



Experiences, models and perspectives on the right to participation in the Juvenile Justice System

TRAINING MODULE

Time frame: 8 hours

Introduction

The right to participation represents a fundamental principle of the 1989 UN Convention on the Rights of the Child (CRC) ratified by all member states in Europe. More recently the Council of Europe embodied such a principle in its proposals to improve the Juvenile Justice's systems in order for them to become more "child friendly". Article 12 on the right of the child to be heard could be intended as a provision which gives access to the integrated system proposed by the CRC. At the same time, especially considering the structural purpose of the Juvenile Justice systems, participation has to be considered as a mean but also as an end in the rehabilitative key intention of the various measures applied. The right and the possibility for the child to actively participate in society and in the determination of his/her future represent a major challenge throughout all sectors of society as well as in culturally qualifying the relation between adults and children. The particular domain of Juvenile Justice and its concrete implementation proposes significant questions related to this principle, especially deriving from the possible situation of coercion which might arise from the application of the law. The possible answers, interpretations and models deriving from this question might lead to determine new and useful perspectives both for the juvenile justice systems to strengthen their degree of compliance with the international legislation as well as to improve their capacity to provide children with the possibility to benefit from a system more capable of proposing effective and relevant rehabilitative paths in line with what should be considered as the core function of any justice's measure involving children .

Learning Objectives

Based on the elaboration and empirical research conducted in Italy, Spain and Belgium's Juvenile Justice Systems, the proposed seminar is conceived as an occasion of exchange for professionals and other actors involved in the JJ system to deepen the theoretical as well as the practical understanding of the right to participation in the context of Juvenile Justice systems and measures.

The one-day training seminar intends to verify the possible integration of a child rights-based framework into the actual practices, perspectives and models that will be brought by the participants. In particular the seminar aims at the following specific objectives:

1. Share and define how participation could be considered a key principle in promoting a child rights-based approach in the juvenile justice system;
2. Identify obstacles, opportunities, challenges, resources and actions to effectively apply the right to participation within the juvenile justice system and measures in

- relation to the different mandates and domains of expertise of training participants;
3. Develop opportunities for cooperation and follow-up between complementary professional mandates from a logic of greater integration of child protection systems.

Target group

The seminar is aimed at professionals in contact with children in conflict with the law working in the field of juvenile justice and child protection including lawyer, judges, social workers, educators, teachers, psychologists, director and staff of detention centres and care facilities, police and security guards, volunteers. This training experience also targets community members other than professionals as well as officials, institutional actors, policy and decision makers. The composition of multidisciplinary training groups involving different mandates is highly recommended.

Training format

This module (7.5-8 hours) is divided in two integrated and parallel blocks:

A session focused on theory and concepts (4 hours) that provides a theoretical and conceptual framework on children's rights, participation and the juvenile justice system. International and European standards will be used as a reference tool for determining a theoretical as well as practical framework for implementation.

A session concentrated on practices and interactive activities (3 - 3.5 hours) based on real experiences and case studies aimed at identifying obstacles while determining orientations and practical indications on how to implement and improve meaningful participation of children in the field of juvenile justice.

Methodological considerations

The training seminar uses a participatory methodology under a holistic, transcultural and human rights-based approach that places the persons at the centre of its action and carefully considers the relation with the surrounding context. In this light, the course facilitator should try to embrace, value and integrate training participants' experiences during the session. For this purpose, training seating is arranged in a circle to allow greater group interaction. This setting could be metaphorically presented as a method for the co-building of knowledge by putting in the centre each different experience and expertise. The training methodology is inspired by the "adult learning theory", which links what has been learnt to the real world through empirical analysis starting from the fact that persons learn best through discussion, sharing of experiences, practical exercises, discovery and analysis. Such method requires limited number of participants up to a maximum of 20 ideally. The facilitator should make use of a flipchart to trace all the relevant elements that will comprise the resulting common thinking.

The approach towards participants should enable fruitful dialogue between different sectors and a comparison between theory and practice of child participation in the juvenile justice system. The objective is to generate knowledge together, giving value to each experience and expertise. The key guiding questions that orient the conduct of the seminar are: a) how the juvenile justice system can be informed by the spirit of the UN CRC; b) how child participation within juvenile justice systems works in practice; c) how participation could be ensured and made more effective and appropriate.

The training content is based on a systemic approach according to which subjects are as important as the relation between them within a surrounding context. To address the principle of participation, the CRC is used as the system of reference and Article 12 as the starting point. Article 12 will, however, be read in connection with other articles of the CRC as a systemic platform able to orient policies, strategies and actions that view children as informed decision makers and active members of society. The course facilitator should highlight the connection and interrelation of the different elements that will emerge during the session. In this sense, it is important that participants learn to understand their mandate as an integral part of a broader system and to place it accordingly.

List of training contents

- The UN Convention on the Rights of the Child and article 12
- Continuity needs/rights
- Participation in International Standards and Guidelines
- National legal framework
- Child-friendly justice
- The principle of participation: an interrelation of articles (CRC as framework)
- Systemic approach

Training activities and agenda outlines

SESSION 1: Understanding a child rights-based approach with a focus on the principle of participation in the field of juvenile justice.

Time frame: 4 hours

- **Welcome and introduction to the seminar (15 min.)**

Welcome to participants and introduction to the background of the training seminar by presenting the project Twelve following the structure: why, what, when, who and how. It is important to clarify with participants the purpose of the seminar and how it is conceived as part of a process (see above rationale) that could inform or generate future actions and changes in the contexts where participants operate. It could be useful to raise some questions that inspired the project Twelve, such as: it possible to talk about participation in situations of deprivation, semi-deprivation or limitation of liberty? Here participation is just the adhesion to a project built by the institutions? Participation is just formal or procedural or, instead, it can be substantial?

The facilitator continues with the presentation of the agenda, objectives and expectations of the training seminar. The facilitator writes the objectives in the flipchart sheet and posts it on the wall. At the end of the session participants will verify the achievement of these objectives through a joint assessment. It should also be stressed that the method is as important as the content, by making reference to the circular setting and to the interaction opportunities that it generates.

- **Introduction round of presentations (30 min.)**

The facilitator asks participants to introduce themselves through a method that connects each one's presence with the biographical dimension based on experiential elements, as a

way to highlight the centrality of the person. The intention is to avoid focusing only on professional roles and mandates but to create an environment that considers each person as a unique product of life experiences. For this purpose, the facilitator invites each participant to first share with the group a keyword on what he or she believes it is important to enhance participation according to his or her experience; and secondly to briefly present him or herself as well as his or her professional mandate. The facilitator writes all the keywords in the flipchart and posts the sheet on the wall.

This exercise is also conceived as an icebreaker activity that beyond allowing participants to know each other better, will help at introducing the course content while fostering an appropriate training environment.

- **Key concepts and considerations connected to the notion of participation (20 min.)**

The facilitator introduces some reflections about the notion of participation, highlighting that the training seminar is proposing a comprehensive conception of participation, which could be synthesized through the following three R's: Recognition, Responsibility and Rehabilitation.

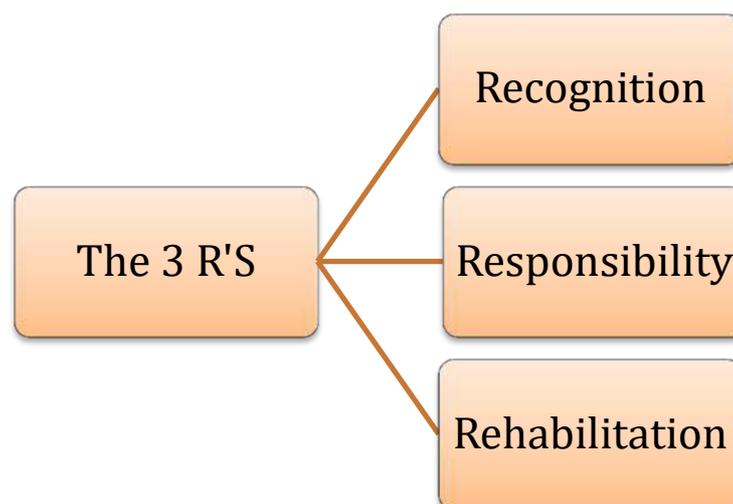


Figure 1: The Three R's

RECOGNITION: opportunities for participation allow children, professionals and officials in the juvenile justice field to interact and collaborate, demonstrating thereby respect for each other and gaining the recognition of the other. Meaningful child participation allows professionals and officials also to recognize and enhance the individual positive resources of children; it also can help the child to gain a better understanding and recognition of his or her personality, i.e. their own 'self'.

RESPONSIBILITY: Opportunities for children to participate enable children to be protagonists of their own lives towards self-determination and autonomy, even in the complex context of deprivation of liberty. Children who have the possibility to get engaged and exercise their participatory rights, have better chances to acquire a growing sense of responsibility.

REHABILITATION: Participation processes play a fundamental role for the rehabilitation and social inclusion of children who are in conflict with the law, allowing to (re-)create positive ties and relations between the child and the society. The meaning of rehabilitation and social inclusion is to enable and encourage children and young persons to become active members of the community, to contribute with their own resources and skills, and to assume a constructive role in society. This can be achieved due to the reciprocal nature of the rehabilitation process that creates a feeling of belonging and enables children to feel accepted by the community, which they are 'part of'.

The facilitator presents the relation of the notion of participation with a series of key concepts and considerations in order to create and share a general context of reference.



-
- A. **HUMAN RIGHTS:** Participation is key to approach a human rights perspective connected to the recognition of each person and his/her self-determination. It is a fundamental principle. Participation means not only listening to the opinion of that child but also taking in consideration how that child can influence the environment; this can be done only if this child is recognised and heard. In general there is a lack of participation not only from the young generation but also by adults. Addressing participation is a big opportunity in order for the principles of the CRC to re-gain life.
- B. **APPROPRIATENESS:** Those policies, measures and actions that respond to the uniqueness and peculiarity of each situation are appropriate. In other words, appropriate policies, measures and actions addressed to children should ensure the conditions for developing tailored responses and solutions. Considering participation as a key element of policies, measures and actions addressed to children could most likely contribute at giving better responses to the uniqueness and peculiarity of each situation and at recognising individuality and personal stories. Participation enables to take appropriate actions, create the appropriate conditions to implement and reach objectives, and establish an appropriate relation between adults and

children.

- C. **EFFECTIVENESS:** Effectiveness means to transform an objective in an action that produces a result which is consistent with the initial objective. In this light, participation could help at turning the system more effective, above all when it comes to juvenile justice and the rehabilitative scope of the criminal measures. Participation could also help professionals at understanding whether their actions are working and at adapting them accordingly.
- D. **INCLUSION:** Participation is closely related with the principle of non-discrimination, since one of its meanings is to consider the person as part of something (in connection with the etymological definition of PARTICIPATION: Etymologically “participation” derives from Late Latin *participatio(n-)*, “shared in”, from the verb *participare*, based on *pars*, part- “part” + *capere* “take”. Participation means to take part or have a share, as with others). Children involved in juvenile justice are often those who have been excluded from society or who have not benefitted from the support and services that they would have been entitled to; having thus not participated or participated wrongly. Is the juvenile justice system capable to be inclusive and offer a rehabilitative process that can lead the child back in the society and the system positively? Enabling meaningful participation is an important key to make a new start possible with better efforts to hear the views of the child and to take them seriously into account. For the child it is about being able to participate to a social contract and to the realization of the own story differently.
- E. **REHABILITATION:** The juvenile justice system works towards the rehabilitation and social inclusion of children in conflict with the law. It is a system that could enable the child to participate in a different way. Meaningful participation qualifies the scope of rehabilitation; the capacity to participate may be specular to the capacity to rehabilitate. The rehabilitative approach is conceived in contrast to the punitive approach. Participation could help at re-qualifying the notion and the scope of rehabilitation.
- F. **ECOLOGY:** Participation enriches the ecology of systems. The child protection system is currently fragmented, which often determines its effectiveness and appropriateness. Participation is a way to address this by re-establishing the relation among components. Participation, therefore, should be considered within a system of relations. In this sense, it is important to adopt an ecological approach in which there are different but interconnected levels and subjects. Participation could be an important element to qualify the relations between the elements of the system and the competences and skills operating within it.
- G. **CREDIBILITY:** To which extent the juvenile justice system is credible for children? The level of effective and meaningful participation may be proportional to the degree of credibility that the system is able to generate. Only a credible system will be able to produce efficient and appropriate actions. It is important to consider that in some cases the perspectives of the children and of the system about what is right and what is wrong can be different. Participation may allow to create spaces for common understanding, sharing and exchange between different persons and positions. The relation between law – legitimacy – credibility may be further explored through the notion of participation.
- H. **PREVENTION:** Reiteration and recidivism is one of the features present in the systems and participation is a way to tackle it. Some children/youth have probably

entered in conflict with the law because they are from particularly marginalised groups, they have been left behind by the social welfare system or they just participated wrongly. Listening and participation can lead to actions that are more efficient and appropriate also in preventing young delinquency and recidivism before, during and after criminal proceedings. This means also extending participation from the closest family context to the wider child's community.

The facilitator leaves the possibility to participants of making comments or questions.

- The CRC and the child rights-based approach (45 min.)

The intent of this section is twofold. The first purpose is to show the continuity and interconnection between 'needs' and 'rights', while the second is to introduce the international legal framework as a referral map for the developing and undertaking of interventions and actions with a holistic, systemic and preventive approach.

The facilitator proposes an exercise to the training group that consists in brainstorming the needs of a child. The facilitator notes the group's responses on the flipchart, and reiterates that the purpose of the exercise is to identify the needs that any child could have, without describing or categorising this child. On the basis of the answers provided, the facilitator underlines how every single need identified is guaranteed by a legal provision and the recognition of a right to our child. The shift from a logic of needs to a logic of rights is extremely important since the former foresees discretionary responses while the latter is enforceable. From a rights-based perspective, children cannot be identified as pure need anymore but as active subjects and holders of rights. A child rights-based framework introduces the identification and assumption of responsibilities of the different actors that play a role from a systemic perspective. The CRC has to be therefore understood as a system of multifaceted nature composed by interrelated articles and principles.

To simplify the understanding of the CRC and its use as a operational framework, the facilitator matches the identified needs with the rights afforded to all children, including in the context of juvenile justice, by using a simple clustering of the Convention divided into four dimensions: survival- development- protection- participation:

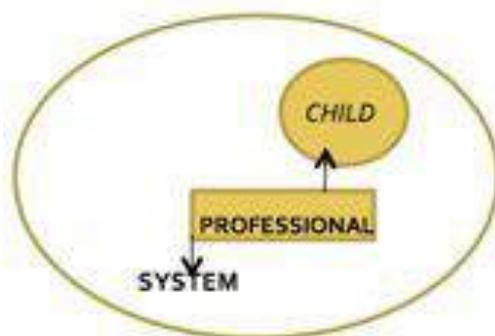


The facilitator should highlight here the importance of the dimension of participation, which is the very revolution of the CRC. It introduces for the first time the recognition of the child as an active subject that contributes to the society, not only taking into consideration his or her vulnerabilities but also his or her capacities and positive resources.

Related to this, the facilitator presents the Karpman Triangle, which is a helpful model to interpret the mainstream narrative according to which every situation can be interpreted following the triangulation victim – aggressor – savior. A child rights-based approach means to deconstruct this logic and avoid stereotypes in order to consider the uniqueness of each person and situation.



Professionals may play a key role in making practices closer to a child rights-based approach within the juvenile justice system, which includes enhancing the participation of the child. Workers and professionals could be considered as vectors of sense as well as vectors of change in relation with the child but also with the system. The facilitator suggests actions that professionals working with children in conflict with the law could adopt. For example: professionals should get information about the child's story and personal situation as well as about his interests and opinions in order to achieve meaningful communication and make proposals that make sense for him.



- **Group discussion (40 min.)**

The facilitator leaves space for questions, comments and discussion. Participants may have raised specific issues during the previous sections. The facilitator should use this

moment to resume them and to relate the different elements emerged, ensuring that participants get a clear and general overview of the topics faced. The facilitator can ask the participants what are the key lessons that have learned from the discussion that can be applied to real-life and work situations.

- **Child participation and juvenile justice in the International, European and national legal framework (60 min.)**

The purpose of this section is to structure and systematize the information given so far, connect it with the juvenile justice system and highlight the importance given by the normative framework to the principle of participation.

The facilitator may use a PPT presentation or a similar tool (prezi for example). The presentation starts from a recap of the CRC with special mention to its 4 principles (best interest of the child, non-discrimination, survival and development, and participation) and to article 12. Then it refers and shifts to more specific tools such as the General Comments 10 and 12, the international standards, the regional standards in particular the Guidelines of the CoE for a child friendly justice, and the national legislation (see PPT presentations attached).

Particular emphasis might be given to General Comment No. 10 containing indications on how to develop and implement a comprehensive juvenile justice policy and to the GC No. 12 on the right of the child to be heard, in which the Committee on the Rights of the Child recommended that child participation shall meet the following requirements in order to be effective and meaningful:



After the presentation, the facilitator leaves space for questions and comments.

SESSION 2: Practical application of the principle of participation under a systemic child rights-based approach in the field of juvenile justice.

Time frame: 3 – 3.5 hours

- **The “Twelve Model” on child participation (60 min.)**

The aim of this section is to present Article 12 as an entry point to the holistic and empowering approach promoted by the Convention: the recognition of children as rights holders. The Convention does not define or mention the ‘right to participation’ as such. However, Article 12 and other, related articles of the Convention, are together interpreted as the ‘participatory rights of children’ as they mutually inform an understanding of children’s agency as active members of society. In order to understand the far-reaching meaning and implications of Article 12, it is useful to look at the entire system of human rights proclaimed by the Convention, which are all inter-related and indivisible, and create thus a close net of standards for the holistic promotion and protection of children’s rights. As a general principle, the right of the child to have his or her views heard and taken into account is closely intertwined with the other general principles of the Convention: the right to non-discrimination (Article 2); the best interests of the child as a primary consideration (Article 3); and the right to life, survival and development (Article 6). These articles are cross-cutting and significant for the interpretation of each right under the Convention and for its holistic implementation.

Furthermore, there are some other specific articles of the CRC that are primarily relevant for the participatory rights of children. The facilitator will use the following diagram to present and discuss how they relate to each other and how their effective implementation could enhance the participation of children in conflict with the law.



Child participation: some of the key rights and articles under the CRC

The facilitator should present how these articles may help at qualifying the very notion of participation and therefore how their respect should be carefully looked at in the specific context of juvenile justice:

Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

Article 14 (Freedom of thought, conscience and religion): Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should help guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Article 15 (Freedom of association): Children have the right to meet together and to join groups and organisations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights,

freedoms and reputations of others.

Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children’s books.

Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

After having presented the model, the facilitator proposes an open discussion in plenary related with the diagram. Some possible questions to enrich the discussion could be:

- *Which of these articles are currently respected in the juvenile justice system?*
- *What is not possible to ensure? Why?*
- *How could these articles be further related and reinforced in practice?*

- **Group activity: identification of barriers and opportunities to improve child participation (45 – 60 min.)**

Participants are divided in groups of 4-6 people. Each group will identify one representative that will act as rapporteur of the group. Based on a case study provided by the facilitator, each group will identify possible actions to enhance child participation and to improve the situation proposed in the case study. Participants’ answers may relate to different mandates and sectors of the juvenile justice system. The groups can use the “Twelve model” as a guiding tool.

- **Partnership learning moment (30 – 45 min.)**

The rapporteurs of each group are asked to present the outcomes of the activity to the full group. Following each presentation, the facilitator underlines the relevant aspects and asks for feedback. The facilitator keeps track of the general suggestions and insights gained from the different groups.

- **Closing (15 min.)**

The facilitator recaps the main issues faced during the training seminar, reiterating the importance of the systemic approach embodied in the CRC. The flip chart sheets posted so far may help at going through the different concepts and reasoning that have been tackled.

- **Conclusion and evaluation (30 min.)**

The facilitator with the collaboration of participants verifies if the objectives set and posted at the beginning of the session have been met and invites to share suggestions for follow-up opportunities. The facilitator thanks the training group and leaves time for final questions, observations or comments.

Key references

Training facilitators should have as main references to prepare and conduct the session the following materials:

- ***Children's rights to participation and the juvenile justice system: theory and practices for implementation (2016)***. The TWELVE handbook was drafted, formalized and published in parallel to the training seminars implemented within the framework of the Twelve project. It constitutes the fundamental reference point for the design, organization and delivery of the training deriving from the present module. Available for download at: <http://www.defenceforchildren.org/twelve-handbook/>
- ***UN Convention on the Rights of the Child (1989)***: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- ***General Comment no. 10 (2007)*** on children's rights in juvenile justice: <http://www.refworld.org/docid/4670fca12.html>
- ***General Comment no. 12 (2009)*** on the right of the child to be heard: <http://www.refworld.org/docid/4ae562c52.html>

Bibliographical suggestions

Archard, D. W., *Children's Rights*, in *Stanford Encyclopedia of Philosophy*, 2014, available at <http://plato.stanford.edu/entries/rights-children/>

Belotti V. & Ruggiero R., *Vent'anni di infanzia, Retorica e diritti dei bambini dopo la convenzione dell'ottantanove* [Twenty years of childhood. Rethoric and children's rights after the Convention on children rights], Guerini Studio, 2008.

Braun M., Rosset P., *Children Rights Behind Bars. Human rights of children deprived of liberty: improving monitoring mechanisms*, Defence for Children International, 2015, available at <http://www.childrensrightsbehindbars.eu/images/Childrens-Rights-Behind-Bars-A-European-Overview.pdf>

Cipriani, D., *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Ashgate, 2009.

Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An EU Agenda for the Rights of the Child*, /* COM/2011/0060 final */, http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm

Committee on the Rights of the Child, *General Comment No. 9 The rights of children with disabilities*, CRC/C/GC/9, United Nations, 2007

Committee on the Rights of the Child, *General Comment No.7 Implementing child rights in early childhood*, CRC/C/GC/7, United Nations, 2005.

Coppetta M. G., *L'esecuzione penitenziaria a carico del minorenne nelle carte internazionali e nell'ordinamento italiano* [The juvenile penitentiary law in international documents and Italian law], Milano, 2010.

Council of Europe Parliamentary Assembly, *Child-friendly juvenile justice: from rhetoric to reality*, 2014, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21090&lang=en>

Council of Europe, *Have your say! Manual on the revised European Charter on the Participation of Young People in Local and Regional Life*, Council of Europe Publishing, 2008, available at http://www.coe.int/t/dg4/youth/Source/Resources/Publications/Have_your_say_en.pdf

Council of Europe, *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*, 5 November 2008, CM/Rec(2008)11, available at: <http://www.refworld.org/docid/4a7058c02.html>

Cowden M., *Capacity, claims and children's rights*, in *Contemporary Political Theory*, 2012, 11, 4, 362-380.

De Leo G., *Responsabilità, definizioni e applicazioni nel campo della giustizia minorile* [Responsibilities, definitions and applications in the field of juvenile justice], in *Giovani, responsabilità e giustizia* [Young , responsibility and justice], G. Ponti (edited by), Milano, 1985

Defence for children, *'TWELVE' – Promoting the Implementation of Article 12 of the UN Convention on the Rights of the Child in the Juvenile Justice System –*, available at <http://www.defenceforchildren.it/projects/118-twelve-promoting-the-implementation-of-article-12-of-the-crc-in-the-juvenile-justice-system.html>

Defensa de Niñas y Niños – Internacional, DNI Costa Rica, *Las teorías o ideologías RE*, Proyecto Regional Justicia Penal Juvenil, 2012.

European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European law relating to the rights of the child*, Luxembourg: Publications Office of the European Union, 2015, available at http://www.echr.coe.int/Documents/Handbook_rights_child_ENG.pdf

European Union Agency for Fundamental Rights, *Child-friendly justice. Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States*, Luxembourg, 2015, available at <https://wcd.coe.int/ViewDoc.jsp?id=1705197>

Faccioli F., *I soggetti deboli. I giovani e le donne nel sistema penale* [Vulnerable subjects. Young people and women in the penal system], Milano, 1990.

G. Scardaccione (edited by), *Il minore autore e vittima di reato. Competenze professionali, principi di tutela e nuovi spazi operativi* [The minor perpetrator and the minor victim of crime. Professional skills, principles of protection and new areas of practice], Roma, 2011.

Hammarberg T., *Children and juvenile justice: proposals for improvements*, Strasbourg, 2009, available at https://wcd.coe.int/ViewDoc.jsp?id=1460021#P67_5249

Hart R.A., *Children's participation: From tokenism to citizenship*, Unicef, 1992, available at http://www.unicef-irc.org/publications/pdf/childrens_participation.pdf

Henning K., *Denial of the child's right to counsel, voice, and participation in juvenile delinquency proceedings*, in *Child Welfare*, 2010, 89,5, p. 121-38.

Hodgkin R. and Newell P., Unicef, *Implementation Handbook for the Convention on the Rights of the Child*, Unicef, 2007, available at http://www.unicef.org/publications/index_43110.html

Kilkelly U., *Youth Courts and Children's Rights: An Irish Perspective*, in 8(1) *Youth Justice* (2008) 39-56

Lansdown G., *Promoting children participation in democratic decision-making*, Unicef Innocenti Insight, 2001, available at <http://www.unicef-irc.org/publications/pdf/insight6.pdf>

Lansdown G., *The evolving capacities of the child*, Innocenti Research Centre, Unicef/Save the children, Florence, 2005, available at <http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>

Mental Disability Advocacy Center, *Access to Justice for Children with Mental Disabilities International Standards and Findings from Ten EU Member States, 2015*, available at http://www.mdac.org/sites/mdac.info/files/access_to_justice_children_ws2_standards_and_findings_english.pdf

Nussbaum M., *Creating Capabilities. The Human Development Approach*, Cambridge, MA: Belknap/Harvard University Press, 2011.

O' Donnell D., *The right of children to be heard: Children 's right to have their views taken into account and to participate in legal and administrative proceedings*, Unicef Innocenti Research Centre, 2009, available at http://www.unicef-irc.org/publications/pdf/iwp_2009_04.pdf.

Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children, *Joint report on prevention of and responses to violence against children within the juvenile justice system*, 27 June 2012, A/HRC/21/25, at http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/A-HRC-21_25_EN.pdf

Pepino L., *Dalla retribuzione alla riparazione* [From the retributive to the rehabilitative approach], in *Dov'è l'uscita? Le trasgressioni dei giovani: attori, vittime, sicurezza urbana: le politiche della città dentro e fuori il carcere minorile*, Atti del Convegno organizzato dalla città di Torino l'11-12-13 dicembre 1997, [Where is the exit? The youth transgressions: actors, victims, community safety: the city's policies inside and outside the juvenile prison", Proceedings of the Conference organized by the City of Turin on 11-12-13 December 1997], Neos edizioni, Torino 2001.

Pesarin S., *Messa alla prova: un cammino lungo 25 anni. Atti del convegno* [Probation: a path along 25 years. Proceedings of the conference] Genoa 25/10/2013.

Petti G., *Il male minore* [The lesser evil], Verona, 2005.

Pupavac V., *Misanthropy without borders: The international children's rights regime*, in *Disasters*, 2001, 25(2): 95-112.

Re L., *Structural discrimination and color-blindness in United States and European prison systems*, in *Jura Gentium*, 2007, available at: <http://www.juragentium.org/forum/race/en/re.htm>.

Rosolini R., *Minori immigrati in istituto penale. Proposte educative ispirate al principio dell'ibridazione culturale* [Immigrant minors in penal institution. Educational proposals based on the principle of cultural hybridization], in *Minori e Giustizia* [children and Justice], 3-4, 2002.

Roy N.-Wong M., *Juvenile Justice. Modern Concepts of Working with Children in Conflict with the Law*, Save the children UK, 2004, available at http://www.essex.ac.uk/armedcon/story_id/save_jj_modern_concepts.pdf

Save the children, *Practice Standards in Children's Participation*, London, 2005, available at <http://resourcecentre.savethechildren.se/sites/default/files/documents/3017.pdf>,

Sen A., *Human rights and capabilities*, in *Journal of Human Development*, 6(2): 151–166, 2005.

Steward R., *Child participation and independent human rights institutions for children in Europe*, Unicef Innocenti Research Centre, 2009, available at http://www.unicef-irc.org/publications/pdf/iwp_2009_23.pdf,

UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, A/RES/68/189, 2014, available at http://www.unodc.org/pdf/criminal_justice/Model_Strategies_violence_children.pdf

Unicef, *Child Protection Information Sheet, Children in Conflict with the Law*, available at http://www.unicef.org/chinese/protection/files/Conflict_with_the_Law.pdf, [accessed on 17.02.2016].

Unicef, Fact sheet on the right of participation, available at http://www.unicef.org/crc/index_30228.html [accessed on 17.02.2016].

United Nations Office on Drugs and Crime, *Justice in matters involving children in conflict with the law model law on juvenile justice and related commentary*, United Nations, 2013, available at https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf

Weijers I., *Requirements for Communication in the Courtroom: a comparative perspective on the youth court in England/Wales and the Netherlands*, 4(1) *Youth Justice* (2004) 22-31;

Willow C., *Children's right to be heard and effective child protection*, Save the Children Sweden, 2010, available at <http://www.savethechildren.org.fj/wp-content/uploads/2015/02/Childrens-right-to-be-heard-and-effective-child-participation.pdf>

ANNEX 1: Sample evaluation form

Participant's Evaluation Form

Place and date

We ask you to take a moment to provide your feedback. Your responses are anonymous and will be used to improve future consultative methods. Your feedback is important to us.

Please circle your response to each statement.	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	Not Applicable
1. The seminar covered what I expected it to cover	1	2	3	4	5	0
2. The seminar satisfied my professional needs in this area	1	2	3	4	5	0
3. The seminar's objectives were clearly and adequately stated	1	2	3	4	5	0
4. The approach followed by the project was understandable.	1	2	3	4	5	0
5. The seminar's content was interesting	1	2	3	4	5	0
6. The programme and the agenda of the seminar were effective	1	2	3	4	5	0
7. The level of interactivity was appropriate	1	2	3	4	5	0
8. The theme and discussion were useful and relevant for my area of work	1	2	3	4	5	0

Please circle 'Yes' or 'No' to the following statements	Response	If 'No' please circle or comment
1. The duration of the seminar was right for me	Yes / No	Too long / too short
2. The venue was right for me	Yes / No	
3. I was satisfied with the food	Yes / No	
4. The structure of the agenda was effective (sessions/breaks/etc).	Yes/No	
5. The overall organisation of the seminar was effective.	Yes/No	

What did you like best about this day?

What did you like least?

Have you any suggestions about how it could be improved?

Thank you for your feedback!



Child rights, participation and democratic citizenship

The CRC as a tool to promote the participation of children

DAJA WENKE, INDEPENDENT RESEARCHER AND CONSULTANT, CHILD RIGHTS

UN Convention on the Rights of the Child (CRC)

- ▶ Adopted in 1989
- ▶ Entry into force on 2 September 1990
- ▶ Core part of the body of international human rights law
- ▶ The most widely ratified human rights treaty
- ▶ Comprehensive: Social, economic, civil, cultural and political rights
- ▶ Complemented by three Optional Protocols
 - ▶ Sale of Children, Child Prostitution and Child Pornography (2000)
 - ▶ Children in Armed Conflict (2000)
 - ▶ Communications Procedure (2011)
- ▶ Treaty Body: Committee on the Rights of the Child

UN Convention on the Rights of the Child (CRC)

- ▶ Over 50 Articles: interrelated and indivisible
- ▶ Four general principles: Relate to all other articles

UN Convention on the Rights of the Child (CRC)

- ▶ Over 50 Articles: interrelated and indivisible
- ▶ Four general principles: relate to all other articles
 - ▶ **Non-discrimination (art. 2)**
 - ▶ **Best interests of the child (art. 3)**
 - ▶ **Right to life, survival and development (art. 6)**
 - ▶ **Right to be heard (art. 12)**

CRC Article 12:

Respect for the views of the child

- ▶ 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.
- ▶ How has this been translated into different national laws and policies?

CRC Article 12: Obligations of states

- ▶ **Legal and social status of the child**
 - ▶ No full autonomy as adults but **subject of rights**
 - ▶ Rights derive from child's status as citizen, not from child's vulnerability (protection) or dependency (provision)
- ▶ **The child who is “capable of forming his or her own views” (Art. 12(1))**
- ▶ 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” (evolving capacities)
- ▶ **“Opportunity to be heard in any judicial or administrative proceedings affecting the child” (Art. 12(2))**
- ▶ “either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”

The 'participatory rights' of children

- ▶ Article 12 is linked with all articles under the Convention
- ▶ Particular relevance for the right to be heard:
 - ▶ General principles: Articles 2, 3 and 6
 - ▶ Evolving capacities: Article 5
 - ▶ Broader civil rights:
 - ▶ Art. 13: Freedom of expression
 - ▶ Art. 14: Freedom of thought, conscience and religion
 - ▶ Art. 15: Freedom of association
 - ▶ Art. 16: Right to privacy
 - ▶ Art. 17: Access to information
- ▶ **The right to 'participation' cannot be implemented in isolation**
- ▶ **Process and dialogue**
- ▶ **Mutual learning**



FROM ENTITLEMENTS TO PRACTICE

Strategies for implementing participatory rights



Strategies for implementation of Art. 12

- ▶ Participation rights reflected in domestic legislation
- ▶ Right to information: Prerequisite for participation
- ▶ Participation rights without discrimination, exclusion or differential standards (proactive measures)
- ▶ Implementation not dependent on resources
- ▶ Education, training, supervision, mentoring and other strategies to promote participation
- ▶ Influence attitudes and mindsets about children, childhood and participation
- ▶ Multi-sectoral approaches and implementation cutting across all sectors
- ▶ Monitoring implementation and impact

Forms of implementation

- ▶ Ad hoc
- ▶ Informal
- ▶ Formal and structured forms of participation
 - ▶ Targets and objectives
 - ▶ Evaluation of process, structures, quality and outcomes
 - ▶ Accountability

Individual and collective right to be heard: Spheres of implementation

- ▶ Government and policy planning
 - ▶ International, central government, regional and local levels
 - ▶ Children's Parliaments, surveys and consultations
 - ▶ Voting rights
- ▶ Service provisions, including health, education, social services, alternative care, protection
- ▶ Family and community
- ▶ Judicial and administrative procedures
- ▶ Juvenile justice
- ▶ Work and employment
- ▶ Play, recreation and sports
- ▶ Review, monitoring and evaluation

Steps for implementation of Art. 12 in individual cases

- ▶ Preparation
- ▶ Hearing
- ▶ Assessment of the capacities / maturity of the child
- ▶ Documentation and feedback: Information about the weight given to the child's views
- ▶ Complaints mechanism, remedies and redress

Communicating with children

- ▶ Child-sensitive communication
 - ▶ **Trust and respect**
 - ▶ Making the child feel cared for as a person
 - ▶ Take time to speak to the child and listen
 - ▶ Provide information in a form and language that the child understands
 - ▶ Quality interpreters / cultural mediators whom the child feels comfortable with
 - ▶ Qualified interviewers
 - ▶ Children's House model for forensic interviews
 - ▶ Data protection and privacy considerations
-
- **Safeguarding the right to be heard in a meaningful way is about a lot more than interviewing children**
 - **It has implications for policy and practice at all levels**

Reporting and complaints mechanisms

- ▶ In the community
 - ▶ Internally in service provider structures
 - ▶ Within institutions
 - ▶ Within the public administration
 - ▶ Independent
-
- Information and awareness
 - Access
 - Child-friendly procedures
 - Feedback and follow-up
 - Input for structural reforms

Challenges of implementation

- ▶ Disempowering perception of children
- ▶ Weak and inconsistent understanding of 'participation' (any definitions?)
- ▶ Standardised vs. individualised approaches
- ▶ Participation often reliant on goodwill
- ▶ No institutionalised mechanisms / procedures for participation
- ▶ Weak safeguards and remedies
- ▶ Many individual success stories but no systemic approach to child participation
- ▶ Lack of tools to measure scope and quality of implementation and progress made
- ▶ Weak or no accountability
- ▶ Weak understanding, culture and mechanisms of multi-disciplinary cooperation

Guidance for implementation

- ▶ CRC General Comment No. 12 (2009)
- ▶ CRC Implementation Handbook
- ▶ Recommendation CM/Rec (2012)2 on the participation of children and young people under the age of 18 and forthcoming assessment tool
- ▶ Council of Europe guidelines on child-friendly justice
- ▶ UN Guidelines on Justice in Matters involving child victims and witnesses of crime
- ▶ National guidelines and tools
- ▶ ...

CRC holistic and integrated approach: “The child at the centre”

- ▶ **Continuum of services for prevention, protection and empowerment**
 - ▶ Participation as means and outcome of prevention, protection and empowerment
- ▶ **“Protect to enable”: From a charity-based to a rights-based approach**
 - ▶ Children have the right to unfold and develop their evolving capacities, the right to master their destiny and to emancipate themselves
- ▶ **Parallel investments:**
 - ▶ Strengthen systems
 - ▶ Address specific issues through a ‘systems approach’
- ▶ **Uniqueness of every child**
- ▶ **Recognise the potential and resources that children offer for the society**
- ▶ **Evolving understanding of childhood: The child as citizen and nation builder**



Thank you!

Daja Wenke

Independent Researcher and Consultant

Child Rights and Protection

dajawenke@gmail.com



TWELVE

Children's right to participation
and the juvenile justice systems

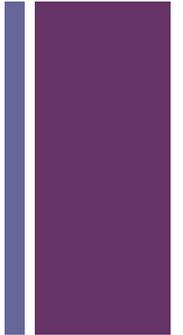
Genova
22-24 June 2015

Twelve

Juvenile Justice standards and child
participation



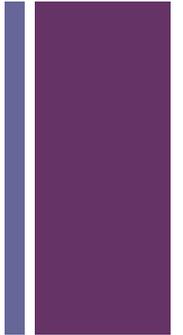
Definition of international standards



- **Treaties**, which are legally binding on States that are parties to them.
- **Human rights standards**, concerned with criminal justice law and policy reform are also enshrined in other types of UN non-treaty instrument.



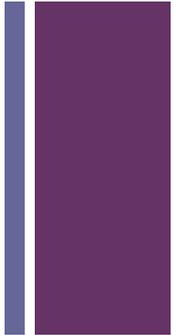
General human rights rights



- **Universal Declaration on Human Rights 1948**
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (and its Optional Protocol 2002)**
- **Convention on the Rights of the Child 1989**



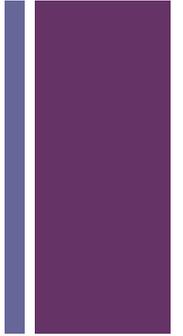
Specific to children in conflict with the law



- **Standard Minimum Rules for the Treatment of Prisoners 1955**
- **UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 ('Beijing Rules')**: *"The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely."*
- **UN Guidelines for the Prevention of Juvenile Delinquency 1990 ('Riyadh Guidelines')**:⁹ (h). *Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes."* ⁴⁰ *Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation."*
- **UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 ('Havana Rules')**: ³² *The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities"*.
- **UN Standard Minimum Rules for Non-custodial Measures 1990 ('Tokyo Rules')**



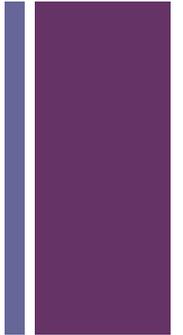
...



- **Guidelines for Action on Children in the Criminal Justice System 1997:** *“8. In the use of the Guidelines for Action at both the international and national levels, consideration should be given to the following:(e) Participation of children and concerned sectors of society;”*
- **UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002:** *“8. The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a restorative process. Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings.”*
- **UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 2010 (‘Bangkok Rules’)**
- **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems 2012**



Regional (European)-specific child rights standards



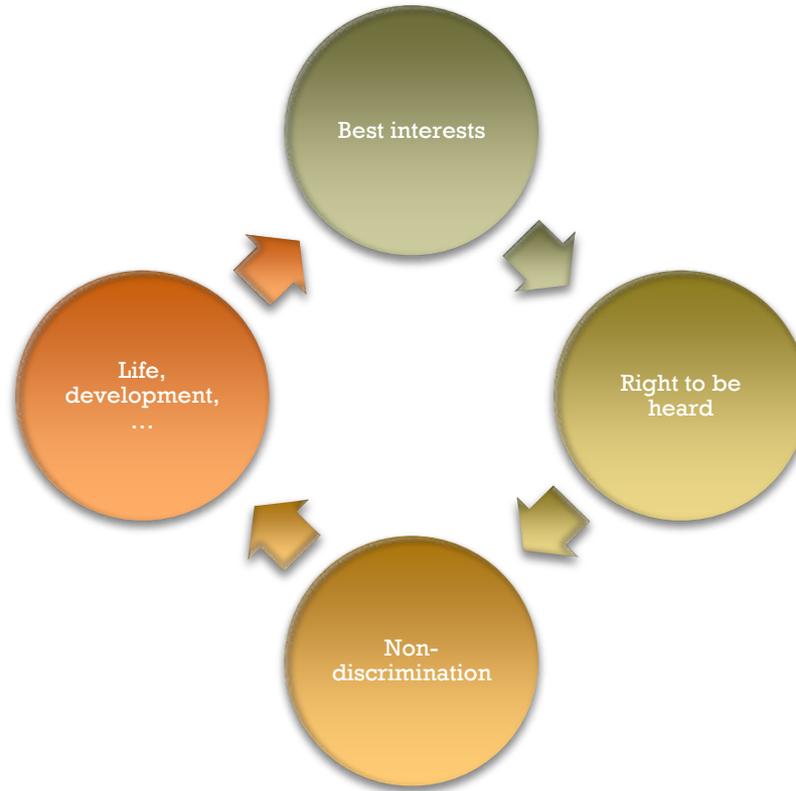
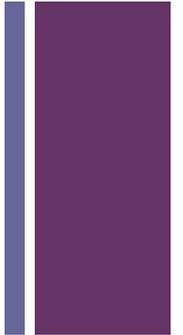
- **European Convention for the Protection of Human Rights and Fundamental Freedoms 1950**
- **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987**
- **Council of Europe Framework Decision on the standing of victims in criminal proceedings 2001**
- **European Rules for juvenile offenders subject to sanctions or measures 2008:** *13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.” “E.10. Regime activities 76.1 All interventions shall be designed to promote the development of juveniles, who shall be actively encouraged to participate in them.”*
- **Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice 2010:** *Fundamental principles- “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.”” 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.”*

+ Regional (non-European) standards

- **African Charter on Human and Peoples' Rights 1986**
- **African Charter on the Rights and Welfare of the Child 1990:** *“Article 4: Best Interests of the Child 1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration. 2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.”*
- **American Convention on Human Rights 1978**
- **Inter-American Convention to Prevent and Punish Torture 1985**
- **Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008**

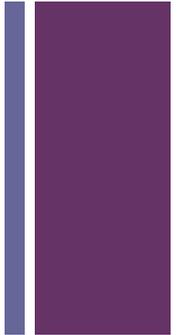


Cross-cutting principles of justice for children





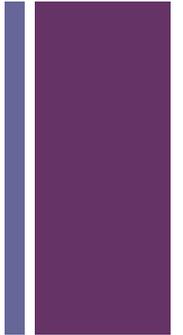
STANDARDS ON CHILD PARTICIPATION (CRC)



- The Committee on the Rights of the Child has determined that Articles, 2 (non-discrimination), 3 (best interests), 6 (right to life and development) and 12 of the UNCRC must be understood not only as rights of children but also as **general principles** to be applied in the realisation of all other rights. Accordingly, Article 12 must be considered in the development of any legislation, policies or programmes undertaken to implement the other three general principles

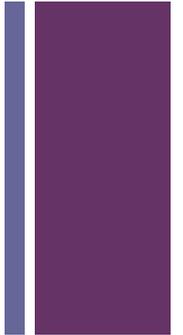


Art. 12 of the CRC



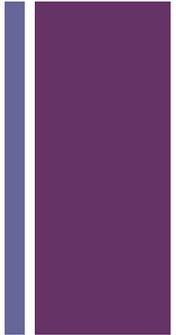
- States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose the child shall 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 appropriate body, in a manner consistent with the procedural rules of national law. The obligation under Article 12 applies to children as individuals, to specific groups of children and to children collectively.

+ General Comment N.12



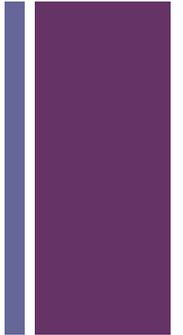
- General Comment 12 in June 2009, on the Right of the Child to be Heard.
- This elaborates in detail the scope of Article 12, and how the Committee expects governments to interpret their obligations to children under its provisions. It is intended to provide an elaboration of what action governments are expected to take to implement Article 12, and how to interpret its meaning.

+ Related articles





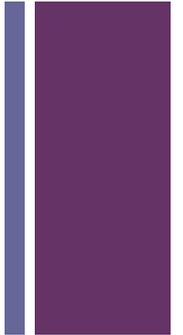
Examples of national law implementing art. 12 of the CRC



- Constitution of Finland 1995. It has been amended by the addition of a sentence providing that: *“Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.”*
- Constitution of Poland 1997 provides that: *“Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.”*



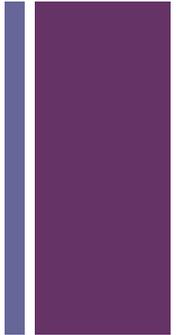
Child-friendly environment



- It is crucial that in all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding. All efforts should be made to ensure that the environment is as non-intimidating and child-sensitive as possible.
- Children have a right to the protection of privacy because of their age. In addition, it is recommended that 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.
- International standards recommend that 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.



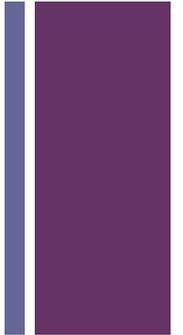
Right (not duty) to be heard and to express views



- The CRC clearly states a child's right to be heard in all matters that affect them and judges must respect this. The child must be made aware that the right to be heard is a right of the child, not a duty on the child and they should be provided with all necessary information on how to effectively to use the right to be heard.
- Even more important is the right of the child to confront prosecution witnesses and to cross-examine them.
- The child has the right to have the last word in a hearing. This is important, especially before sentencing because it allows the child to give an impression the judge or jury will carry with them when they retire.
- Any judgements and court rulings affecting children should be duly reasoned and explained to them in language they can understand, particularly those decisions in which the child's views and opinions have not been followed.
- Finally, the child has the right to disposition of his or her case in due course and to hear and receive in writing the reasoning for a sentence. This is the basis for any challenge of the disposition – the right to appeal to a higher authority.



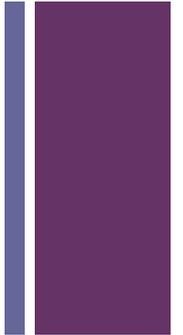
Complaints and inspection mechanisms



- Complaints mechanisms :The Havana Rules specifically state that every child in detention has the right and opportunity to make requests or complaints to the director of the detention facility as well as to the central administration, the judicial authority or other proper authorities through approved channels. Such complaints should be uncensored regarding the substance of the complaint and children should be informed of the response to any complaints without delay.
- The right to complain is a very important mechanism for giving a voice to children in the justice system and for ensuring that their rights are protected – such mechanisms need to be properly resourced and complaints investigators trained.
- Report of the SRSG on VAC and the SR on sale of children: *child participation is vital to break the invisibility of violence and inform child-sensitive approaches, including the development of safe and effective counselling, reporting and complaint mechanisms. 109. Children need to feel empowered, to obtain the required information about their rights to access and to make effective use of these mechanisms; they need to feel reassured that they will be listened to in an ethical, safe and confidential manner, that their testimonies will not be disclosed or misused, and that their protection will not be put at risk. Children's participation in these efforts should be secured, including in the design and development of these mechanisms.*

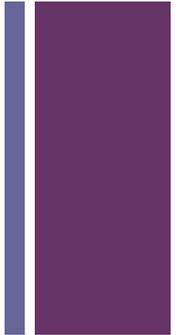


Complaints



- There should also be a mechanism whereby more serious complaints, or where issues that fail to get resolved, can be brought to the attention of external inspection bodies including Children's Commissioners or other independent monitoring bodies.
- All complaints should be acknowledged and answered without delay. Complaints mechanisms for children must be safe, child-sensitive, effective and easily accessible. They should be accessible to all children regardless of their age, maturity, understanding or literacy level. If necessary the child should be able to request assistance from family members, legal counsellors, humanitarian groups or others where possible. It is particularly important that children who have literacy or learning difficulties should receive help making a complaint.

+ Useful links



- www.ipjj.org
- www.srsg.violenceagainstchildren.org
- www.penalreform.org
- www.ohchr.org
- www.coe.org
- www.crin.org
- http://www.theoneminutesjr.org/?thissection_id=10&movie_id=201200148&keyword_id=1065
- http://www.theoneminutesjr.org/?thissection_id=10&movie_id=201200037&keyword_id=1065