocations and expenditure are not interfered with or undermined by third parties.¹⁵

E. Data collection and research

30. Regularly updated data and research are crucial to understanding the implications of the digital environment for children's lives, evaluating its impact on their rights and assessing the effectiveness of State interventions. States parties should ensure the collection of robust, comprehensive data that

11 General comment No. 5 (2003), para. 45; general comment No. 14 (2013), para. 99; and general comment No. 16 (2013), paras. 78–81.

12 General comment No. 5 (2003), para. 37.

13 Ibid., paras. 27 and 39.

14 General comment No. 19 (2016), para. 21.

15 Ibid., para. 27 (b).

is adequately resourced and that data are disaggregated by age, sex, disability, geographical location, ethnic and national origin and socioeconomic background. Such data and research, including research conducted with and by children, should inform legislation, policy and practice and should be available in the public domain.¹⁶ Data collection and research relating to children's digital lives must respect their privacy and meet the highest ethical standards.

F. Independent monitoring

31. States parties should ensure that the mandates of national human rights institutions and other appropriate independent institutions cover children's rights in the digital environment and that they are able to receive, investigate and address complaints from children and their representatives.¹⁷ Where independent oversight bodies exist to monitor activities in relation to the digital environment, national human rights institutions should work closely with such bodies on effectively discharging their mandate regarding children's rights.¹⁸

G. Dissemination of information, awareness-raising and training

32. States parties should disseminate information and conduct awareness-raising campaigns on the rights of the child in the digital environment, focusing in particular on those whose actions have a direct or indirect impact on children. They should facilitate educational programmes for children, parents and caregivers, the general public and policymakers to enhance their knowledge of children's rights in relation to the opportunities and risks associated with digital products and services. Such programmes should include information on how children can benefit from digital products and services and develop their digital literacy and skills, how to protect children's privacy and prevent victimization and how to recognize a child who is a victim of harm perpetrated online or offline and respond appropriately. Such programmes should be informed by research and consultations with children, parents and caregivers.
33. Professionals working for and with children and the business sector, including the technology industry, should receive training that includes how the digital environment affects the rights of the child in multiple contexts, the ways in which children exercise their rights in the digital environment and how they access and use technologies. They should also receive training on the application of international human rights standards to the digital environment. States parties should ensure that pre-service and in-service training relating to the digital environment is provided for professionals working at all levels of education, to support the development of their knowledge, skills and practice.

H. Cooperation with civil society

34. States parties should systematically involve civil society, including child-led groups and non-governmental organizations working in the field of children's rights and those concerned with the digital environment, in the development, implementation, monitoring and evaluation of laws, policies, plans and programmes relating to children's rights. They should also ensure that civil society organizations are able to implement their activities relating to the promotion and protection of children's rights in relation to the digital environment.

I. Children's rights and the business sector

35. The business sector, including not-for-profit organizations, affects children's rights directly and indirectly in the provision of services and products relating to the digital environment. Businesses should respect children's rights and prevent and remedy abuse of their rights in relation to the digital environment. States parties have the obligation to ensure that businesses meet those responsibilities.¹⁹
36. States parties should take measures, including through the development, monitoring, implementation and evaluation of legislation, regulations and policies, to ensure compliance by businesses with their obligations to prevent their networks or online services from being used in ways that cause or contribute to violations or abuses of children's rights, including their rights to privacy and protection, and to provide children, parents and caregivers with prompt and effective remedies. They should also encourage businesses to provide public information and accessible and timely advice to support children's safe and beneficial digital activities.

16 General comment No. 5 (2003), paras. 48 and 50.

17 General comment No. 2 (2002), paras. 2 and 7.

18 Ibid., para. 7.

19 General comment No. 16 (2013), paras. 28, 42 and 82.

37. States parties have a duty to protect children from infringements of their rights by business enterprises, including the right to be protected from all forms of violence in the digital environment. Although businesses may not be directly involved in perpetrating harmful acts, they can cause or contribute to violations of children's right to freedom from violence, including through the design and operation of digital services. States parties should put in place, monitor and enforce laws and regulations aimed at preventing violations of the right to protection from violence, as well as those aimed at investigating, adjudicating on and redressing violations as they occur in relation to the digital environment.²⁰
38. States parties should require the business sector to undertake child rights due diligence, in particular to carry out child rights impact assessments and disclose them to the public, with special consideration given to the differentiated and, at times, severe impacts of the digital environment on children.²¹ They should take appropriate steps to prevent, monitor, investigate and punish child rights abuses by businesses.
39. In addition to developing legislation and policies, States parties should require all businesses that affect children's rights in relation to the digital environment to implement regulatory frameworks, industry codes and terms of services that adhere to the highest standards of ethics, privacy and safety in relation to the design, engineering, development, operation, distribution and marketing of their products and services. That includes businesses that target children, have children as end users or otherwise affect children. They should require such businesses to maintain high standards of transparency and accountability and encourage them to take measures to innovate in the best interests of the child. They should also require the provision of age-appropriate explanations to children, or to parents and caregivers for very young children, of their terms of service.

J. Commercial advertising and marketing

40. The digital environment includes businesses that rely financially on processing personal data to target revenue-generating or paid-for content, and such processes intentionally and unintentionally affect the digital experiences of children. Many of those processes involve multiple commercial partners, creating a supply chain of commercial activity and the processing of personal data that may result in violations or abuses of children's rights, including through advertising design features that anticipate and guide a child's actions towards more extreme content, automated notifications that can interrupt sleep or the use of a child's personal information or location to target potentially harmful commercially driven content.
41. States parties should make the best interests of the child a primary consideration when regulating advertising and marketing addressed to and accessible to children. Sponsorship, product placement and all other forms of commercially driven content should be clearly distinguished from all other content and should not perpetuate gender or racial stereotypes.
42. States parties should prohibit by law the profiling or targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics, including group or collective data, targeting by association or affinity profiling. Practices that rely on neuromarketing, emotional analytics, immersive advertising and advertising in virtual and augmented reality environments to promote products, applications and services should also be prohibited from engagement directly or indirectly with children.

K. Access to justice and remedies

43. Children face particular challenges in access to justice relating to the digital environment for a range of reasons. Such challenges arise because of the lack of legislation placing sanctions on children's rights violations specifically in relation to the digital environment, the difficulties in obtaining evidence or identifying perpetrators or because children and their parents or caregivers lack knowledge of their rights or of what constitutes a violation or abuse of their rights in the digital environment, among other factors. Further challenges may arise if children are required to disclose sensitive or private online activities or from their fear of reprisals by peers or of social exclusion.
44. States parties should ensure that appropriate and effective remedial judicial and non-judicial mechanisms for the violations of children's rights relating to the digital environment are widely known and readily available to all children and their representatives. Complaint and reporting mechanisms should be free of charge, safe, confidential, responsive, child-friendly and available in accessible

²⁰ Ibid., para. 60.

²¹ Ibid., paras. 50 and 62–65.

formats. States parties should also provide for collective complaints, including class action and public interest litigation, and for legal or other appropriate assistance, including through specialized services, to children whose rights have been violated in or through the digital environment.

45. States parties should establish, coordinate and regularly monitor and evaluate frameworks for the referral of such cases and the provision of effective support to children who are victims.²² Frameworks should include measures for the identification of, therapy and follow-up care for, and the social reintegration of, children who are victims. Training on the identification of children who are victims should be included in referral mechanisms, including for digital service providers. Measures within such a framework should be multi-agency and child-friendly, to prevent a child's revictimization and secondary victimization in the context of investigative and judicial processes. That may require specialized protections for confidentiality and to redress harms associated with the digital environment.
46. Appropriate reparation includes restitution, compensation and satisfaction and may require apology, correction, removal of unlawful content, access to psychological recovery services or other measures.²³ In relation to violations in the digital environment, remedial mechanisms should take into account the vulnerability of children and the need to be swift to halt ongoing and future damage. States parties should guarantee the non-recurrence of violations, including by the reform of relevant laws and policies and their effective implementation.
47. Digital technologies bring additional complexity to the investigation and prosecution of crimes against children, which may cross national borders. States parties should address the ways in which uses of digital technologies may facilitate or impede the investigation and prosecution of crimes against children and take all available preventative, enforcement and remedial measures, including in cooperation with international partners. They should provide specialized training for law enforcement officials, prosecutors and judges regarding child rights violations specifically associated with the digital environment, including through international cooperation.
48. Children may face particular difficulties in obtaining remedy when their rights have been abused in the digital environment by business enterprises, in particular in the context of their global operations.²⁴ States parties should consider measures to respect, protect and fulfil children's rights in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned. They should ensure that businesses provide effective complaint mechanisms; such mechanisms should not, however, prevent children from gaining access to State-based remedies. They should also ensure that agencies with oversight powers relevant to children's rights, such as those relating to health and safety, data protection and consumer rights, education and advertising and marketing, investigate complaints and provide adequate remedies for violations or abuses of children's rights in the digital environment.²⁵
49. States parties should provide children with child-sensitive and age-appropriate information in child-friendly language on their rights and on the reporting and complaint mechanisms, services and remedies available to them in cases where their rights in relation to the digital environment are violated or abused. Such information should also be provided to parents, caregivers and professionals working with and for children.

VI. Civil rights and freedoms

A. Access to information

50. The digital environment provides a unique opportunity for children to realize the right to access to information. In that regard, information and communications media, including digital and online content, perform an important function.²⁶ States parties should ensure that children have access to information in the digital environment and that the exercise of that right is restricted only when it is provided by law and is necessary for the purposes stipulated in article 13 of the Convention.
51. States parties should provide and support the creation of age-appropriate and empowering digital content for children in accordance with children's evolving capacities and ensure that children have access to a wide diversity of information, including information held by public bodies, about culture, sports, the arts, health, civil and political affairs and children's rights.
52. States parties should encourage the production and dissemination of such content using multiple formats and from a plurality of national and international sources, including news media, broadcasters, museums, libraries and educational, scientific and cultural organizations. They should particularly

endeavour to enhance the provision of diverse, accessible and beneficial content for children with disabilities and children belonging to ethnic, linguistic, indigenous and other minority groups. The ability to access relevant information, in the languages that children understand, can have a significant positive impact on equality.²⁷

53. States parties should ensure that all children are informed about, and can easily find, diverse and good quality information online, including content independent of commercial or political interests. They should ensure that automated search and information filtering, including recommendation systems, do not prioritize paid content with a commercial or political motivation over children's choices or at the cost of children's right to information.
54. The digital environment can include gender-stereotyped, discriminatory, racist, violent, pornographic and exploitative information, as well as false narratives, misinformation and disinformation and information encouraging children to engage in unlawful or harmful activities. Such information may come from multiple sources, including other users, commercial content creators, sexual offenders or armed groups designated as terrorist or violent extremist. States parties should protect children from harmful and untrustworthy content and ensure that relevant businesses and other providers of digital content develop and implement guidelines to enable children to safely access diverse content, recognizing children's rights to information and freedom of expression, while protecting them from such harmful material in accordance with their rights and evolving capacities.²⁸ Any restrictions on the operation of any Internet-based, electronic or other information dissemination systems should be in line with article 13 of the Convention.²⁹ States parties should not intentionally obstruct or enable other actors to obstruct the supply of electricity, cellular networks or Internet connectivity in any geographical area, whether in part or as a whole, which can have the effect of hindering a child's access to information and communication.
55. States parties should encourage providers of digital services used by children to apply concise and intelligible content labelling, for example on the age-appropriateness or trustworthiness of content. They should also encourage the provision of accessible guidance, training, educational materials and reporting mechanisms for children, parents and caregivers, educators and relevant professional groups.³⁰ Age-based or content-based systems designed to protect children from age-inappropriate content should be consistent with the principle of data minimization.
56. States parties should ensure that digital service providers comply with relevant guidelines, standards and codes³¹ and enforce lawful, necessary and proportionate content moderation rules. Content controls, school filtering systems and other safety-oriented technologies should not be used to restrict children's access to information in the digital environment; they should be used only to prevent the flow of harmful material to children. Content moderation and content controls should be balanced with the right to protection against violations of children's other rights, notably their rights to freedom of expression and privacy.
57. Professional codes of conduct set by news media and other relevant organizations should include guidance on how to report digital risks and opportunities relating to children. Such guidance should result in evidence-based reporting that does not reveal the identity of children who are victims and survivors and that is in accordance with international human rights standards.

B. Freedom of expression

58. Children's right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, using any media of their choice. Children reported³² that the digital environment offered significant scope to express their ideas, opinions and political views. For children in disadvantaged or vulnerable situations, technology-facilitated interaction with others who share their experiences can help them to express themselves.
59. Any restrictions on children's right to freedom of expression in the digital environment, such as filters, including safety measures, should be lawful, necessary and proportionate. The rationale for such restrictions should be transparent and communicated to children in age-appropriate language. States

²⁷ General comment No. 17 (2013), para. 46; and general comment No. 20 (2016), paras. 47–48.

²⁸ General comment No. 16 (2013), para. 58; and general comment No. 7 (2005), para. 35.

²⁹ Human Rights Committee, general comment No. 34 (2011), para. 43.

³⁰ General comment No. 16 (2013), paras. 19 and 59.

³¹ Ibid., paras. 58 and 61.

³² "Our rights in a digital world", p. 16.

parties should provide children with information and training opportunities on how to effectively exercise that right, in particular how to create and share digital content safely, while respecting the rights and dignity of others and not violating legislation, such as that relating to incitement to hatred and violence.

60. When children express their political or other views and identities in the digital environment, they may attract criticism, hostility, threats or punishment. States parties should protect children from cyberaggression and threats, censorship, data breaches and digital surveillance. Children should not be prosecuted for expressing their opinions in the digital environment, unless they violate restrictions provided by criminal legislation which are compatible with article 13 of the Convention.

61. Given the existence of commercial and political motivations to promote particular world views, States parties should ensure that uses of automated processes of information filtering, profiling, marketing and decision-making do not supplant, manipulate or interfere with children's ability to form and express their opinions in the digital environment.

C. Freedom of thought, conscience and religion

62. States parties should respect the right of the child to freedom of thought, conscience and religion in the digital environment. The Committee encourages States parties to introduce or update data protection regulation and design standards that identify, define and prohibit practices that manipulate or interfere with children's right to freedom of thought and belief in the digital environment, for example by emotional analytics or inference. Automated systems may be used to make inferences about a child's inner state. They should ensure that automated systems or information filtering systems are not used to affect or influence children's behaviour or emotions or to limit their opportunities or development.

63. States parties should ensure that children are not penalized for their religion or beliefs or have their future opportunities in any other way restricted. The exercise of children's right to manifest their religion or beliefs in the digital environment may be subject only to limitations that are lawful, necessary and proportionate.

D. Freedom of association and peaceful assembly

64. The digital environment can enable children to form their social, religious, cultural, ethnic, sexual and political identities and to participate in associated communities and in public spaces for deliberation, cultural exchange, social cohesion and diversity.³³ Children reported that the digital environment provided them with valued opportunities to meet, exchange and deliberate with peers, decision makers and others who shared their interests.³⁴

65. States parties should ensure that their laws, regulations and policies protect children's right to participate in organizations that operate partially or exclusively in the digital environment. No restrictions may be placed on the exercise by children of their right to freedom of association and peaceful assembly in the digital environment other than those that are lawful, necessary and proportionate.³⁵ Such participation should not in and of itself result in negative consequences to those children, such as exclusion from a school, restriction or deprivation of future opportunities or creation of a police profile. Such participation should be safe, private and free from surveillance by public or private entities.

66. Public visibility and networking opportunities in the digital environment can also support child-led activism and can empower children as advocates for human rights. The Committee recognizes that the digital environment enables children, including children human rights defenders, as well as children in vulnerable situations, to communicate with each other, advocate for their rights and form associations. States parties should support them, including by facilitating the creation of specific digital spaces, and ensure their safety.

E. Right to privacy

67. Privacy is vital to children's agency, dignity and safety and for the exercise of their rights. Children's personal data are processed to offer educational, health and other benefits to them. Threats to children's privacy may arise from data collection and processing by public institutions, businesses and other organizations, as well as from such criminal activities as identity theft. Threats may also arise from children's own activities and from the activities of family members, peers or others, for example, by parents sharing photographs online or a stranger sharing information about a child.

33 General comment No. 17 (2013), para. 21; and general comment No. 20 (2016), paras. 44–45.

34 "Our rights in a digital world", p. 20.

35 Human Rights Committee, general comment No. 37 (2020), paras. 6 and 34.

68. Data may include information about, *inter alia*, children's identities, activities, location, communication, emotions, health and relationships. Certain combinations of personal data, including biometric data, can uniquely identify a child. Digital practices, such as automated data processing, profiling, behavioural targeting, mandatory identity verification, information filtering and mass surveillance are becoming routine. Such practices may lead to arbitrary or unlawful interference with children's right to privacy; they may have adverse consequences on children, which can continue to affect them at later stages of their lives.
69. Interference with a child's privacy is only permissible if it is neither arbitrary nor unlawful. Any such interference should therefore be provided for by law, intended to serve a legitimate purpose, uphold the principle of data minimization, be proportionate and designed to observe the best interests of the child and must not conflict with the provisions, aims or objectives of the Convention.
70. States parties should take legislative, administrative and other measures to ensure that children's privacy is respected and protected by all organizations and in all environments that process their data. Legislation should include strong safeguards, transparency, independent oversight and access to remedy. States parties should require the integration of privacy-by-design into digital products and services that affect children. They should regularly review privacy and data protection legislation and ensure that procedures and practices prevent deliberate infringements or accidental breaches of children's privacy. Where encryption is considered an appropriate means, States parties should consider appropriate measures enabling the detection and reporting of child sexual exploitation and abuse or child sexual abuse material. Such measures must be strictly limited according to the principles of legality, necessity and proportionality.
71. Where consent is sought to process a child's data, States parties should ensure that consent is informed and freely given by the child or, depending on the child's age and evolving capacity, by the parent or caregiver, and obtained prior to processing those data. Where a child's own consent is considered insufficient and parental consent is required to process a child's personal data, States parties should require that organizations processing such data verify that consent is informed, meaningful and given by the child's parent or caregiver.
72. States parties should ensure that children and their parents or caregivers can easily access stored data, rectify data that are inaccurate or outdated and delete data unlawfully or unnecessarily stored by public authorities, private individuals or other bodies, subject to reasonable and lawful limitations.³⁶ They should further ensure the right of children to withdraw their consent and object to personal data processing where the data controller does not demonstrate legitimate, overriding grounds for the processing. They should also provide information to children, parents and caregivers on such matters, in child-friendly language and accessible formats.
73. Children's personal data should be accessible only to the authorities, organizations and individuals designated under the law to process them in compliance with such due process guarantees as regular audits and accountability measures.³⁷ Children's data gathered for defined purposes, in any setting, including digitized criminal records, should be protected and exclusive to those purposes and should not be retained unlawfully or unnecessarily or used for other purposes. Where information is provided in one setting and could legitimately benefit the child through its use in another setting, for example, in the context of schooling and tertiary education, the use of such data should be transparent, accountable and subject to the consent of the child, parent or caregiver, as appropriate.
74. Privacy and data protection legislation and measures should not arbitrarily limit children's other rights, such as their right to freedom of expression or protection. States parties should ensure that data protection legislation respects children's privacy and personal data in relation to the digital environment. Through continual technological innovation, the scope of the digital environment is expanding to include ever more services and products, such as clothes and toys. As settings where children spend time become "connected", through the use of embedded sensors connected to automated systems, States parties should ensure that the products and services that contribute to such environments are subject to robust data protection and other privacy regulations and standards. That includes public settings, such as streets, schools, libraries, sports and entertainment venues and business premises, including shops and cinemas, and the home.

36 Human Rights Committee, general comment No. 16 (1988), para. 10.

37 Ibid.; and Committee on the Rights of the Child, general comment No. 20 (2016), para. 46.

75. Any digital surveillance of children, together with any associated automated processing of personal data, should respect the child's right to privacy and should not be conducted routinely, indiscriminately or without the child's knowledge or, in the case of very young children, that of their parent or caregiver; nor should it take place without the right to object to such surveillance, in commercial settings and educational and care settings, and consideration should always be given to the least privacy-intrusive means available to fulfil the desired purpose.
76. The digital environment presents particular problems for parents and caregivers in respecting children's right to privacy. Technologies that monitor online activities for safety purposes, such as tracking devices and services, if not implemented carefully, may prevent a child from accessing a helpline or searching for sensitive information. States parties should advise children, parents and caregivers and the public on the importance of the child's right to privacy and on how their own practices may threaten that right. They should also be advised about the practices through which they can respect and protect children's privacy in relation to the digital environment, while keeping them safe. Parents' and caregivers' monitoring of a child's digital activity should be proportionate and in accordance with the child's evolving capacities.
77. Many children use online avatars or pseudonyms that protect their identity, and such practices can be important in protecting children's privacy. States parties should require an approach integrating safety-by-design and privacy-by-design to anonymity, while ensuring that anonymous practices are not routinely used to hide harmful or illegal behaviour, such as cyberaggression, hate speech or sexual exploitation and abuse. Protecting a child's privacy in the digital environment may be vital in circumstances where parents or caregivers themselves pose a threat to the child's safety or where they are in conflict over the child's care. Such cases may require further intervention, as well as family counselling or other services, to safeguard the child's right to privacy.
78. Providers of preventive or counselling services to children in the digital environment should be exempt from any requirement for a child user to obtain parental consent in order to access such services.³⁸ Such services should be held to high standards of privacy and child protection.

F. Birth registration and right to identity

79. States parties should promote the use of digital identification systems that enable all newborn children to have their birth registered and officially recognized by the national authorities, in order to facilitate access to services, including health, education and welfare. Lack of birth registration facilitates the violation of children's rights under the Convention and the Optional Protocols thereto. States parties should use up-to-date technology, including mobile registration units, to ensure access to birth registration, especially for children in remote areas, refugee and migrant children, children at risk and those in marginalized situations, and include children born prior to the introduction of digital identification systems. For such systems to benefit children, they should conduct awareness-raising campaigns, establish monitoring mechanisms, promote community engagement and ensure effective coordination between different actors, including civil status officers, judges, notaries, health officials and child protection agency personnel. They should also ensure that a robust privacy and data protection framework is in place.

VII. Violence against children

80. The digital environment may open up new ways to perpetrate violence against children, by facilitating situations in which children experience violence and/or may be influenced to do harm to themselves or others. Crises, such as pandemics, may lead to an increased risk of harm online, given that children spend more time on virtual platforms in those circumstances.
81. Sexual offenders may use digital technologies to solicit children for sexual purposes and to participate in online child sexual abuse, for example, by the live video streaming, production and distribution of child sexual abuse material and through sexual extortion. Forms of digitally facilitated violence and sexual exploitation and abuse may also be perpetrated within a child's circle of trust, by family or friends or, for adolescents, by intimate partners, and may include cyberaggression, including bullying and threats to reputation, the non-consensual creation or sharing of sexualized text or images, such as self-generated content by solicitation and/or coercion, and the promotion of self-harming behaviours, such as cutting, suicidal behaviour or eating disorders. Where children have carried out such actions, States parties should pursue preventive, safeguarding and restorative justice approaches for the

³⁸ General comment No. 20 (2016), para. 60.

children involved whenever possible.³⁹

82. States parties should take legislative and administrative measures to protect children from violence in the digital environment, including the regular review, updating and enforcement of robust legislative, regulatory and institutional frameworks that protect children from recognized and emerging risks of all forms of violence in the digital environment. Such risks include physical or mental violence, injury or abuse, neglect or maltreatment, exploitation and abuse, including sexual exploitation and abuse, child trafficking, gender-based violence, cyberaggression, cyberattacks and information warfare. States parties should implement safety and protective measures in accordance with children's evolving capacities.
83. The digital environment can open up new ways for non-State groups, including armed groups designated as terrorist or violent extremist, to recruit and exploit children to engage with or participate in violence. States parties should ensure that legislation prohibits the recruitment of children by terrorist or violent extremist groups. Children accused of criminal offences in that context should be treated primarily as victims but, if charged, the child justice system should apply.

VIII. Family environment and alternative care

84. Many parents and caregivers require support to develop the technological understanding, capacity and skills necessary to assist children in relation to the digital environment. States parties should ensure that parents and caregivers have opportunities to gain digital literacy, to learn how technology can support the rights of children and to recognize a child who is a victim of online harm and respond appropriately. Special attention should be paid to the parents and caregivers of children in disadvantaged or vulnerable situations.
85. In supporting and guiding parents and caregivers regarding the digital environment, States parties should promote their awareness to respect children's growing autonomy and need for privacy, in accordance with their evolving capacities. States parties should take into account that children often embrace and experiment with digital opportunities and may encounter risks, including at a younger age than parents and caregivers may anticipate. Some children reported wanting more support and encouragement in their digital activities, especially where they perceived parents' and caregivers' approach to be punitive, overly restrictive or not adjusted to their evolving capacities.⁴⁰
86. States parties should take into account that support and guidance provided to parents and caregivers should be based on an understanding of the specificity and uniqueness of parent-child relations. Such guidance should support parents in sustaining an appropriate balance between the child's protection and emerging autonomy, based on mutual empathy and respect, over prohibition or control. To help parents and caregivers to maintain a balance between parental responsibilities and children's rights, the best interests of the child, applied together with consideration of the child's evolving capacities, should be the guiding principles. Guidance to parents and caregivers should encourage children's social, creative and learning activities in the digital environment and emphasize that the use of digital technologies should not replace direct, responsive interactions among children themselves or between children and parents or caregivers.
87. It is important that children separated from their families have access to digital technologies.⁴¹ Evidence has shown that digital technologies are beneficial in maintaining family relationships, for example, in cases of parental separation, when children are placed in alternative care, for the purposes of establishing relations between children and prospective adoptive or foster parents and in reuniting children in humanitarian crisis situations with their families. Therefore, in the context of separated families, States parties should support access to digital services for children and their parents, caregivers or other relevant persons, taking into consideration the safety and best interests of the child.
88. Measures taken to enhance digital inclusion should be balanced with the need to protect children in cases where parents or other family members or caregivers, whether physically present or distant, may place them at risk. States parties should consider that such risks may be enabled through the design and use of digital technologies, for example, by revealing the location of a child to a potential abuser. In recognition of those risks, They should require an approach integrating safety-by-design and privacy-by-design and ensure that parents and caregivers are fully aware of the risks and available strategies to support and protect children.

39 General comment No. 24 (2019), para. 101; and CRC/C/156, para. 71.

40 "Our rights in a digital world", p. 30.

41 General comment No. 21 (2017), para. 35.

IX. Children with disabilities

89. The digital environment opens new avenues for children with disabilities to engage in social relationships with their peers, access information and participate in public decision-making processes. States parties should pursue those avenues and take steps to prevent the creation of new barriers and to remove existing barriers faced by children with disabilities in relation to the digital environment.
90. Children with different types of disabilities, including physical, intellectual, psychosocial, auditory and visual disabilities, face different barriers in accessing the digital environment, such as content in non-accessible formats, limited access to affordable assistive technologies at home, school and in the community and the prohibition of the use of digital devices in schools, health facilities and other environments. States parties should ensure that children with disabilities have access to content in accessible formats and remove policies that have a discriminatory impact on such children. They should ensure access to affordable assistive technologies, where needed, in particular for children with disabilities living in poverty, and provide awareness-raising campaigns, training and resources for children with disabilities, their families and staff in educational and other relevant settings so that they have sufficient knowledge and skills to use digital technologies effectively.
91. States parties should promote technological innovations that meet the requirements of children with different types of disabilities and ensure that digital products and services are designed for universal accessibility so that they can be used by all children without exception and without the need for adaptation. Children with disabilities should be involved in the design and delivery of policies, products and services that affect the realization of their rights in the digital environment.
92. Children with disabilities may be more exposed to risks, including cyberaggression and sexual exploitation and abuse, in the digital environment. States parties should identify and address the risks faced by children with disabilities, taking steps to ensure that the digital environment is safe for them, while countering the prejudice faced by children with disabilities that might lead to overprotection or exclusion. Safety information, protective strategies and public information, services and forums relating to the digital environment should be provided in accessible formats.

X. Health and welfare

93. Digital technologies can facilitate access to health services and information and improve diagnostic and treatment services for maternal, newborn, child and adolescent physical and mental health and nutrition. They also offer significant opportunities for reaching children in disadvantaged or vulnerable situations or in remote communities. In situations of public emergency or in health or humanitarian crises, access to health services and information through digital technologies may become the only option.
94. Children reported that they valued searching online for information and support relating to health and well-being, including on physical, mental and sexual and reproductive health, puberty, sexuality and conception.⁴² Adolescents especially wanted access to free, confidential, age-appropriate and non-discriminatory mental health and sexual and reproductive health services online.⁴³ States parties should ensure that children have safe, secure and confidential access to trustworthy health information and services, including psychological counselling services.⁴⁴ Those services should limit the processing of children's data to that which is necessary for the performance of the service and should be provided by professionals or those with appropriate training, with regulated oversight mechanisms in place. States parties should ensure that digital health products and services do not create or increase inequities in children's access to in-person health services.
95. States parties should encourage and invest in research and development that is focused on children's specific health needs and that promotes positive health outcomes for children through technological advances. Digital services should be used to supplement or improve the in-person provision of health services to children.⁴⁵ States parties should introduce or update regulation that requires providers of health technologies and services to embed children's rights within the functionality, content and distribution thereof.

42 "Our rights in a digital world", p. 37.

43 General comment No. 20 (2016), para. 59.

44 Ibid., paras. 47 and 59.

45 Ibid., paras. 47–48.

96. States parties should regulate against known harms and proactively consider emerging research and evidence in the public health sector, to prevent the spread of misinformation and materials and services that may damage children's mental or physical health. Measures may also be needed to prevent unhealthy engagement in digital games or social media, such as regulating against digital design that undermines children's development and rights.⁴⁶
97. States parties should encourage the use of digital technologies to promote healthy lifestyles, including physical and social activity.⁴⁷ They should regulate targeted or age-inappropriate advertising, marketing and other relevant digital services to prevent children's exposure to the promotion of unhealthy products, including certain food and beverages, alcohol, drugs and tobacco and other nicotine products.⁴⁸ Such regulations relating to the digital environment should be compatible and keep pace with regulations in the offline environment.
98. Digital technologies offer multiple opportunities for children to improve their health and well-being, when balanced with their need for rest, exercise and direct interaction with their peers, families and communities. States parties should develop guidance for children, parents, caregivers and educators regarding the importance of a healthy balance of digital and non-digital activities and sufficient rest.

XI. Education, leisure and cultural activities

A. Right to education

99. The digital environment can greatly enable and enhance children's access to high-quality inclusive education, including reliable resources for formal, non-formal, informal, peer-to-peer and self-directed learning. Use of digital technologies can also strengthen engagement between the teacher and student and between learners. Children highlighted the importance of digital technologies in improving their access to education and in supporting their learning and participation in extracurricular activities.⁴⁹
100. States parties should support educational and cultural institutions, such as archives, libraries and museums, in enabling access for children to diverse digital and interactive learning resources, including indigenous resources, and resources in the languages that children understand. Those and other valuable resources can support children's engagement with their own creative, civic and cultural practices and enable them to learn about those of others.⁵⁰ States parties should enhance children's opportunities for online and lifelong learning.
101. States parties should invest equitably in technological infrastructure in schools and other learning settings, ensuring the availability and affordability of a sufficient number of computers, high-quality and high-speed broadband and a stable source of electricity, teacher training on the use of digital educational technologies, accessibility and the timely maintenance of school technologies. They should also support the creation and dissemination of diverse digital educational resources of good quality in the languages that children understand and ensure that existing inequalities are not exacerbated, such as those experienced by girls. States parties should ensure that the use of digital technologies does not undermine in-person education and is justified for educational purposes.
102. For children who are not physically present in school or for those who live in remote areas or in disadvantaged or vulnerable situations, digital educational technologies can enable distance or mobile learning.⁵¹ States parties should ensure that there is proper infrastructure in place to enable access for all children to the basic utilities necessary for distance learning, including access to devices, electricity, connectivity, educational materials and professional support. They should also ensure that schools have sufficient resources to provide parents and caregivers with guidance on remote learning at home and that digital education products and services do not create or exacerbate inequities in children's access to in-person education services.

⁴⁶ General comment No. 15 (2013), para. 84.

⁴⁷ General comment No. 17 (2013), para. 13.

⁴⁸ General comment No. 15 (2013), para. 77.

⁴⁹ "Our rights in a digital world", pp. 14, 16 and 30.

⁵⁰ General comment No. 17 (2013), para. 10.

⁵¹ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019), para. 64; and Committee on the Rights of the Child, general comment No. 11 (2009), para. 61; and general comment No. 21 (2017), para. 55.

103. States parties should develop evidence-based policies, standards and guidelines for schools and other relevant bodies responsible for procuring and using educational technologies and materials to enhance the provision of valuable educational benefits. Standards for digital educational technologies should ensure that the use of those technologies is ethical and appropriate for educational purposes and does not expose children to violence, discrimination, misuse of their personal data, commercial exploitation or other infringements of their rights, such as the use of digital technologies to document a child's activity and share it with parents or caregivers without the child's knowledge or consent.

104. States parties should ensure that digital literacy is taught in schools, as part of basic education curricula, from the preschool level and throughout all school years, and that such pedagogies are assessed on the basis of their results.⁵² Curricula should include the knowledge and skills to safely handle a wide range of digital tools and resources, including those relating to content, creation, collaboration, participation, socialization and civic engagement. Curricula should also include critical understanding, guidance on how to find trusted sources of information and to identify misinformation and other forms of biased or false content, including on sexual and reproductive health issues, human rights, including the rights of the child in the digital environment, and available forms of support and remedy. They should promote awareness among children of the possible adverse consequences of exposure to risks relating to content, contact, conduct and contract, including cyberaggression, trafficking, sexual exploitation and abuse and other forms of violence, as well as coping strategies to reduce harm and strategies to protect their personal data and those of others and to build children's social and emotional skills and resilience.

105. It is of increasing importance that children gain an understanding of the digital environment, including its infrastructure, business practices, persuasive strategies and the uses of automated processing and personal data and surveillance, and of the possible negative effects of digitalization on societies. Teachers, in particular those who undertake digital literacy education and sexual and reproductive health education, should be trained on safeguards relating to the digital environment.

B. Right to culture, leisure and play

106. The digital environment promotes children's right to culture, leisure and play, which is essential for their well-being and development.⁵³ Children of all ages reported that they experienced pleasure, interest and relaxation through engaging with a wide range of digital products and services of their choice,⁵⁴ but that they were concerned that adults might not understand the importance of digital play and how it could be shared with friends.⁵⁵

107. Digital forms of culture, recreation and play should support and benefit children and reflect and promote children's differing identities, in particular their cultural identities, languages and heritage. They can facilitate children's social skills, learning, expression, creative activities, such as music and art, and sense of belonging and a shared culture.⁵⁶ Participation in cultural life online contributes to creativity, identity, social cohesiveness and cultural diversity. States parties should ensure that children have the opportunity to use their free time to experiment with information and communications technologies, express themselves and participate in cultural life online.

108. States parties should regulate and provide guidance for professionals, parents and caregivers and collaborate with digital service providers, as appropriate, to ensure that digital technologies and services intended for, accessed by or having an impact on children in their leisure time are designed, distributed and used in ways that enhance children's opportunities for culture, recreation and play. That can include encouraging innovation in digital play and related activities that support children's autonomy, personal development and enjoyment.

109. States parties should ensure that the promotion of opportunities for culture, leisure and play in the digital environment is balanced with the provision of attractive alternatives in the physical locations where children live. Especially in their early years, children acquire language, coordination, social skills and emotional intelligence largely through play that involves physical movement and direct face-

52 General comment No. 20 (2016), para. 47.

53 General comment No. 17 (2013), para. 7.

54 "Our rights in a digital world", p. 22.

55 General comment No. 17 (2013), para. 33.

56 Ibid., para. 5.

to-face interaction with other people. For older children, play and recreation that involve physical activities, team sports and other outdoor recreational activities can provide health benefits, as well as functional and social skills.

110. Leisure time spent in the digital environment may expose children to risks of harm, for example, through opaque or misleading advertising or highly persuasive or gambling-like design features. By introducing or using data protection, privacy-by-design and safety-by-design approaches and other regulatory measures, States parties should ensure that businesses do not target children using those or other techniques designed to prioritize commercial interests over those of the child.

111. Where States parties or businesses provide guidance, age ratings, labelling or certification regarding certain forms of digital play and recreation, they should be formulated so as not to curtail children's access to the digital environment as a whole or interfere with their opportunities for leisure or their other rights.

XII. Special protection measures

A. Protection from economic, sexual and other forms of exploitation

112. Children should be protected from all forms of exploitation prejudicial to any aspects of their welfare in relation to the digital environment. Exploitation may occur in many forms, such as economic exploitation, including child labour, sexual exploitation and abuse, the sale, trafficking and abduction of children and the recruitment of children to participate in criminal activities, including forms of cybercrime. By creating and sharing content, children may be economic actors in the digital environment, which may result in their exploitation.

113. States parties should review relevant laws and policies to ensure that children are protected against economic, sexual and other forms of exploitation and that their rights with regard to work in the digital environment and related opportunities for remuneration are protected.

114. States parties should ensure that appropriate enforcement mechanisms are in place and support children, parents and caregivers in gaining access to the protections that apply.⁵⁷ They should legislate to ensure that children are protected from harmful goods, such as weapons or drugs, or services, such as gambling. Robust age verification systems should be used to prevent children from acquiring access to products and services that are illegal for them to own or use. Such systems should be consistent with data protection and safeguarding requirements.

115. Considering States' obligations to investigate, prosecute and punish trafficking in persons, including its component actions and related conduct, States parties should develop and update anti-trafficking legislation so that it prohibits the technology-facilitated recruitment of children by criminal groups.

116. States parties should ensure that appropriate legislation is in place to protect children from the crimes that occur in the digital environment, including fraud and identity theft, and to allocate sufficient resources to ensure that crimes in the digital environment are investigated and prosecuted. States parties should also require a high standard of cybersecurity, privacy-by-design and safety-by-design in the digital services and products that children use, to minimize the risk of such crimes.

B. Administration of child justice

117. Children may be alleged to have, accused of or recognized as having infringed, cybercrime laws. States parties should ensure that policymakers consider the effects of such laws on children, focus on prevention and make every effort to create and use alternatives to a criminal justice response.

118. Self-generated sexual material by children that they possess and/or share with their consent and solely for their own private use should not be criminalized. Child-friendly channels should be created to allow children to safely seek advice and assistance where it relates to self-generated sexually explicit content.

119. States parties should ensure that digital technologies, surveillance mechanisms, such as facial recognition software, and risk profiling that are deployed in the prevention, investigation and prosecution of crimes are not used to unfairly target children suspected of or charged with criminal offences and are not used in a manner that violates their rights, in particular their rights to privacy, dignity and freedom of association.

120. The Committee recognizes that, where the digitization of court proceedings results in a lack of in-

⁵⁷ General comment No. 16 (2013), para. 37.

person contact with children, it may have a negative impact on rehabilitative and restorative justice measures built on developing relationships with the child. In such cases, and also where children are deprived of their liberty, States parties should provide in-person contact to facilitate children's ability to meaningfully engage with the courts and their rehabilitation.

C. Protection of children in armed conflict, migrant children and children in other vulnerable situations

121. The digital environment can provide children living in vulnerable situations, including children in armed conflict, internally displaced children, migrant, asylum-seeking and refugee children, unaccompanied children, children in street situations and children affected by natural disasters, with access to life-saving information that is vital for their protection. The digital environment can also enable them to maintain contact with their families, enable their access to education, health and other basic services and enable them to obtain food and safe shelter. States parties should ensure safe, secure, private and beneficial access for such children to the digital environment and protect them from all forms of violence, exploitation and abuse.

122. States parties should ensure that children are not recruited or used in conflicts, including armed conflicts, through the digital environment. That includes preventing, criminalizing and sanctioning the various forms of technology-facilitated solicitation and grooming of children, for example, through use of social networking platforms or chat services in online games.

XIII. International and regional cooperation

123. The cross-border and transnational nature of the digital environment necessitates strong international and regional cooperation, to ensure that all stakeholders, including States, businesses and other actors, effectively respect, protect and fulfil children's rights in relation to the digital environment. It is therefore vital that States parties cooperate bilaterally and multilaterally with national and international non-governmental organizations, United Nations agencies, businesses and organizations specialized in child protection and human rights in relation to the digital environment.

124. States parties should promote and contribute to the international and regional exchange of expertise and good practices and establish and promote capacity-building, resources, standards, regulations and protections across national borders that enable the realization of children's rights in the digital environment by all States. They should encourage the formulation of a common definition of what constitutes a crime in the digital environment, mutual legal assistance and the joint collection and sharing of evidence.

XIV. Dissemination

125. States parties should ensure that the present general comment is widely disseminated, including through use of digital technologies, to all relevant stakeholders, in particular parliaments and government authorities, including those responsible for cross-cutting and sectoral digital transformation, as well as members of the judiciary, business enterprises, the media, civil society and the public at large, educators and children, and is made available in multiple formats and languages, including age-appropriate versions.

Compliance with the Convention on the Rights of the Child (hereafter “the Convention”)

ALTERNATIVE THEMATIC REPORT

Submitted by the Legal Network of “National Network for Children”

To be considered on the 92nd Session (September 2022) in relation to reporting country:

Bulgaria

This report is linked to the Alternative Comprehensive report to Bulgaria’s progress on Child Rights subject to submission by the National Network for Children.

I. DEFINITION OF THE CHILD (art. 1).

In its 2016 Concluding observations on the combined third to fifth periodic reports of Bulgaria, the Committee recommended that the Government should amend its Family Code to remove all exceptions that allow marriage for anyone under the age of 18 years (paragraph 18).

At present, Article 6 of the Family Code provides that the minimal marriage age is 18. Exceptionally, the court can allow children aged 16 to 18 to marry “if important reasons so require”. In the case law of the national courts, “important reasons” are, for example, if the couple expects a child or already has a child; living together, etc. For the last 10 years, there were more than 600 requests to the court for such marriage permissions. In 2 cases, the appeal courts refused the requests, finding that the marriage sought was a remedy to circumvent the law, actually aiming at allowing the adolescents to dispose with large amounts of money and property or to cross the border without the consent of their legal guardians.¹

Article 6 of the Family Code is logically related to Article 191 of the Criminal Code, which criminalizes marital relationship with a minor. It is a crime if a full age man and a girl below 16 live together as husband and wife (it is not a crime if she is between 16 and 18).

We recommend abolishing the exception set forth in Section 6 of the Family Code.

II. RIGHT TO LIFE (Art. 6)

The international law protects the child’s right to life and the right to antenatal care of the mother. The child’s right to life arises after birth and the mother’s right to antenatal care, preventing preterm birth, arises after the 12 week of gestation.² The Committee’s working definition of early childhood is all young children “at birth”, whereby States parties are urged to take all possible measures to “improve perinatal care for mothers and babies”.³

In Bulgaria, the effective Penal Code (PC) contradicts these principles.

Article 126 of PC criminalizes home abortions performed by doctors and non-qualified persons.

The provision, adopted in 1968, contains the exact phrase “killing the fetus” and it is placed in Section “Homicide”. Abortion does not qualify as “taking life”, therefore, its systematic place is not in Section

1 Judgment no. 159 of 2 December 2014 in case 971/2014 of the Pleven Regional Court; Judgment no. 89 of 11 May 2017 in case 195/2017 of the Lovech Regional Court.

2 “Recommendations on interventions to improve preterm birth outcomes”, World Health Organization 2015: https://www.who.int/reproductivehealth/publications/maternal_perinatal_health/preterm-birth-guideline/en/

“Medical management of abortion” World Health Organization 2018: <https://www.who.int/reproductivehealth/publications/medical-management-abortion/en/> ³ CRC General Comment No. 7 (2005) Implementing child rights in early childhood.

“Homicide”. Being positioned there, the provision implies that the right to life arises before birth, which is not true.

We recommend abolishing Section 126 of PC and replacing the crime home abortion in

Section “Crimes against the public health” of PC, with revised edition of this crime via contemporary terms such as “pregnant uterus”, “ending pregnancy” etc.

III. RIGHT OF THE CHILD TO PRESERVE THEIR IDENTITY, INCLUDING THEIR FAMILY RELATIONS (Art. 8 and 9)

In Bulgaria, parental disputes over custody and contact rights often result in parental alienation and estrangement. This phenomenon is further coupled with the lack of social services building up parenting capacity. Hence, custody disputes culminate in severe court battles, the victims of which are the children, this often leading to the violation of their human rights.

Even though mediation is part of Bulgarian legal framework since 2004 as an alternative dispute resolution mechanism, its application towards family disputes has not yet reached its potential. The Civil Procedure Code does provide for an obligatory court referral of spouses to mediation (arts. 140 and 321 Civil Procedure Code). Notwithstanding the latter though, the ultimate decision on whether to opt for mediation is subject to the free choice of the parents. This, acknowledged with the cultural context in the country, practically renders the institution of mediation inapplicable.

In addition, for the last 5 years there were numerous legislative initiatives on integrating an obligatory first mediation information and assessment session (MIAM) between parents as a condition precedent for initiating court proceedings. Regardless of the support such legislative initiatives have received from both academia, NGOs, social workers and psychologists, no such changes have yet been adopted.

We urge the Government for effecting legislative changes providing for obligatory MIAMs as a condition precedent to custody court proceedings. We recommend further to raise the bar for mediators practicing family mediation and offer enhanced trainings obligatory for mediators practicing in the field of family disputes with a special focus on the child’s best interests.

IV. DUTY TO PREVENT AND INVESTIGATE DEATH

On 18 June 2013 the ECtHR found violation of Bulgaria’s duties to prevent and investigate the death of 15 children and young adults in a state home for children with severe mental disabilities – *Nencheva and others v. Bulgaria* (appl. No. 48609/06). The execution of the judgment is monitored by the CoE’s Committee of Ministers and revised action plan was submitted by the Government on 10 October 2018 (see [DH-DD \(2018\)1040](#)). The last consideration of the case took place on 4 December 2018, whereby the following recommendations were made inter alia:

“6. encouraged the authorities to indicate the measures adopted or envisaged to ensure that children with mental disabilities placed outside their families, who are not represented by their parents or a relative or whose parents have lost interest in them, are afforded independent representation, enabling them to have complaints relating to their health and treatment examined by a court or other independent body;

7. encouraged again the authorities to introduce additional guarantees to ensure the effectiveness of investigations in cases where parents have lost interest in a child after he or she has been placed in an institution, and to provide information on domestic practice with regard to the criminal liability of officials responsible for the running or monitoring of residential centers”.

We invite the Committee to synchronize their recommendations under this head with the recommendations of the CoE’s Committee of Ministers in *Nencheva and others* and to address the issues of representation of children with disabilities and investigations of deaths of children in institutions to the Government of Bulgaria.

V. RIGHT OF THE VICTIMS TO A LAWYER (Art. 19)

Article 19 of the Convention guarantees to victims of violence protective measures including legal assistance and access to justice.

In Bulgaria, the Legal Aid Act provides that the National Legal Aid Bureau shall guarantee free legal aid to “children accommodated with foster families or with relatives; child at risk; victims of domestic or

sexual violence or of human trafficking”³. More generally, the Child Protection Act provides that “the child has a right to legal aid and appeal in all proceedings concerning his/her rights”⁴.

The National Legal Aid Bureau at the Ministry of Justice issued 467 permissions for *ex officio* lawyer in 2019; 457 – in 2018 and 310 – in 2017.⁵

We invite the Government to respond how many of these lawyers were appointed to child victims of violence. We recommend the National Legal Aid Bureau to keep separate statistic of the under aged beneficiaries of their services, as well as to register separately child victims and child offenders.

VI. RIGHT OF ACCESS TO HEALTH CARE SERVICES (Art. 24)

The Committee urges the States to review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion.⁶

Bulgarian legislation regulating access to abortion is not in compliance with this indication. While certain forms of medical assistance are accessible to girls between 16 and 18 years of age without their parents’ consent, planned surgeries are not. For example, doctors directly can provide consultations, examinations and tests to girls over 16.⁷ This would cover prescription for a drug inducing home abortion in the first weeks after the intercourse. However, if the pregnancy is more advanced and the only option is operative abortion in hospital, the girl aged 14 to 18 must provide parental consent.⁸ At the same time, the Criminal Code sets 14 as a minimum age for sexual consent.¹⁰ The Government reports that in 2017, 3 251 under aged girls carried pregnancy till term⁹; in 2018 - 3 073¹⁰; in 2019 – 2 948.¹¹

We recommend aligning the minimum age for abortion without parental consent with the minimum age for consensual sex. We recommend decreasing the age set forth in Article 87, paragraph 3 of the Health Act from 16 to 14. We recommend decreasing the age set forth in Article 89 of the Health Act from 18 to 14, as it concerns access to safe abortion.

VII. RIGHT OF THE VICTIMS OF TRAFFICKING TO COMPENSATION (Art. 19 and Art. 35)

In its 2016 Concluding observations on the combined third to fifth periodic reports of Bulgaria, the Committee found that there is no system to provide specialized care and support to child victims of trafficking (paragraph 56), as provided by articles 19 and 35 of the Convention.

In Bulgaria, human trafficking was criminalized in 2002. For the last 18 years, only 1 child was awarded compensation for damages caused by the crime.

The only successful compensation claim, submitted on behalf of minor victim of human trafficking, received legal aid from NGO. With final verdict of the Vratsa District Court dated 22 January 2020 in criminal case No. 281/2019 the trafficker was ordered to pay the sum BGN 10,000 (approximately EUR 5,000) to his 2-year old daughter, for forcing her mother to prostitute while she was pregnant with the claimant. The writ of execution is presently at the hands of a bailiff who attempts to collect the money; however, the trafficker is not engaged in any job in the prison and does not possess any income or property.

3 Article 22, paragraph 1, points 4, 5 and 7 of the Legal Aid Act.

4 Article 15, paragraph 8 of the Child Protection Act.

5 <https://www.nbpp.government.bg>

6 General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24).

7 Article 87 of the Health Act.

8 Article 89 of the Health Act. Article 4 of Regulation no. 2 of 1 February 1990 on the conditions and the procedure for artificial ending of pregnancy. ¹⁰ Article 151 of the CC.

9 “Population and demographic processes in 2017”, National Statistical Institute, 12 April 2018: www.nsi.bg

10 “Population and demographic processes in 2018”, National Statistical Institute, 12 April 2019: www.nsi.bg

11 “Population and demographic processes in 2019”, National Statistical Institute, 13 April 2020: www.nsi.bg

In addition, there were 2 attempted compensation claims on behalf of children - also represented by an NGO lawyer – but both were repealed upon appeal on the grounds of procedural breaches¹².

Section 51 of the Criminal Proceedings Code provides the right of the public prosecutor to submit compensation claims on behalf of child victims.

We invite the Government to present other final judgments awarding compensations to child victims of trafficking, should there is any. We recommend the establishment of a State Fund for compensations, awarded as a result of human trafficking, which cannot be collected from the sentenced person. We recommend specialized, enhanced trainings of prosecutors on the application of Section 51 of the CPC.

VIII. VIOLENCE AGAINST CHILDREN INCLUDING DOMESTIC VIOLENCE

(arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

In 2019, the draft Strategy for the Child (2019 — 2030) was placed under a serious disinformation attack and as a result was not adopted. The prevention and protection of children from violence was one of its strategic goals. There is still no unified information system for recording and monitoring cases of violence against children.

The Bulgarian Parliament did not ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention. It was further declared unconstitutional by the Constitutional Court¹⁵.

The Penal Code (Articles 129 and 130) criminalizes the infliction of severe and medium bodily injury. However, the infliction of light bodily injury and any light form of corporate punishment is not considered a criminal offence ex officio, but a crime conditional to a victim's complaint.

The Istanbul Convention¹³ stipulates that investigations into or prosecution of the offence should be ex officio (article 55). Additionally, Art. 125, para. 2 in fine of the Family Code states that "the parent shall not use violence, as well as methods of education, which lower the child's dignity."

We recommend the criminalization of all forms of corporal punishment against children, including all cases of bodily injury, not merely the medium and severe ones as regulated by current penal legislation.

According to Article 2, para. 2 of the Protection against Domestic Violence Act "(2) Any domestic violence committed in the presence of a child shall be considered mental and emotional violence against the said child." Therefore, any violence against a parent is considered violence toward the child as well and he/she is a victim of this violence.

The provisions in the Penal Code (PC) related to domestic violence (DV) were adopted in 2019. These introduce DV as an aggravating circumstances provision in several other criminal offences, including - Murder (Art. 116 a), Bodily injury (Art. 131, 5a), Kidnapping (Art. 142, 5a), Article 142a, Coercion (Art 143, (3), Article 144 (1). Article 93, para. 31 PC defines domestic violence as an aggravating circumstances provision – "the crime has been committed in the conditions of domestic violence, if it has been preceded by systematic exercise of physical, sexual or mental violence, placing in economic dependence, compulsory restriction of privacy, personal liberty and personal rights and is exercised against an ascendant, descendant, spouse or ex-spouse, a person with whom he has a child, a person with whom he is or has been in civil partnership, or a person with whom he lives or is lived in one household." This definition introduces the condition of "systematic exercise" (according to Bulgarian legal theory and some of the existing case-law¹⁴ – systematic would mean of no less than

12 Judgment of the Pleven Regional Court dated 31 March 2011 in appeal criminal case No. 239/2011 and judgment of the Pleven Regional Court dated 24 June 2011 in appeal criminal case No. 341/2011)

13 The Bulgarian Constitutional Court declared the Istanbul Convention unconstitutional because the Constitution does not contain the concept of gender: <http://www.constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>

14 "It is obvious that the legislator did not intend to criminalize every act of domestic violence, but only the one that is characterized by a system from which an increased public danger of the act can be derived. According to the understanding established in legal theory and practice, in order for an act to be considered systematic, it must be performed at least three times." - Judgement of Ihtiman Regional Court Dated 9th March 2020 in Case № 671/2019

three separate occasions) of violence, thus creating additional hardships for the victim of domestic violence (especially a child) to take legal actions and receive protection while facing the burden of proof for the three separate occasions.

Article 46 of the Istanbul Convention introduces the circumstances that should be taken into consideration as aggravating in determining the sentence in relation to the offences established in accordance with the Convention, where two of the provisions are: a) the offence was committed against a former or current **spouse or partner** as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority; and b) the offence, or related offences, were committed **repeatedly**. The existing provision in the PC (art. 46 a) and b)) appears to be a combination of the above provisions, thus narrowing the scope of the protection of the victims of domestic violence by not regulating two separate aggravating circumstances provisions and by creating a provision where the latter (the systematic exercise) appears to be a condition for the application of the first (committed by a spouse or partner). Additionally, one of the measures for protection against DV set up in article 5 of the Protection against Domestic Violence Act is “1. obligating the perpetrator to refrain from committing domestic violence;” which grants no real protection for the victim of abuse. Moreover, the national legislation does not provide for offences committed against or in the presence of a child to be acknowledged as aggravating circumstances provision – as stipulated in Article 46d of the Istanbul Convention.

A project proposal for the amendment of the Domestic Violence Act has been subject to public consultation in January 2021, where the term “systematic” was abolished, however the said proposal has not been introduced to the parliament yet after the public consultation.

We recommend that the term “systematic exercise” in the definition of “domestic violence” as an aggravating circumstances provision should be removed. Notwithstanding the above, we support the introduction as an additional provision of the crime of exercise of domestic violence where the offence is committed by a spouse or partner without a further condition for its application.

Without prejudice to the above, the circumstance that the offence was committed against or in the presence of a child should be introduced as an aggravating circumstances provision. We highly recommend that the Government should do what is necessary to allow for the ratification of the Istanbul Convention’ as recommended in the European Parliament resolution on the rule of law and fundamental rights in Bulgaria (2020/2793(RSP)), para 17.¹⁵

We urge the Government to submit to the Parliament the Draft Strategy for the Child (2020- 2030), to which it is legally obliged under article 1, para 3 of the Child Protection Act.

The Implementing Regulation to the Child Protection Act, § 1, item 4 defines the term “sexual violence” as “Sexual violence is the use of a child for sexual gratification”. This definition seems to lack understanding of the nature of sexual violence against children and fails to address the problem as an experience suffered by the child victim, while instead it uses the term “sexual gratification” that defines it through the experience of the perpetrator.

Therefore, we recommend the Bulgarian legal definition of sexual violence to be altered in compliance with the common understanding of the term under the CRC¹⁶.

IX. CHILDREN IN CONFLICT WITH THE LAW, RIGHTS OF MINORS IN

CORRECTIONAL BOARDING SCHOOLS AND INSTITUTIONS (Art. 6, 19, Art. 37-40)

As a reaction to a murder of an 18-year old girl by an alleged perpetrator – a 17 year-old boy, a legislative initiative for the amendment of the Penal Code was introduced in Parliament in January, 2020²⁰. The specific problematic amendment proposal abolishes the reduction of punishment and served time under Art. 63 of the Penal Code²¹ in respect of minors who have reached the age of 16 and increases the sentences of minors in said age group for up to twenty years of served time. The proposal is introduced for children aged 16 to 18 who have committed a serious crime against the person. That would mean that a 16-year old child would be punished as an adult, which is in breach of Article 37 (a) CRC. The draft law was voted in during the first vote at the Parliamentary Commission on Children,

¹⁵ At: https://www.europarl.europa.eu/doceo/document/B-9-2020-0309_EN.html

¹⁶ General Comment No. 13 on the Right of the Child to Freedom from All Forms of Violence sets forth a broad definition of violence against children which includes sexual abuse and exploitation.

Youth and Sports Matters in February²² despite the many statements²³ strongly criticizing the proposal. Further vote in the Legal Commission, a leading one, awaits.

We recommend the immediate abolishment of the said legislative proposal for amendment of Article 63 of the Penal Code that will result in punishment of 16-18 year old children as adults.

In Bulgarian law children are divided to two groups granting different status – minors (below 14 years of age) and adolescents (14-18 y/a). Separately, institutions perceive ‘a child in conflict with the law’ to also include minors who have not completed 14 years of age (which is the minimal age of criminal responsibility) and are registered in the system of combating anti-social behaviour of minors mostly for status offences²⁴. According to data from the National Statistical Institute (NSI), in 2019, 9,167 minors were registered in children’s pedagogical rooms for anti-social acts and crimes committed by them, which is an increase by 69 children comparing to 2018 results²⁵. Based on the data from Infostat, the total number of children registered in pedagogical rooms has only increased since 2016 and maintains a relatively constant number of over 9,000 children¹⁷. The total number of children placed in the four Correctional Boarding Schools (CBS) under the Juvenile Delinquency Act (1958) is 119. The children accommodated there live in difficult conditions - without adequate access to health care and quality education focused on their differentiating level of knowledge and understanding and suitable for adolescents living conditions. No reform concerning Justice for Children has been put into action by the Government and the observations and concerns stated by the Committee remain unchanged.¹⁸

The pandemic situation has further aggravated the situation of children placed in correctional facilities in Bulgaria. Usually, contacts with the wider community and family are limited, which leads to risk of social isolation and hardly any possibilities for resocialization. Due to the COVID- 19 pandemic any vacations of children out of the correctional school and any visits are forbidden and as stated by the Ombudsman of the Republic of Bulgaria Diana Kovacheva in an official Statement¹⁹ – contact with family and even with a medical practitioner is established solely by phone or via Internet²⁰. As stated by the Ombudsman there is non-compliance with anti-epidemic measures, such as placement of a child during the State of emergency (due to COVID-19) in the CBS „Hristo Botev” in the village of Podem. To add to this, there is also presence of a problem with staffing of the said facilities. An additional concern is the fact that the directors and staff of CBS and SBS seem to lack operational support of the Ministry of Education and Science since CBS did not receive instructions on special safety rules during the epidemic that take into account the specifics of the place where children live together permanently²¹.

In 2016, a draft law on Diversion from Criminal Proceedings and Imposition of Educational Measures on Children was introduced. It strived for the transformation of correctional facilities into special centers, the closure of boarding schools, a new system of measures for child offenders, the lightest measure being a warning and the most severe the placement in a special foster family or educational center. However, the Draft law was put on hold and years passed on without any reform in the child justice system. The Ministry of Justice pointed out in late 2019 that the expert working group²² on the Draft law shall resume its functioning, although not specifying any precise future plans or giving any hope for an upcoming repeal of the outdated Juvenile Delinquency Act.

We recommend the closure of the CBS and the development of alternative services for child offenders. The Juvenile Delinquency Act should be repealed and an entirely new law on child justice that meets international standards should be adopted.

17 https://infostat.nsi.bg/infostat/pages/reports/result.jsf?x_2=240

18 Concluding observations on the combined third to fifth periodic reports of Bulgaria, adopted at its seventy-second session (17 May-3 June 2016), para. 58 and 59.

19 Official Statement on the issues of children in correctional boarding schools in Bulgaria – Statement to the Minister of Education and Science on measures for protection of the health and well-being of children who are in closed institutions, Ombudsman of the Republic of Bulgaria Diana Kovacheva PhD

20 Statement of the Ombudsman

21 At the time of publication of the statement.

22 Concluding observations on the combined third to fifth periodic reports of Bulgaria, the Committee recommended that the Government should amend its Family Code to remove all exceptions that allow marriage for anyone under the age of 18 years (paragraph 18).

List of questions:

- 1. Are there any plans of the Government to follow the Committee's recommendation¹ and amend its Family Code in Article 6 to remove all exceptions that allow marriage for anyone under the age of 18 years?**
- 2. Are there any plans for abolishing Section 126 of PC and replacing the crime home abortion in Section "Crimes against the public health" of PC, with revised edition of this crime via contemporary terms such as "pregnant uterus", "ending pregnancy", etc.?**
- 3. What is the strategy the Government has deployed in order to ensure parental disputes are resolved in the best interest of a child? What role does mediation have within the context of resolving different parental disputes?**
- 4. Are there any plans of the Government to implement the recommendations of the CoE's Committee of Ministers ²³ in *Nencheva and others* and to address the issues of representation of children with disabilities and investigations of deaths of children in institutions in Bulgaria?**
- 5. Are there any plans for the National Legal Aid Bureau to keep separate statistic of the under aged beneficiaries of their services, as well as to register separately child victims and child offenders?**
- 6. Are there any plans for the alignment of the minimum age for abortion without parental consent with the minimum age for consensual sex²⁴ in Bulgaria? Does the Government intend to decrease the age set forth in Article 87, paragraph 3 of the Health Act from 16 to 14? Does the Government plan to decrease the age set forth in Article 89 of the Health Act from 18 to 14, as it concerns access to safe abortion?**
- 7. Is the Government able to present other final judgments apart from the one described, awarding compensations to child victims of trafficking, should there is any? Is there any intention for an establishment of a State Fund for compensations, awarded as a result of human trafficking, which cannot be collected from the sentenced person? Are there any plans for specialized, enhanced trainings of prosecutors on the application of Section 51 of the CPC?**
- 8. Are there any plans for the criminalization of all forms of corporal punishment against children, including all cases of bodily injury, not merely the medium and severe ones as regulated by current penal legislation?**
- 9. Will the term "systematic exercise" in the definition of "domestic violence" as an aggravating circumstances provision in Art. 93, para. 31 of the Domestic Violence Act be removed?**
- 10. Are there any plans for the introduction as an additional provision of the crime of exercise of domestic violence where the offence is committed by a spouse or partner without a further condition for its application?**
- 11. Are there any plans for the introduction of the circumstance that the offence was committed against or in the presence of a child should as an aggravating circumstances provision in the Domestic Violence Act?**
- 12. Will the project proposal for amendment of the Domestic Violence Act of January 2021 be presented to the committees and the parliament for vote?**
- 13. Is there any intention for the ratification of the Istanbul Convention' as recommended in the European Parliament resolution on the rule of law and fundamental rights in Bulgaria (2020/2793(RSP)), para 17?¹⁸**
- 14. Are there any plans on behalf of the Government to submit to the Parliament the Draft Strategy for the Child (2020- 2030), to which it is legally obliged under article 1, para 3 of the Child Protection Act?**
- 15. Are there any plans for the Bulgarian legal definition of sexual violence in the Implementing Regulation to the Child Protection Act, § 1 to be altered in compliance with the common understanding of the term under the CRC¹⁹?**

²³ Committee of Ministers and revised action plan was submitted by the Government on 10 October 2018 (see DH-DD (2018)1040).

²⁴ Article 151 of the CC

16. Are there any plans for the closure of the CBS and the development of alternative services for child offenders? Are there any plans for The Juvenile Delinquency Act to be repealed and an entirely new law on child justice that meets international standards to be adopted (such as draft law on Diversion from Criminal Proceedings and Imposition of Educational Measures on Children) ?

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LEGAL AID NETWORK AT THE NATIONAL NETWORK FOR CHILDREN



NATIONAL NETWORK FOR CHILDREN

The Legal Aid Network of the NNC¹ was established in 2020 as an initiative of National Network for Children (NNC) with the motive to increase the influence of the advocacy activity of the NNC through the work on significant, or so-called „strategic cases” of children, as well as to offer qualified legal aid in cases related to children. The objectives of the Legal Aid Network can be synthesized by the following:

- 1) improving the protection of children's rights;
- 2) advocacy for the improvement of the legal framework that protects children's rights;
- 3) raising the legal culture in the field of children's rights.

To ensure the above, the Legal Aid Network is structured of an Advisory Board which includes key lawyers and jurists in the field of children's and human rights and the development of civil society organizations, a Coordinator of the Legal Aid Network and a Consultant of the Legal Aid Network. The expertise of these key experts in the field of child rights and human rights in general ensures that the Legal Aid Network offers a robust knowledge in the field of children's rights protection and as such – strives to achieve their due implementation on a national level.

¹ Legal Aid Network's section of the NNC's website, <https://nmd.bg/campaigns/mrezha-za-pravna-pomosht/>



The conference is co-funded by the
European Union's Rights, Equality and
Citizenship Programme (2014-2020)

VALIDITY



BCNL

