



NOVA School of Law Comments

6: Definitions and understanding

1. The **concept of effective participation** is relevant to children in accessing to justice and imply that the proceedings are adapted to them or that they are held in a child-friendly manner. The child has the right to follow proceedings and has a broad understanding of the nature of the trial process, including the relevance of any penalty which may be imposed. Relevant aspects to take into account in ensuring the full respect of the children's right to adapted proceedings: the setting should be child sensitive and not intimidating (CoE [Child Friendly Justice Guidelines](#), § 54); the language should be child friendly from the moment of information about the charge, until the end of the proceedings, including the pronouncement of the judgment (GC24 § 47; CoE, § 56); the child should be accompanied by the holder of parental responsibility / responsible adult throughout the process; the Interviews / police questioning should be audio-recorded (CoE § 59); the Court sessions should be adjusted to the child's attention span (CoE § 61); the Court sessions should be kept behind closed doors (GC24 §67); and the child's identity should be protected (GC24 §67).
2. Proceedings involving children should be organized so as to **respect their best interests, taking full account of their age, level of maturity and evolving capacities**, and steps should be taken to promote their ability to understand and participate in the proceedings.
3. **Separate child justice systems**: international law, in particular Article 40 of the [Convention on the Rights of the Child](#) (the "CRC") and [General Comment no. 24 \(2019\)](#) on children's rights in the child justice system (GC24), strongly recommend that states establish separate child justice systems, for children accused or suspected of having infringed criminal law (GC24§ 4). The child's harmful effects of the criminal justice system should be recognized (GC24§ 2).
4. Children should have the possibility **to complain and initiate legal proceedings in cases of violations of their rights**. States Parties (SP) should provide legal or other appropriate assistance to children free of charge in all matters affecting them. Legal assistance should be of sufficient quality and be provided to all children within the SP territory, including non-citizens.
5. **Being aware of, and having access to, information about their rights and how to obtain a remedy** is another key element of ensuring access to justice for children. Information should be age-appropriate and adapted to the needs of children. It should be presented in ways that children accept and understand. In addition, information should be made available to parents and other persons acting as legal representatives of children.
6. **Independent, safe, effective, easily accessible and child-sensitive complaint and reporting mechanisms** should be established by law in compliance with international human rights norms and standards, in particular the CRC. Where such mechanisms already exist, SP should secure their availability and accessibility for all children, including children deprived of their liberty, without discrimination of any kind. In addition, SP should ensure that complaint and reporting mechanisms act in an effective and child-sensitive manner and pursue the best interests of the child.
7. SP should ensure that the **views of children**, including children from the youngest age, even when they may be unable to express themselves verbally, **are given due consideration**.



8. SP should make sure that **children's privacy and confidentiality** are safeguarded during the proceedings.

9. SP should ensure that **children are protected from all forms of violence** when meeting the justice system.

10. With **technological advancements** and **changing consumption habits**, children are now consumers at an earlier age, leading to new legal disputes often not designed for their participation. Resolution mechanisms, both internal and external, must adapt to include children's input. If children can engage in business transactions, they should also have facilitated access to justice to protect their consumer rights, including the ability to use dispute resolution mechanisms.

11. **Digital justice** should not be the default option, as in-person interactions are vital, especially at the start of proceedings. Relying solely on digital means can lead to social and digital exclusion. To prevent this, it is important to assess the impact of digital justice carefully. Projects like Justice for Children (JUS Project), the EU-Council of Europe's Child-friendly Justice, and Project LINK are examples of efforts to improve access to justice.

7: Barriers

1. **Lack of child-friendly justice systems:** there's a consensus that the legal system is often too complex and inaccessible for children. Legal language is difficult for children to understand, and there is a lack of child-friendly versions of legislation and information.

2. **Inadequate children legal representation and support:** children often have challenges in accessing specialized legal representation. The appointment of lawyers for children can be bureaucratic and inconsistent. Furthermore, in many cases, children are not heard in legal proceedings that concern them, limiting their ability to influence outcomes directly.

3. **Lack of specialized training for legal professionals,** such as judges and prosecutors, often lack specific training in children's rights and child-friendly procedures. All professionals working with children in contact/conflict with the law should receive interdisciplinary training on the rights and needs of children of different age groups and be able to work in interdisciplinary teams and be well informed about the physical, psychological, mental, and social development of children.

4. **Structural and procedural legal barriers:** the legal system's structural complexity, including the duration of proceedings and the procedural rigidity, often works against the best interests of the child.

5. **Economic and social barriers:** economic constraints limit children's access to legal support, with free legal aid not always available or accessible. Additionally, social and digital exclusion can hinder children's and their families' ability to engage with justice processes, particularly where digital justice solutions are implemented without considering their impact.

6. **Need for a Children's Ombudsman:** the establishment of a children's ombudsman is strongly supported. Such a figure would provide a direct avenue for addressing children's grievances and ensuring their voices are heard in matters that concern them.

7. **Confidentiality and representation:** in civil and administrative proceedings, the practice of notifying parents of the child's statements can inhibit children's freedom to express themselves openly.



There is also concern over the legal representation of children, particularly when their rights are exercised on their behalf by parents or guardians who may be the source of conflict or harm.

8. Arbitral proceedings and access to alternative dispute resolution: in cases involving children's capacity to engage in legal transactions, their rights are often overshadowed by legal representatives, leaving children out of critical discussions and decisions. The need to accommodate children within the formalism of dispute resolution and increase awareness of ADR mechanisms is also highlighted.

9. Proposed Solutions: Child-Friendly Legal Systems; Specialized Training for Professionals; Establishment of a Children's Ombudsman; Enhancement of Multidisciplinary Approaches; Streamlining Legal Processes; Promotion of Legal Literacy and Awareness.

8: Enabling factors and strategies

1. Children should be able to initiate mechanisms of mediation or judicial intervention, according to his/her age and maturity, and intellectual and emotional capacities in matters of particular importance for the child's life (concept that is opposed to "acts of the child's daily life") and property matters (assets by donation or succession, or through their work, namely as digital influencers, advertising models, artists - theatre, television or internet, participants in television competitions, and sports).

2. A Children's Ombudsman is key to ensure children's right to access to justice and effective remedies. It should be independent from the SP with professionals from the child protection services, police officers, judges, prosecutors, lawyers that assure information and advice children in an appropriate manner, and which is gender and culture sensitive. **Schools** play an important role by promoting children's rights and the means of ensuring them.

3. Empowering children to claim their rights: provide children with adapted information about their rights, and the avenues for doing so regarding child justice proceedings, system and procedures, charges, time and place of court proceedings and other relevant events, existing mechanisms for review of decisions.

4. SP should ensure child-friendly language at all stages: child-friendly layouts in interviewing spaces and courts; support by appropriate professionals; removal of intimidating legal attire; and adaptation of proceedings, including accommodation for children with disabilities and children from ethnic/religious minorities. In all proceedings, children should be treated with respect for their age, special needs, maturity and level of understanding as well as any communication difficulties they may have.

5. SP should ensure that all children have access to specialized and efficient justice systems, which require child-specific institutional structures, such as specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as other representatives who provide legal or other appropriate assistance to the child. Specialised services such as probation, counselling or supervision should be established together with specialised facilities.

6. SP should expand the provision of legal, mediation and social support to children going through justice processes (e.g., through decentralized, community-based, multi-disciplinary child rights centres or legal clinics). Develop greater links between social protection and justice systems and ensure improvements in preventive measures and take up of alternatives to judicial proceedings, such as mediation.



7. SP should invest in **reliable, regular and comparable data focused on children in justice systems**: introduce child-focused benchmarks and indicators to monitor and assess progress in the SP justice systems.

8. A **multidisciplinary and interdisciplinary approaches** should assure a close cooperation between professionals to obtain a comprehensive understanding of the child (an assessment of her/his legal, psychological, social, emotional, physical and cognitive situation). A common assessment framework should be established for professionals working with children in contact/conflict with the law, such as lawyers, psychologists, physicians, police, immigration officials, social workers, and mediators, in order to provide any necessary support to those taking decisions and to enable them to best serve children's interests in any given case.

9. **Rescale-up existing programmes to adapt police and court procedures to children's rights and needs**, including the establishment of specialized police units/officers and interviewing rooms, the setting up of specialized procedures in administrative, civil and criminal courts and building the capacity of the police, judges and other professionals working with children, with a focus on multidisciplinary practices. **Develop regional platforms** to enable national governments, civil society and other partners to share lessons learned and good practices and build regional know-how and cooperation on justice for children.

9: Proceedings

1. **Legal aid** should be provided to all children, including free access to legal representation throughout the proceedings, in particular children who are facing criminal charges before judicial, administrative, or other public authorities (CG24 §§ 49, 51). It should be mandatory for SP to ensure that the provision of legal aid is institutionalized and that clear guidelines on accessing legal aid are provided to all children and their parents or guardians.

2. **Specialized child lawyers** should be available to represent children in both civil and criminal proceedings, in particular: before they are questioned by the police or by another law enforcement or judicial authority; upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act; without undue delay after deprivation of liberty; and where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

3. SP should provide that a **single professional contact/trust person** supports the child during all stages of judicial proceedings. This person should use a child-friendly approach; be sufficiently trained and available regularly at all stages of proceedings; develop a trusting, continuous relationship with the child; and liaise and coordinate with any other groups involved (e.g., child protection services, police officers, judges, prosecutors, lawyers and parents or guardians).

4. **The right to be heard** should not be subject to age limits or other arbitrary restrictions, either in law or practice, SP should introduce in their legislation clear criteria and adopt methods for determining and assess a child's development. Additionally, the legal framework should be clear that not hearing the child can only be justified when the children is not capable of forming their opinions/views and should be properly justified by the judge. Otherwise, it should be should automatically be a ground of refusal of recognition of the judicial decision or the enforcement of instruments and agreements in all matters



affecting them (e.g., agreements between the parties). The procedural safeguards that guarantee children's participation in judicial proceedings and effectively protect their right to be heard should also include child-adapted versions of mediation, such as pre-mediation phase (information session) in all processes that affect them, carried out by a certified mediator, but also capacity building and information of mediators who contact with children their families.

5. Determining a child's best interests requires SP to report on how a child's best interests were assessed (e.g., rules, guidelines and protocols for the assessment should be developed). Professionals should ensure that children understand the concept of best interests, particularly when explaining the process and outcomes of the proceedings.

6. SP should ensure that hearings are conducted in child-friendly facilities and competent professionals. Specific arrangements should be available, especially from child victims, avoiding revictimization and secondary trauma, such as reducing the need for repeated interviews by disclosing information to other professionals (with the child's consent). Forensic interviewing of suspected child abuse victims should be provided by SP because it can provide critical evidence for both criminal child abuse investigations and civil child protection proceedings. Information from the interviews, but may also identify other victims, assist professionals responsible for assessing risk and safety needs of children and families, and facilitate case management decisions, and assist judge decision.

7. SP should ensure child's right to privacy and confidentiality either through legislation providing that most court hearings involving children are to be held in private or by allowing judges to decide on the absence of the public. Measures such as live video links or pre-recorded testimony in hearings should be considered. Recordings need to be safely stored and children's identities protected online, in all areas of law and independent of the child's role in proceedings. Personal data should only be accessed and transferred when absolutely necessary, and always take the child's best interests and opinions into account.

8. All professionals in contact with children should receive training in child rights, child-friendly verbal and non-verbal communication and language, child development and child-related criminal and civil legislation. General and specialist training for judges and prosecutors should be promoted. Training should be obligatory for front-line practitioners, such as police officers and court staff. Specific training modules should be developed, targeting different professionals in relation to their function. Ensuring that professionals are provided with clear guidelines and detailed rules on how to hear children. This is to ensure that they properly use procedural safeguards and that they use a consistent, child-friendly approach to hearings in criminal and civil proceedings. These should go hand in hand with a standardisation of procedures and coordination among different actors and professional groups to harmonise hearings.