Access to Justice for Children
From concept to impact

Prof. Dr. Ton Liefaard | Webinar, 1 September 2022

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Children's Rights are Human Rights

BECAUSE
EVERY CHILD
IN THE WORLD
HAS ONE THING
IN COMMON.

THEIR RIGHTS.

UN CRC – 33 years later

- Various Implementation Efforts

  - Domestication of the UN CRC – law and policy reform, professional standards, monitoring

  - Regionalization of children's rights

  - Beyond state actors

  - Sustainable Development Goals (SDGs)

  - Optional Protocol to the CRC on a communications procedure (OP3/OPIC)

- 'Justice gap'

  - *Recognition* of children as rights holders

  - Equivalence

  - Equality and inclusion

  - **Visibility of children – child-centred approach**

  - Accountability –> Access to justice

Photo: UNICEF

Making rights a reality: effective remedies

- 'for rights to have meaning, effective remedies must be available to redress violations'
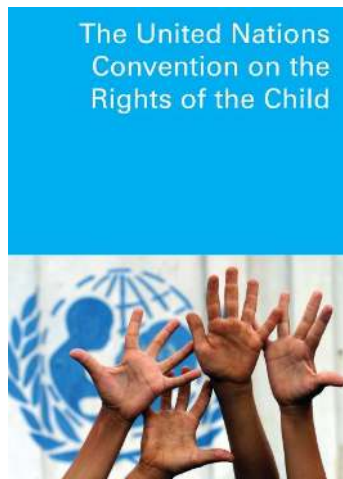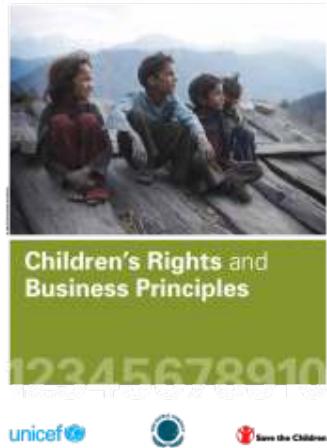
CRC Committee GC No. 5, para 24

- 'rights without remedies are of symbolic importance no more'
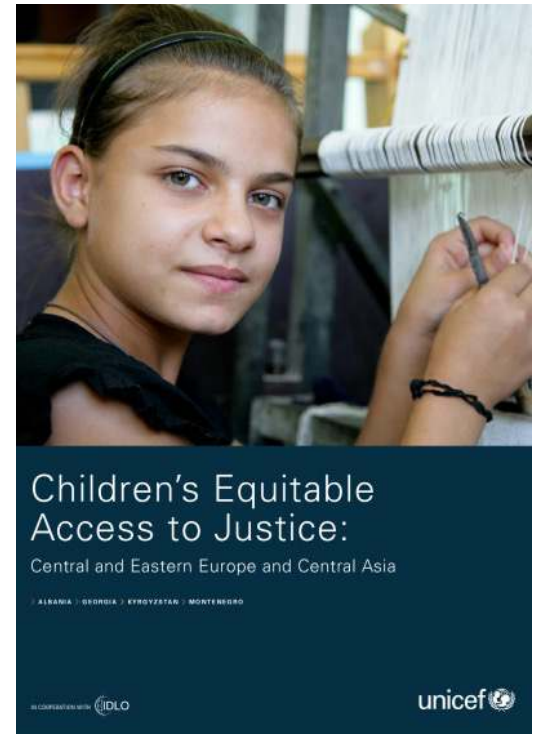
Michael Freeman (2007)

- Access to justice: 'the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the [CRC]'

UN High Commissioner for Human Rights (2013)

Specific challenges children face

- Legal barriers for children – domestic level
  - Legal capacity – dependency (e.g. parents, legal guardians)
  - Legal standing

- Socio-economic situation / lack of resources

- Traditional attitudes towards children and children's rights
  - Lack of recognition as rights-holders and/or as victims
  - *De facto* lack of child *rights* focus

- Exclusion and discrimination

- Lack of (legal) empowerment and child-sensitivity

Children's Equitable Access to Justice:
Central and Eastern Europe and Central Asia

ALBANIA > GEORGIA > KYRGYZSTAN > MONTENEGRO

IDLO

unicef

Child-friendly justice systems

- Concept to enable children to access and engage with justice (systems)

- Accessibility
- Accommodation
- Responsivity
- Accountability
- Remedies
- Empowerment

Council of Europe's Guidelines on child-friendly justice (2010)

Guidelines on child-friendly justice

Guidelines as part of the broader European Human Rights Framework

- *All* justice proceedings – informal and formal
- Before, during and after justice proceedings
- Different *roles* of children

- Key elements:
  - Information;
  - Accessibility of proceedings;
  - Legal and other assistance;
  - Right to be heard - incl. feedback
  - Avoiding undue delay;
  - Safe and child-appropriate environment;
  - Language and;
  - Role of parents/family.

CHILDREN'S RIGHTS

Relevant for *all* children

- Why relevant?

- Art. 2 of the UN CRC - 'all children'

- Points of attention
    1. Beyond formal & beyond criminal justice
    2. All groups of children
    3. Accommodating differences for equal opportunities

- Critical issues
    1. Responsive professionals – specialisation & mindset
    2. Protection for effective participation
    3. Information, information, information ...
    4. Child as a meaningful actor – "connecting"
    5. Access to justice / remedies -> accountability

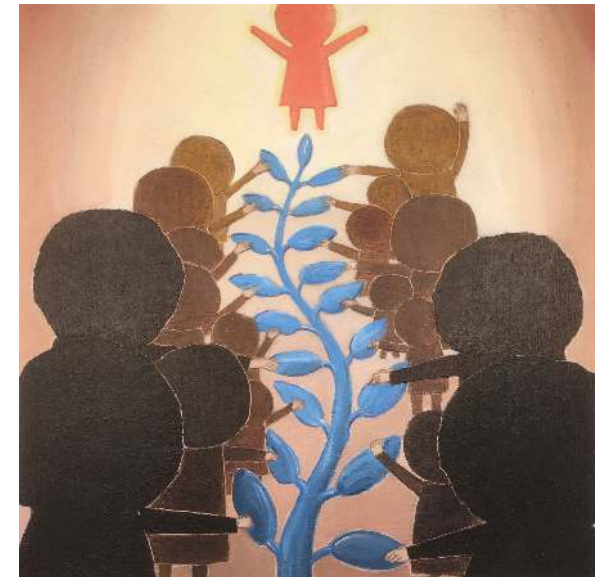# General Comment No. 24 – UN CRC Committee

- MACR should be *at least* <u>14 years of age</u> – comprehension of criminal proceedings

- Upholding 'effective participation' as an element of fair trial with explicit reference to child-friendliness (para. 46)

- 'Children with developmental delays or neurodevelopmental disorders or disabilities … should not be in the child justice system at all' (para. 28)

CO's Australia 2019

- Respect for the views of the child in different settings and contexts
  - Family law, migration, family, community, school and public consultations

- Redress for victims of (sexual) violence

- Information for child victims of family and domestic violence

- Information for children in conflict with the law - on 'how to report abuses'

Some concluding observations

- *Access to Justice for Children* – An emerging human rights concept with significant practical meaning

- Need for a children's rights focus on access to justice, including its outcomes and impact – *beyond participation and including children*

- Role for the UN Committee on the Rights of the Child

  - OP3 / OPIC – Individual communications procedure

  - Access to justice in the reporting procedure – child-friendly justice

Illustration: Lisa Brandenburg

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https://childrensrightsobservatory.nl

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I. *How can we make justice systems accessible?*

- **Concept of child-friendly justice**
  - Basis in International Children's Rights Law
  - *Before*, *during* and *after* justice proceedings

  - Prevention (!)
  - Accessibility
  - Accommodation
  - Responsiveness
  - (legal) empowerment (incl. information and assistance)
  - Accountability (incl. 'feedback')
  - Remedies (redress, reparation/restoration, compensation etc.)

- **'Leaving no one behind' & art. 2 UN CRC**
  - Rethink existing barriers – e.g. gender & jurisdiction
  - Protection for effective participation
  - Accommodating differences for equal opportunities

TASK FORCE ON JUSTICE   PATHFINDERS

Justice for Children
Justice for All
The Challenge to Achieve SDG 16+

II. *How can we make sure that remedies & outcomes are child-sensitive and meet expectations?*

- UNDP:

  access to justice 'must be defined in terms of ensuring that legal and judicial outcomes are just and equitable' (2004)

- CRC Committee:

  children whose rights have been violated should receive 'appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39 [CRC]' (GC No. 5, para. 24)

  - See also Art. 37 (d) CRC, Art. 25 CRC, Art. 40 (2)(b)(v) CRC

- CRC-OP3 / OPIC:

  - *Individual* compensation, services, rectification and interim measures;

  - *General* remedies as instructions to the government to create systemic change.

What do we know about children's expectations?

- Do we ask?
  - In advance?
  - When hearing children?

- Who accesses justice?

- Do we report back?
  - Sacchi et al. case under CRC-OP3 – open letter by the Committee

- Follow up?