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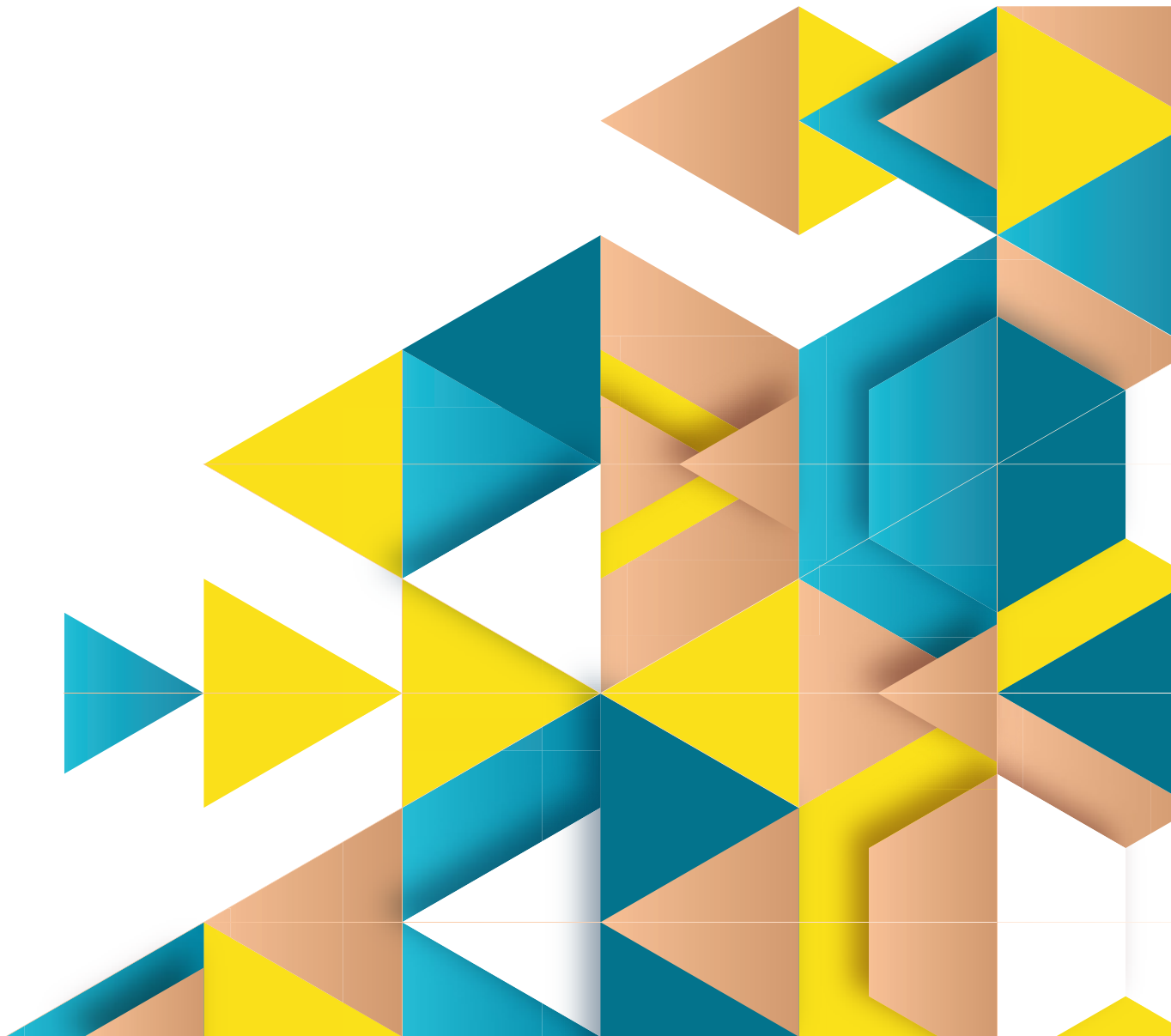
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Child-Friendly Justice in Georgia – Concept for Implementation in Practice

2023



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1. Introduction

In September 2019, the child-friendly justice agenda was widened in the Republic of Georgia (Georgia) when the Parliament adopted the *Code on the Rights of the Child*² (*the Code*). This new law introduces legal safeguards, underpinned by international standards, to ensure that rights of children are adequately protected and that children themselves are able to independently exercise their rights and access justice through child-friendly justice in all justice proceedings affecting them. *The Code* clearly provides a mandate to work on child-friendly justice in all justice proceedings in which children are involved or which affect children.

According to the Council of Europe Guidelines on child-friendly justice, child-friendly justice describes justice systems designed or adjusted to be child sensitive to particular issues that children face when they come into contact with the law. Child-friendly justice for that matter 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 right to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity”.*³

The Code uses a definition of child-friendly justice that is in line with that used in the Council of Europe’s Guidelines.

*“The justice system, which ensures respect and effective realization of all the rights of the child through the principles of child participation, primary consideration of the best interests of the child, respect dignity, equality and rule of law. The child friendly justice is administered by the specialized professionals and is accessible, age-appropriate, understandable, speedy, fair, diligent and adapted to children’s rights and needs.”*⁴

Georgia took the first steps to introduce child-friendly justice in 2009 with the initiation of the Juvenile Justice Reform. Initial phases of the reform covered mainly issues related to children in conflict with the law. In the following stage, with the adoption of the Juvenile Justice Code in 2015, this extended to child victims and witnesses as well. The Juvenile Justice Code introduced the principle of the best interests of the child, basic standards for specialization of justice professionals and multidisciplinary work, access to free legal aid for juveniles in conflict with the law, child victims and some categories of child witnesses. The Code provides child friendly justice principles and guarantees for administrative proceedings and judicial proceedings on matters of civil and administrative laws involving children and strengthens safeguards and procedural guarantees for children in criminal justice proceedings as well. In particular, these provisions introduce broader and stronger system of institutional specialization, access to legal aid for all children in contact with justice system, multidisciplinary approach and obligation of the common courts to administer criminal, civil and administrative justice proceedings involving children in line with the Code. Thus, the Code together with the Juvenile Justice Code provides a solid framework for the establishment of a child-friendly justice system covering all domains of justice where children may appear.

The Code places obligations on all stakeholders whose work and decision-making processes affect children and their rights. These obligations encompass actors at all levels: extending from high-level actors in Parliament, Courts, and Public Prosecutions Offices to police, social workers and lawyers working in remote regions. Obligations reach NGOs, other administrative bodies and individuals working for private organisations (for example, as service providers).

Ultimately, child-friendly justice is a concept that has to be lived by professionals and by the stakeholders as part of their joint responsibility to protect children’s rights. Consequently, mindsets and actions of key actors in the system must also become child-friendly to ensure that all children in all areas of Georgia benefit from the Code when they are involved in justice proceedings or when they seek justice. Key decisions affecting or about children occur at all stages of the justice chain and child-friendly justice must not only be available during justice proceedings; child-friendly justice must be ensured before and after justice

2 Available in English at <https://matsne.gov.ge/en/document/view/4613854?publication=0>

3 Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice 1, 13 (2010), available at www.coe.int/childjustice (hereafter ‘CFJG’).

4 See the art. 3 “I” and 13 (1) of the Code.

proceedings as well. Specific and practical recommendations are therefore needed to ensure the entire justice chain in Georgia can become truly child-friendly in practice as mandated by the Code on the Rights of the Child and Georgia's commitment to international human and children's rights law.

1.1 Objectives and methodology

This concept document outlines steps towards the establishment of child-friendly justice in national justice systems in Georgia. The key aim of this concept is to provide practical and realistic recommendations to address challenges that stand in the way of ensuring child-friendly justice at *all* stages of the justice system. It therefore distinguishes key elements of child-friendly justice that must be applied *before* justice proceedings; *during* justice proceedings; and *after* justice proceedings.

At each stage, this report reviews the existing justice system framework to identify existing legal or other obstacles and implementation gaps, as well as any strengths, in ensuring core elements of child-friendly justice are in place. Findings relating to the existing framework are a result of consultations through questionnaires and interviews with representatives of the Judiciary, Ministerial agencies, Prosecutor's office, Public Defender (Ombudsman), the State Inspector,⁵ the Legal Aid Service, other state agencies, NGOs, independent experts⁶ and children.⁷ National laws, international commentaries and jurisprudence, grey reports and practical tools were also reviewed through desk research. The knowledge and insights of local experts at each stage of the process has been essential to providing recommendations that are practical in the Georgian context.

The recommendations provided are designed to strengthen the capacity of UNICEF and government actors, as well as civil society and professionals working with children in the justice system, to ensure the whole justice chain in Georgia is child-friendly and child rights responsive. It can also provide a basis to further engage with children themselves to see how the Georgian system could be improved and child-friendly justice enhanced.

1.2. Scope of this report

The terms of reference entail "a review of all areas of the justice system ... and all actors directly and indirectly involved in the administration of the justice processes". The three core areas of the mainstream justice system in Georgia where a child may appear or be involved are:

- o Civil and administrative judicial proceedings;
- o Criminal judicial proceedings (referred to as "juvenile justice" as the system in line with the Juvenile Justice Code responding to children in conflict with the law, child victims and witnesses); and
- o Administrative non-judicial proceedings.

Given the broad scope, this report provides specific and targeted recommendations for priority areas, while also providing recommendations relevant across all justice systems about or affecting children in Georgia. Priority areas are:

- o Family law matters involving children within 'civil and administrative judicial proceedings'; and
- o Violence against the child as a crosscutting issue through all areas of justice (civil and administrative, juvenile justice and administrative non-judicial proceedings) and related matters on child victims and witnesses.

There is a relatively smaller focus on the implementation of the Juvenile Justice Code in this concept,

⁵ The State Inspector's Office was abolished in 2022 and two new agencies were created: Personal Data Protection Service and Special Investigative Service

⁶ The first round of consultations took place in January – February 2021. Due to the COVID-19 pandemic, all consultations took place online. A full list of consultees is available in Annexure 2.

⁷ Consultations with children in conflict with the law and children with disabilities took place on 23-25 June 2021, via online platforms. Eight children were interviewed in total.

reflecting that much work has been or is now being undertaken in this area. However, some outstanding priority issues in juvenile justice remain. This report reviews elements of child-friendly justice relevant to juvenile justice as provided by the Code. These elements encompass all areas of justice domain and seek holistically address the needs and circumstances of children in contact with justice system, including in criminal law matters.

1.3 Terms used in this report

The following terms which are used in this report are all relevant to children's rights. However, it is important to appreciate the differences between these terms.

Child-friendly justice systems respect children's rights before during and after justice proceedings. Child-friendly justice is about ensuring children receive treatment that responds to the child's individual needs and views.⁸ It enables children to be involved and participate effectively throughout all stages of justice proceedings that concern them. Although we use the term 'child-friendly', other terms could be favoured such as child-sensitive, child-responsive, child-adapted or child focused.⁹ Child-friendly justice must be considered separately from the implementation of children's rights, which is a broader imperative under international law.

The definition in the Georgian context is found in Article 3(l) of the Code and provided in full above.

Implementation is the process whereby States take action to ensure the realization of children's rights as a laid down in the CRC and related standards.¹⁰ Georgia, as a state party to the CRC, is obliged to implement all provisions of the CRC (Article 4). Child-friendly justice requires that children's rights be implemented throughout justice proceedings, but implementation as a concept is much broader. This report is not about the general implementation of children's rights, but about ensuring children's rights are realized throughout all stages of justice proceedings.

Access to justice refers to the right of the child to access justice systems to seek legal protection of their rights. It refers to the ability to seek remedies in case of (alleged) rights violations,¹¹ but also encapsulates the right to bring matters in relation to the enjoyment of rights more broadly. Children are entitled to access justice not only in response to a rights violation, but to lodge an appeal or seek a claim for the protection of their rights.

Access to justice is related to child-friendly justice but there are important differences: child-friendly justice is about the approach by which systems guarantee the rights of children in any case. For children to access justice, children must be legally empowered to access justice mechanisms and remedies that are child-friendly.¹² Both child-friendly justice and access to justice require the legal empowerment of all children: children should be enabled to access relevant information and to effective remedies to claim their rights, including through legal and other services, child rights education, counselling or advice, and support from knowledgeable adults.¹³ In this sense, access to justice and child-friendly justice systems are related.

Article 13 of the Code (the right of the child to justice) reflects the requirements that children be able to access justice in Georgia. It requires that "every child has the right to bring a matter to the court and/or to an administrative body and enjoy the justice system which is accessible for the child, age-appropriate, understandable, fair, diligent, adapted to the child's rights and needs, respecting the child's dignity and privacy" [i.e. child-friendly].

8 See also the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council resolution 2005/20, article 9(d).

9 See e.g. the 2016 Guidelines on Children in Contact with the Justice System of the International Association of Youth and Family Judges and Magistrates.

10 UN Committee on the Rights of the Child (CRC), General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5 (hereinafter 'General Comment 5').

11 UN Human Rights Council, Access to justice for children. Report of the United Nations High Commissioner for Human Rights, OHCHR 2013 A/HRC/25/35 para 4 (hereinafter 'High Commissioner 2013').

12 Liefwaard, Advisory Report Council of Europe, State of Georgia, Access to justice for children under the Code on the Rights of the Child, 14 July 2020.

13 High Commissioner 2013, para 5.

1.4 Structure of the report

This report was prepared by international expert Ton Liefaard, national independent consultant Nana Chapidze and researcher Jessica Valentine. It was commissioned by UNICEF and structure is as follows: first, an introduction to child-friendly justice in the Georgian justice context is provided in part 2, followed by a review of the child-friendly justice in Georgia (part 3). Part 3 is divided into 3 core subsections:

- o Child-friendly justice before justice proceedings (part 3.1)
- o Child-friendly justice during justice proceedings (part 3.2)
- o Child-friendly justice after justice proceedings (part 3.3)

Each section in part 3 identifies core elements of child-friendly justice relevant to that stage of justice proceedings. The basis of each element of child-friendly justice in international law or regional standards is identified, before considering the extent to which the Georgian legal framework incorporates this element. Reflections about implementation of the element in practice are followed by recommendations and international examples of good practice.

Part 4 identifies the key priorities identified in part 3, and provides a roadmap for future steps on ensuring child-friendly justice becomes a reality, noting that effective implementation requires collaborative efforts and reflecting on the joint responsibility of various stakeholders.

2. CHILD-FRIENDLY JUSTICE IN THE GEORGIAN JUSTICE CONTEXT

2.1 Developments in Georgia on children's rights and child-friendly justice: from law to practice

Georgia has made significant legislative progress in relation to children's rights and child-friendly justice during the past years, reflected by the adoption of the Juvenile Justice Code in 2015 and the Code on the Rights of the Child in 2019 (the Code). Collaborative efforts between government and civil society have been pivotal to this progress and have paved the way for significant reforms, particularly in the context of juvenile justice. With the new children's rights code entering into force in September 2020, Georgia has entered a new phase in its efforts to implement the UN Convention on the Rights of the Child¹⁴ and to adapt justice proceedings in which children participate or with which children engage to children's rights and needs.

Although Georgian law underpins the core aspects elements of child-friendly justice (see, e.g., Chapter X), practical implementation remains flawed, which may undermine the new Code's credibility. If implementation measures and systematic frameworks are not put in place, there is a risk of undermining the important progress Georgia has shown over the year past decade. It is critical that Georgia uses the current momentum provided by the recent implementation of entry into force of the new Code in legislation to ensure the law becomes realised and benefits all children in a sustainable manner. In doing so, Georgia could confirm its leading role in the region and beyond.

Georgia is a State party to most major international and regional instruments for the protection of human and children's rights, including the CRC and all three of its subsequent optional protocols. On a national level, there has been a significant legislative process to further children's rights, most notably through the adoption of the *Juvenile Justice Code* and *the Code*. An overview of the international, regional and national legal framework relevant to Georgia is provided in Annexure 3.

Georgia operates a civil legal system with an adversarial tradition. A number of stakeholders are responsible for making child-friendly justice a reality in practice. The Code (and international law) clearly state that the Georgian government, and all the Ministries within it, are responsible for adopting child-friendly justice approaches.¹⁵ The judiciary and a number of state institutions also play critical roles including the Legal

¹⁴ Georgia ratified the *United Nations Convention on the Rights of the Child* (hereinafter 'CRC') in 1994.

¹⁵ Chapter XII, Code on the Rights of the Child. Although the Ministry of Internal Affairs is not explicitly mentioned in the Code, see Art XX together with Art 4 CRC.

Aid Service, the Public Defender of Georgia and and Georgian Bar association. An overview of the justice system and the roles and responsibilities of key stakeholders is provided in Annexure 4.

2.2 National context and priority issues affecting children in Georgia generally

Despite the progress made in recent years, children in Georgia face some critical issues which place them and their rights at this risk. This section outlines some of the key issues affecting children's rights generally in Georgia. Although these issues are not strictly relevant to child-friendly justice systems, they provide important contextual information as to the types of rights violations many Georgian children may suffer and which children are less likely to access justice systems. Any steps to implement child-friendly justice systems must be mindful of these key issues to ensure all children in Georgia can access justice. Insights from national experts and children and desktop research have helped us to identify the following critical issues facing children in Georgia, which include the following:

Violence against children – at home, in institutions and in the community

A prevalence of corporal punishment and child abuse within the family environment and ill-treatment by public institutions including police stations and at schools and institutions is a serious issue in Georgia. ¹⁶70% of children (between 1 and 14) were victims of at least one method of violent discipline. 66% of children experienced psychological aggression, while about 31% were subjected to corporal punishment. Only 28% of children are subjects to only non-violent methods of discipline.¹⁷ Consequences of the COVID-19 pandemic including the closure of schools and fewer visits by social workers mean the likelihood of reporting of violence is lower. ¹⁸ Furthermore, since the beginning of 2021-2022, Only 59.7% of children age 2 to 4 years and only 66.2% of children age 2 to 5 years attended early childhood education (ECD) since the beginning of the 2021-2022 school year, while 71.7% of children age 6-17 years attended only classroom teaching, 21.7% only distance learning, 5.0% - combined learning, while 1.5% did not attend the learning process at all. ¹⁹ In the recent case before the European Court of Human Rights (Tkhelidze v. Georgia), the Court found that the Georgian authorities, the police in particular, had failed to protect a girl against gender based violence, which ultimately resulted in her death. The Court held that 'the police inaction in the present case could be considered a systemic failure and there was a pressing need to conduct a meaningful inquiry into the possibility that gender-based discrimination and bias had been behind the police's lack of attention'. ²⁰ In not doing so, Georgia had breached its obligations under Article 2 of the European Convention of Human Rights (in conjunction with Article 14).

Poverty and insufficient social protection

Approximately one in five families live in poverty in Georgia according to the data of 2021.²¹ Decreased incomes during pandemics, mainly for low-income families, suggest the social and economic crisis is affecting the poor population most severely. ²² Insufficient social protection renders children living in poverty, children in street situations, children with disabilities, children belonging to minority groups, children affected by or subjected to migration and domestic violence, among others, at risk of becoming victims of a number of rights abuses. ²³

¹⁶ Sexual abuse and exploitation including cases within the family and online abuse and exploitation is also a key area of concern: Committee on the Rights of the Child, Concluding Observations, Georgia, 2017 CRC/C/GEO/CO/4, paras 23-4.

¹⁷ UNICEF Study on child discipline practices in Georgia, 2020. https://www.unicef.org/georgia/media/5511/file/Discipline_Report_ENGLISH.pdf

¹⁸ Renate Winter consultation; UNICEF Georgia: We work for each child during the COVID-19 pandemic, Newsletter: March-May 2020.

¹⁹ UNICEF MICS Plus, December 2021 <https://www.unicef.org/georgia/media/6901/file/Wave%206%20-%20Brief%20Results%20-%20ENG.pdf>

²⁰ Press release, ECHR 219 (2021), 08.07.2021; ECtHR, 8 July 2021, appl. no. 33056/17 (Tkhelidze v. Georgia)

²¹ National Statistics Office of Georgia, share of absolute poverty (2021) <https://www.geostat.ge/en/modules/categories/192/living-conditions>

²² Analytical Report of the First, Second and Third Wave Studies, the Ministry of Displaced Person from Occupied Territories, Labour, Health and Social Affairs, the World Health Organization Regional Office for Europe, World Health Organization Country Office Georgia and the UNICEF Office for Georgia, May 2020: <https://www.unicef.org/georgia/media/4736/file/COVID-19-Study-Analytical-Report-1st-2nd-and-3rd-waves-Eng.pdf>

²³ CRC Committee, Optional Protocol against the Sale of Children, Concluding Observations, Georgia, 2019 CRC/OPSC/GEO/CO/1 para 20.

Discrimination and exclusion

Children in alternative care and children living in remote areas are subject to more rights violations in Georgia. Other groups facing discrimination include children with disabilities, children living on the streets, refugees or migrant children and girls.²⁴ A 2019 report by the OHCHR noted a deeply entrenched prejudice within judiciary (and society generally) towards those of different sexual orientation and gender identity or expression²⁵ and children identifying as LGBTQI+ experience high incidents of violence against. In 2018, 84% of lesbian, gay, bisexual, trans and gender diverse persons reported having experienced some form of abuse by family members.²⁶ Main factors contributing to children's living/working on the streets include, among others, domestic violence, strict discipline – i.e. categorical limitations of their social networks and overly strict rules – in rehabilitation or service institutions, foster family care or closed juvenile schools. These factors leading children and youth to prefer street lives and to repeated escapes from care institutions. The absolute majority of street-connected children do not have access to either education or medical services beyond emergency care.²⁷

Other overarching issues include a lack of specific budget allocations, which extends to a lack of access to ongoing services. A lack of disaggregated data on issues affecting children is also a problem.²⁸

3. CHILD-FRIENDLY JUSTICE IN GEORGIA: A REVIEW OF LEGAL FRAMEWORKS AND PRACTICES AND RECOMMENDATIONS

Introduction: Children in justice systems

Justice systems are not designed for children; hence, children and their rights can be significantly impacted by justice systems. Children engage with or participate in justice systems in different ways and in different contexts. Among others, children may initiate legal proceedings claiming to be victims of rights violations or requesting a certain legal order; children may be defendants in criminal justice proceedings; children may testify in criminal justice proceedings as witnesses or children may be caught up in justice proceedings because of a dispute between their parents, guardians, family members or other adults. Children can be witnesses, victims, plaintiffs, defendants and subjects of justice proceedings. Their involvement in proceedings may be voluntary or involuntary, and in either case it can directly and sometimes drastically change their lives. Child-friendly justice is a concept that applies to any and all types of justice proceedings involving children, no matter the capacity or role of the child.

Child-friendly justice requires justice proceedings be sensitive to a child's human rights and fundamental freedoms, as well as adjusted to the child's needs bearing in mind her or his evolving capacities. Child-friendly justice also requires that children be able to independently enjoy and exercise their rights throughout justice proceedings and presumes that children have access to all justice proceedings about or affecting them. Child-friendly justice is a concept that applies to all stages of justice proceedings, that is: **before, during and after justice proceedings.**

Key elements and principles of child-friendly justice are identified and discussed in the sequences of before, during and after justice proceedings in this section. However, it is important to be mindful of the fact that there are elements that overlap across *all* stages of justice proceedings. The most notable of these '**cross-cutting**' elements are: access to information; effective participation; specialized and trained professionals; adapted procedures and right to legal representation.

²⁴ Gender-based violence (practice of sex-selective abortion still exists, minimum of age of marriage only changed to 18 in 2018). Country Reports on Human Rights Practices for 2019, United States Department of State, Bureau of Democracy, Human Rights and Labor (40-45).

²⁵ High Commissioner 2013 para 23.

²⁶ Survey by The Equality Movement, the Women's Initiative Support Group and the International Lesbian and Gay Association (ILGA)-Europe.).

²⁷ Children Living and/or Working in the Streets in Georgia, UNICEF 2018 <https://www.unicef.org/georgia/media/1256/file/Street%20Children.pdf>

²⁸ See Committee on the Rights of the Child, Concluding Observations, Georgia, 2017 CRC/C/GEO/CO/4, para 9. A number child rights violations are alleged to occur in Abkhazia and South Ossetia including children deprived of liberty, lack of inclusive education, discrimination towards ethnic Georgian children and failure to take measures to prevent the spread of COVID-19. See: United States Department of State, Bureau of Democracy, Human Rights and Labor, 2020 Country Report on Georgia. These areas remain outside the effective control of the State party, which is a serious obstacle to ensuring child-friendly justice for all children.

How to read this section

This section follows a sequence in relation to each element or principle of child-friendly justice: first, the basis of each element in international law or regional standards, and its significance to child-friendly justice as a concept is identified. Subsequently, the national legal framework, which usually includes *the Code*, is applied, followed by findings about how the elements apply *in practice* in Georgia. The findings are made on the basis of our desktop research and consultations with various stakeholders, including children. Recommendations and international examples of good practice are then provided.

Each section begins with a overarching discussion on the element of child-friendly justice as it relates to all types of justice proceedings, whether these be proceedings in court, mediations or other formats. Then, in order to provide more concrete and specific examples, sections are divided according to the type of proceedings they relate to such as civil and administrative, administrative judicial proceedings, administrative non-judicial proceedings and juvenile justice proceedings.

3.1 Key elements of the child-friendly justice concept BEFORE all types of justice proceedings

Decisions made in the period before justice proceedings commence can be critical for a child. Important decisions such as whether to commence proceedings, in what form, whether a child should be detained, whether mediation should commence are all matters in which children’s lives and rights may be impacted. Generally, no judicial or other sort of oversight is in place before justice proceedings begin, so a child – and their rights – may be forgotten or left behind.

This section discusses key elements necessary to make systems child-sensitive before justice proceedings commence. These are:

- Access to information
- Right to be heard
- Legal capacity

Although these elements are discussed in relation to the stage before justice proceedings, children require access to information and the right to be heard throughout all stages of justice proceedings.

3.1.1 Access to information before justice proceedings

Why do children need access to information before justice proceedings?

Making information available and accessible to children is the crucial starting point of a justice system that is child-friendly. Without it, children (and adults) cannot meaningfully access justice, participate in justice proceedings or engage in decision-making.

Basis in international and regional law and standards

A child’s right to receive information is grounded in Article 17 CRC,²⁹ but the freedom to “seek, receive and impart information” is contained in Article 13 of the CRC and the availability of appropriate information is also at the heart of a range of substantive rights in the CRC. According to international and regional standards, child-friendly information means children should receive information:

- directly, promptly and adequately;
- in a manner adapted to their age and maturity;

²⁹ CRC Art 21(a)); immigration and asylum (Art 22(2)); health care for disabled children (Art 23(4) and education and vocational training (Art 28(d)) Art 17 of the CRC (mass media and children). See also Articles 37(d), 40(2)(b)(ii), and 42.

- in a language they can understand;
- in a gender and culture-sensitive form.³⁰

According to regional and international standards, in every case, from the child's very first contact with the justice system and on each and every step of the way,³¹ all relevant and necessary information should be presented to the child in a way that is accessible, i.e. in a way adapted to the development and maturity levels of the child and adapted to any special education needs or low levels of literacy. This right applies equally to children as victims, alleged perpetrators of offences or as any involved or affected party.³²

Information should also be available to parents or representatives, teachers and other people working with and for children but this should never be an alternative to providing information to the child.³³

What sort of information should be given to the child?

Information should be practical on legal matters that are relevant to the child's specific circumstances.

Before justice proceedings, information should be provided to the child (and the holder of parental responsibility) about general aspects of the conduct of the proceedings, including an explanation about:

(1) *What will happen*, in other words, practical and procedural information about how the relevant legal process works (e.g. the time and place, how long proceedings may last and any possible alternatives to proceedings). Information on court practices should not be generic, and should relate to the specific type of proceedings.

The child should receive information about their own role in the proceedings. They should also receive information about the roles, what they can expect from and names of other key actors. Key actors include anyone providing the child with legal or other appropriate assistance, the child's parents legal guardians, and, if relevant, a guardian ad litem (or similar body). The child should also be informed of possible outcomes and consequences of procedures, including how and under what conditions they can access remedies.

(2) *What should happen* for the child's rights to be upheld in the justice proceedings.³⁴ This is necessary for a child to see themselves as meaningfully involved in decision-making. This should be *attached to the specific realities* of the processes and decisions confronting the child. The child should also be given information about their rights and how to enforce the child's rights throughout the process. The child should be informed:

- of the child's right to express her or his opinion in all matters affecting the child and the impact his or her expressed views will have on the outcome, and how to do so;
- how to access legal and other appropriate assistance;
- how to access protection measures when necessary
- how to access special safeguards for children in justice systems who are vulnerable;
- how to bring a complaint;
- how to communicate with relatives, friends, employers, or other authorities;
- how to access support such as medical support, psychological support or alternative accommodation;
- how to access to an interpreter;
- who to contact and how for information throughout their case; and

³⁰ UN High Commissioner, 2013 para. 19; CFJG Guidelines 2 & 3.

³¹ CFJG, part IV, A para 50.

³² CFJG, part IV, A para 50. The right to information is also right is also covered in the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res. 2005/20, 22 July 2005, VII) and the European Convention on the Exercise of Children's Rights (ETS No. 160, Article 3).

³³ UN High Commissioner, 2013, para. 20.

³⁴ See the Code, Art 70(4)(a).

- how to access reimbursement.³⁵

(3) *How to use the information* in the child's specific situation. Information should contextualise choices, manage expectations in light of other factors influencing decisions about child, and present realistic, clear projections about outcomes from different courses of action.³⁶ This goes beyond simply telling a child they have the right to be heard and to have their best interests considered as a primary consideration. It involves investing the time and effort to provide the child with reassurance to insist that their voice be heard, contextualising best interests in their present situation, presenting genuine choices, and explaining what support available to enable child to exercise choices.³⁷

(4) *What happens next*. The child should be told what will happen after the proceedings? How long until the decision will be in place? Can the child appeal or bring complaints? How?

This report will now consider the extent to which these international and regional standards are reflected in the Georgian legal framework and in practice, before providing recommendations.

1. PROVIDING INFORMATION IN GEORGIA BEFORE ALL TYPES OF PROCEEDINGS

1.1 National legal framework on access to information before justice proceedings

Article 70 of *the Code* provides a strong starting point for ensuring children receive information before justice proceedings commence. It places a number of legal obligations on actors in the justice systems to provide information and outlines the sort of information children should receive. It states that an authorised body must, upon the first contact of a child with the justice system in criminal, administrative or civil law issues, provide the child with information. The information provided to the child must be about the child's role in the process, support mechanisms for participation, possible outcomes, the date ad venue of the process, mechanisms to appeal the decision, opportunities to receive compensation and opportunities for receipt of support services (healthcare, psychosocial services) or an emergency financial aid.³⁸

Article 70(5) requires that children should receive information in an adapted language and/or means of communication with consideration of cultural sensitivity, age, sex and individual capabilities. *The Code* requires that child-friendly justice shall be implemented with primary consideration of the best interests of the child that means procedures accessible and understandable to the child at all stages of the exercise of justice.³⁹

The Code also places obligations on certain actors to provide information about children's rights generally:

- Parents and legal guardians must provide information and guidance to the child on his/her rights to the child, respect others human rights and means for human rights protection.
- Actors in the education system must ensure children receive information about their rights, available counsel, and support and complaints mechanisms in the education system (preschools, schools, vocational education institutions)⁴⁰ and in alternative care services.⁴¹

1.2 Findings: access to information before justice proceedings

- The majority of the stakeholders consulted for this project agree that children (as well as parents and legal representatives) do not have access to information about children's rights. Children do not

³⁵ This list builds of the EU Directive 2012/29/EU (Article 4 of which is set out in full in relation to child victims below) and other international standards, including General Comment 12 [41] and the Guidelines on child-friendly justice.

³⁶ Stalford, Cairns and Marshall, *Achieving Child Friendly Justice through Child Friendly Methods: Let's Start with the Right to Information*, Social Inclusion, 2017, Volume 5, Issue 3, Pages 207–218.

³⁷ Stalford, Cairns and Marshall, *Achieving Child Friendly Justice through Child Friendly Methods: Let's Start with the Right to Information*, Social Inclusion, 2017, Volume 5, Issue 3, Pages 207–218.

³⁸ The Code Art. 70 (4)

³⁹ The Code, Art. 70 (4), 75 (2)

⁴⁰ See also art. 36 of the Code on the Aims of Education.

⁴¹ The Code, art. 70(1)-(3).

receive sufficient information on their rights and protection mechanisms.

- According to majority of the children interviewed during the consultations⁴², they do not know exactly what specific rights they have and can demand. They stated that adults talk to children mainly about children`s obligations rather than about their rights in the family and in the schools. In general, children are not aware of the right to apply to the court or to an administrative body, are not aware of their right to be heard, right to property, also the rights to demand access to education, health protection etc.
- Especially problematic is access to information for child victims who are in a severe emotional state and often left without support and services. Other groups of children less likely to have access to information include: children in regions settled by ethnic minority groups, younger children, children in state care and in non-state religious shelters.
- According to the State Care Agency, homeless children (including children living and/or working on the streets) have lack of access to information on the legal protection mechanisms. A key barrier is their parents` weak social skills, academic and cognitive impairments.
- Many stakeholders noted that the information that is provided is not child friendly or age-appropriate and not comprehensive enough.
- Initiatives and available means for informing children on their rights include:
 - o Public Defender carries out activities to raise children`s awareness of their rights, especially those faced by social threats and has created a brochure on “Children`s Rights and Police”, website⁴³, hotline telephone “1481” (information available in small group homes and penitentiary institutions as well), information meetings with school students, children in alternative care, etc.
 - o Legal Aid Service has created a pilot project “Know Your Rights before 18”, website,⁴⁴ Facebook page and hotline telephone “1485”
 - o Office of the School Resource Officers: as they are present in majority of the public schools, they meet children on daily basis giving advice and information about rights and means of protection; websites⁴⁵, hotline telephone of the 24-hour psychological service “08 00 00 00 88”
 - o The State Care Agency: children in state care service (small group home or foster care) receive an information leaflet on contact details of the service provider, rights and duties of the child, protection of privacy, protection from violence and neglect, right to feedback or complaint, protection of health, and hotline numbers of Public Defender and emergency services.
 - o Police: awareness-raising activities for children on their rights and protection mechanisms through social media, TV and radio programmes, brochures, video, unified emergency hotline “112”, etc.

Despite these initiatives, lack of information for children about their rights and protection mechanisms was identified by many stakeholders and children themselves to be a key challenge.

1.3 Recommendations: ensuring information is provided to children before all types of proceedings

Short term:

- » **Develop authoritative guidance, such as procedural rules and policies to ensure children are systematically provided with information adapted to their level of understanding at all steps**

⁴² UNICEF supported consultations with children in conflict with the law and children with disabilities about children`s rights, VAC and access to justice on 23-25 June 2021.

⁴³ <https://ombudsman.ge/eng/informatsia-bavshvebistvis-vis-mivmartot>.

⁴⁴ <http://www.legalaid.ge/en/tbilisi>.

⁴⁵ <http://mandaturi.gov.ge/contact> and the psycho-social service centre <https://befriend.mes.gov.ge>.

of proceedings. Guidance should identify who is responsible for providing information to children before (as well as during and after; see below) all types of justice proceedings. Table 1 below is an example of clarifying the roles of various actors before justice proceedings.

- » **Ensure those responsible are sufficiently trained in how to deliver information to children. Ensure training (see section 3.2.3) encompasses best practices on how to provide relevant information in a way that is adapted to a child’s maturity and development.**
- » **Remedies should be accessible to children if policies are breached and children are therefore unable to effectively participate in proceedings due to a lack of information.**
- » **Make sure that, where relevant, children are informed about their right to initiate justice proceedings (i.e. access to justice), including information about age limits, practical steps to be taken and where they can seek help and assistance. This requires justice authorities and institutions to proactively reach out to children and it is an impetus for general education about rights, to the wider public including children (see also under medium term).**

Table 1: Everyone has a role in preparing a child for Court: an excerpt from a training document for lawyers and judges in New York State⁴⁶

Adult	Role
Lawyer	<p>Makes certain the child is aware of the hearing and lets the child know he/she is entitled but not required to attend.</p> <p>The attorney is the point person for familiarizing the child with all aspects of the hearing, for explaining what is going to happen, and determining the child’s preferences and wishes so that they can be taken into consideration. Here are some things children will want to know:</p> <p>Before</p> <ul style="list-style-type: none"> - What does the courtroom look like? - Who will be in the courtroom? - What does each person in the courtroom do? - Where will the child sit? - Who will sit next to the child? <p>Ongoing (During)</p> <ul style="list-style-type: none"> - What is the purpose of the hearing? - Who will be attending the hearing? - Will the child be expected to speak? - What if he/she does not want to speak? - Can the child use other means of communication? - What should the child do if he/she has questions, needs to use the bathroom or feels scared? - How is the child expected to behave? - What happens if the child misbehaves? - Can the child bring quiet toys to court? - Can the child bring a support person or item to court? How should the child dress for court? - Why is attire important? - How long will the hearing last? - How long will the child have to wait for the hearing? - Where will the child wait for the hearing?

⁴⁶ This is based off a table provided in training documents for lawyers and judges in New York State: <https://www.nycourts.gov/ip/justiceforchildren/PDF/PJCJC%20Handbook%20-%20Encouraging%20Child%20in%20Court.pdf>

Social worker	The caseworker is also a source of information and can answer questions about the purpose and expectations of the hearing. Discussing who will be in court, what the child will see and what is expected of the child will help alleviate stress and provide a better understanding of what to expect
Parent	Where appropriate, the parent(s) can speak to the child about the hearing, answer questions, encourage participation and support the child's decision whether to attend court.
Judge	The judge can request that children attend their court hearings and can ask why a child is not in court. It is not the responsibility of the judge to prepare children for court but the judge can determine if a child has been prepared for court and proceed accordingly.

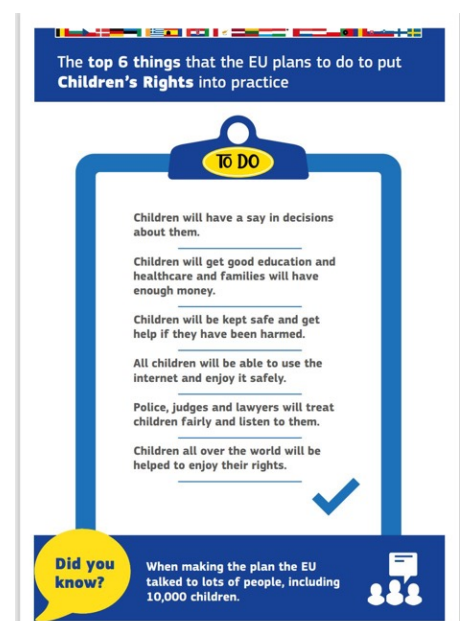
Medium term:

- » **Invest in ensuring all children have access to information on their rights. This requires Georgia to**
 - **Invest in coordinated efforts to raising awareness of children's rights for all children.**
 - **Measure the effectiveness of the current initiatives in providing information to all children, in collaboration with children.**
 - **Conduct studies involving input from children on best methods for accessing information on their rights. Children should be from a range of age groups and regions (including rural and remote), have experienced different types of proceedings and include children with disabilities and homeless children.**
 - **Identify practical and relevant information for children according to their role in proceedings, and specific to the type of proceedings.**

- **Invest in collaborating with children to making a child-friendly version of the Code and other key legislation, as well as formal documents (e.g. forms to access justice). Information should be available and divided in a way that a child in a type of proceeding (family / violence / juvenile justice / administrative), bearing in mind children's age and maturity, can use together with explanations: relevant to children in each type of proceedings with explanations.**

The EU strategy on the rights of the child (developed with children) is available in a child-friendly version that was **co-designed with children**. Children advised on the language, images and examples used in the leaflets. Moreover, the child friendly version of the strategy is accessible for visually impaired readers and can be accessed using assistive devices and technology.⁴⁷ The image on the right is taken from this document.

Child Rights Connect has child-friendly resources explaining how children can access justice through the Optional Protocol to the CRC on a communications procedure.⁴⁸



⁴⁷ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en#the-eu-strategy-on-the-rights-of-the-child

⁴⁸ <http://opic.childrightsconnect.org/resources-for-children/>

In the Netherlands, the district court of Amsterdam allows children aged 8 and upwards to have an interview with the judge in a so-called 'child interview' (this is intended to enable the child to exercise his or her right to be heard). In the invitation letter children are referred to websites which provide information on the procedure, the court hearing, (online) counselling services, etc. Also, the letter (very) briefly discusses the purpose of the 'child interview' and the role of the judge as a decision-maker. Two letters have been designed: one addresses children of 12 years and the other is adapted to children aged 8 up to 11.

In Croatia, two brochures, are being used (one for children up to 14 years old and the other for parents/caregivers) to help the process of the child's preparation and to introduce them with their rights. Questions that are discussed include: why am I asked to go to court, what does it mean to prepare for court, who is the court expert, who will talk to me, how does the court look like, who is doing what at the court, what can I do at court (the child's rights) and how can I calm down if I get distressed. The brochure for parents/caregivers gives information on how to support their child in this process.⁴⁹

Wisconsin Supreme Court in the USA designed an activity book for young children about what happens in Court which includes puzzles and games to teach young children about the justice system. Answers questions like, what do lawyers do in Children's Court; What do children do? Who is in the Court room? See: <https://www.wicourts.gov/courts/resources/kid/docs/activitybook.pdf>

2. INFORMATION AND ADVICE BEFORE FAMILY LAW PROCEEDINGS

2.1 Existing framework

Information for children during divorce proceedings

Under the Code, the relevant Government Ministry⁵⁰ and municipalities must design and implement family support programs with consideration of individual needs and circumstances of the child and his/her family. NGOs also can provide interventions in this regard in cooperation with the Ministry and municipalities. Such family support programs may provide one or several support efforts or services, including skills development course on childcare and positive parenting and counselling on family matters and during family disputes and divorce proceedings⁵¹. As long as the provision does not refer forms and extent to involve children in such counselling, it would be important to develop standards and/or guidelines for designing and implementing such programs with consideration of information and counselling for children as needed.

In reference to art.70 (4), (5) of Code, it should be noted that obligation of the justice agencies to provide children with information in all matters of justice proceedings may also include family law (divorce as well) proceedings. In this regard, key actors are the Legal Aid Service, the State Care Agency and the courts. However, the courts and other justice agencies would benefit from having guidelines with extensive recommendations how to implement it in practice concerning divorce and other related family law proceedings. No specific legislation deals with the particularities of providing information and advice to children in family proceedings.

2.2 Findings: providing information to children before family proceedings

- Majority of the stakeholders note the necessity of working with children and parents as well in general in the view of raising awareness, at least, on the child's rights, supportive and positive parenting. The role of the schools is strongly emphasized in this regard. In addition, it would

49 Both examples are annexed to Liefwaard, Advisory Report Council of Europe, State of Georgia, Access to justice for children under the Code on the Rights of the Child, 14 July 2020.

50 Ministry of Internally Displaced Persons, Health, Labor and Social Protection

51 Art. 28 (5)

be relevant to stress the role of the child support and protection units under the Municipalities (created in the end of 2020 in accordance with the Code (art. 96 (3, 4)).

- Majority of the interviewed children shared that children in general are often subject to violence and ignorance of their views in the family and in the school. Parents do not listen to their children and restrict their freedom in learning, being different and innovative.
- There is often high risk of manipulation and psychological violence against children from parents during family conflicts. In these cases, children`s views and facts of possible violence or negative influence is overlooked. There is a lack of intervention of competent authorities working with parents in terms of changing attitudes and raising awareness.

2.3 Recommendations: providing information to children before family proceedings

- » **Invest in ways to ensure, systematically, that relevant and specific information is provided to children by a trained and independent professional before family proceedings commence, e.g. through lawyers.**
- » **In the context of family law, access to justice is critical. Children must receive adequate information on when and how can children can approach courts themselves.**

The below provides specific examples of information that may be relevant to a child depending on the type of family proceedings they are involved in:

Divorce and the separation of parents

In family law matters, such as divorce proceedings, a child needs to be informed that they have a right to have a say in decisions affecting them in relation to contact or residence with their parents. This includes specific examples such as how they can assert this in practice, who they should speak to and when; how much influence that may have on the decision ultimately made; and whether/how they go about complaining if they feel their views have not been heard or taken into account.

Appealing guardianship and custodianship

A child under guardianship should have access to information and advice on their right to appeal the decision of the agency in court on the appointment, removal or relief of a guardian (or custodian), as well as any other matters related to guardianship and custodianship.

Abduction

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.⁵²

Separating parents: recommendations from a pilot program involving children⁵³

A resource telling children that they have a right to have a say in decisions that affect them in relation to contact or residence with their parents who are separating should be accompanied by specific examples as to how a child goes about asserting this in practice:

- who they should speak to and when;
- how much influence that may have on the decision ultimately made; and
- whether/how they go about complaining if they feel their views have not been heard or taken into account.

⁵² CFJG part IV, A, para 56.

⁵³ Stalford, Cairns and Marshall, Achieving Child Friendly Justice through Child Friendly Methods: Let's Start with the Right to Information, Social Inclusion, 2017, Volume 5, Issue 3, pp 207-218.

A simple example of giving a child an explanation of best interests in context of divorce: *When adults make decisions about you, they should think if this decision is best for you. When parents are divorcing, the decision where and who you should live with, should be taken thinking about what is best for the child, not what is best for your mother or father.*

3. INFORMATION AND ADVICE BEFORE JUSTICE PROCEEDINGS CONCERNING CHILD VICTIMS OR WITNESSES OF VIOLENCE

Existing framework

Under the Code (art. 70 (4)) justice institutions are obliged to inform children of relevant information within their first contact with the justice system. Police are the first point of contact for child victims (including victims of domestic violence) and witnesses. Furthermore, the police participate together with the social workers in the procedures of separation of the child from parents/legal guardians in case of violence.

A social worker from the Agency of State Care and Assistance of Trafficking Victims (the Agency) also has a role to play.⁵⁴ The Agency is the main state body responsible to detect violence against the child, appear on the place of incident together with police, provide appropriate assistance and place the child in adequate state care (shelter of victims of trafficking or domestic violence, foster care or small group homes).

Furthermore, the Legal Aid Service and the courts are also key agencies responsible for informing children about their role, rights and other details of justice proceedings related to violence.

Findings: information before proceedings concerning violence

The Code introduces a clear obligation on relevant criminal justice agencies to inform the child, but in practice, many stakeholders reported that child victims are not aware of their rights and there is a confusion as to who is responsible for providing child victims with relevant information.

In 2018, the Ombudsman's monitoring visits⁵⁵ revealed that 32,5% of children in foster care do not know how to contact the State care agency or police in case of need and 35% of children are aware of only the telephone number of police (unified emergency number "112").

Recommendations: providing information to child victims of violence

Short term:

- » **Authoritative guidance, such as procedural rules and policies on providing information to child victims and witnesses of violence must be developed as a priority. These should always identify who is responsible for providing information to children before (as well as during and after) all types of judicial proceedings and how the child will be supported throughout the process.** The EU Directive 2012/29 (below) provides useful guidance on the type of information child victims or witnesses of violence should receive.
- » **Police, social workers and Legal Aid lawyers should be trained specifically on providing information to – and seeking information from – child witnesses, particularly when the child may be traumatised.** More detail on how to support child victims of violence before justice proceedings is included under section 3.1.4 under: 'Special theme: Right to support and protect child victims of violence'. See also section 3.1.3 on specialization and training.

⁵⁴ <http://atipfund.gov.ge/eng>

⁵⁵ "Monitoring of Child Care System – Effectiveness of Alternative Care" - Public Defender's (Ombudsman) Special Report, 2018 <https://ombudsman.ge/eng/spetsialuri-angarishebi/bavshvze-zrunvis-sistemis-monitoringi-alternatiuli-zrunvis-efektianoba-spetsialuri-angarishi>

EU Directive 2012/29 on establishing minimum standards on the rights, support and protection of victims of crime provides important guidance on specifically providing information to child victims of violence:

Article 4

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.

4. INFORMATION AND ADVICE BEFORE ADMINISTRATIVE (NON-JUDICIAL)

PROCEEDINGS

Existing framework

Administrative bodies are under a legal obligation to inform the child, in adapted means of communication, on his/her rights, procedure, type and terms of administrative proceedings, how to file an application or an administrative complaint. An administrative body must provide information and consultation to a child considering cultural sensitivity, age, sex and individual capabilities, in an adapted language and means of communication.⁵⁶

Findings

Children`s lack information about their rights and protection mechanisms in relation to administrative non-judicial proceedings. In this regard, the Code`s provisions allowing children to apply to the administrative body directly or through chosen representative in his/her own name, is a completely new opportunity for children in Georgian reality.

Recommendations

- » **The government must develop authoritative guidance including procedural and legislative policies (outlined above in the first recommendation) defining roles and responsibilities of key actors responsible for providing information to children involved administrative proceedings.**
- » **Undertake initiatives to raise awareness of the need for children involved in administrative decisions must be undertaken.**

5. INFORMATION AND ADVICE BEFORE JUVENILE JUSTICE PROCEEDINGS

Existing framework

The Code introduces a clear obligation on relevant criminal justice agencies to inform the child about his/her rights, possible consequences of justice proceedings, available complaint mechanisms, support services, compensation etc.⁵⁷ The Juvenile Justice Code also provides that the relevant justice agency shall inform the child about his/her rights, juvenile justice proceedings and expected results, support and complaints mechanisms.⁵⁸

Findings

- A key challenge is the lack of access to information relating to criminal matters in regions, in groups of younger children, ethnic minorities. Especially problematic is access to information for child victims who are in severe emotional state and often left without support person and services.

Based on feedback from the Security Division and Rehabilitation Department of the Special Penitentiary Service (under the Ministry of Justice):

- When entering the facility, child prisoners receive information from social workers in written and verbal form about their rights, rules of treatment, conditions of serving the sentence, rules of submission of complaints, disciplinary and other requirements, and pre-caution warning on responsibility in case of violation of the prison`s internal regulations.
- The social workers talk to the child, explain what is not clear, and provide additional information. Moreover, there is a brochure available in Georgian, in English, Russian, Persian and Turkish languages
- The child confirms the receipt of information by his/her signature in attendance of a social worker.

⁵⁶ General Administrative Code, art. 85

⁵⁷ The Code 2(3) read with art. 70 (4)

⁵⁸ See the Juvenile Justice Code, art. 10 (5)

If the juvenile rejects to sign, the administration makes an official record. The brochure contains information about:

- o conditions of serving the sentence in the facility
 - o how to appeal against the disciplinary measure
 - o responsibilities, what information they can request/receive
 - o security and protection, contact to outside world
 - o main duties of the juvenile in the penitentiary facility
 - o correspondence
 - o forbidden rules
 - o education and labour
 - o religion
 - o activities outside the cell
 - o application/complaints
 - o whom to address for help and other matters.
- It seems child prisoners receive information mainly in written form with a possibility of asking questions to the social workers. However, it is clear that there is a lack of efforts or initiatives in the penitentiary institution to raise awareness of the child prisoners on their rights and child-friendly justice principles.

Recommendations

- » **The Ministry of Justice must develop and implement training and monitoring to ensure that social workers providing information to the child do so in a way that is adapted the level of the child's development and provide adequate information as to the charges, the child's rights, the procedures and any support mechanisms available for the child. This information should be given to the child promptly, as soon as possible after first contact with the justice system in a language they can understand (this includes children in police custody, see below). 59**
- » **The Ministry of Justice and the Ministry of Interior must ensure procedures are in place to support child witness to receive information in a way adapted to their level of development and maturity, using language and communication adapted to the specific child. Information should not just be provided through a written or official document but also include an oral explanation.**

Children are particularly vulnerable when interviewed by police. The Ministry of Interior, as well as the lawyers, must ensure that children are not only given information about the charges but also supported to understand it.

- » **Children in police custody (detention) should receive prompt information about:**
 - o **Their procedural rights (Art 37(d) CRC)**
 - **The right to prompt access to legal or other appropriate assistance**
 - **The right to challenge the legality of the deprivation of liberty before a court or**

59 Article 40(3)(ii) of the UNCRC; UN Committee on the Rights of the Child 2019; Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice).

other competent and independent authority (which includes not only the right to appeal court decisions but also the right to access court for review of an administrative decision taken by police, for example.

o Rights concerning their treatment and conditions (Art 37(c) CRC)

- **The right to be separated from adults**
- **The right to maintain contact with family through correspondence and visits and to contact with the wider community, including friends and other persons**
- **The right to education**
- **The right to make requests or complaints without censorship**⁶⁰

In General Comment 24 the CRC Committee states that:

■ 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.. Children who are diverted need to understand their legal options and legal safeguards should be fully respected

■ A child should be supported by all practitioners to comprehend the charges and possible consequences and options in order to direct their legal representative, challenge witnesses, provide an account of event and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed.⁶¹

Article 4 of the **EU Directive** 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings provides useful guidance on ensuring child suspects receive adequate information before justice proceedings. It states that:

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;

⁶⁰ For a full list see General comment 24 paras 89-95. See also the Havana Rules, the European Rules for juvenile offenders and the CPT standards which contain provisions relating to the right to information.

⁶¹ Para 46, 47.

- 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.

In **Victoria, Australia** a brochure designed for young people under arrest explains under what circumstances police may arrest them; their rights; whether they have to talk to police; whether they should be fingerprinted or photographed; and how to complain if they feel mistreated by police.⁶²

Children and young people are also able to access an online virtual tour of the Children's Criminal Court before attending. The website provides tips for going to court, how to access a lawyer, how to ask for an adjournment, and simple definitions of key terms used in criminal proceedings. Children are also able to watch a video mock hearing involving a 15 year old charged with theft of a car (a separate version is also available for children with hearing impairments).

See: <http://childrenscourt.court nexus.com>

⁶² <https://www.legalaid.vic.gov.au/find-legal-answers/police-powers-and-your-rights/resources>; See also: <https://www.legalaid.vic.gov.au/find-legal-answers/police-powers-and-your-rights/young-people-and-police>

3.1.2 RIGHT TO BE HEARD BEFORE JUSTICE PROCEEDINGS

Why is the right to be heard important for a child before justice proceeding?

The child's right to be heard is seen as reflecting the very essence of the recognition of the child as rights holder and as a key actor in her or his life⁶³ and this extends to the period before justice proceedings commence. A child should be able to participate effectively before, during and after all types of justice proceedings. Emphasis is often placed on the right to be heard during justice proceedings, as is the case in this report because this was raised as a key issue in the Georgian context. However, it is important to remember that matters may settle outside courts, for example through the use of diversion or mediations. A child's right to participate effectively should be guaranteed equivalent levels of safeguards in both judicial and out-of-court proceedings.⁶⁴ Children should be included in the discussions at any stage of justice proceedings where any decision which affects their present and/or future well-being is made.⁶⁵

The actor responsible for preparing the child for justice proceedings (also those responsible for providing the child with information, discussed in the above section) should consult with the child on the manner in which they wish to be heard⁶⁶ (and must be aware this is not a right of the child not a duty).

There are many reasons why children should be invited to exercise their right to be heard and contribute to decision-making processes affecting them:

- Children are the experts in their own circumstances and reality and can therefore *provide important information* for decision-makers in making decisions that will affect children;
- Listening to children leads to the increased *fulfilment of other rights* and it enhances child growth and *development*. Through contributing to decisions which affect them, children learn to interact with adults and others, gaining confidence that their contribution is to be taken seriously and valued while also learning critical skills such as reasoning and expressing views;
- Giving children space to have a voice enables them to *protect themselves*, it enables their needs to be met and it allows them to develop to their full potential intellectually, socially and emotionally;
- Active participation may help a child to understand and *accept any final decision*, because a judges decision more readily accepted when reasons explained and understood by child⁶⁷;
- Listening to children and young people's experiences and views contributes to *better decision-making* based on the reality of their lives and not untested adult assumptions;
- Not allowing children to be involved in decision-making processes affecting them, denies their fundamental right to be heard.⁶⁸

Basis in international and regional law and standards

Article 12 CRC provides children with the right to be heard and express views in all matters affecting them. It is considered to be 'one of the fundamental value of the CRC'⁶⁹ and to represent 'in its clearest form the human rights image of the child under the CRC'.⁷⁰ Article 12(2) CRC highlights the need for children to be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child.

Article 12 underscores that children have the right to participate in all forms of decision-making that affects his or her position. The assumption that children possess evolving capacities (article 5) and procedural rights is embedded in the CRC. Together with other rights, such as the rights to freedom of expression,

63 Liefwaard, Child-friendly Justice and Procedural Safeguards For Children in Criminal Proceedings New Momentum For Children in Conflict With the Law? Bergen Journal of Criminal Law and Criminal Justice, Volume 8, Issue 1, 2020, p 7.

64 CFJG Guideline 26 and para 84.

65 CFJG, p 51.

66 CFJG, Part III, para 44.

67 Rap, A children's rights perspective on the participation of juvenile defendants in the youth court. International Journal of Children's Rights, Volume 24.1 2016, pp 93-112.

68 This list bears relevance for all stages of justice proceedings (i.e. during and after proceedings as well). It is based on a list made by Gerison Lansdown for UNICEF in FRA Why Listen to Children. Child-friendly training documents. See also General Comment 12.

69 General Comment 12, para 2.

70 Freeman 2007. Why it remains important to take children's rights seriously. International Journal of Children's Rights, 15(1) 8.

religion and assembly,⁷¹ article 12 emphasises that children have the ability to participate in decision-making affecting them and thereby assumes that children have agency to demand and claim rights.⁷² The agency and emerging autonomy of children is also reflected in CRC article 5, article 40(2) – which sets out a child’s fair trial rights – and article 37(d) – which requires that children be allowed to challenge the legality of their deprivation of liberty.

The Committee on the Rights of the Child has explained the fundamental right of the child to be heard in the context of justice proceedings.⁷³ The Committee has reiterated recently that children have a right to be heard directly, and not only through a representative at all stages of the process, starting from the moment of contact with the justice system.⁷⁴

1 National legal framework on hearing the child before all types of justice proceedings

According to the *Code*⁷⁵, the child shall have a guarantee to express his/her views regarding matters affecting his/her rights at any stage of judicial or non-judicial justice proceedings. The key guarantees are as bellow:

- o Right of the child to be heard shall not be restricted by reference to age or other circumstances;
- o The child shall have the opportunity to express his/her opinion in the desired form;
- o A child with disabilities shall receive adequate support in expressing his/her views;
- o The child shall express his/her opinion without the influence of an administrative body or other third parties
- o The process of expressing his/her opinion by the child shall not take the form of an examination. It shall take place in a friendly environment in a form of free dialogue. The dialogue should be supportive rather than contentious.

Hearing the child before Family Proceedings: existing framework

In cases of separation and divorce, children of the relationship are unequivocally affected by decisions of the courts. Issues of maintenance for the child, as well as custody and access may be determined outside court via family mediation. There are two options of alternative dispute resolution: amicable resolution or reconciliation and the court mediation (introduced in 2019 by the Law on Mediation with relevant reflection in the Civil Procedure Code).

Amicable resolution of dispute without mediation

The Civil Procedure Code⁷⁶ (art. 208, 218) provides that the court shall use its best efforts and take all measures provided by law to help the parties arrive at an amicable resolution of the dispute. In doing so, the judge may take a break during the hearing on its own initiative or on the petition of a party and listen only to the parties or their representatives in the absence of other persons. The judge explains to the Parties potential outcomes of the dispute resolution and offer conciliation terms. If the parties agree to resolve the dispute in amicable agreement, the judge cancels the proceedings and approves the terms of amicable agreement. Reaching amicable agreement in civil proceedings including on family matters is possible at any stage.

Court Mediation with the help of a Mediator

According to the Civil Procedure Code⁷⁷, mediations are available in all cases of matrimonial disputes

71 CRC art 13-15.

72 Liefgaard 2012.

73 General Comment 12 paras 57-64.

74 General Comment 24 para 45.

75 The Code, art. 79.

76 Art. 208, 218.

77 Civil Procedure Code, art. 1873

excluding adoption (including annulment of adoption), restriction and deprivation of parental rights and violence against women and/or domestic violence. Mediations are also available for disputes related to inheritance, property estimated under 2000 GEL, other civil disputes in case of the parties' consent.

A Judge can make a partial decision or an interim Court order relating to issues such as childcare, a parent's access to the child, custody, maintenance or material support.⁷⁸

Furthermore, the Law on Mediation⁷⁹ provides that mediation is a process initiated by the parties or on the legal basis, through which the two or more parties try to resolve the dispute with the help of a mediator. The Court mediation is admissible after the submission of a lawsuit in the court and in case if the court transmits the case for review to a mediator.

Existing framework: hearing the child before proceedings on cases of violence

The views of a child victim of violence, abuse or neglect (whether inside the home or another environment) must be taken into account before justice proceedings to determine the best interests of the child. Decisions such as placement in foster care, alternative care and visits with parents and family may be made before justice proceedings commence.

The Code may apply a provisional measure based on the motion of the parties to protect the claimant from irreparable damage. No case of any forms of violence against the child shall be subject to mediation or other similar deals.⁸⁰

Findings on hearing the views of the child in all types of proceedings (including family law and violence)

- The Code's provision (art.79) on the guarantees on hearing the views of the child in all judicial and non-judicial proceedings introduces an overall guidance to ensure equal realization of the right to be heard for all children in all types of judicial and non-judicial justice processes without emphasizing any particular matter or area of law.
- Neither the Civil Procedure Code nor the Law on Mediation nor *the Code* provide any specific procedures or guarantees for children in the exercise of their right to be heard in mediation or other alternative dispute resolution mechanisms before the judicial proceedings.
- Furthermore, a long established practice of amicable dispute resolution (Civil Procedure Code, art. 208, 218) takes place mainly out of the courtroom. The judge is involved only at the beginning to encourage the Parties to use such possibility and at the final stage when approving the terms of amicable agreement. Otherwise, the outside courtroom process of negotiation has not been regulated by any legal or recommendatory act and therefore, the child's participation in such alternative dispute resolution negotiations fully depend on the adults' will and actions.

Recommendations: Hearing the child before all types of civil and administrative proceedings (including family proceedings and proceedings concerning violence)

- » **Lawyers and others involved in preparing the child for justice proceedings should enable children to exercise their right to be heard proactively before proceedings commence.**

A lawyer should consult with the child about the legal strategy and whether or not to seek justice or approach the court etc. That is one of the implications of art. 12 CRC for the phase before justice proceedings commence.

Best interests and the right to be heard

Social workers and other actors in justice systems should not work on the basis of what they consider to be in the child's best interests without hearing the child – they should solicit the views of the child to inform their decision.

⁷⁸ See the Civil Procedure Code, articles 245, 355 (1)

⁷⁹ The Law on Mediation, adopted on 18/09/2019, last amended on 11/12/2019 / art. 2 (a, b) <https://matsne.gov.ge/ka/document/view/4646868?impose=translateEn&publication=0>

⁸⁰ Art. 75 (3),(4) of the Code

- » **Legislation, regulation and policy directives should ensure that children are invited to exercise their right to be heard proactively by a lawyer.**

The fact that a child's views should be systematically solicited by a legal or other independent representative (provided the child wishes to be heard) and properly considered before and outside of the commencement of all types of judicial proceedings should be reflected in authoritative guidance such as regulations or procedural guidance. This means that procedures should be flexible in order to accommodate the child's views when appropriate.

- » **Amend the Civil Procedure Code and the Law on Mediation to guarantee the right of the child to be heard by decision makers including in early mediation processes.**

3.1.3. LEGAL CAPACITY OF THE CHILD IN ALL TYPES OF JUSTICE MATTERS

See also section 3.3.2 on access to justice.

Why do children need legal capacity in all types of justice matters?

Legal capacity is a prerequisite for children to access justice⁸¹ independently of adults, such as parents or legal guardians. This is particularly relevant in situations where there is a conflict of interests between the child and his parents or legal guardians,⁸² but children have a stand alone right to access justice, also in light of their evolving capacities (art. 5 CRC).⁸³

Although the CRC does not explicitly recognise children's legal capacity, the CRC assumes that the child, in accordance with his or her evolving capacities, can exercise his rights independently from legal representatives (article 5 CRC). Consequently, the categorical exclusion of legal capacity for minors can be considered as problematic, since it does not acknowledge children's status as rights holders. Moreover, it disregards children's evolving capacities.⁸⁴

Legal capacity of children in international and regional law and standards

There is a growing body of jurisprudence of national and regional judicial and administrative bodies recognizing children's legal standing (with or without representation).

⁸⁵The Guidelines on child-friendly justice provide that children, as bearers of rights, '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 of children who have sufficient understanding of their rights and of the use of remedies to protect these rights, based on adequately given legal advice' (para. 34). Similarly, the European Convention on Human Rights gives 'everyone' whose human rights are violated – thus including children – the right to an effective remedy before a national authority (article 13).

1 Existing framework on Legal Capacity of the Child Civil and Administrative justice proceedings

The Code breaks new ground by introducing the right for every child to file a complaint or case directly or through a representative on a decision or action concerning the child or any other matters to protect his or her own rights and freedoms in all types of proceedings.⁸⁶ Before the introduction of the Code, the law denied children's legal capacity in Georgia and the legal standing to hire a lawyer in their own name,⁸⁷ preventing children from initiating proceedings or from claiming rights independently from their parents or legal guardians.

81 For a definition of access to justice, see p 4 of this report

82 UN High Commissioner 2013, para 16. And Liefwaard, 'Access to Justice for Children: Towards a Specific Research and Implementation Agenda', *International Journal of Children's Rights* 2019/27 (Liefwaard 2019), p 205.

83 Liefwaard 2019, p 205.

84 Ibid.

85 Liefwaard and Doek, *Litigating the Rights of the Child. The UN Convention on the Rights of the Child in Domestic and International Jurisprudence*, Dordrecht: Springer, 2015, 1–12.

86 Art. 75(1), see also Article 13(1), Article 69(2))

87 Civil Code Art 14.

However, the Civil Code ⁸⁸, the Civil Procedure Code⁸⁹ and the General Administrative Code⁹⁰ deny the legal capacity of children under 7 years old and restrict the legal capacity of children from 7 up to 18. The restriction expands to children`s rights to access to justice and participation in civil and administrative justice proceedings. Access to justice is a central right, which encompasses a substantive right, namely the right to a remedy, as well as the means to protect all other rights. Moreover, it implies procedural rights as well.

To emphasize again, *the Code* changes the traditional approach to the legal status of the child. Instead of seeing the child as an object of intervention or protection and as entirely dependent on her or his legal representatives (parents or legal guardians), it takes away the categorical exclusion of children from access to justice. The *Code* provides a broader procedural capacity for children of any age and grants them the right to initiate and participate in civil or administrative judicial proceedings and non-judicial administrative proceedings. However, the Code on the Rights shall be applied in such cases which equips the child to submit complaint to an administrative body and then – as needed – to appeal its acts or decision to the court. Moreover, the mentioned civil and administrative legislation shall be amended to ensure the reference is made on the specific provisions of the Code on the Rights of the Child.

2. Findings on Legal Capacity of the Child in Civil and Administrative Justice Proceedings

- The Civil Code provides the right of the child to protection against abuse of parental rights, without indication on age barriers ⁹¹. It stipulates that in case of abuse of the rights of the child by parents/legal representatives, the child can independently apply to the guardianship and care agency or, in the cases provided by the Hague Convention 1996 ⁹², to the Central Authority (Ministry of Justice) and to a court.
- Furthermore, the *Civil Procedure Code* provides the right of the child to apply to the court for the protection of his or her rights and legal interests. In such a case, the child has the right to disagree with his or her procedural representative and independently protect himself or herself. The court has an obligation to involve the guardianship and care agency in such judicial proceedings.⁹³ The child shall enjoy additional procedural rights including access to case materials, appeal for recusals, introduce evidence, participate in examining evidence, ask questions to witnesses, experts, specialists, file motions, provide a court with oral and written pleadings, present their own views, appeal court judgments and rulings, present an act of settlement at any stage of the proceedings and etc. Herewith, the Code refers the Code on the Rights of the Child stipulating that the child shall also enjoy the right to information through means of communication adapted his/her individual needs and cultural sensitivity.⁹⁴
- Regarding this particular provision, neither Civil Code nor the Civil Procedure Code provide any age barriers (amended in line with the Code on the Rights of the Child). However, it is still ambiguous in light with the articles 12-16 of the Civil Code, which limit the legal capacity of the child. Although, the Code does not recognize any barriers, there is still a need to align all the civil and administrative procedural legislation with the Code in this and in other areas as needed.

3 RECOMMENDATIONS REGARDING LEGAL CAPACITY OF CHILDREN IN CIVIL AND ADMINISTRATIVE PROCEEDINGS

- » **Ensure legislation, systems and processes (including forms) are adapted for all ages of children seeking to access justice.** (See also section 3.2.1 on child-friendly environments and adapted processes)

88 Art. 12 (2, 6), 14 (1)

89 Art. 81 (2, 3, 5)

90 Art. 74 (2)

91 Civil Code, Art. 1198¹

92 Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

93 Civil Procedure Code, Art. 81¹

94 Civil Procedure Code, Art. 83.1, 1¹ – referring the Code on the Rights of the Child, Art. 70 (4,5)

- » **Ensure legal empowerment of children receives attention in any public awareness raising campaigns about children’s rights. This means children are able to enter courts independently of their parents and get access to their own legal counsel.**
- » **Public Defender should raise awareness of their authority to receive complaints from children and ensure they appropriately assist or refer children to independent legal representatives to proceed with their claims in justice proceedings.**
- » **Secure free access to legal and other appropriate assistance for all children, in their own name and ensure information about such assistance is widely known.**

RECOMMENDATION REGARDING LEGAL CAPACITY IN JUVENILE JUSTICE PROCEEDINGS

- » **A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice processes.⁹⁵**

3.1.4 SPECIAL THEME: RIGHT TO SUPPORT AND PROTECTION CHILDREN FROM VIOLENCE

Violence is a key issue affecting children in Georgia (see section 2.2) and much stigma surrounds family violence, which often goes unreported. Children experiencing family violence can be particularly vulnerable as they are less likely to have a reliable adult upon whom they can rely to access support, protection or complaints mechanisms.

Existing framework

The Code provides for the right of the child to be protected from physical and psychological violence, bullying, coercion, injury, neglect, negligence, torture, sale, exploitation, child trafficking, harmful traditional practices, cruel or coercive methods of medical treatment and other forms of violence in the family, at school, or in any other space, including online ⁹⁶.

For the first time in the national legislation, the Code explicitly (without indicating consequences as suffering or anguish) prohibits corporal punishment, other cruel, inhuman or degrading treatment or punishment in the family, preschools and schools, alternative care service, medical and/or psychiatric institution, penitentiary institution and any other space. ⁹⁷

- The Code provides the obligation of the State to undertake the following measures for the prevention of violence against the child ⁹⁸:
 - o Improvement of the national legal framework
 - o Consulting, informing and supporting parents and other caregivers in the development of positive, non-violent parenting methods and skills
 - o Specialized training and information for persons working with and for children in education, healthcare, social protection, sports, culture and justice systems
 - o Supporting child participation in the development and implementation of policies, programmes and initiatives
 - o Promoting media in covering information of violence against children in line with the ethical standards
 - o Supporting NGOs, including through allocating financial resources, to implement programmes for prevention and response violence against the child

⁹⁵ General Comment 24 para 46.

⁹⁶ The Code on the Rights of the Child, art. 53-59.

⁹⁷ The Code on the Rights of the Child, art. 53 (2).

⁹⁸ The Code on the Rights of the Child, art. 60.

- The State shall ensure protection, support and rehabilitation of child victims of crimes/violence, specifically through the bellow measures ⁹⁹:
 - o Short and long-term physical and psycho-social rehabilitation and support services
 - o Mechanisms for protection of children from re-traumatization and harm
 - o Mechanisms for access to justice, appeal and redress/compensation
 - o Ensuring the right of child victims to receive compensation from the State when this is not immediately possible from perpetrators
 - o At every stage of justice proceedings, to ensure protection of rights of child victims and prevention of secondary victimization
 - o Mandatory specialization of all persons in the public agencies working with and for child victims of violence

Findings

- In 2018, the Ombudsman`s monitoring visits in alternative care services¹⁰⁰ revealed that 45.1% of the children say they cannot contact the social workers without the consent of the foster parents. In some small group homes, the anonymous complaint box is available; however, children do not use it at all. In some rare cases when children share about the facts of violence with caregivers or social workers, the response is neither adequate nor preventive and never – multidisciplinary.
- According to the Agency, they take preventive measures to protect children from violence in alternative care through monitoring visits in foster care and small group homes. During the visits, the Agency considers the health, education, psycho-emotional state and other needs of the child. The guiding document is the Government Decree on national childcare standards. In case of detecting VAC, the Agency reports and make referrals as required by the Government Decree on Child Protection Procedures. The Agency believes that all children and their caregivers in alternative care know about the children`s rights and protection mechanisms (police, social worker, caregivers, PDO).
- The State Care Agency is involved in all types of administrative judicial proceedings on VAC as a representative (Guardian Ad Litem) of the child. There are some key issues of the conflict of interests at the institutional level. In particular, the role of the Agency as a procedural representative of the child in alternative care (foster care, small group homes) may come into conflict with the Agency`s another role of providing/supervising/oversight of the state care of children. The issue of conflicts of interest may emerge where the child protests againts the decision of the Agency as the same Agency is to represent the child in the court.
- In March 2022, the Psycho-Social Service Center (based on Barnahus model) was opened in Tbilisi under the State Care Agency, which provides a child-friendly space for child victims and witnesses of sexual violence for investigative interviewing, forensic examination and psycho-social support and rehabilitation.

Recommendations relating to victims of violence and related proceedings

See also section 3.1.1 relating to police custody and section 3.3.3 relating to support after justice proceedings.

- » **Ensure reliable and confidential mechanisms are available for all children, including those in boarding schools or deprived of their liberty in other settings, to independently access complaints mechanisms and the support of an impartial adult whom they can trust.**
- » **Legislative guidance should guarantee that an appropriate adult be present when child victims**

⁹⁹ The Code on the Rights of the Child, art. 61.

¹⁰⁰ "Monitoring of Child Care System – Effectiveness of Alternative Care" - Public Defender`s (Ombudsman) Special Report, 2018 <https://ombudsman.ge/eng/spetsialuri-angarishebi/bavshvze-zrunvis-sistemis-monitoringi-alternatiuli-zrunvis-efektianoba-spetsialuri-angarishi>

of violence are interviewed before justice proceedings. This may be a parent, legal guardian, social worker or psychologist. The role of this person should be to provide advice and support to the child and to ensure the interview is conducted fairly and this person should be trained specifically for this role.

- **Ensure any power differential between the supporting person and the officer does not prevent the child from receiving relevant and impartial information before participating in an interview.**
- » **Children need specific types of support and safeguards when being interviewed by police as victims and/or suspects.**
- » **Ensure availability and accessibility of multidisciplinary approach towards all child victims and witnesses through integrated psycho-social service (based on Barnahus model), which is provided at this stage only for child victimism of sexual violence. In this regard, the bellow safeguards and support shall be guaranteed:**
 - Restricting the number of times a victim must give evidence (during all stages of justice proceedings)
 - Admission of audio-video records of interviews with child victim/witness as evidence in chief in the courts preventing the need for repetitive interviews
 - Expanding evidentiary rules to prevent unjustified interference with victims' privacy, and aggressive, harassing or otherwise traumatic questioning

Child victims of violence should be able to:

- exercise agency (i.e. be heard)
- express impact victimization has had on their life in own terms
- meaningfully participate in decision making throughout the different stages of the criminal trial process.

The **Committee on the Rights of the Child, in its General Comment 13**, clearly states the obligations states have to address victims extend to ensuring systems and procedures are child-friendly:

- Responding to violence requires a paradigm shift away from treating children as objects in need of assistance [para 59]
- Participation promotes protection, and child protection is key to participation: Experience of violence is inherently disempowering and sensitive measures are needed to ensure child protection interventions do not further disempower children [para 63].
- Investigation should be rigorous, but child sensitive [para 51]
- Treatment (Art 39 CRC) should invite the views of the child [para 52]
- Judicial involvement: due process, best interests, must be promptly informed child-friendly, preventive where possible
- Where appropriate, specialized courts with specific interdisciplinary training for professionals [para 56]

3.2. KEY ELEMENTS OF THE CHILD-FRIENDLY JUSTICE CONCEPT DURING ALL JUSTICE PROCEEDINGS

The time during justice proceedings is a crucial stage for children involved in justice proceedings, whether judicial, non-judicial or administrative. Often justice proceedings occur in intimidating setting such as court rooms where processes are largely run by busy legal professionals with heavy caseloads and limited time who are not aware of the needs and interests of children in such proceedings. The same can often be said of justice proceedings occurring outside of court rooms, where decision-makers have little knowledge or training in children's rights and needs. For the stage during proceedings to properly respond to a child's rights and needs, the following key elements and principles are necessary:

- Adapted procedures and child-friendly environments
- Representation and legal counsel
- Effective participation and right to be heard
- Multidisciplinary approach
- Best interest assessments
- Preventing delay

Each of these elements are discussed in more detail below.

3.2.1. ADAPTED PROCEDURES AND CHILD-FRIENDLY ENVIRONMENT

Why is it important to have adapted procedures and a child-friendly environment?

Child sensitive procedures start by acknowledging that children have a right to access justice and have legal standing if they have an interest in seeking remedies.¹⁰¹ For children to properly participate in justice proceedings, appropriate conditions and procedures for supporting children to express their views must be in place. Justice settings are notoriously intimidating and procedures are often so complicated even adults struggle to fully understand them.

Basis in international and regional law and standards

In many ways, this requirement reflects the essence of child-friendly justice reflecting that justice procedures and settings should be adapted to and focused on the needs of the child. The Guidelines on child-friendly justice state that, 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.¹⁰²

In practice: what do adapted procedures and child-friendly environments look like?

Child-friendly environment relates to the design, for example, of (court) rooms or police stations, as well as the removal of intimidating clothing of actors in that room.¹⁰³ In relation to procedures, this requires that all stages of proceedings be adapted for children. They should be carried out in a language the child understands, with adequate breaks, and include accommodation for children with disabilities. Support of appropriate adults should also be available.¹⁰⁴

¹⁰¹ Liefwaard 2019, p 213; Liefwaard, Advisory Report Council of Europe, State of Georgia, Access to justice for children under the Code on the Rights of the Child, 14 July 2020.

¹⁰² CFJG Part IV A, para 54.

¹⁰³ CFJG, Part IV A, para. 11.

¹⁰⁴ General Comment 24 para 46.

National legal framework: adapted Procedures and Environment during all types of proceedings

The Code provides that the courts shall ensure administration of all types of judicial proceedings, including juvenile justice criminal proceedings based on the child-friendly justice principles as required by this Code. ¹⁰⁵In particular, the Judiciary (the High Council of Justice, the Supreme Court, and the Common Courts) shall ensure following guarantees for all types of judicial proceedings involving children (including juvenile justice):

- o Child-friendly infrastructure at all levels of the courts
- o Adapted appeal procedures, forms and proceedings
- o Create child support and consultation services at the courts to promote the child's meaningful participation in judicial proceedings

Furthermore, all government and other public institutions shall ensure child-friendly procedures and approaches in their administrative (decision-making) processes concerning children. Key agencies and institutions with this obligation include: ¹⁰⁶

- o Public Defender's Office and its structural units
- o Legal Aid Service
- o Ministry of Justice and its subordinate entities
- o Ministry of Internally Displaced Persons, Health, Labour and Social Protection and its subordinate entities (most relevant is namely the Agency for State Care and Assistance to Victims of Trafficking and Violence)
- o Ministry of Education and Sciences and its subordinate entities
- o Ministry of Agriculture and Environment Protection
- o Municipalities

Adapted Procedures and Environment during family law proceedings and proceedings concerning violence

Note: for the national laws relating to a child's access to justice in these types of proceedings see section 3.3.2 on enforcement and access to justice

The Code provides the above-mentioned guarantees for adapted procedures and friendly environment in all types of judicial and non-judicial proceedings without distinguishing any particular matter or area, such as family law. No other related laws on civil and administrative proceedings provides any specific or tailored procedures for children in family law (for example, such as divorce) proceedings. ¹⁰⁷

Adapted Procedures and Environment during administrative (non-judicial) proceedings

Administrative bodies shall ensure child-friendly administrative proceedings with primary consideration of the best interests of the child, which implies available and perceivable procedures for the child at all stages of the proceedings.

Adapted Procedures and Environment during Juvenile Justice Proceedings

The Code does not explicitly mention the specific functions and role of criminal justice agencies and procedures as the Juvenile Justice Code regulates these areas. However, the Code, as already discussed above, outlines the key principles of child-friendly justice, which cover all matters of criminal, administrative and civil law areas.

¹⁰⁵ The Code art. 95 (1).

¹⁰⁶ The Code, articles 91-94, 96-98.

¹⁰⁷ General Administrative Code, art. 98

Therefore, the Ministry of Internal Affairs and the Prosecutor's Office are also key actors to ensure the realization of the rights of children in contact with justice system. The Ministry of Internal Affairs is the first contact for children in conflict with the law, child victims (including victims of domestic violence) and witnesses.

Findings: Adapted procedures and child-friendly environment during all types of justice proceedings

Consultations and desktop research reveal that in Georgia the environment (infrastructure) in justice systems is largely not adapted to children. This was particularly evident during judicial proceedings that occur in a court room:

- Only two court buildings have child-friendly rooms throughout the country (in bigger cities).
- There is rarely a chair for the child in the courtroom, the court rooms are largely not adapted to children.¹⁰⁸
- Tbilisi, Kutaisi and Rustavi city courts do not have separate entrance and waiting rooms for accused juveniles (except the detained juveniles), child victim and witnesses. All involved parties use the same entrance and the same waiting room so that everyone can see the children and communicate with them¹⁰⁹
- In almost all cases, the legal or procedural representatives (guardian ad litem) were present, however, they were sitting far from the child in the courtroom and children did not have an opportunity to communicate with them.
- One stakeholder stated that there are 'So many people in the room – it's not even adult friendly. I feel nervous and tense when I go in'.
- Another stakeholder commented that infrastructure is mainly 'ritual, emotionally oppressive and not at all adapted to children with disabilities.'¹¹⁰

Judicial proceedings are generally not in a form and language adapted to children.

- Judges commented on the lack of guidance for adapting proceedings to a child, which was reflected by other feedback about the role of judges during proceedings:
 - o There is a lack of child-friendly explanations from judges during proceedings
 - o Children can express their views during the hearings; however, judges do not actively support their meaningful participation¹¹¹
 - o In 25% of the cases, judges did not ask children whether they agreed with their lawyers or not and if they had anything to add¹¹²
 - o Although children may be supported by a psychologist during proceedings, the legislation is vague about their role and function in doing so and judges are unclear on how to involve psychologists in proceedings.
 - o Proceedings are often rushed and no extra time is afforded to matters involving children

108 Consultation with NGOs 11 February 2021

109 Public Defender (Ombudsman) of Georgia, study "Protection of procedural rights of juvenile defendants, witnesses and victims in criminal justice" (2019) <https://www.ombudsman.ge/eng/spetsialuri-angarishebi/siskhlis-samartlis-martlmsajulebis-sferoshi-arasrultslovan-braldebulta-motsmeta-da-dazaralebulta-saprotseso-uflebebis-datsva?fbclid=IwAR3aN6qf7F-1PfH6WQQdnplqJ6lb1y1b8LqEjLnUZNELit-MGLzaJfKy-dw>

110 PDO

111 Public Defender (Ombudsman) of Georgia, study "Protection of procedural rights of juvenile defendants, witnesses and victims in criminal justice" (2019) <https://www.ombudsman.ge/eng/spetsialuri-angarishebi/siskhlis-samartlis-martlmsajulebis-sferoshi-arasrultslovan-braldebulta-motsmeta-da-dazaralebulta-saprotseso-uflebebis-datsva?fbclid=IwAR3aN6qf7F-1PfH6WQQdnplqJ6lb1y1b8LqEjLnUZNELit-MGLzaJfKy-dw>

112 Public Defender (Ombudsman) of Georgia, study "Protection of procedural rights of juvenile defendants, witnesses and victims in criminal justice" (2019) <https://www.ombudsman.ge/eng/spetsialuri-angarishebi/siskhlis-samartlis-martlmsajulebis-sferoshi-arasrultslovan-braldebulta-motsmeta-da-dazaralebulta-saprotseso-uflebebis-datsva?fbclid=IwAR3aN6qf7F-1PfH6WQQdnplqJ6lb1y1b8LqEjLnUZNELit-MGLzaJfKy-dw>

Other feedback indicated that there is a lack of child-friendly material, such as forms and brochures, adapted for children:

- Some of the forms which children need to sign are extracts of legislation (in the juvenile justice context) which is difficult even for average adults to read
- The courts issued adapted application forms for children; however, NGOs stated that this has not had any significant impact on practice. They referred to a case where a 7-year-old claimant who filed an application in that adapted form, however, the court rejected it

These findings also extend to other types and stages of justice proceedings, such as the period before children encounter justice systems where children are interviewed in police stations and legal aid offices. Feedback suggests that in most locations where children first encounter justice systems, especially in the regions, the environment is not adapted for children.

- The Legal Aid Service only has two offices (out of 38 offices) adapted to children. In case of foreign children, and children belonging to groups of ethnic and linguistic minorities, LAS does not have licensed translation services and does not have communication questionnaires and contract forms adapted to children. Police stations, particularly interview rooms, are not adapted to children. Sometimes at least six or seven people are attending the interviewing process with the child in a small room (a social worker as a procedural representative, parents, investigators, psychologists and others). This is a problem for all children regardless of their status, especially for child victims. It must be noted that as child victims, children in conflict with law are also often left without any assistance from professionals.
- Lack of child friendly spaces in the regional divisions of the State Care Agency is also a serious problem, which negatively affects also on the protection of privacy of children.

Adapted procedures and child-friendly environment during Family law proceedings

The legislation lacks procedural guarantees to translate the substantive rights of children into practice. There are significant discrepancies between the substantive and procedural norms provided by different laws. *The Code* provides stronger and broader guarantees, however, lacks detailed and effective procedural safeguards for implementation. Furthermore, other procedural laws are still in conflict with *the Code*. Moreover, the laws are not understandable for children. There is a need to develop adapted version of the laws applicable to children, especially on the right to be heard and participation.

Adapted procedures and child-friendly environment during proceedings on violence

In family disputes there is often high risks of manipulation and psychological violence against children from parents. In these cases, children's views and facts of possible violence or negative influence is overlooked. There is a lack of intervention of competent authorities working with parents in terms of changing attitudes and raising awareness.

The psychosocial service center of the School Resource Office offers psychosocial assistance to children, their parents and teachers. The psychosocial center hears the views of the child, identifies his/her needs and works through multidisciplinary approach involving psychologist, social worker, and psychiatrist.

Adapted procedures and child-friendly environment during Administrative (non-judicial) proceedings

As in all other areas, there are no adapted forms, procedures and environment for children in administrative non-judicial proceedings. In this regard, it is especially difficult to foster child-friendly approaches, as the circle of administrative bodies are much wider than those agencies specifically involved in the justice proceedings. Administrative bodies include all levels of government sector and public institutions in all areas and sectors of public life and decision-making.

Adapted procedures and child-friendly environment in juvenile justice proceedings

Special issue: Child-Friendly Police Stations

- All the children (without exception) interviewed during the consultations,¹¹³ revealed distrust in police. According to the children, police do not know and do not want to talk to the child in a friendly way. Police are rude and disrespectful to children. Some children told the stories of children beaten and threatened by police.
- The feedback from the Ministry of Internal Affairs (police) shows lack of acknowledgement of existing challenges and problems in the area of child-friendly justice. Although they acknowledge the need to adapt more police stations to respond to children`s needs, they still insist that procedures are adapted to all children. They name lack of social workers and psychologists and services for children as key challenges in their work. Furthermore, the Ministry finds it important to remove imperative nature of prohibition of interrogation/interviewing children in the night hours¹¹⁴. According to the Ministry, “when a child is in danger and contacts police in night hours, police interview/obtain information from the child until the morning and this is not the best interests of the child”.
- Moreover, there are no rules and standards for ethical interviewing and child-friendly environment in police stations. Interviews with children often take place in over-crowded and unfavourable environment with attendance of at least six or seven people in a small room.

Psycho-Social Service Center for Child Victims of Violence (based on Barnahus model)

- In 2022, the Center was opened in Tbilisi and it provides integrated services for child victims of sexual violence, including investigative interviewing and its audio-vidé records as evidence, forensic examination and psycho-social support and rehabilitation services.
- The concept of this psycho-social service center is based on multidisciplinary approach and serves the prevention of secondary victimization of children in justice proceedings and administration of justice as well.
- Currently, the Center serves only child victims/witness of sexual crimes/violence, however, there are several challenges which need to be addresses in terms of legal amendments and improvement of practices of agencies and professionals, including on matters related to use of the audio-vidé records of child interviews as evidence in chief, ensure child-friendly environment with attendance of procedural parties behind the screen, conducting interviews by a specialized interviewer, and expansion of the services to all victims of violence throughout the country.

Recommendations: adapting all types of proceedings for children

- » **The government must invest further to transform civil and administrative justice proceedings into child-friendly and inclusive systems with child-sensitive professionals, including judges, clerks, lawyers, social workers, police etc.**

In doing so, Georgia must ask for input from a range of children from a range of backgrounds, levels of development and with a range of specific needs (including those more likely to be involved in judicial proceedings in some capacity) before adapting forms, procedures and environments to become ‘child-friendly’.

Good practices include:

- o Ensuring the child has the same lawyer and judge throughout proceedings
- o Allowing the child to sit next to his or her parents and lawyer in court, so he or she can experience

113 UNICEF supported consultations with children in conflict with the law (totally eight children were interviewed) took place on 24-25 June 2021.

114 See the art 52 (6) of the Juvenile Justice Code

the emotional support from them (unless the child does not wish this)

- o Preventing lawyers and others from frequently walk in and out of the courtroom when children's matters are in session
- o Preventing asking traumatizing questions to a child victim by preliminary agreeing questions with a judge who will pose the questions in a child-friendly manner
- o Ensuring sufficient time is allocated to matters concerning children so that these matters are not rushed at the expense of procedural rights of children.

In relation to administrative proceedings, there should be general guidance and key principles applicable to all state/public agencies to promote implementation of child-friendly approaches across all public decision-making processes. Special consideration should be paid to the Government Ministries and public entities in child protection, healthcare and social protection, inclusive education and also at the local levels in the municipalities.

To avoid children being placed in intimidating court rooms, the CRC Committee strongly advocates for hearings in camera as a rule, which should foster the atmosphere of understanding and in addition relates to the protection of the child's and his family's privacy.¹¹⁵

- » **all the relevant Ministries and the High Council of Justice, in collaboration with civil society, should produce guidance, accompanied by training, for court staff, judicial and administrative authorities to ensure that court sessions are adapted to the child's pace and attention span and child's communication skills**

Guidance or codes of conduct for judicial or other competent authorities (e.g. social or healthcare services) should outline in detail:

- o How and when to involve the child in determining the modalities of his/her participation in the proceedings;
- o How to adapt pace and length of proceedings for children;
- o How to adapt language for the child's level of development and specific needs.

3.2.2. LEGAL REPRESENTATION AND ASSISTANCE AND LEGAL AID

Note: lawyers standards, ethics and training are discussed in the section below (3.2.3) on specialization and training

Why is legal assistance and legal aid important?

A child's right to legal or other appropriate assistance is one of the most crucial elements of the child's legal empowerment and an essential element of child-friendly treatment.¹¹⁶ The UN High Commissioner argues that, without legal assistance, children will largely be unable to access complex, 'adult-designed' legal systems.¹¹⁷ Consequently, legal assistance is perceived as an essential prerequisite for children's right to access to justice, as well as an important element of effective participation, fair trial and child-sensitive treatment.¹¹⁸

Legal aid, or the right to assistance free of charge, is necessary for children as costs for legal proceedings can be particularly problematic for children.

115 CFJG, Part IV, A, para. 6; UN High Commissioner, 2013, para. 48.

116 Liefwaard 2019, 209. ECtHR, 20 January 2009, appl. no. 70337/01, Güveç v. Turkey, para. 31; see also ECtHR, 15 June 2004, appl. no. 60958/00, S.C. v. United Kingdom.

117 UN High Commissioner 2013, para. 40-43.

118 Liefwaard 2019, p. 209.

Basis in international and regional law and standards

Legal representation

The CRC provides that a child has a right to legal or other appropriate assistance in the context of criminal justice proceedings (CRC Art 40(2)(b)(ii) and (iii)). The Guidelines on child-friendly justice state that this should not only pertain to juvenile justice, but to all types proceedings and highlights the need for this to be independent of other involved parties, including parents:

If children are to have access to justice which is genuinely child-friendly, 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.¹¹⁹

The Guidelines also recommend a system of specialized youth lawyers, which respects the child's free choice of a lawyer and underscore the importance of clarifying 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.¹²⁰

Legal Aid

The UN High Commissioner argues for a legal aid scheme supporting children, and particularly children facing financial barriers due to poverty or their specific status as a migrant or refugee child or street child, among others.¹²¹ The UN Basic Principles on the Role of Lawyers provide that states should 'ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons.'¹²²

Right to legal representation in practice: when does a child require legal representation and what does this entail?

The Committee recommends states ensure a 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.¹²³ In other words, a child should have access to legal representation before, during and after their involvement in justice proceedings. The role of the lawyer at each stage of proceedings may depend on the child's age and maturity.

National legal frameworks on representation and legal counsel for children: during all types of justice proceedings

A conflict exists between the Civil Procedure Code and the Code in relation to the legal representation of children.

According to the Civil Procedure Code, children's legal representatives are their parents, adoptive parents, other legal guardians or caregivers. A legal representative performs all procedural action on behalf of the child. It means that the legal representatives are also the procedural representatives of the child. A legal representative can trust a lawyer to perform all the procedural actions on his/her behalf, however, the legal representative still maintains the right to participate in the proceedings.¹²⁴ In such cases, the court is obliged to involve a child between the ages of 7-18; however, the involvement of children under the age of seven is optional.¹²⁵

The Code also provides that a parent is a legal representative of the child and represents the child's rights and interests, without special authorization, in relations to the third Parties, including in the judicial proceedings.¹²⁶ However, *the Code*, unlike the Civil Procedure Code, provides unconditional autonomy of

119 CFJG part IV A, para 37.

120 CFJG, Explanatory Memorandum, p78.

121 UN High Commissioner 2013, para 17.

122 United Nations Basic Principles on the Role of Lawyers, 7 September 1990 paras 2-3.

123 General Comment 24, para 49.

124 Civil Procedure Code, art. 101 (1, 2, 5).

125 Civil Procedure Code, 81 (3, 5).

126 See the Code, art. 24 (3).

the child to choose his or her own procedural representative who can be someone else than the child's legal representative.¹²⁷ This autonomy is in conflict with the Civil Procedure Code.

Procedural Representation (Guardian ad Litem) of children in justice proceedings

According to *the Code*, the child has the right to participate in administrative non-judicial proceedings and all types of judicial processes directly and/or through a representative, who may be the legal representative of the child or other procedural representative chosen by the child.¹²⁸

The Agency of State Care and Assistance to Trafficking Victims (the Agency) appoints social workers to provide procedural representation of children involved in criminal, civil or administrative judicial proceedings as required by the Civil Procedure Code, Administrative Procedure Code and Juvenile Justice Code.

In civil and administrative judicial proceedings, the Agency provides procedural representation when there is a conflict of interest between the child and the parent (for example, in case of domestic violence), in divorce cases concerning visitation rights of parents. Even if the child independently applies to the court, the court shall invite the Agency as his/her procedural representative. Even if the child does not agree on the procedural representative, the Agency is involved and continuously represents the child.¹²⁹

Legal Aid and Legal Counsel for Children

The Legal Aid Service (LAS)¹³⁰ provides free legal aid including services such as drafting legal documents and legal defense or representation in criminal justice, administrative and civil proceedings, including administrative non-judicial proceedings.¹³¹ The key laws regarding legal aid and counsel in justice proceedings related to children are the Code, the Juvenile Justice Code and the Law on Legal Aid.¹³² The provision of legal aid in criminal proceedings is discussed in more detail below.

Initially, LAS provided free legal aid and counsel to persons, including children if their families were insolvent and/or in certain cases directly prescribed by the law, such as obligatory defense of children in conflict with the law, victims of violence, disability related matters.

At every stage of juvenile justice proceedings, since 2016, with the adoption of Juvenile Justice Code, free legal aid has become more widely available to all children in conflict with the law (charged, convicted or acquitted) and child victims. At a later stage, the Juvenile Justice Code made free legal aid available also for child witnesses, only in relation to crimes against life and health, and crimes of torture¹³³. However, availability of free legal aid for children in civil and administrative judicial proceedings remained limited within the frames of the pre-defined criteria.

In all types of justice proceedings, including civil and administrative judicial and non-judicial proceedings, free legal aid has become available for children since September 2020, with the adoption of the Code. The Code provides that a child has the right to receive qualified legal aid at the State's expenses through the means of communication adapted to his/her age and individual capabilities. The Legal Aid Service shall provide legal advice/aid free of charge to a child and/or a parent or other caregiver on matters related to the rights of the child, in accordance with the legislation of Georgia.¹³⁴

The term "in accordance with the legislation of Georgia" stipulates, mainly, at the Law of Georgia on Legal Aid, which was accordingly amended and now confirms that every child enjoy right to free legal aid and consultation unless she/he has hired a private lawyer. The Legal Aid Service ensures every child's equitable access to legal aid in accordance with UN Convention on the Rights of the Child, its Optional Protocols and other international treaties of Georgia and in line with the child friendly justice approaches as required by the Code on the Rights of the Child¹³⁵.

127 See the Code art. 81 (1).

128 The Code, art. 80.

129 Code of Civil Procedure, art. 81¹

130 <http://www.legalaid.ge/en>

131 LAS provides representation of accused/charged persons, convicted and acquitted in criminal justice proceedings, victims/damaged party in criminal justice proceedings, representation in administrative and civil justice proceedings and in administrative non-judicial proceedings.

132 The Law on Legal Aid, adopted on 19/06/2007; last amended on 14/07/2020

133 Juvenile Justice Code, art. 15 (1)

134 Code on the Rights of the Child, art. 79 (1, 2)

135 Law on Legal Aid, art. 41

Family law proceedings

Role of parents in justice proceedings concerning children

The Code provides that a parent is a legal representative of the child and represents the child's rights and interests, without special authorization, in relations to the third Parties, including in the judicial proceedings.¹³⁶

Procedural representative (Guardian ad litem)

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. This could be done on the request of the child or another relevant party.¹³⁷ A guardian ad litem should help the court in defining what is in the best interests of the child.

For example, the Agency provides procedural representation when there is a conflict of interest between the child and the parent (for example, domestic violence), in divorce cases.¹³⁸ The court invites the Agency as a procedural representative for the child who independently applies to the court for the protection of his or her rights. Even if the child does not agree on the procedural representative, the court still gets the Agency involved.¹³⁹

Findings on procedural representation (guardian ad litem), legal assistance and legal aid for children in all types of proceedings (including family matters and matters relating to violence)

Procedural representation and the role of the Agency

- Judges find it challenging to ensure proper procedural representation of the child who should emotionally support and inform the child. In practice, the social workers mainly have “close to zero” information about the child whom they represent. The judges communicate with the child who is not ready to discuss anything due to emotional tension. All different involved agencies should cooperate with one another to facilitate the communication process with the child in the court.
- The Agency's involvement as a procedural representative, especially concerning children in alternative care raises questions about independence of such representation. The Agency makes decisions about placing the child in alternative care, acts as the child's legal guardian (for children who do not have parents or other relatives as legal guardians) and oversees state care services. This raises serious concerns regarding conflict of interest in case of violence against the child in alternative care services.
- According to the Agency, in cases of appeals by the child (except the child in state care) against the action or decision of the administrative body, there are more options for the representation and protection of the child's interests. This can be a lawyer of the LAS, of an NGO or the Agency. If the child expresses negative attitude towards the procedural representative, the Agency changes the representative and appoints another one. According to the Agency, the social workers have obligation to address possible conflicts of interests. However, it is unclear how they do it in practice.
- According to Public Defender's office and judges, procedural representatives are present in all types of justice proceedings as it is required by the law, however, such representation does not actually imply any meaningful involvement of or communication with the child to assist the court in hearing the views of the child and establishing his/her best interests.

136 See the Code, art. 24 (3)

137 GCFJ para. 42, 105

138 in accordance with the Civil Code and Civil Procedure Code

139 Code of Civil Procedure, art. 81¹

Findings about the quality of representation by procedural representatives: the European Court of Human Rights in *N.T.s. and others v Georgia*

The above findings are reflected in this recent case against Georgia where the Court found the poor quality of the children's representation and the failure to duly present and hear the children's views undermined the procedural fairness of the decision-making process.

The Court established the violation of private and family life of the three children and stated that they had not been adequately represented before the domestic courts. The ECtHR reiterated that the functions and powers of the domestic authority designated to represent them had not been clearly defined and the courts had not considered hearing the oldest of the boys in person. Moreover, the courts had made an inadequate assessment of the boys' best interests, which did not take their emotional state of mind into consideration. The court observed that representatives of the Agency had met the boys only a few times with the purpose of drafting reports on their living conditions and their emotional state of mind, but no regular contact had been maintained in order to monitor the boys and establish a trustful relationship with them.¹⁴⁰

Legal representation and assistance

- While the child's right to a lawyer and legal counsel is ensured by the law in nearly all types of justice proceedings, it is still unclear in practice whose interests lawyers actually represent: those of the parents or the child's. In seeking the legal aid to appeal the court judgement or decisions of an administrative body, children face serious barriers, such as parents' influence, lack of supporting procedures to have a lawyer in their own name and complexity of involving a procedural representative. Judges recognize the need for children to have an independent and separate representative from their parents.

Legal Aid

- Although the provisions of the Code make it clear that children in all types of justice proceedings should have access to a legal representative, in practice LAS only provides free legal assistance in the fields of juvenile justice, child victims and witness of crimes (against life and health, crimes of torture).

Representation in juvenile justice proceedings

According to the Juvenile Justice Code, at every stage of criminal justice proceedings, all juveniles in conflict with the law (charged, convicted or acquitted juveniles), child victims and child witnesses (in relation to crimes against life and health, and crimes of torture) shall have the right to free legal aid.¹⁴¹

Procedural representation

The Agency of State Care and Assistance to Trafficking Victims provides procedural representation of children involved in criminal matters. *According to the Juvenile Justice Code*¹⁴², the Agency provides procedural representation for accused juveniles, child victims and witnesses if their parents/legal guardians are absent, the child rejects participation of his/her parent/other legal guardian or they act against the interests of the child or allegedly committed violence against the child, or there are other conflicts of interests.

The Juvenile Justice Code also provides appointment of other trusted person as a procedural representative with consideration of the child's views. However, the related procedure of hearing the child's views is not prescribed.¹⁴³

140 European Court of Human Rights, *NTS and others v Georgia*, 2 February 2016, Application no. 71776/12, paras 72-77, 84.

141 Juvenile Justice Code, art. 15 (1)

142 See the art. 50 (1), (2)

143 The Juvenile Justice Code, art. 50

Findings: representation in Juvenile Justice Proceedings

- Key challenges: lack of social workers and psychologists (who have often the key role in the fair and speedy implementation of child-friendly justice); lack or absence of state services for responding children's needs in the justice system (including the children living and/or working on the streets).
- In almost all cases, the legal or procedural representatives were present, however, they were sitting far from the child in the courtroom and children did not have an opportunity to communicate with them.

Representation in administrative (non-judicial) proceedings

- In all types of justice proceedings, including administrative non-judicial proceedings, free legal aid is available for all children. The Code provides that a child has the right to receive qualified legal aid at the State's expenses through the means of communication adapted to his/her age and individual capabilities. The Legal Aid Service shall provide legal advice/aid free of charge to a child and/or a parent or other caregiver on matters related to the rights of the child ¹⁴⁴.

Findings: representation in administrative (non-judicial) proceedings

The Law on General Education provides administrative proceedings of the Specialists' Group of the Juvenile Referral Center to review the referral of the child with difficult behavior to Juvenile Referral Facility (the semi-closed boarding school).¹⁴⁵ If the Referral Center takes a decision on referring the child to the facility, it will send the decision to the court for approval. However, if the legal representative of the child supports the decision, there is no obligation for the Referral Center to submit the decision for the court's approval.¹⁴⁶ The law does not require to hear the child's views or consent. This is in contradiction with the Code as it deprives the child from the right to appeal the decision concerning his/her rights. According to the relevant Agency, there is a work ongoing to develop a new Law which will address the existing gaps, however, the draft is still not available to review at this stage.

Recommendations: providing independent representation for the child

- » **Secure free, independent and skilled legal assistance to all children in their own name across all types of proceedings.**

This involves addressing as a matter of priority the representation of children in alternative care who seek to bring complaints, as well as children in proceedings involving family conflicts. The Agency cannot provide independent representation for children it has placed in alternative care, and such children need access to separate, independent legal aid and support.

- » **Implement a mechanism to ensure the child involved in justice proceedings can take action if there is a conflict of interests with his or her representative.**

Any person responsible for representing a child must be properly trained (see following section 3.2.3) and children should have access to complaints mechanisms in the event they seek to make a complaint about their representative.

- » **Implement a legal aid scheme supporting children, particularly those facing financial barriers due to poverty or their specific status as a migrant or refugee child or street child, among others.**

¹⁴⁴ Code on the Rights of the Child, art. 79 (1, 2)

¹⁴⁵ Law on General Education, art. 48⁷- 48⁹

¹⁴⁶ Law on General Education, art. 48⁷(11)

3.2.2. SPECIALIZATION AND TRAINING OF PROFESSIONALS INVOLVED DURING JUSTICE PROCEEDINGS

Why is training and specialization of professionals important?

Children are a diverse group with specific vulnerabilities, characteristics and needs that set them apart from adults. Child-friendly justice requires that professionals (i.e. adults) in justice systems embrace, are educated in, and adopt a certain mindset towards the role, status and capacity of children in justice proceedings.

Actors in justice systems interacting with children should therefore have a level of understanding and adaptability to properly ensure children's rights and interests are upheld throughout proceedings. Flexibility and openness are needed to properly respect the place, role, views, rights and needs of the child in proceedings.

Although this section focuses on the stage 'during' proceedings, it is important to note that a lack of specialized and trained professionals is a critical issue that cuts across all stages of justice proceedings. Professionals in contact with children before and after justice proceedings must have an understanding of the different developmental needs, vulnerabilities, rights and interests of all children. If they do not, children do not get adequate support and may experience further violations of their rights at a critical and sometimes traumatic moment in their lives.

The need for training and specialization: basis in international and regional law and standards

The Committee has repeatedly stressed that training and capacity building on children's rights for those who work with and for children is integral to the effective implementation of children's rights.¹⁴⁷ Such training must be "systematic and ongoing", involving an initial training followed by re-training.¹⁴⁸ Training should be designed to "increase knowledge and understanding of the Convention."¹⁴⁹ The Guidelines on child-friendly justice equally stress the importance of training all professionals working with and for children.¹⁵⁰ In the context of Georgia, the Committee has recommended that Georgia expand training to all professional groups working with and for children and continued in-service professional training and/or awareness-raising programmes on children's rights for judicial actors, delivered by the High School of Justice.¹⁵¹

Existing framework: National framework on specialization of all Justice Professionals

In 2015, the Juvenile Justice Code introduced specialization of professionals within the justice system with the standards mainly based on the one-off trainings. The specialization standards include only one-off core training course in juvenile justice and certified professionals are eligible to work with and for children in juvenile justice system.

In 2020, the Code introduced a more comprehensive concept and broader obligations in this regard. In accordance with the Code, all justice professionals (lawyers, prosecutors, police, judges, mediators, social workers, psychologists, etc.) shall meet the standards of selection, pre-service and continuous training, professional development and career advancement, quality control and ethical fitness for working with children.

Findings re existing framework of specialization for all types of proceedings

Feedback from stakeholders reveals that, despite the new law, there is a huge lack of specialized professionals working with children at all stages of justice proceedings.

¹⁴⁷ See, e.g. its 'jurisprudence' which is discussed on the Leiden Children's Rights Observatory: <https://www.universiteitleiden.nl/en/law/institute-of-private-law/child-law/leiden-childrens-rights-observatory>. See also, e.g. General Comment 24, para 39.

¹⁴⁸ General Comment 5, para 53.

¹⁴⁹ General Comment 5, para 53.

¹⁵⁰ Training is considered a general element of child-friendly justice under the CFJG: Part IV, A.

¹⁵¹ Committee on the Rights of the Child: Concluding Observations of Georgia, 2017 CRC/C/GEO/CO/4, para 12.

Selection and recruitment:

- Ineffective selection, recruitment and training of professionals, including a lack of adequate preservice and continuous professional training contribute to the lack of specialized professionals.
- Consultees commented on the importance of selecting the right candidates for the specialization with an interest and good motivation for working with children. The basis of the trainings should be a common vision of specialization for all professionals including judges, psychologists, social workers and others. Thus, the trainings should be multidisciplinary and participatory of all justice professionals. People with no interest and no motivation of working with children should not be selected for specialization.

Ineffective one-off training:

- Many stakeholders noted that the current scheme of specialization is unsatisfactory: it is based on the one-off training course and not sufficient for actual specialization. The one-off training courses do not adequately respond the needs as they are not multi and/or interdisciplinary and not oriented on changing attitudes and behaviours.
- NGOs working in children`s rights emphasize that the current scheme of specialization of professionals does not respond to the needs, as it is one-time and not sufficient for real specialization. Moreover, even this one-off training course leads the professionals in a wrong direction because the legal part pertaining children`s rights is delivered sometimes by lawyer-trainers who have never dealt with children, never represented children, and are not aware of how to build trust and communicate with the child.

Lack of clarity around roles and responsibilities of actors at different stages of justice proceedings:

- Many consultees reflected on the confusion amongst professionals as to their roles in supporting children throughout proceedings.

Communicating with children:

- The children interviewed during consultations stated that adults in the justice system do not listen and trust what the child says. Even when they hear the child, they always check it with adults whether the child said false or truth.
- The Public Defender highlighted that it is necessary to train justice professionals in ethical and child-friendly communication methods. The system of continuous training, qualification and quality control should be developed and established in every agency, which participates in the administration of child-friendly justice.

Addressing mindset and perceptions:

- Consultees noted that training does not contribute significant change in attitudes and behaviour of judges, prosecutors and especially the defence lawyers. It is difficult to change the mind-set of professionals. Some “specialized” professionals should never work with and for children. It`s a huge number of different violations of the child`s rights during the court hearings. The defence lawyers make pressure on children trying to stress them out in benefit of the defendant. In many case, neither judge nor the child victim`s lawyer and nobody else is there to focus on and protect the child. For more on mindset and perceptions, see page 53 below.

Recommendations: improving the current specialization and training scheme

Recommendation 1: Continuous high-quality training

- » **The government must invest in ongoing, continuous training building off existing training. This requires identifying responsible ministries for providing training in different types of justice proceedings and collaboration with civil society and children to ensure training is practical, targeted and effective.**

International and regional standards state that all actors working with and for children should receive

interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them. According to the CRC Committee, actors working with and for children:

- should receive training that aims to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the CRC and to encourage active respect for all its provisions¹⁵²
- should have expertise in matters related to child and adolescent development and psychology¹⁵³
- should receive preparation and support to facilitate children’s effective participation and have skills in listening working jointly with children and engaging children effectively in accordance with their evolving capacities¹⁵⁴
- must be aware of risks to children in certain situations.¹⁵⁵

There should be **periodic evaluation** of the effectiveness of training, reviewing not only knowledge of the Convention and its provisions but also the extent to which it has contributed to developing attitudes and practice which actively promote enjoyment by children of their rights.¹⁵⁶

Training should be both multi-agency as well as tailored to the needs and fields of particular actors working with particular demographics of children. Training should focus on providing practical examples (e.g, case studies). Training should also focus on **how to communicate with children** with a range of needs and from different stages of development.

In **Scotland**, a participatory project exploring how to improve court ordered contact processes for children. The children who took part (who had experienced domestic abuse) felt that it was important that all adults working with children know what makes a SUPER LISTENER.¹⁵⁷



152 General comment 5 para 53.

153 General comment 14 para 94.

154 General comment 12 para 134(g).

155 General comment 12 para 134(h).

156 General comment 5 para 55.

157 <https://www.chscotland.gov.uk/about-us/> . See also [Practice & Procedure manual Dec 2020](#)

High Quality training

Decision-makers conducting *Children's Hearings* in **Scotland** receive a high standard of ongoing training. A Learning Academy with a dedicated 'Practice, Improvement and Learning Team' is responsible for training staff. They work with a range of partner organisations and young people to ensure training is updated regularly & of good quality.¹⁵⁸

Recruiting the right people

Recruitment of those participating in Children's Hearings focuses on candidates qualities of trust, empathy, compassion, listening.¹⁵⁹

Recommendation 2: Invest in long-term capacity building

- » **The shortage of specialized professionals needs to be addressed now by encouraging young professionals in a range of fields (police, psychologists, lawyers, social workers) to ensure children's rights can properly be realised throughout justice proceedings.**

This involves recording data on the numbers of available specialized professionals across all fields (e.g. psychologists, police, prosecutors, judges, lawyers).

The Committee has made it clear that "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 also requires a **commitment to resources and training.**"¹⁶⁰

Recommendation 3: Selection, recruitment and ongoing professional standards

- » **Apply more rigorous and systemic selection and recruitment processes for key actors interacting with children in justice systems.**

Recruitment:

Child's lawyers are subject to rigorous selection processes in New Zealand. Child's lawyers are selected by a multidisciplinary panel (made up of Family Court judge; manager/court coordinator, psychologist and cultural advisor where possible) (application + interview). The judge is to, as far as is practicable, appoint a lawyer who is, by reason of personality, cultural background, training and experience and suitably is considered qualified to represent the child. The judge must also consider lawyer's availability; current workload; distribution of work among lawyers). If successful, lawyers must be mentored by a senior lawyer for 12 months.

Ongoing training and professional development:

Child lawyers require ongoing training to remain on the panel of child lawyers. Lawyers must undertake a minimum of 5 hours child practice and 5 hours continued professional development in specific areas within a fixed timeframe. New lawyers must be mentored for 12 months and a review occurs every 3 years.¹⁶¹

158 <https://www.chscotland.gov.uk/about-us/> . See also [Practice & Procedure manual Dec 2020](#)

159 <https://www.chscotland.gov.uk/volunteering-with-us/>

160 General Comment 12; General Comment 19 para 53.

161 New Zealand Family Court Practice Note 2020, Ministry of Justice: <https://www.justice.govt.nz/assets/Documents/Publications/LawyerforChild-19June2020.pdf> (last accessed 6 May 2021).

Recommendation 4: Clearly define roles and responsibilities in authoritative guidance

Any supplementary guidance (see recommendation 1 under section 3.1) must define the roles and responsibilities of key actors at all stages in different justice systems. Procedures must be enacted to ensure actors systematically receive training to complement their assigned roles and responsibilities.

The FRA has created a useful **checklist** for ensuring professionals apply elements of child-friendly justice throughout judicial proceedings.¹⁶²

Recommendation 5: Ensure all professionals working with and for children are subject to ethical standards and that children have access to, and are informed of, complaints mechanisms should they wish to make a complaint about any professional.

Child Law Advice in the **UK** has outlined the steps for children in justice proceedings to take to make complaints about a judge.¹⁶³

Training should address mindsets and perceptions

Child-friendly justice as a concept requires that actors within justice systems are willing and able to adapt an attitude towards children in the justice system. Child-friendly justice requires that professionals in justice systems embrace a certain mindset towards the role, status and capacity of children in justice proceedings. A level of understanding, adaptability, flexibility and openness is needed to properly respect the place, role, views, rights and needs of the child in proceedings. Most stakeholders consulted during this project, reflected on the need for 'values', 'attitudes' or 'perceptions' of key actors in the justice system towards children to change.

The table below presents common perceptions towards children in tension with child-friendly justice, the column on the right-hand side presents remedies for these perceptions.

Mindset	Remedy
<p>Adults can protect children's rights and interests.</p> <p>Children therefore do not need</p> <ul style="list-style-type: none">■ Legal capacity■ To be heard■ Access to independent representation <p>Parents, other family members or legal guardians can protect their interests for them.</p>	<ul style="list-style-type: none">■ This disregards children's status as rights holders under international human and children's rights law <p><i>See, for example, Articles 5, 12 and 18 of the CRC and General Comment 12, Guidelines on Child-Friendly Justice.</i></p>
<p>Children are too easily manipulated or pressured (e.g. by family) to change their views and wishes.</p> <p>Children therefore should not be heard at all.</p>	<ul style="list-style-type: none">■ This needs attention (parental alienation, being heard 'freely') <p><i>See: General Comment 12, A Daly (2011) The right of children to be heard in civil proceedings and the emerging law of the European Court of Human Rights, C. v. Finland, No 18249/02</i></p>

¹⁶² <https://fra.europa.eu/en/publication/2018/child-friendly-justice-checklist-professionals>

¹⁶³ <https://childlawadvice.org.uk/information-pages/complaining-about-a-court-or-a-judge/> (last accessed 6 May 2021)

<p>Justice proceedings are too complicated and stressful for children.</p> <p>Children are incompetent and insufficiently resilient to participate in them.</p>	<ul style="list-style-type: none"> ■ Instead of disregarding children’s right to participate in justice proceedings, children should be adequately assisted and guided by legal and other appropriate assistants and information for and (legal) empowerment of children is critical here as well; <p><i>General Comment 12; OHCHR, 2013 on Access to Justice: Legal empowerment</i></p>
<p>Children’s rights may undermine parental rights during proceedings (and should therefore not be considered)</p>	<ul style="list-style-type: none"> ■ This is the result of a fundamental flaw in the understanding of children’s rights and should be addressed by education and training building on the notion that parents and family have an essential role and responsibility for the upbringing of children as well as for their enjoyment of rights (Art. 18 and 5 CRC); ■ the State should support parents in this regard (Art. 18 (2) CRC). ■ Only if the best interests of the child are at stake, the state may intervene at the cost of the position of parents – the jurisprudence of the European Court however has made it very clear that such a decision may not be taken lightly and that the position of parents must be protected against unlawful or arbitrary State intervention; <p><i>ECtHR, Strand Lobben v Norway, No 37283/13, 10 September 2019 [222-223].</i></p>
<p>Older children in conflict with the law should be treated like adults, not children</p>	<ul style="list-style-type: none"> - This perception disregards the right of every person under the age of 18 to be treated as children entitled to the full protection of the CRC and all the related international and European legal standards; and <p>See CRC Art 40, the Committee on the Rights of the Child General Comment 10, General Comment 24</p>
<p><i>The Code</i> might never be properly implemented in practice ¹⁶⁴</p>	<ul style="list-style-type: none"> - Skepticism or criticism is often expressed in response to the lack of implementation of legislation. The significance of having a Code like this and its potential should not be underestimated. It provides an essential element of children’s rights implementation and is critical for systemic and sustainable change. - Law does matter and bring standards closer, which has the potential of contributing to a great acceptance of children’s rights norms, among professionals, parents and others responsible for children and the wider public. Having said this, everyone must be reminded that developing legislation is not enough. Much more needs to be done to really improve justice systems for children. <p><i>On implementation generally, see General Comment 5 and General Comment 19</i></p>

Specialization and training of key actors in justice proceedings

The above recommendations are applicable to all of the key actors identified below. This section identifies key issues and proposes recommendations concerning the specialization and training of specific key actors in justice proceedings.

1.1 Training and specialization of judges and magistrates

Basis in international law and standards

The CRC Committee, in its periodic reports, also comments on aspects of training, including specialist training of its judiciary, which it considers essential if all children are to enjoy their rights.¹⁶⁵

The Guidelines on child-friendly justice encourage states to consider establishing a system of specialized judges for children and to further develop courts in which both legal and social measures can be taken in favour of children and their families.¹⁶⁶

Existing framework

- The High Council of Justice is the body responsible for organising qualification exams and selection of judges. The High School of Justice provides professional trainings for judges, as well as their assistants and other court staff.

Findings: training and specialization of judges

- The extent to which judges in Georgia are specialized in children's rights in civil and administrative matters is limited.
- In general, judges specialise in either criminal, civil or administrative law. In relation to matters affecting or about children, judges may further specialise in areas such as family disputes, juvenile justice and civil and administrative matters involving children. However, such 'specialization' for civil and administrative law merely requires attendance at a single training session,¹⁶⁷ so the extent to which these judges are truly specialized in children's matters is questionable.
- "Specialization" for judges, as for other professionals does not carry nature of actual specialization as they receive 5-day training course once in their career. With the adoption of the Code, a number of cases with participation of children and need for more meaningful specialization will go in rise owing to the introduction of child-friendly justice concept in all areas of law and all types of judicial proceedings.
- One consultee reported that those judges that have received additional trainings from UNICEF have changed in that they have become more sensitive to children during proceedings, for example, they let a child sit in judges chair and take off formal judges robes that may be intimidating to children.
- A huge problem with values. For example, according to some child rights defenders some judges interviewed the child in front of the abusive parents.

Recommendations: trained judges (nb. Specialization of judges is discussed below)

- » Training for judges should incorporate practical examples of incorporating best interests and right to be heard in the court room. Moreover, the specialization trainings should be interdisciplinary/multidisciplinary with participation of different stakeholders to share experiences and learn methods and skills for multidisciplinary approaches in practice.
- » Training should recognise that courts are to have due regard to the authoritative interpretations provided by the UN Committee on the Rights of the Child (General Comments, Concluding Observations for Georgia, and decisions under the Third Optional Protocol on a Communications Procedure).

¹⁶⁵ General Comment 5, para 5.

¹⁶⁶ CFJG Part V(f), p 33.

¹⁶⁷ The Decree #8 of the High Council of Justice (issued on 11.09.2020) provides topics for trainings.

In New York State the Courts developed a Guide of Tools for Engaging Children in their Court proceedings for judges, advocates and child welfare professionals.

The Guide includes inputs from children, insights from psychological development and recommendations for communicating with children of certain age groups (5-8 year olds; 11 year olds; 12-15 year olds; 16-20 year olds).¹⁶⁸

Introducing specialized Children's Courts or a specialized division of judges?

International law

The Guidelines on child-friendly justice 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 specialized units within the police, the judiciary, the court system and the prosecutor's office.¹⁶⁹

National law

The Law on Common Courts provides a possibility to create specialized courts.¹⁷⁰ The High Council of Justice is the body that would be responsible for doing so. In the field of civil and administrative justice, no specialized children's courts exist except one chamber on family disputes at the Tbilisi City Court.

Feedback from consultations

Many consultees commented on the fact that no Children's Court exists in Georgia dedicated to child justice issues, nor are any magistrates or judges hearing only cases pertaining to children. There is no specialized family or children's courts in Georgia for hearing only family matters, except the chamber on family law cases in the Tbilisi City Court (which also reviews matters not involving children). The Tbilisi Court (partly adapted) and also the Court in Rustavi City also have child-friendly spaces for interviewing children involved in the judicial proceedings, but this is not replicated in other regions of Georgia. Some judges specialize in juvenile justice, although these judges also hear cases concerning adult matters as well.

A majority of the stakeholders find it extremely important to have specialized units in the judiciary and in any other agencies (police, legal aid, lawyers, psychologists) involved in the administration of the child-friendly justice (the introduction of specialized police divisions is discussed under the section on police below).

There are a number of arguments that can be made for and against the introduction of separate, specialized courts.

Arguments against introducing specialized courts:

- » Treating children's rights as a specialized issue implies it is not everyone's responsibility
- » Some consultees do not believe this to be a feasible or realistic option given the low numbers of cases involving children. (In the context of juvenile justice, efforts were made to introduce a separate court in 2009 but it was not feasible. One Judge pointed to the fact this Court would have to hear all 3 instances.)

168 <https://www.nycourts.gov/ip/justiceforchildren/PDF/PJCJC%20Handbook%20-%20Encouraging%20Child%20in%20Court.pdf>

169 CFJG Part IV, D, para 60.

170 The Law on Common Courts, art. 2.2¹

- » There is an overlap between matters involving children and adults, for example, juvenile witnesses can also be involved in adult cases
- » Given most efforts to enhance child-friendly justice have been made in Tbilisi and other larger cities in Georgia, introducing a specialized court in a large city may enhance the discrepancies for children in regional and remote areas in accessing justice.

Arguments for introducing a separate and specialized court:

- » This sends a strong message that matters involving children's require special attention
- » Enables judges committed to working with children to access ongoing training and specialization and share best practices
- » Enables judges to devote more time on each case, allowing them to exercise patience and communicate carefully with children during proceedings
- » Now that the Code is adopted, child-friendly approaches in the justice system are mandatory and strong links are established between justice and child protection systems. This will with high probability increase a number of cases of children and, it would be strongly advisable to direct efforts and investments into establishing specialized court chambers/units.

Recommendations: specialized judges

There is a need to start discussions and moving forward to create specialized courts or court chambers with the fully specialized judges working primarily on children's cases. Such court chambers might have a profile of working on children's cases inclusively all related areas of justice (juvenile justice, civil and administrative including violence, divorce etc.) to strengthen stronger interactions between justice and child protection systems and disciplinary work/approaches of professionals and addressing holistically the needs of children within justice system.

Short-medium term

- » **Develop a systematic way of ensuring that every institution engaging with children in justice systems adopt a child specific approach towards children. This includes investing in adapted infrastructure and facilities that are child sensitive. This could include separate courts for families and children bearing in mind challenges to geographical reach, availability of human resources etc.**
- » **One possibility is to have a specialist division of trained judges & magistrates available for circuits to travel to courts in other regions for 'Children's hearing days'. Ensure the same judges hearing each matter. This must not create unnecessary delay if regional areas have to wait for children's hearing day.**

In the state of Victoria, Australia, Magistrates specialized in matters concerning children considered to be at risk and in need of protection attend 'Marram-Ngala Ganbu' court days. These days are devoted specifically for cases involving Indigenous Australian children considered to be at risk of abuse and in need of protection. These days are characterized by the following features:

- » *Fewer cases* (typically 10-12 listed on a Court day, rather than in a mainstream mention court day (typically 30-50))
- » Less cases allow for more time for each case
- » More time gives all participants a better *opportunity to be heard* and enables hearings to be conducted in a way that is *less adversarial and more collaborative*.

Services working with families are also invited to participate in hearings and provide input about families' progress and needs.¹⁷¹

Medium-long term

- » Invest in approximately 4 Children's Courts specifically dedicated to family and criminal matters involving children. These should be managed and run by specialized magistrates, judges and court staff who receive ongoing training.

The Youth Adult Court in Brooklyn, **USA** is a specialized Court that aims to create age-appropriate responses for criminal defendants up to the age of 24.

It initially began as one model, but following its success, this has been replicated. The Court Model contains specialized courtrooms were established in each borough for the cases of 16- and 17-year-olds. Specially-trained judges with an expanded array of dispositional options available to them presided. The goal of the court was two-fold: (1) to connect teenage defendants with services that might enable them to avoid future criminal justice system contact and (2) to avoid the legal and collateral consequences associated with criminal prosecution.

According to a findings from a survey, key factors driving the success of this model are:

- » Strong judicial leadership
- » A mandatory referral process (so young adults are not able to 'opt out' of the Young Adult Court)
- » Training in topics relevant to the adolescent and young adult target population, provided to all interested providers by the Center for Court Innovation; and Prosecutorial buy-in and collaboration.¹⁷²

Separate and specialized Children's Courts exist in many countries including in the Netherlands, France, Australia and Scotland. In **Australia, Victoria** (these are separated into two divisions: one family division matters (concerning children at risk of abuse or in need of protection) and one on children in conflict with the law (juvenile justice).

Scotland's Youth Courts for **juvenile justice** employ some key elements of child-friendly justice including adapted proceedings, non-adversarial environments and the attendance of support persons.

Since 1971, Scotland has pioneered a radical and integrated approach to care and justice for children. The key elements of the **Scottish Children's Hearing Systems** are:

- » The same system deals with children who offend, children who are at risk, abused or neglected (often they are the same children).
- » The focus of the system is on addressing both welfare needs and behaviour, in the context of the family and the community.
- » Cases are screened by an independent public official, the Children's Reporter.
- » Decisions about public intervention are made by a lay tribunal (the Children's Hearing) following round the table dialogue.
- » The courts have specific roles restricted to adjudicating on disputed evidence and hearing appeals.

Recent developments in the system have focussed on:

managing the impact of international human rights obligations so as to maintain the ethos of dialogue at the heart of the system; and improving the effectiveness of services, and of the system as a whole, at addressing youth offending.

International research evidence increasingly demonstrates the necessity of a joined-up approach to the "needs and deeds" of children and young people who are at risk or already offending. Active encouragement with the child and family is also critical to dealing effectively with youth crime and its causes.¹⁷³

¹⁷² <https://www.courtinnovation.org/programs/brooklyn-young-adult-court> ; https://www.courtinnovation.org/sites/default/files/media/documents/2018-03/changing_frame_nyc_young_adult_courts.pdf

¹⁷³ Mr Alan D Miller (Principal Reporter, Scottish Children's Reporter Administration), The Scottish Children's Hearing Systems: An Integrated Approach, in Peter Power, Research Materials for the Children's Court of Victoria -4- Family Division, 4.96, last updated October 2020. Available online: <https://www.childrenscourt.vic.gov.au/research-materials>.

1.2 Training and specialization of lawyers

The UN Basic Principles on the Role of Lawyers require states, professional associations of lawyers and education institutions to ensure that lawyers have appropriate education and training, and that they are also made aware of human rights and fundamental freedoms.¹⁷⁴ Particularly with regard to children, ‘appropriate assistance’ means appropriate according to the circumstances of the case and the needs of the child.¹⁷⁵ In this regard the CRC Committee has addressed the responsibility of states to develop (and evaluate) training and codes of conduct for legal professionals (e.g., lawyers) on how to hear children, and ensure their interests are represented in practice.¹⁷⁶ The Guidelines on child-friendly justice also advocate education and (on-going) training of lawyers representing children. The need for specialized training should also be considered in light of the complexity of international and regional standards, such as the effective use of the relatively new Optional Protocol to the CRC on a communications procedure.

Existing legal framework

- Although the Professional Ethics Code for Lawyers provides general standards of conduct, there is no ethical code or standards for lawyers for working with children.

Findings: specialization of lawyers in practice

- The LAS has more than 200 lawyers specialized in children’s rights. To receive a specialization certificate, the lawyers passed the exams organized by the Georgian Bar Association. They work on other cases as well. It is in the agenda of LAS to create specialized groups of lawyers who will work only on children’s cases.
- There is a lack of effective complaints mechanisms adapted to child clients.
- Lack of standards for lawyers working with children (although a Government Decree, limited in scope)
- Lack of awareness towards the child as a rights holder and fully pledged client. Lawyers mainly discuss representation strategy with the child’s parents
- In specialization trainings on administrative matters involving children, participant lawyers (independent lawyers) were reluctant and passive. They do not take seriously child-friendly justice and related training. They just want to get a certificate to prevent a barrier in working all kinds of cases including matters on children. “It is just ticking the box to be a multi-choice lawyer” (according to child rights defenders/NGOs).
- The Georgian Bar Association lacks effective mechanisms to ensure high ethical standards of lawyers towards children. Even if one files a complaint to the ethics committee of GBA, there is a little chance of due hearing and adequate response to ethical violations (according to interviews with NGOs, child rights defenders). If the lawyer is not sensitive towards children, he/she represents danger to the child in justice proceedings. There are currently ongoing efforts for developing the Ethics Code for lawyers.

Recommendations: improving specialization and training of lawyers

- Recommendations 1-5 at 3.1.3 are particularly important when it comes to the training and specialization of lawyers working with children.
 - » **Training for lawyers should focus on conducting client interviews with children, particularly when children may be victims of violence or be facing trauma. These should also clarify that any lawyers representing children on a best interests basis must still solicit the child’s views.**

174 Art. 9, UN Basic Principles on the Role of Lawyers.

175 General Comment 10 paras 49–50 with regard to article 40(2)(b)(ii) of the CRC.

176 General Comment 10 para 49; General Comment 5 paras. 53 and 55.

The **American Bar Association** standards recognise that lawyers representing children require specialized training, such as in relation to relevant legal standards, communication with children, child development, value of multi-disciplinary input.¹⁷⁷

New Zealand children's lawyers are subject to strict regulation and training standards (discussed above).

Legal Aid in Victoria, **Australia** has developed a useful guide on representing children in child protection proceedings (i.e. children who have been exposed or are potentially at risk of harm from their parents or guardians). This guide addresses topics such as:

- Child participation principles
- Lawyer-child relationship (including preparing to meet the child, first meeting, capacity to instruct, eliciting views and wishes)
- Information gathering and analysis (including role in court, child's attendance at court)
- Confidentiality
- Children's needs (including children from minority groups, children with a disability, LGBTIQ+ children)
- Appeal or review of decisions¹⁷⁸

In the past decade, different on- and off-line materials were developed to enable legal and other professionals to educate and train themselves in assisting children who wish (or need) to have access to justice.

1.3 Training and specialization of psychologists (involved in family and juvenile justice matters)

Existing legal framework

- No laws or any other regulations pertain to the role, training or specialization of psychologists in civil and administrative matters. (In relation to training and specialization of psychologists involved in juvenile justice matters, see below under juvenile justice.)

Findings

- The level of involvement and extent of intervention of a psychologist depends on the personality of a judge. According to the interviews child rights defenders, children often do not receive emotional support during the court hearings. Defense lawyers often ask traumatizing questions to the child victim of sexual violence.
- *Lack of resources:* There are a few psychologists nationwide involved in domestic disputes that is far from sufficient and cannot address even a minimum of needs in the field. Scarcity of clinical psychologists is a serious problem to ensure child-friendly justice processes. Children do not receive any short or long-term psycho-emotional support before, during and/or after justice proceedings. Involvement and extent of intervention of a psychologist depends on an individual judge.
- *Lack of regulations and standards:* The national legislation (including the Juvenile Justice Code, the Code and other laws) is vague about the role and functions of psychologists in general and in particular

¹⁷⁷ American Bar Association Section of Family Law, Standards of Practice for Lawyers Representing Children in Custody Cases, August 2003 (aba Custody Standards) and American Bar Association, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, February 1996 (aba Abuse and Neglect Standards).

¹⁷⁸ <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-representing-children-in-child-protection-proceedings-guide.pdf>

- in child-related justice proceedings. There is no legally binding or recommendatory guidelines on the key aspects of needs assessment and support to the child, extent to their involvement in the proceedings, their rights and duties, etc. There is no extensive study/analysis in this regard.¹⁷⁹

- Privately hired psychologists without proper training are used in justice proceedings relating to children.

Recommendations

- » There is a need to regulate and organize training and specialization of psychologists and recommendations 1-6 above are equally important to the specialization and training of psychologists. The NICHD Protocol¹⁸⁰ for child interviewing and training should be applied.
- » **The role of a psychologist in matters relating to children must be clearly defined in authoritative guidance, and psychologists must be trained in relation to each role for which they are responsible. The responsibilities of psychologists extend before, during and after proceedings and include:**
 - o *Before proceedings:*
 - Assisting investigators in interviewing the child. Some psychologists may be trained as professional interviewers (basic communication skills, studying child interviewing tools and protocols and at a final stage, start practicing, develop and deliver).
 - Assessing whether child should be brought into the court room
 - Identifying any unfavourable influences from parents, extended family or others involved in the process
 - Providing assessment reports (especially in domestic disputes) to inform the Judge
 - o *Before and during proceedings*
 - Observing and protecting the child from re-victimization during the justice proceedings. (For example, if the child shows signs of trauma or is too anxious or nervous, the psychologist should intervene and ask the judge to stop questioning and make sure that the trauma is not aggravated.)

In Victoria, **Australia**, a Children's Court Clinic, conducts independent psychological and psychiatric assessments of children and families for the Children's Court.

- In some cases, limited treatment is also provided.
- The Clinic also conducts assessments relating to the impact of drug use on a young person and may make recommendations about appropriate treatment.
- The reports provided by the Clinic are used to assist magistrates in making decisions in both Family Division and Criminal Division cases.

Training and selection:

- Clinicians must have a minimum of 10 years experience in the field.
- A number of the sessional clinicians work at child and adolescent facilities in hospital settings or at university clinics when not engaged at the Clinic. Specialists in small children, in adolescents and in adult clinical work are engaged.

179 PDO 2019 study at 4

180 See: <http://nichdprotocol.com/dutch.pdf>; and: <https://youth.gov/content/nichd-investigative-interview-protocol>

Children are able to participate in any arguments as to whether a matter should be referred to the clinic (through a lawyer directly representing their interests or they themselves may do so directly if they wish to). Children should also get access to these reports (s562(3)(a) of the Child, Youth and Families Act (Vic)) unless the Magistrate considers this would be prejudicial to the development or mental health of the child, the physical or mental health of the parent or the physical or mental health of that person or any other party. Reports are subject to confidentiality provisions.

The Clinic is located next to the Melbourne Children's Court.¹⁸¹

1.4 Social workers (child protection, children's procedural representation (guardian ad litem) in the court)

Findings

According to the State Care Agency, specialization of their social workers and other professionals in judicial proceedings concerning children is a serious challenge. The Government has not yet set relevant standards in this regard.

Recommendations

There is a need to regulate and organize training and specialization of social workers and recommendations 1-6 above apply here. As stated above, social workers (and other actors in justice systems) should not work on the basis of what they consider to be in the child's best interests without hearing the child – they should solicit the views of the child to inform their decision.

1.5 Police

Specialization of police is discussed in part 4 below under juvenile justice proceedings.

2. Specialization and training of key actors across different fields in Georgia

1 Family matters (and other civil and administrative judicial cases involving children)

Existing framework

- As noted, there is no specialized family or children's court in Georgia for hearing only family matters except the chamber on family law cases in the Tbilisi City Court, which reviews family disputes also including matters involving children. In general, the Common Courts review cases of children and family matters on regular basis.
- The *Civil Procedure Code* provides that judges, lawyers, social workers and/or other specialists involved in the civil proceedings on child protection matters are specialized in child communication methods and other related aspects. The Government sets the standards for specialization for professionals and the High Council of Justice provides the specialization standards for judges.¹⁸² The High Council of Justice sets standards of specialization in civil and administrative proceedings are limited to mandatory training.¹⁸³ The list of training topics includes:
 - Code on the Rights of the Child and related legal framework
 - Child rights international standards
 - Child development and age-related characteristics
 - Role of a psychologist in civil and administrative judicial proceedings and administrative proceedings on matters involving children (main spheres and instruments of work of psychologists including with

¹⁸¹ <https://childrenscourt.vic.gov.au/childrens-court-clinic>

¹⁸² Civil Procedure Code, adopted on 14/11/1997; last amended on 05/10/2020; art. 5¹

¹⁸³ Decree №8 (11.09.2020) of the High Council of Justice

children in family disputes)

- Violence against the child and its effects on child development (domestic violence, violence related stress and trauma and its effects on the child, instruments for identification of violence)
- Role of a social worker in civil and administrative judicial proceedings and administrative proceedings on matters involving children (social work as a profession, aims and main fields of social work, tools, instruments and principles for social work practice)
- Child`s needs and factors related to parents/family environment affecting child`s behavior and his/her emotional and physical well-being

Recommendations

Recommendations 1-6 above apply to actors working with children in family matters. **Communicating with and independently hearing children is particularly important in these matters, as is the ability to provide support to children who may be experiencing trauma.**

2. Matters relating to violence (child victims and witnesses)

(See also the section on juvenile justice below)

Existing framework

Code Art 60(3)(c): Specialized training and information for persons working with and for children in education, healthcare, social protection, sports, culture and justice systems, including creation of a safe and non-violent environment for children and change of social norms containing violence.

The High Council of Justice`s training modules for judges (Decree №8) include violence against the child and its negative effects on the child`s development. In particular, main forms of VAC, physical and behavioural indicators of children who experience violence, stress and trauma caused by violence and its effects on child development, as well as psychological aspects related to child victims and witnesses.

Recommendations

Recommendations 1-6 above apply to actors working with children who have been exposed to violence. Communicating with and independently hearing children is equally important in these matters, as is the ability to provide support to children who may be experiencing trauma.

Victims should have procedural standing and legal representation (during all or some stages of proceedings) and be offered to option of engaging in restorative justice procedures as an alternative dispute resolution, if they wish to. Judges and others in the process therefore must be **trained in involving victims in proceedings without creating unrealistic expectations in victims as to what their participation will achieve, while also using caution to avoid unmet expectations and delay which can cause more distress and harm to victims and witnesses.**

3. Administrative (non-judicial) proceedings

Existing framework

The General Administrative Code provides for the mandatory specialization of officials of administrative body participating in the administrative proceedings on children`s rights: an official of an administrative body who is a participant of the administrative proceedings with respect to children`s rights must be specialized in accordance with the specialization standards established by the legislation of Georgia.¹⁸⁴

Findings: Administrative (non-judicial) proceedings

- Trainings and/or any other guidance for the public agencies have not been introduced so far to ensure administrative non-judicial proceedings on all matters affecting child in accordance with the Code and child-friendly approaches.

184 General Administrative Code, art. 75 (2)

- This sector is diverse and includes all areas of contact with children, such as education, healthcare, protection, and family support, access to basic services and goods, adequate living, safe environment and so on. Therefore, the most significant decisions affecting children`s lives actually are made at this level. Thus, it is vitally important to have child-sensitive and child-responsive attitudes, knowledge and skills among employees and decision-makers at the Government Ministries, their subordinate legal entities, other public institutions and local governments (municipalities) to make decisions, which are in line with the child rights and child-friendly justice principles and standards.

Recommendations: training and specialization of actors in administrative proceedings

- » Specific recommendations would include standards for pre and in-service trainings, ethical communication with children (ethics protocols, code of conduct specifically working for children etc.), multidisciplinary work, guidelines for child-friendly justice (best interests, participation and hearing the views, adapted means of communication, access to information, fair and child-friendly administrative processes, environment, trained personnel, access to support etc.)
- » As this is a completely new area to explore and implement, it is highly important to provide at least general principles and guidance for all government/state/public agencies and institutions how to ensure child-friendly approaches and CFJ principles in practice in their administrative non-judicial processes and how to start trainings and specialization initiatives at system level.

4. Juvenile Justice Proceedings: training and specialization

Existing framework

The Juvenile Justice Code¹⁸⁵ states that the following professionals should receive mandatory specialized trainings to be eligible for working with and on children`s cases:

- o Judges
- o Prosecutors
- o Police investigators
- o Lawyers
- o Social workers
- o Mediators
- o Probation officers
- o Victim and Witness Coordinators of the Prosecutor`s Office
- o Juvenile Penitentiary facility workers
- o Psychologists involved in the administration of juvenile justice

For these professionals, the Government decree on specialization standards provides below core topics:

- o Justice: Juvenile Justice Code, Juvenile Justice International Standards
- o Psychology: Psychological aspects of anti-social behavior, violence against the child and its negative effects on the child`s development
- o Skills: Protocol on interviewing/interrogation of child victims and witnesses

Similarly, the High Council of Justice issued an ordinance with core topics for mandatory trainings as bellow:¹⁸⁶

- o *Juvenile Justice Code* (new approaches and standards in the legislation on juvenile justice)

¹⁸⁵ See art. 3 (6), 16-21 of the Juvenile Justice Code

¹⁸⁶ Decision of the High Council of Justice (28/12/2015) <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202015/232-2015%20001.pdf>

- o *Juvenile Justice International Standards* (important international standards and norms in the area of juvenile justice)
- o *Psychological aspects of anti-social behavior* (child development, age specific and trauma-related experience and consequences on forming anti-social and delinquent behavior)
- o *Violence against the child and its negative effects on the child`s development* (main forms of VAC, physical and behavioral indicators of children who experience violence, stress and trauma caused by violence and its effects on child development)
- o *Psychological aspects* related to child victims and witnesses

Training and specialization of police

Existing framework

- According to the Ministry of Internal Affairs, police officers have to undergo a specialized 8-day training course in juvenile justice at the Police Academy and receive a certificate to work in juvenile justice. The Government Decree¹⁸⁷ sets the specialization standards for all professionals, including police. Since 2015, MIA Police Academy has granted specialization in juvenile justice to 1532 police officers.
- The Police Academy is the official training institution of the Ministry, which provides formal education programmes and trainings for police detectives, investigators and other police officers, including specialized training programme in juvenile justice.
- In 2020, the MIA created a specialized police division on children`s cases, including on VAC. They are planning to expand this practice to other regions as well

Findings: police specialization in practice

Responses during consultations and insights from national experts reveal the following:

- According to child rights defenders, there is a huge lack of child friendly environment/spaces, knowledge and skills in child-friendly justice approaches in police stations.
- Police investigators do not feel comfortable interrogating or interviewing children. Police investigators are not able to build rapport with children. Instead, they often ask inadequate/traumatizing questions, especially victims of sexual violence. Investigators feel awkward in communicating with children.
- Interrogations during night hours and long hours is problematic and some police adopt the attitude that it is best to be 'tough'
- There is a lack of specialized investigators who are prepared, committed and aware of applying child-friendly justice approaches in practice. Specialized investigators have big workloads.
- Practices of police work in general are not adapted to child-friendly justice standards (for example, even when the victim is a child, several police officers usually appear on the crime scene heavily equipped and take the child in the police car – sometimes without social workers (as they fail to appear on time). In such unaddressed and non-sensitive system of police, it is hard to ensure child-friendly approaches and environment).

CHILD INTERVIEWS

As mentioned above, the consulted children expressed distrust towards police and mentioned that police people do not know how to talk to and treat children.

Interviewing children should be a priority issue as there are no specific standards and/or regulations for child-friendly and ethical interviewing children. Generally police investigators interview children. On daily basis, they encounter cases of drastically diverse profiles, for example, they interrogate adults accused in robbery and the next moment they might have to speak with a child. Psychologists highlight that it is extremely difficult to swap from one mindset to another. At the same time, police investigators are not aware

187 Government Decree #668 on Specialization Standards for Persons Administering or Participating in the Juvenile Justice Proceedings,

of the role of a psychologist and sometimes ask them to do their work (meaning – to obtain information/ evidence from the child). There are very few trained professional child interviewers, not enough – one can count the total on one hand and often they are unavailable because they usually have other day jobs.

Integrated Psycho-Social Service Center

- The Psycho-Social Service Center in Tbilisi provides integrated services for child victims of sexual violence, including investigative interviewing and its audio-video records as evidence, forensic examination and psycho-social support and rehabilitation services.
- The concept of this psycho-social service center is based on multidisciplinary approach and serves the prevention of secondary victimization of children in justice proceedings and administration of justice as well. However, currently, the Center serves only child victims/witness of sexual crimes/ violence and there are several challenges which need to be addressed in terms of admitting the audio-video records of child interviews as evidence in chief, ensure child-friendly environment with attendance of procedural parties behind the screen, conducting interviews by a specialized interviewer, and expansion of the services to all victims of violence throughout the country.

Prosecutor's office

Since 2015, the Prosecutor's office has trained 269 prosecutors, 25 investigators and 15 victim and witness coordinators in juvenile justice in the standard provided by the Government Decree. Specialized prosecutors work on all types of cases on regular basis and are also eligible to work on children's cases. In 2020, the Prosecutor's office appointed one prosecutor per each of the Divisions in Tbilisi to work on juveniles' cases only. The Key topics for the Specialization training for prosecutors are adjusted their key functions. This is a 5-day course on three key topics: juvenile justice, psychology and methods of communication with children. Specific topics as below:

- ✓ Legal aspects - 3 days: children's rights international instruments, Juvenile Justice Code, discretionary powers of prosecutors, diversion and mediation;
- ✓ Psychological aspects- 2 days: age specific aspects of the child and development issues; anti-social behavior; children and social environment; VAC, related risk factors and consequences, penitentiary stress; interview/interrogation of child victims/witnesses, relevant protocol and child-friendly environment.
- ✓ After the five day training, there is a test comprising of two parts (written test and role-play).
- Training for mid-management and victim and witness coordinators: 3-day training for managers consists of 2 days of legal aspects and 1 day of psychological aspects of children in contact with criminal justice system; 3-day training course for coordinators comprises of one day for legal aspects and two days on psychosocial aspects and emotional support to the child.

Juvenile Penitentiary Institution

Social workers and psychologists working with juveniles in prisons received trainings in 2019-2020 on the topics: restorative justice; instruments for case management and assessment; enhancing skills for participation; motivating interviewing; coping with professional burnout; social work in emergency and post-emergency; time management.

Recommendations: training and specialization of actors in juvenile justice

- Recommendations 1-6 apply equally to the juvenile justice context. A priority issue is investing now in the long-term capacity building of those involved in child interviews and interrogations.
- Support the MIA in the implementation of institutional specialization: identify the number and territorial distribution of specialized police officers based on the assessment of workload, jurisdiction and region-specific aspects; selection of specialized officers based on the pre-defined criteria (motivation, qualification and experience); continuous training and professional development; quality control and monitoring.

- Support the MIA in the development of work instructions, methodological tools and guidelines to address the gaps in the practice of applying child-friendly justice approaches by police offices and investigators.
- Continue to support the MIA to raise awareness of police officers on psychological and legal aspects related to prevention of re-victimization/secondary victimization/maltreatment within justice system against juveniles in conflict with the law and child victims/witnesses and consequences of such acts; also, on the crime prevention works and child-friendly approaches in this regard.
- Amend the Government Decree N°668 (30/12/2015) on Standards of Specialization in Juvenile Justice, which shall reflect all mandatory provisions of institutional specialization as required by the Code on the Rights of the Child. Police need additional training or awareness raising measures on this. Furthermore, it is necessary to address the problems at system level in police to change traditional malpractice and attitudes towards tough treatment and methods towards children.
- Staff working with children in prisons, including penitentiary officers, social workers and psychologists, should receive training on the core elements of child-friendly justice.

INTERVIEWS

Police investigators require specific training on interviewing children. In all cases, whether it is a psychologist or a police investigator, the person who interrogates or interviews the child must have strong knowledge and skills in interviewing children (basic and advanced trainings and working under supervision in the initial stage).

- o If an investigator interviews the child, she/he should go under the same selection and training as a psychologist interviewer.

The UNODC, together with UNICEF, has created a Training Programme on the **Treatment of Child Victims and Child Witnesses of Crime for Law Enforcement Officials** which provides useful recommendations for interviewing victims, as well as practical training documents including case studies and practice interviews.¹⁸⁸

Selection and recruitment of the right types of decision-makers

Practitioners participating in the successful **Young Adult Court** model in the **USA** (discussed above) recommend that only judges suited to the work be selected to work in these specialized courts.

Practitioners felt that awareness of and openness to considering the impact of sociological issues facing many defendants (i.e., poverty; interpersonal, intergenerational and community trauma; education and employment challenges), genuine belief in the goals of the part, and willingness to be empathetic and encouraging to defendants were all paramount.¹⁸⁹

¹⁸⁸ UNODC, UNICEF, Training Programme on the Treatment of Child Victims and Child Witnesses of Crime for Law Enforcement Officials, 2015 New York. See: https://www.unodc.org/documents/justice-and-prison-reform/Training_Programme_on_the_Treatment_of_Child_Victims_and_Child_Witnesses_of_Crime_-_Law_Enforcement.pdf (last accessed 6 May 2021).

¹⁸⁹ See: https://www.courtinnovation.org/sites/default/files/media/documents/2018-03/changing_frame_nyc_young_adult_courts.pdf (last accessed 6 May 2021).

3.2.3. Effective participation and the right to be heard during proceedings

This section also relates to the right to information (3.1.1) and the right to be heard before proceedings (3.1.2).

Why is effective participation during proceedings important?

Refer to 3.1.2 above.

During justice proceedings, the environment and atmosphere must be enabling and encouraging to convey to the child that the decision-maker is willing to listen and seriously consider the child's views. Interactions with children during proceedings should have the format of a talk, rather than a one-sided examination.¹⁹⁰

During and after proceedings, the decision maker must give due weight to the child's views. This implies that the child receives clarification and feedback from the decision-maker as to how they have taken the child's input into account and to what extent this has affected their decision.¹⁹¹ Clarification is particularly prompted in case the child's views have not been followed.¹⁹²

The need for effective participation during proceedings: basis in international law?

Refer to section 3.1.2 above.

Existing framework: effective participation in all types of proceedings

The Code guarantees the child's right to meaningful participation in all types of proceedings directly and/or through a representative, who may be the legal representative of the child or other procedural representative chosen by the child. Child-friendly justice shall be implemented with primary consideration of the child's best interests and accessible and understandable processes at all stages of justice proceedings.¹⁹³

Furthermore, The Code provides that, in all types of justice proceedings from the point of first contact with the justice system, children should be informed in a way adapted to their maturity of critical issues (for more on this see the section on information (3.1.1)). The Code states that during all types of judicial and non-judicial proceedings, the child shall have the following guarantees:

- o To express his/her views freely and in desired form or means of communication regarding the matter at any stage of hearing on the case;
- o To ensure that the right of the child to be heard is not restricted by reference to age or other circumstances;
- o A child with disabilities shall receive relevant support in expressing his/her views;
- o To express his/her views freely from influence of an administrative body or other third parties;
- o The process of interviewing with the child shall not take a form of examination. It shall take place in a friendly environment, in a form of free dialogue. The dialogue should be supportive rather than contentious.¹⁹⁴

Although the Code removes all age and other barriers for children and provides guarantees for their autonomy in addressing and participating in any type of justice processes, existing civil and administrative procedural laws are in tension with the Code as they maintain dependence of children on adults and conflicting restrictions on access to justice forums and mechanisms. Exceptionally, the Civil Code¹⁹⁵ and Civil Procedure Code¹⁹⁶ provide the right of the child to protection, however, with a restriction of choosing a procedural representative in own name. Instead, the child should agree to have a mandatory procedural representation by the State Care Agency, appointed by the court.

190 General Comment 12, para 43.

191 General Comment 12, para. 45. See also UN High Commissioner, 2013: para. 51.

192 CFJG Part IV, D: para 49.

193 The Code, arts 74-75.

194 The Code, art. 78.

195 Civil Code, Art. 1198¹.

196 Civil Procedure Code, art. 81¹.

All types of Justice Proceedings: findings and recommendations on effective participation

- According to the Public Defender, children can express their views during the hearings; however, Judges are passive in supporting their meaningful participation. In 25% of the cases, judges did not ask children whether they agreed their lawyers or not and if they had anything to add.¹⁹⁷ Children are often too nervous or anxious to participate meaningfully in proceedings.
- Judges are keen on discussing and gaining more knowledge on the aspects of child participation and right to be heard from international best practices, including also matters on protection of the property rights of the child.
- According to LAS, during communication with the child, the lawyers consider the child's age and adequate forms of communication. Children also find online communication easy. First of all, lawyers ask questions to children about their hobbies and interests. After establishing trust, lawyers start conversation on the main topic. They state "however, it is problematic when the child is over the age of 14 and already has independent views and the defence strategy cannot be sharply different from his/her views". Furthermore, they find it difficult to help children in appealing the judgements of the first instance court due to influence of parents. This opinion is noteworthy as demonstrating the needs for enhancing knowledge and skills in communication with children and more importantly, the need to raise awareness of lawyers and address ambiguities on whose interests they should actually represent.

Recommendations: hearing children in all types of proceedings

- » **During justice proceedings, judges and other decision-makers 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.**
- » **Legislative guidance should clearly state that, during proceedings, all measures to ensure that children are included in the judicial proceedings is the responsibility of the judge or decision-maker, who should verify that the child has been effectively included in the process, should they wish to be, and are absent only when children themselves have declined to participate or are of such maturity and understanding that their involvement is not possible. Statutory provisions or procedural guidance on the right to be heard should be specific to type of proceeding and field (family, juvenile justice, violence) so that particular challenges in each field can be addressed to ensure the child can participate effectively.**

Legislative guidance and judges should allow children choice as to modality of heard – if want to be heard in the first place, present with options such as one-on-one conversation with a Judge.¹⁹⁸

Hearing the child in Family matters

Although *the Code* provides high standards concerning the child's rights to independently apply available justice mechanisms and fully participate in the justice proceedings in a friendly environment, the civil procedural legislation including on family matters is still conflicting with *the Code* in this regard.

While *the Code* does not recognize any age barriers, under the *Civil Procedure Code*, children under seven have no guarantees for the right to participate in judicial proceeding and this group of children therefore rely upon their parents or a judge to involve them in proceedings. Children aged 7-18 are represented in the court by their parents or caregivers, and the court is obliged to involve the children in such proceedings (see also the section on representation above at 3.2.2).

¹⁹⁷ Public Defender (Ombudsman) of Georgia, study "Protection of procedural rights of juvenile defendants, witnesses and victims in criminal justice" (2019) <https://www.ombudsman.ge/eng/spetsialuri-angarishebi/siskhlis-samartlis-martlmsajulebis-sferoshi-arasrultslovan-braldebulta-motsmeta-da-dazaralebulta-saprotseso-uflebebis-datsva?fbclid=IwAR3aN6qf7F-1PfH6WQQdnplqJ6lb1y1b8LqEjLnUZNELit-MGLzajfKy-dw>

¹⁹⁸ CFJG para 44, p 28. Children should be consulted on the manner in which they wish to be heard.

Findings

- Judges consulted for this project hearing divorce cases stated they try to listen to the child away from parents but there is no clear authoritative guidance requiring them to do so. In such cases, the judge asks everyone to leave the courtroom and talks to the child. Many judges believe what the child says should be confidential if the child wishes so, however, it is not because the judge should use the testimony of the child as evidence. Therefore, the judge should clarify with the child that whatever she/he says cannot be confidential and other parties will learn it after the interview. In case of recording, the child should also be preliminary informed to have his/her consent. Attendance of psychologist always a good idea. They help judges in decision-making and see important details which may not come under the judge's attention.
- Judges emphasize the need for receiving more training and developing skills in the aspects of child participation and views to be heard. In their opinion, it would be helpful for judges to have guidance notes or guidelines on the aspects and practical tools for the realization of the child's right to be heard in the civil and administrative judicial proceedings.
- Key barriers in hearing the views of the child and promote his/her meaningful participation are mainly their parents (sometimes extended family as well) who are not interested in their child's emotional well-being rather retaliation on each other and using the child as a weapon. They often manipulate with child, negatively train them which is detrimental to the child's best interest so in practice it is impossible to hear child free of any influence (especially those under 12 or 13). Once their teenagers they might already be able to judge and better understand the situation. To address the issues with parents, it is important to set up early intervention programmes for support positive parenting skills.

Recommendations

- » **Children should be asked on the manner in which they prefer to be heard in proceedings relating to family matters. This means their legal representative should consult with them about this, as well as matters which the child wishes to remain confidential, before proceedings commence.**
Involvement of psychologists to support children throughout justice proceedings is beneficial, however the psychologist must not act as a gatekeeper determining whether or not the child has an opportunity to participate– this is a right for the child to decide to claim for themselves, with the assistance of an independent adult, preferable a lawyer. It is then up to the judge to decide how much weight to then place on the child's views, which is an assessment a psychologist may also be able to provide guidance on.
- » **Authoritative guidance outlining how and when judges are to hear children in family matters must be developed, accompanied by practical training.**

The new Code eliminates age barriers meaning judges and decision-makers should make assessments based on the evolving capacities and maturity of the individual child involved in the case, **and not arbitrarily and categorically exclude children from being meaningfully involved in decisions based on their age.**

In **A.B. v Finland**¹⁹⁹ the Committee on the Rights of the Child was critical of Finland for not hearing the child who was four years old upon the family's arrival to Finland and six at the time of the Immigration Service's decision in making a best interests assessment of the child.

In abduction proceedings in **the Netherlands** children from the age of three have an opportunity to express their views to a mediator trained in child psychology who will represent the child in a mediation with the parents.

199 A.B. v Finland CRC/C/86/D/51/2018 paras 12.2, 12.4: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/FIN/CRC_C_86_D_51_2018_32344_E.pdf. See also: M. Sormunen, Communication 51/2018: A.B. v. Finland, Leiden Children's Rights Observatory, Case Note 2021/4, 7 May 2021: <https://www.childrensrightsobservatory.nl/case-notes/casenote2021-4#findings>

Children from the age of 6 are given the opportunity to speak with the judge behind closed doors, and judges receive training on speaking with children and may be provided with assistance from the professional psychologist. Although this example imposes fixed age limits, it is important to ensure an individualized assessment of a child to assess their maturity and evolving capacities is undertaken so that children are not categorically excluded from being involved in proceedings on the basis of their age.

Hearing the child in Administrative proceedings

Administrative proceedings are less formal, more flexible and relatively easy to establish through law as opposed to judicial proceedings. This means the rate at which children may be involved in administrative proceedings is potentially very high, although data on exact numbers is lacking.

Existing framework

Parties to administrative proceedings have the right to express their own opinions. It is inadmissible to restrict the right of a child to be heard on the ground of his/her age or any other circumstances. A child must have an opportunity to express his/her own views in his/her desirable form.²⁰⁰ However, the administrative procedural legislation fosters same restrictions of the child's legal capacity as in the civil proceedings. The textbox below provides a concrete example of how children involved in administrative proceedings struggle to have their right to be heard upheld during proceedings.

Administrative proceedings concerning children: institutionalization in Juvenile Referral Facilities

In Georgia, decisions made through administrative proceedings occurring both inside or outside of court rooms can determine whether children are sent to the semi-closed educational facility.²⁰¹

Before the administrative judicial proceedings, the decision on sending the child to the facility is made by the Juvenile Referral Center (Ministry of Justice) through administrative non-judicial proceedings. The matter is only sent to court if the child's legal representative does not support the decision. The court's role is to review and approve the decision of the mentioned administrative body in the event the child's representative.

Without Court involvement

The Law on General Education provides administrative proceedings of the Specialists' Group of the Juvenile Referral Center (under the Ministry of Justice) to review the referral of the child with difficult behaviour to Juvenile Referral Facility (the semi-closed boarding school).²⁰² If the Referral Center takes a decision on referring the child to the facility, it will send the decision to the court for approval. However, if the legal representative of the child supports the decision, there is no obligation for the Referral Center to submit the decision for the court's approval²⁰³.

200 General Administrative Code, art. 98

201 The only semi-closed juvenile facility (boarding school) situated in Samtredia, Imereti Region was closed down in May, 2021, however, the Government Decree still keeps the provisions on sending juveniles with difficult behaviour to the semi-closed educational facility under the Ministry of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Protection, see the art. 2 "N" and art. 15 (transitory provisions on closure of the existing facility) <https://matsne.gov.ge/ka/document/view/4765155?publication=0>

202 Law on General Education, art. 48⁷- 48⁹

203 Law on General Education, art. 48⁷(11)

With Court involvement

The court reviews a petition of the Juvenile Referral Center on sending a child with difficult behavior to the juvenile referral facility (semi-closed boarding school) ²⁰⁴. The procedures imply the bellow:

- In the review of the case, the judge considers individual assessment of the child and other documents proving his/her complex behavior and/or a crime allegedly committed by the child with other additional circumstances (MACR, degree of committed act, etc.).
- A parent or other legal guardian represent the child in the court proceedings. If the child has no legal representative, the court invites a procedural representative of the State Care Agency.
- The child can refuse giving explanation to the court and demand a lawyer or presence of a parent or other legal guardian.
- The mentioned guarantees are limited and restrict the child`s rights to participation, views to be heard and autonomy of choosing a representative in own name.

Findings

Under the Law on General Education, if a child`s legal representative supports the decision to send a child to the Juvenile Referral Facility, this will be done without the child being provided with an opportunity to be heard or to provide consent, and without any court oversight. This contradicts the Code as it deprives the child from the right to appeal the decision concerning his/her rights. This example clearly shows general attitudes and practices in all other administrative bodies and non-judicial administrative processes.

Recommendations: Administrative justice and hearing the child

- » **Administrative proceedings must be child-friendly and accessible to children.**
- » **Georgia must develop administrative procedures in legislation reflecting the requirements of Article 12 CRC and the Code to ensure the child`s right to be heard along with other procedural rights such as the right to request review, appeal and receive reparation when their rights are violated in administrative proceedings**

Hearing the child in evidence and witness statements in proceedings concerning violence

Existing legal framework

The Civil Procedure Code provides that when witnesses under the age of 14 are examined, a teacher of the witness, and if necessary, the witness`s parents, adoptive parents, guardians or custodians may also attend. These persons may also attend the examination of witnesses aged between 14 and 18 at the court`s discretion. These persons may pose questions to the witness with the permission of the court. If it is necessary for obtaining an accurate and sincere testimony of the child, the court may ask either of the parties to leave the courtroom. After returning, the party shall be informed of the child`s testimony and given an opportunity to ask him/her questions. A witness who has not attained the age of 16 shall leave the courtroom after the examination is over, except when the court finds it necessary for a witness to stay in the courtroom. ²⁰⁵

204 Art. 21³⁵-21³⁸

205 Civil Procedure Code, art. 152

Findings

- There is often high risks of manipulation and psychological violence against children from parents during family conflicts. In these cases, children's views and facts of possible violence or negative influence is overlooked. There is a lack of intervention of competent authorities working with parents in terms of changing attitudes and raising awareness (according to PDO).
- An important challenge for the judge is to examine whether the views are those of the child's own expressed in a free environment or under influence or coercion.
- There is a lack of effective mechanisms to protect children from violence in the family and in the alternative care services. Children often prefer not to speak up and report violence because of fear of stigma and distrust towards the justice system. The justice system largely overlooks incidents of domestic violence, unless the child has visible signs of abuse, such as bruises and physical injuries. Besides high profile cases of heavy violence, sometimes resulted in death of the victim, usually no measures are taken (according to PDO and child rights defenders).

Recommendations

Evidence and witness statements by child victims of violence should as far as possible be carried out by trained professionals and 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.²⁰⁶

It is important to understand that the right of the child to be heard also implies the right to refuse expressing views. It means that we should not force children to appear before the court.

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.²⁰⁷ 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 re-victimisation and secondary trauma.²⁰⁸ Any adaptations should not affect the guarantees of the right to a defence; however, some elements of the rules on evidence may be adapted to avoid additional trauma for children.²⁰⁹ 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.²¹⁰

Interviewing victims in *X and others v Bulgaria*

The European Court of Human Rights was critical of the failure of Bulgarian authorities for not properly involve the child victims in an investigation concerning allegations of sexual abuse in an orphanage (§208). The Court relied heavily on the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the '*Lanzarote Convention*').

The Court was critical of the following points:

- the children were not interviewed in a way adapted to their age and level of maturity (§211);
- interviews were not video-recorded; and one child had to be interviewed twice (contrary to what the Lanzarote Convention calls for in Article 35(1)&(2))
- the authorities failed to follow certain lines of inquiry: so no attempt was made to (assess the need to) interview the applicants and their parents (§215) and to put measures in place to assist and support the applicants (§216)²¹¹

206 CFJG Guidelines paras 64, 47.

207 CFJG para 128 on p 88.

208 CFJG para 128 on p 88.

209 CFJG para 128 on p 88.

210 CFJG para130 p88.

211 European Court of Human Rights, *X and others v Bulgaria*, 2 February 2021, Application no. 22457/16. Judgment online at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-207953%22%7D> (last accessed 6 May 2021).

The UN has created a Training Programme on the **Treatment of Child Victims and Child Witnesses of Crime for Law Enforcement Officials** which provides useful recommendations for interviewing child witnesses and victims in a sensitive manner, as well as practical training resources²¹²

DOs:

- ✓ The interview should be carried out by specially trained professionals.
- ✓ If video recording is to be done, check that all technical equipment is working properly before the interview is started.
- ✓ Inform the child about the interview process and how the video record is to be used.
- ✓ Always use a three-phased structure for the interview.
- ✓ Seek the consent of the child and the child's parent or guardian to conduct the interview.
- ✓ Explain that the interview is NOT an interrogation.
- ✓ Create a safe and non-threatening environment. The interview room should be made as child-sensitive as possible.
- ✓ The content of the interview should be strictly confidential.
- ✓ The purpose of interview is to gather facts and evidence, not to counsel the child, but the atmosphere of the interview must be child-friendly and comforting.
- ✓ Bear in mind all important considerations when asking questions.
- ✓ Be patient and allow the child to take all the time he or she needs to tell you what you want to know.
- ✓ Give the child the opportunity to express himself or herself in a way he or she feels comfortable with.

DON'T's:

- × Do not frequently interrupt the child.
- × Don't show any signs of frustration.
- × Do not repeat the same question. Reformulate the question for further clarification.
- × Do not force the child to speak.
- × Do not threaten that something bad will happen if the child refuses to speak.
- × Don't promise any incentive during the interview.
- × Do not make any promises that cannot be kept. Be honest with the child.

212 UNODC, Training Programme on the Treatment of Child Victims and Child Witnesses of Crime for Law Enforcement Officials. See: https://www.unodc.org/documents/justice-and-prison-reform/Training_Programme_on_the_Treatment_of_Child_Victims_and_Child_Witnesses_of_Crime_-_Law_Enforcement.pdf (last accessed 6 May 2021).

3.2.4. Multidisciplinary approach and cooperation between professionals

Why is a multidisciplinary approach and cooperation between professionals important in matters relating to children?

Incorporating multi-disciplinary approaches throughout justice proceedings can enhance the adaptability of processes and enhance the overall level of child-sensitivity the child experiences and is also necessary to properly assess, for example, the child's developmental, psychological or emotional situation which is relevant to justice proceedings.

Close co-operation between different professionals – with full respect of the child's right to private and family life – 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. Such cooperation should fully respect the child's right to private and family life.²¹³ Co-operation between professionals can:

- Ensure the child is not subject to excessive interventions (e.g. too much assistance, too many professionals, too many interviews, which in the case of child victims can lead to revictimization)
- Ensure the child receives appropriate multidisciplinary assistance
- Prevent delay in justice proceedings, (see also section (3.2.6) on preventing delay).

Grounding in international law

The Guidelines of child friendly justice state that, “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. 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. While implementing a multidisciplinary approach, professional rules on confidentiality should be respected.”²¹⁴

A multidisciplinary approach is also endorsed by the Committee on the rights of the child, particularly in relation to making best interests assessments (discussed further in section 3.2.6).²¹⁵

Existing national legal framework regarding multidisciplinary approaches: all types of justice proceedings

According to the Code, administrative bodies and courts should assess and determine the child's psycho-social, emotional and physical health state and his or her best interests through **multidisciplinary cooperation with specialists of relevant state agencies, invited experts and/or organizations**. Social workers, forensic experts, psychologists, paediatricians, police, prosecutors and lawyers shall carry out joint, multidisciplinary work in the same space to avoid several interviewing and secondary victimization of child victims and witnesses of crime.²¹⁶

Findings

According to the stakeholders, there are some initiatives of cooperation and multidisciplinary approaches during decision-making on matters involving children. In particular:

- o Government Decree on referral procedures for child protection requires all state/public agencies including municipalities to identify and report violence against the child. The referral procedures imply cooperation mainly among police, social workers (State Care Agency), the School Resource Officers and their psychologists, lawyers and etc.

213 CFJG para 16, p 23.

214 CFJG paras 16-18, p 23.

215 See General Comment 14.

216 Code on the Rights of the Child, art. 72

- o The Office of School Resource Officers apply multidisciplinary approach and cooperate with the Ministry of Justice (National Agency for Crime Prevention, Non-Custodial Sentences and Probation, Juvenile Referral Center), Ministry of Internal Affairs (Human Rights Department, community police) and the Agency for State Care.
- o The now abolished State Inspector's Office cooperated with different state agencies and specialists, including child psychologists. In 2020, the State Inspector signed a memorandum of cooperation with the Office of the School Resource Officers, which runs the Psychological Service Center for children.
- o The State Care Agency has memorandum of cooperation with different national and international organizations.

However, NGOs observed that multidisciplinary approaches exist just on paper and do not happen in practice. They claim that psychologist, social workers, judges, lawyers, police and prosecutors are not well aware of their role and priority of the best interests of the child. According to them, justice professionals have general understanding of multidisciplinary work, however, actually do not own relevant knowledge and skills how to implement it in practice for the best interests of the child. Furthermore, multidisciplinary work approaches are not included in the specialization training curricula.

Multidisciplinary cooperation in family matters

Existing framework

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 ²¹⁷.

The Civil Procedure Code (art. 162) provides that if a judge has no specialized knowledge related to the particular matter of the case, the court may initiate invitation of an expert examination at any stage of the hearings. However, in doing so, the judge must justify that she/he cannot make a decision on the case without involvement of the expert.

Findings

- Although the Law on Domestic Violence and the Government Decree provide cooperation among the agencies to protect children from violence, it is not effective in practice and professionals do not actually exercise effective cooperation and referrals. There is not effective institutional model of multidisciplinary approach. The lack of relevant procedures, knowledge and skills in this regard constitute barriers for actual multidisciplinary and holistic assessment of the child's best interests in practice.

Multidisciplinary cooperation in proceedings concerning violence

Existing framework

"The Law on Combatting Violence against Women, Domestic Violence and Protection and Support of Victims of Violence" defines forms of violence against the child (including "neglect") and provides specific protection measures, including separation of the child from parents or other legal guardians. The Law also provides a possibility to separate a perpetrator from the child instead of vice versa. Police issues a restraining order for immediate response on violence incidents, while the court issues protective order to protect long-term protection of the victim as needed.

According to the Code on Administrative Offences, failure to obey the decision of a social worker on the separation of the child from perpetrators is an administrative offence subject to administrative detention up to seven days or corrective works up to one month. ²¹⁸

²¹⁷ General Comment 14, para 64.

²¹⁸ The Code of Administrative Offences, art. 172⁶

Government Decree – Child Protection Referral Procedures

The Government Decree²¹⁹ on child protection implies cooperation among different agencies and professionals to protect children from violence. In particular, the Decree provides:

- o All the State agencies, state and private educational, medical and child-care institutions and municipalities identify violence against a child and inform the Agency for State Care;
- o In case of emergency, all the mentioned bodies must immediately report police, emergency aid and the Agency. All the mentioned agencies shall approve the internal instructions on child protection referrals.
- o The Agency may take a decision on separation of a child from his/her family or any other responsible person in case of violence as a measure of last resort.
- o If the social worker takes a decision on the separation of the child from parents/caregivers, the child moves in the care of available extended family or in the State care (foster care, small group homes) and should receive adequate medical and other services.
- o In case of failure of compliance with the referral obligations, the respective legal entities and natural persons shall be subject to financial sanctions

Findings

PDO reveals key problems related to children in alternative care: lack of multidisciplinary cooperation, delayed or no referrals of cases of VAC, absence of measures of prevention of repeated violence, including severe forms of violence, lack or absence of support and rehabilitation services for child victims. The lack of protection of the children living in the boarding schools and shelters under the religious dominations is still a big problem. They do not have access to family environment, face higher risks of violence, their awareness of their rights is low, and state monitoring is weak.

Multidisciplinary cooperation in juvenile justice proceedings

Existing framework

The Juvenile Justice Code firstly introduced the concept of individual assessment of children in conflict with the law at the stages of diversion, sentencing, individual sentence planning, and release on parole. The Code also provides a guarantee of psychological support for the child during interview/interrogation. Furthermore, for the protection of child victims of sexual exploitation and violence, the Code provides a possibility to submit audio-video records of the child`s testimony to the court instead of repetitive interviews in order to avoid the child`s secondary victimization.²²⁰ The Code on the Rights of the Child broadens the concept and requires multidisciplinary approach in assessing the best interests of the child in the judicial and other proceedings, interviewing the child victims and witnesses in one space, provision of short and long-term support and rehabilitation services.²²¹

According to the Code, art 72(3) on adopting a multidisciplinary approach, to prevent several interviews and secondary victimization of child victims and witnesses, multidisciplinary approach shall be applicable in one space with participation of social workers, forensic experts, medical practitioners, psychologists, paediatricians, police, prosecutors and lawyers.²²²

Findings: Multidisciplinary cooperation at policy level

To promote policy level discussions on the implementation of the Juvenile Justice Code, the Prosecution's Office has specialized prosecutors in juvenile justice. Since 2017, the Prosecutor's Office organizes the local multidisciplinary coordination meetings for the implementation of the Juvenile Justice Code - composed of prosecutors, investigators, judges, attorneys, social workers, mediators, and the representatives of municipalities, educational and penitentiary institutions. Prosecutors (at the court also a judge) can

219 Child Protection Referral Procedures - issued on 12.09.2016

220 Juvenile Justice Code, art. 27, 52 (3).

221 Code on the Rights of the Child, art. 5 (5.c), 72 (2, 3).

222 72 (3) of the Code on the Rights of the Child.

decide on diverting the juvenile from criminal prosecution/proceedings based on the criteria/conditions for diversion.²²³ Furthermore, the Psycho-Social Service Center in Tbilisi provides integrated services for child victims of sexual violence, including investigative interviewing and its audio-video records as evidence, forensic examination and psycho-social support and rehabilitation services.

Recommendations: multidisciplinary cooperation in all types of proceedings

- » **Government Ministries responsible for particular justice proceedings (civil, administrative and juvenile justice) should develop a formalised operational cooperation procedure for professionals working with or for children in different government departments and agencies**

For example, **common frameworks for identifying which professional is responsible** for managing coordination of a matter involving a child, and to provide guidance for these professionals to assess the child's situation before justice proceedings, including through liaising with multidisciplinary agencies or departments. Such frameworks or procedures should ensure a child's right to privacy is upheld at all stages of proceedings.

A multidisciplinary approach to children in conflict with the law should reflect the existing and growing understanding of children's psychology, needs, behaviour and development: this should be shared with professionals in law enforcement fields through training and specialization.

- » The concept of this psycho-social service center is based on multidisciplinary approach and serves the prevention of secondary victimization of children in justice proceedings and administration of justice as well. However, currently, the Center serves only child victims/witness of sexual crimes/violence. There are several challenges which need to be addressed in terms of admitting the audio-video records of child interviews as evidence in chief, ensure child-friendly environment with attendance of procedural parties behind the screen, conducting interviews by a specialized interviewer, and expansion of the services to all victims of violence throughout the country.
- » **Place a legal obligation on the responsible professional to obtain a comprehensive understanding of the child involved in civil or administrative judicial proceedings by assessing his or her legal, psychological, social, emotional, physical and cognitive situation.**
- » **Enhance cooperation with civil society**

As is discussed in part 5 of this report, collaboration between the government and civil society is also important for implementing the core elements of child-friendly justice. In its 2017 Concluding Observations, the Committee, encouraged Georgia to collaborate more actively with civil society, including non-governmental and children's organizations, in the planning, implementation, monitoring and evaluation of policies, plans and programmes related to the Convention and in the promotion of children's rights.²²⁴

In **New Zealand**: the Criminal Procedure (Transfer of Information) Regulations 2013 allow the registrar of a Family Court dealing with a domestic violence proceeding to obtain details of a respondent's criminal record (if any) from a court file, a database or the permanent court record to any criminal proceeding (regulation 7A(1)).

'Reference meetings': In **Australia** the Family Courts occasionally organize multidisciplinary meetings between service providers, NGOs and judges to determine capacity of services. This was judges ensure they only make Court orders that are feasible and are also able to keep records and evaluation of what programs are working.

223 As provided by the Juvenile Justice Code, art. 40 – 42.

224 Concluding Observations of Georgia, 2017, CRC/C/GEO/CO/4 para 13.

3.2.5. Best interests assessments

Why is it important to make best interests assessments?

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 CRC and the holistic development of the child. The Committee points out 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" and that no other right, for example the right to be heard, should be compromised by a negative interpretation of the child's best interests.²²⁵

Basis of best interests principle in international law

The best interests principle is a fundamental value of the CRC.²²⁶ The CRC Committee's General Comment 14 provides detailed guidance on the significance of this principle and states that 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.²²⁷ The Committee underlines that the child's best interests is a threefold concept in that it is a substantive right; a fundamental, interpretative legal principle; and a rule of procedure.²²⁸

Best interests assessments in all types of civil and administrative proceedings

Existing legal framework

According to the Code on the Rights of the Child (art. 81), in making and substantiating decisions concerning children, undertaken by administrative bodies and courts, the best interests of the child shall be a primary consideration. In doing so, the administrative bodies and courts shall substantiate their decisions with the following basic criteria:

- o physical and psychological protection and safety;
- o uninterrupted access to education, health and social care, psychosocial support and rehabilitation;
- o prevention of violence, humiliation and danger;
- o promotion of harmonious development;
- o respect for his/her personality, individual capabilities and interests;
- o views of a child; relationship between a child and his/her parent or other person responsible for his/her care;
- o possibility of maintaining or restoring the relationship of a child with both parents
- o specific measures for prevention of harm to the child during enforcement of the decision if the latter is contrary to the child's views
- o other aspects which directly or indirectly affect the rights of the child and decision-making on the principles of fair trial.

Importantly, the Code states that it is inadmissible to restrict the right of the child referring the protection of the child's best interests.²²⁹

Findings

- According to the Agency for State Care, the primary consideration of the child's best interests is a complex concept which is assessed and determined based on specific circumstances and the child's individual traits. A qualified professional or a group of professionals conducts the assessment based on all the aspects of the rights of the child through relevant procedures. The

225 General Comment 14, para 4.
226 General Comment 14, para 1.
227 General Comment 14, para 13.
228 General Comment 14, para 6.
229 The Code, art. 74

Agency considers the views of the child above 10 years in all cases, while the views of children under 10 are considered taking into account his/her age, health state and level of maturity.

- The Agency is the main state body accountable for care and representation of children`s interests. Therefore, their position and practice approach on the primary consideration of the child`s best interest is especially important.
- The judges find it very helpful and supportive that the Code on the Rights of the Child introduced basic criteria for the substantiation of judgements based on the child`s best interests. It seems that they also need trainings to gain more in-depth knowledge and skills for the implementation of this concept in practice (as they mentioned training course with case reviews and best practice examples).

Recommendations

- » **Legislators, in consultation with civil society and children, develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving them due weight as a primary consideration.**²³⁰
- » **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 properly motivated, justified and explained.**²³¹
- » **Those making best interests decisions need to receive practical and high quality training about how to make best interests decisions, this should also ensure such decision-makers do not over rely on best interest – not a channel through which other rights accessed.**
- » **There is a clear need for enhancing the knowledge and skills of social workers from the Agency in this regard and provide theoretical and practical guidance.**

Providing best interests guidance in certain contexts:

The UNHCR has provided practical guidance for making best interests assessments in the context of migration to provide guidance to provide a practical frame of reference for staff and partners in the field.²³²

The Committee on the Rights of the child has stated that:

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.²³³

230 The Committee made a similar recommendation in its 2017 Concluding Observations of Georgia, CRC/C/GEO/CO/4 para 16.

231 General Comment 14 para 97.

232 UN High Commissioner for Refugees (UNHCR), Guidelines on Assessing and Determining the Best Interests of the Child, November 2018 available at: <https://alliancecpha.org/en/child-protection-online-library/guidelines-assessing-and-determining-best-interests-child-2018>

233 General Comment 12 para 74.

Best interests assessments in family matters, matters concerning violence and administrative (non-judicial) matters

Existing legal framework

Article 81(3) of the Code sets out criteria to be considered for best interests assessments although this is not specific to family matters.²³⁴

According to the Civil Procedure Code²³⁵, when delivering a judgement, the court shall evaluate the evidence and determine which circumstances that are essential to the case have been established and which have not yet been established; the court shall also establish which law is to be applied for the case at hand and whether a claim is to be satisfied. The decision shall be composed of introductory, descriptive, reasoning and operative parts.

Findings

Judges reported difficulties in making best interests assessments due to the unclear criteria and lack of guidance or experience in making such assessments.

Recommendations

Extend Article 81(3) assessments to administrative proceedings. Ensure availability of psychologists. and provide refined criteria according to specific types of cases (civil and administrative / family / violence).

Develop relevant best interests criteria specific to each type of proceedings, train judges in implementing in different contexts (using relevant and practical case examples).

In **Australia**: family law matters (between individuals) have certain criteria for making a best interests assessment, whereas matters where the children may be at risk of abuse or in need of protection in parental care have separate list of considerations.

See: Family Law Act s60C and Children, Youth and Families Act (Vic), s 10(3)

In several cases concerning **family disputes** involving children, the **European Court of Human Rights** has stated that domestic courts should assess the difficult questions related to the child's best interests based on 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.²³⁶

3.2.6. Preventing delay throughout proceedings

Why is it important to prevent delay in matters concerning children?

Due to a child's rapidly changing development and evolving capacities, time impacts children differently to adults. Children have a different perception of time from adults and therefore the time element is very important for them. For example, one year of proceedings in a custody case affects a 10 year old more than an adult.

²³⁴ Article 81(2). See also Civil Procedure Code, art. 251¹ – referring the Code on the Rights of the Child, art. 81 (3)

²³⁵ Chapter XXVII/ art. 244, 249, 259, 262

²³⁶ European Court of Human Rights (Grand Chamber), judgment of 13 July 2000, *Elsholz v. Germany*, No. 25735/94, paragraph 53, and judgment of 8 July 2003, *Sommerfeld v. Germany*, No. 31871/96, paragraphs 67-72. See also the partly dissenting opinion of Judge Ress joined by Judges Pastor Ridurejo and Türmen in *Sommerfeld v. Germany* (ibid.), paragraph 2.

Grounding in international law and regional standards

Article 40(2)(b)(iii) CRC requires matters to be determined without delay in the context of children in conflict with the law. The CRC Committee has highlighted the adverse effects of delays in or prolonged decision-making for children more generally, and recommends procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible.²³⁷ Similarly, the Guidelines on Child-Friendly Justice highlight the need to apply the urgency principle in all proceedings involving children, to provide a speedy response and protect the best interests of the child, while respecting the rule of law.²³⁸

Existing national legal framework: all types of proceedings

According to the Code, an administrative body and a court shall give priority to the hearing of a petition, complaint or appeal related to the child. The law shall provide a mechanism for prioritized enforcement of the administrative body's or the court's decisions concerning the child when the best interests of the child so requires. It also stipulates that the court shall review matters on the rights and interest of the child within the rules and terms provided by the Georgian legislation.²³⁹

The Civil Procedure Code provides the following specific provisions regarding the speedy terms of review of cases concerning children:²⁴⁰

- The court reviews and makes a decision concerning the child abduction cases through speedy procedures, within six weeks.
- At the request of the parties, the court may, in full or in part, order immediate enforcement of judgments concerning the rights of the child if the child's best interests so require.

In family proceedings, the importance of courts exercising exceptional diligence to avoid any risk of adverse consequences on the family relations has been highlighted.²⁴¹

Findings

- The Code provides a principle of speedy proceedings of children's matters, however, does not stipulate any specific terms or procedures to avoid undue delay and apply urgency principle when this is necessary for the best interests of the child. In the context of family law proceedings, the Code refers to the Civil Procedure Code, which provides rules and terms for civil judicial proceedings including family law matters.
- Furthermore, the referred Civil Procedure Code sets specific terms only for the court mediation (45 days which can be doubled) and six weeks for the child abduction cases. Otherwise, there are no guarantees and applicable procedures to ensure prioritized and speedy process on matters involving children. It is also ambiguous how and through which procedures the court shall decide when it is urgent to review the cases for the best interests of the child.
- According to the Public Defender's office, risks of violence against the child is increasing in the process of enforcement of the court decisions on family law disputes. The child's emotional state is often not adequately assessed and enforcement procedures are excessively delayed, even and oftentimes - not actually enforced.
- Only one third of the justice sector professionals interviewed by UNICEF in 2015 stated that attempts are made to ensure that cases involving children are expedited.²⁴²

237 General Comment 14, para 93.

238 CFJG para 50, p 28, see also Explanatory Memo para 118, p 82.

239 The Code, art. 69 (4, d), 76 (3).

240 Civil Procedure Code, art. 187⁵, 268.1², 351¹⁴.

241 CFJG para 51, p 29.

242 UNICEF, 2015, Children's Equitable access to justice Central and Eastern Europe and Central Asia.

Recommendations

All types of proceedings:

- » **Set and implement time limits that best suit the best interest of a child and ensures the right of a child to speedy proceedings. At the same time, mechanisms must be in place to ensure the legal and procedural rights of the child are safeguarded throughout proceedings, for example, ensuring legal representation at all stages of proceedings.**

Family proceedings:

- » **Ensure judges are trained in importance of ensuring matters are managed without delay, particularly in the context of family proceedings, while maintaining the necessary procedural safeguards to protect the rights of the child (and parents). Any expedition of proceedings should not be at the expense of procedural rights such as right to be heard.**

Juvenile justice proceedings:

- » **Set time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor to institute charges and the final decision by the court or other judicial body. Ensure the time between the commission of the offence and the final response to this act is as short as possible.**²⁴³

In abduction proceedings in the Netherlands, within six weeks there is a preliminary hearing, a cross-border mediation, a guardian ad litem (a trained child psychologist) is appointed to the child and files a report and a full hearing is held. All children above the age of 6 may participate in (confidentially with the judge). The primary considerations are the expediency of the proceedings and placing a strong focus on the voice of the child.

The European Court of Human Rights is often critical of the delay taken by States in managing cases concerning children.

Gakharia v. Georgia (application no. 30459/13)

- » In the particular circumstances of the current case [divorce proceedings], where the interests of a child were at stake, the domestic courts were required to act with a certain speediness... However, the Court is not convinced that the importance of expeditious proceedings which generally attaches to family proceedings necessitated a procedural shortcut to default proceedings and the circumvention of the rules on summonses [para 43]
- » The proceedings have to be conducted speedily as delays may cause detrimental effects to the child. The urgency of the situation may justify a departure from certain procedural principles (In, Concurring opinion of Judge Wojtyczek [para 2])²⁴⁴

In G.S. v. Georgia (application no. 2361/13)

- » the Court was critical of delay throughout justice proceedings, stating that, in cases concerning a person's relationship with his or her child there is a duty to exercise exceptional diligence, in view of the risk that the passage of time may result in a de facto determination of the matter.²⁴⁵

²⁴³ General Comment 24 para 55; General Comment 10 para 51.

²⁴⁴ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-170342%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-170342%22]})

²⁴⁵ G.S. v. Georgia (application no. 2361/13) paras 48, 63-66.

In M. and M. v. Croatia (application no. 10161/13)

- » the Court was particularly struck by the fact that the child of 13 and a half, had not been heard in the custody proceedings and had thus not been given the chance to express her view before the courts about which parent she wants to live with. The *protracted nature of those proceedings has exacerbated the plight of a traumatised child* who, if for nothing else than her parents' conflicting relationship, has suffered great mental anguish, culminating in self-injuring behaviour.

3.3 Key elements of the child-friendly justice concept AFTER all justice proceedings

Many measures still need to be taken to ensure justice is child friendly after justice proceedings have taken place. This starts with the **communication and explanation** of the decision or judgment to the child. The **enforcement** of the decision, and any follow-up concerning the justice proceedings must also be carried out in a child-sensitive way, including allowing the child to access **remedies**. This section also discusses the types of ongoing **support** that children may require following justice proceedings, before making some observations about the lack of **data and evaluation** concerning justice systems involving children in Georgia.

3.3.1. Communications: explanation and information about the decision

See also section 3.1.1 on access to information before and during proceedings.

Why is receiving an explanation and information after proceedings important for children?

Children need to receive explanations, information and feedback adapted to their level of maturity and development to make sense of the outcome of proceedings and the process by which this outcome was reached. Decision makers must inform the child of the outcomes of the process and explain how her or his views were considered. Without such an explanation, the child will not know if their views were taken seriously.

After proceedings the child also requires information about the right to appeal or how to complain or seek remedies if their rights have been violated throughout the justice proceedings.²⁴⁶ For example, children need information as to whom to turn to in order to voice their complaints and how to access them.

Grounding in international and regional law and standards

In order to participate adequately, children must be provided with all necessary information. When decisions or rulings are made, they should be explained to the children in a language that they can understand, particularly when they conflict with their expressed wishes or views.²⁴⁷

The Committee indicates that for the child's right to participate to be effective and meaningful, it needs to be understood as a process and not as an individual one-off event.²⁴⁸ As the child enjoys the right to have his or her views given due weight, the decision maker must inform the child of the outcome of the process and explain how her or his views were considered. This feedback is a guarantee that the views of the child are not only heard as a formality, but are also taken seriously, and may prompt the child to file an appeal or complaint.²⁴⁹

²⁴⁶ General Comment 12, para 46.

²⁴⁷ Guidelines on Children in Contact with the Justice System, developed by the International Association of Youth and Family Judges and Magistrates (2016) para 2.3.3

²⁴⁸ General Comment 12, para 133.

²⁴⁹ General Comment 12, para 45.

The Guidelines on child-friendly justice state that a child’s lawyer or guardian ad litem should communicate and explain decision to a child in language adapted to child’s level of understanding and give necessary information.²⁵⁰

Existing legal framework for all types of proceedings

The Law on Social Work provides the key authorities and functions of the Agency for State Care and Assistance to Victims of Trafficking in the area of social work in guardianship and care of children:²⁵¹

- o Carry out procedures related to child adoption in accordance with the Law on Adoption and Foster Care;
- o Carry out functions related to guardianship, custodianship (care), support to persons with psycho-social needs in line with the Civil Procedure Code (Chapter 7)
- o Carry out procedural representation of children in accordance with the Juvenile Justice Code
- o Protect the legal rights of children or supported persons (persons with psycho-social needs) in judicial proceedings
- o Manages and oversees cases of violence, including violence against children and related procedures of child protection
- o Manages and oversees state program (within different sub-programs) on social rehabilitation and childcare
- o Provides aid to families, persons with disabilities and elderly in need of support
- o Assigns persons authorized to conduct social work (social workers)
- o Participates in the processes of enforcement of the court decisions related to transfer of custody on the child, relations between the child and one of the parents or other family members

Juvenile justice proceedings

Existing legal framework

The Juvenile Justice Code provides a definition of a procedural representative (guardian ad litem) as “an employee of the guardianship and care agency (the State Care Agency) or other trusted person who provides representation for the protection of the child’s best interests. The procedural representative has the same rights as the child’s legal representative (art. 3 (12)). Furthermore, the Juvenile Justice Code provides powers of the procedural representative, in particular (art. 50 (4)):

- o Speak to the justice agency about the needs of the child
- o Communicate with close relatives, a lawyer and a friend of the child
- o Inform the child about available services of health protection, psychological or social support
- o Inform the child about his/her procedural status, importance of testifying, duration and form and also rules of interview/interrogation
- o Inform the child about time and date of the court hearing and other proceedings
- o Inform the child about the procedures on appealing against the procedural decision and perform other activities to help the child.

250 CFJG, para 49.

251 Art. 51 (2), Law on Social Work adopted on 13.06.2018; last amended on 16/03/2021 <https://matsne.gov.ge/documentview/4231958?publication=6>

Family law proceedings

Existing legal framework:

The court may take decisions on a number of matters involving children in family law cases. Divorce is the most widespread matter in civil judicial proceedings. Furthermore, the court may apply measures on limitation, suspension or deprivation of parental rights in cases of need to duly represent the interests of the child (in divorce cases as well), protect children from abusive parents or ensure alternative care in case of child abandonment. In all cases, the court's provisional rulings and decisions might significantly affect children's lives. Therefore, it is extremely important to inform and consult with children about the court decisions so that they are aware and prepared for changes in their lives.

Divorce and Related Matters Affecting Children

In civil judicial proceedings on divorce, until the final decision is made, the court's ordinances on provisional measures provide temporary regulations on parental duties to take care of the child, relations of one of the parents towards the child, child custody, alimony and financial assistance by one spouse to the other, owning an apartment, etc.²⁵². In terms of a final decision on divorce or annulment of the marriage, the court also decides related matters, such as ²⁵³:

- o Parents' joint custody over the common child;
- o Relations to the child of one of the parents;
- o Transfer the child custody to one of the parents;
- o Alimony for the childcare, etc.

The Code's provisions (art. 70 (4), 75 (2)) on informing children in justice proceedings cover family matters as well. In addition, the *Civil Procedure Code*²⁵⁴ also provides that children have the right to information in conformity with *the Code* (art. 70.4, 5). Besides this, there are no specific provisions on explaining and/or informing the child about the consequences of the justice proceedings on family relations, for example, such as divorce (and related child visitation and other matters) and its impact on the child's life. None of the laws provides related procedures or guidance on the role of a lawyer or a procedural representative (*guardian ad litem*) to explain the decision and its consequences to the child.

Findings

- The Code's provisions (art. 70 (4), 75 (2)) on informing children in justice proceedings cover family matters as well. In addition, the *Civil Procedure Code* ²⁵⁵ also provides that children have the right to information in conformity with the Code (art. 70.4, 5). Besides this, there are no specific provisions on explaining and/or informing the child about the consequences of the justice proceedings on family relations, for example, such as divorce (and related child visitation and other matters) and its impact on the child's life. None of the laws provides related procedures or guidance on the role of a lawyer or a procedural representative (*guardian ad litem*) to explain the decision and its consequences to the child.

Violence related proceedings

Existing framework

Violence against the Child in and outside the Family – Administrative Violations

The courts review matters and decide to impose administrative sanctions concerning certain forms of violence against children in and outside of the family under the Code of Administrative Violations, in particular ²⁵⁶:

252 Civil Procedure Code, art. 355

253 Civil Procedure Code, art. 356

254 Civil Procedure Code, art. 83 (1')

255 Civil Procedure Code, art. 83 (1')

256 The Code of Administrative Violations, adopted on 15/12/2984, last amended on 18/02/2021/ related articles 45¹, 166¹, 170¹, 171³, 172, 172⁹, 173³ and 175² <https://matsne.gov.ge/ka/document/view/28216?impose=translateEn&publication=381>

- o Negligence failure in performing parental duties
- o Disobedience of the court decisions concerning parental duties towards the child
- o Harmful influence on the child
- o Involving a child in a work which is harmful for the child`s education and his/her moral, physical, mental, emotional and/or social development
- o Involving a child in an alcohol, narcotic or psychotropic drugs or tobacco industry (production, storing, transportation and/or selling)
- o Sexual harassment against the child

The court may decide to deprive parental rights by the initiative of the guardianship and care agency or of the child. The grounds of deprivation of parental rights and duties include systematic avoidance of fulfilling parental duties and abuse of parental rights, mistreatment of the child, negatively influencing on the child by immoral acts, chronic alcoholism or drug addiction or involving the child in anti-social acts (among others, begging, vagrancy) ²⁵⁷.

In terms of removal of the child²⁵⁸ and/or applying protective or restraining orders²⁵⁹ against the parents, their rights on legal representation and decision-making on residence of the child are simultaneously suspended. Furthermore, the court suspends parental rights in case of child abandonment when the child resides in 24-hour state care service.

Findings

- There are no specific provisions on explaining and/or informing the child about the consequences of the court decisions. None of the laws provides related procedures or guidance on the role of a lawyer or a procedural representative (guardian ad litem) to explain the decision and its consequences to the child.
- In practice, it depends on an individual justice professional to inform and explain the decisions to the child. Due to the lack of procedures, sufficient knowledge and skills in child-friendly justice, professionals mainly do not pay much attention and efforts in explaining children about the meaning and consequences of the court rulings, judgements and decisions.
- In addition, there is not follow-up mechanisms in place to take care of the child`s needs, provide short and long-term support services and this makes it even more problematic to ensure child-friendly justice after judicial proceedings.

Administrative (non-judicial) proceedings

Existing legal framework:

Administrative non-judicial proceedings involving children may include the following matters (non-exhaustive):

- o Acts and decisions of the Ministry of Education and its public agencies on child`s access to inclusive education and relevant support as needed, decisions of school administration on disciplinary measure, etc.
- o Acts and decisions of the Juvenile Referral Center (under the Ministry of Justice) on referring children in different services, including decision on sending the child to the semi-closed juvenile facility
- o Acts and decisions of Ministry of health/social protection on individual assessment of social-economic, health-related and other circumstances of the child and his family for provision of relevant family support/assistance

²⁵⁷ Civil Code, Art. 1206

²⁵⁸ The Code, art. 26 (1-4), Administrative Procedure Code, 21¹²

²⁵⁹ Administrative Procedure Code, art. 21¹³ , 21¹⁴

- o Acts and decisions of the State Care Agency related to provision of guardianship and care to children out of parental care, procedural representation of the child in judicial hearings, supervision in state and other alternative care services, child protection referrals
- o Acts and decisions of municipalities on social-economic and other protection/assistance, access to infrastructure/public transport, reasonable accommodation to ensure accessibility rights of children with disabilities, protection of children of harmful influences in public spaces, etc.

Findings

In conformity with *the Code*, the General Administrative Code provides a child must have an opportunity to express his/her own views in his/her desirable form and administrative bodies shall ensure child-friendly administrative proceedings with primary consideration of the best interests of the child, which implies available and perceivable procedures for the child at all stages of the proceedings²⁶⁰. However, similar to other matters involving children, there are no specific provisions on explaining and/or informing the child about the consequences of the court decisions. None of the laws provides related procedures to ensure the implementation of this right in practice.

Recommendations: explanations and information in all types of proceedings

- » **Judges and other decision makers handling matters concerning children should receive training on providing information and explanations to children. This should include how to provide explanations outlining how much weight was placed on his or her views.**

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.²⁶¹

- » **There should be clear authoritative guidance on role of representative as opposed to the role of parents in explaining the decision to child (this is particularly important in family proceedings or proceedings concerning domestic violence).**²⁶²

Child friendly judgments: an example

In February 2016, a High Court judge in England wrote a judgment in child-friendly language. This case was about a restriction order between a father and his children. The judgment was relatively short and written in a more accessible way. It started with 'Dear Sam ... This case is about you and your future, so I am writing this letter as a way of giving my decision to you and to your parents.' The judgment used short sentences combined with a legal summary at the end of every paragraph ('In legal language, I make these findings ...').

Stalford and Hollingsworth argue that child-friendly judgments serve multiple purposes. They argue that child-friendly judgments are communicative, developmental, instructive and legally transformative. Judgments written for children are not only an important aspect of children's access to justice, but also reveal the *duty* of judges to enhance children's status and capacities as legal citizens through judgment writing.²⁶³

260 General Administrative Code, art. 98.

261 CFJG Guideline 49.

262 CFJG Guideline 49.

263 Helen Stalford and Hollingsworth, "This case is about you and your future": Towards Judgments for Children", 2020, Modern Law Review. Available online: <https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12536>

3.3.2 Access to justice, enforcement and remedies

See also section 3.2.6 on preventing delay.

Why is access to justice and enforcement important to children?

Access to justice refers to the right of the child to access justice systems to seek legal protection of their rights. It refers to the ability to seek remedies in case of (alleged) rights violations,²⁶⁴ but also encapsulates the right to bring matters in relation to the enjoyment of rights more broadly.

For children's rights to have any meaning, their rights must be enforceable. This means that children must be able to access an effective remedy if they suffer from a violation of their rights. The Committee has underscored this notion by stating: 'for rights to have meaning, effective remedies must be available to redress violations.'²⁶⁵ Remedies must not only be awarded in theory but delivered to the child in practice, without delay.

Grounds in international and regional law and standards

The Committee on the Rights of the Child has made it clear that 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]'.²⁶⁶ It has also underscored the significance of children having access to effective remedies, as noted above. Although the CRC does not contain a provision explicitly providing children with a right to remedies, it is now an established rule of customary international law that everyone has the right to an effective remedy in the case of violations of fundamental human rights.²⁶⁷

The UN High Commissioner for Human Rights has defined access to justice for children as 'the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards'. Access to justice 'is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights'. According to Liefwaard, '[t]his suggests that access to justice for children should be understood both as a fundamental right and as a means to safeguard the enjoyment of just and timely remedies in relation to the protection of substantive rights of the child'.²⁶⁸

The Committee recommends States establish mechanisms 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 for review at the national level and such mechanisms should be made known to the child and accessible.²⁶⁹ In terms of the enforcement of such remedies, the Guidelines on child-friendly justice state that national authorities should take all necessary steps to facilitate the execution of judicial decisions/rulings involving and affecting children without delay²⁷⁰ (for more on preventing delay see part 3.2.6).

Existing national framework regarding access to justice and enforcement in all types of justice proceedings

Access to justice

Article 13 of the Code (titled 'the right of the child to justice') reflects the requirements that children be able to access justice in Georgia. It states that "every child has the right to bring a matter to the court and/or to an administrative body and enjoy the justice system which is accessible for the child, age-appropriate, understandable, fair, diligent, adapted to the child's rights and needs, respecting the child's dignity and privacy."

According to the Code, in all types of judicial or non-judicial justice proceedings (including criminal, civil, administrative judicial and disciplinary and administrative non-judicial proceedings), every child has the

264 OHCHR 2013 A/HRC/25/35, para 4, Access to justice is defined on page 4 of this report.

265 General Comment 5, para 24.

266 General Comment 5, para 24.

267 Cf UDHR art 8; ICCPR art 2(3) in Liefwaard 2019 196.

268 Liefwaard 2019 198.

269 General Comment 14, para 98.

270 CFJG, para 76.

right to fair review of his/her case with observance of all the constituent principles of this right (inter alia, legality, proportionality, presumption of innocence). Furthermore, the child has the right to apply to the court and submit a complaint, obtain legal aid and legal counsel. If the child does not have a lawyer at his/her expenses, the State shall provide free legal aid.²⁷¹

Access to justice in proceedings concerning violence against children

Under the Code, the State is obliged to provide mechanisms for access to justice and appeal in matters involving violence against children. The Code also defines a number of remedies available to child victims and witnesses of violence including redress or compensation, short and long-term physical and psychosocial rehabilitation and support services.²⁷²

The Code provides the right of the child to apply to the administrative bodies to carry out proper actions and take decisions on the above-mentioned matters (whenever needs arise and when the respective administrative bodies fail to meet their obligations). Thus, in case of refusing to undertake appropriate action/decision, at the next stage, the child can appeal their refusals to the court.

The Civil Code stipulates that in case of abuse of the rights of the child by parents/legal representatives, the child can independently apply to the guardianship and care agency or, in the cases provided by the Hague Convention 1996,²⁷³ to the Central Authority (Ministry of Justice) and to a court.

Enforcement

In terms of enforcement, *the Code* requires that all decisions of an administrative body or the court should be enforced through child-friendly procedures. Furthermore, the law shall provide a mechanism for prioritized enforcement of the administrative body's or the court's decisions concerning the child when the best interests of the child so requires.²⁷⁴

According to *the Code*, the State shall guarantee, among others, enforcement of a judicial or an administrative body's decisions concerning children in a child-friendly procedures. Furthermore, an administrative body and a court shall give priority to the hearing of a petition, complaint or appeal related to the child. The law shall provide a mechanism for prioritized enforcement of the administrative body's or the court's decisions concerning the child when the best interests of the child so requires.²⁷⁵

Findings: access to justice and enforcement in all types of proceedings

- The concept of children accessing justice, for example, by initiating proceedings themselves, is still not understood or properly conceptualised in Georgia, despite Article 13 of the Code.
- *The Code* provides general requirement to prioritize and enforce the decisions of the courts and of administrative bodies concerning children through child-friendly justice procedures. However, there are no such procedures, measures or standards envisaged in any of the laws or by-laws to support the implementation of *the Code*'s requirement.
- Furthermore, follow-up and monitoring mechanisms are absent except administrative sanctions for non-obedience and informing the child about available support services (which do not adequately respond children's needs, especially in cases of violence). Therefore, key problems include delays, lack or absence of child-friendly procedures and safeguards, absence of procedures and instruments to ensure the primary consideration of the best interests of the child.
- According to the State Care Agency, they face the following key challenges to perform their functions including in relation to the enforcement of the court decisions on children:
 - o lack of social workers, psychologists and legal specialists;
 - o lack of specialization in child rights;

271 The Code, art. 74

272 Art 61 (1) and (2) the Code

273 Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

274 Code on the Rights of the Child, art. 69 (4), 76 (3)

275 The Code, art. 69 (4, d), 76 (3)

- o low salaries and professionals leaving the Agency
- o Multiple profile (children, persons with disabilities, elderly, etc.) and heavy workload makes it difficult to manage cases with adequate quality

National framework: access to justice and enforcement in family matters

According to the Civil Procedure Code, the court decisions concerning rights of the child are subject to immediate enforcement if the child's best interests so require.²⁷⁶

The Law on Social Work provides that the State Care Agency is responsible for enforcement of the court decisions concerning custody on the child, relations between the child and one of the parents or other family members, etc.²⁷⁷

The Ministerial Ordinance²⁷⁸ provides key rules and procedures in this regard. According to the Ordinance:

- o Participants in the enforcement process are the Parties of the dispute and the official of the State Care Agency. The child is not a participant to this process.
- o If the Party (an obligor) does not voluntarily perform his/her obligation of transferring the child to the interested Party, the State Care Agency drafts an administrative violations protocol on imposition of financial sanctions.
- o Duration of the voluntary enforcement shall not exceed seven days and the date for the enforcement shall be set any time including during holidays if necessary for the factual circumstance and the child's interests.
- o The Parties have the right to reach amicable resolution or appeal against the enforcement agency. In case of amicable resolution, the State Care Agency sends the signed agreement to the court for final approval.
- o The enforcement may be terminated based on the following grounds: written refusal of the interested party, amicable resolution, the Parties are no more interested in the enforcement, annulment of the court decision, the child reached majority. Suspension of the enforcement is possible only once for maximum three months period.

Findings: Family law matters

- According to the State Care Agency, which is responsible to enforce decisions related to family disputes involving children, their social workers monitor how the Parties obey the court decision on visitation rights. If any of the Parties hinder the enforcement of the court decision, the Agency may impose administrative sanctions.
- Neither the Code nor any other laws provide guarantees, after judgments in highly conflictual proceedings, guidance and support to children and their families by specialized service.
- According to the Public Defender's office, risks of violence against the child is increasing in the process of enforcement of the court decisions on family law disputes. In many cases, the child becomes a participant to the conflict between the parents. The child's emotional state is often not adequately assessed and enforcement procedures are excessively delayed, even and oftentimes - not actually enforced.
- In addition, there is a need to clarify/explore issues of conflict of interests on the role of the Agency as a representative of the child in the court proceedings on family matters and as an administrative body, which must enforce the decision.

²⁷⁶ Civil Procedure Code, art. 268 (1²)

²⁷⁷ Art. 51 (2), Law on Social Work

²⁷⁸ Ministerial Ordinance (of the Ministry of Health, Labour and Social Protection) Of 18 April 2011 on the "Approval of the Rules of Enforcement of Decisions related to Transfer Custody on the Child and/or Relations between the Child and a Parent or other Family Member" <https://www.matsne.gov.ge/ka/document/view/1302934?publication=0> / last amended on 29.04.2020

Existing framework: access to justice and enforcement of protection measures for child victims of violence

Enforcement of Provisional Measures for Protection Children from Violence

According to the Law on Violence against Women, Domestic Violence and Assistance to Victims of Violence (then – the Law on Violence), the State Care Agency monitors enforcement of the court`s protective orders and the police restraining orders as provisional measures for the protection of the child from violence (in and outside of the family). In addition, the Agency`s social workers are authorized to decide on removal of the child from the family as a measure of last resort, subject to the court approval within 24 hours.²⁷⁹

The Law on Violence provides that for protecting the victim and restraining the perpetrator, police issue a restraining order for the duration of at maximum one month. Police is obliged to issue a restraining order when investigation has started or is ongoing on the crimes against life, health and sexual integrity (specific articles of the Criminal Code). Duration of the court`s protective order is up to nine months.²⁸⁰

Follow-up and Responsibility for Non-compliance

If the perpetrator does not obey the requirements under the restraining and protective orders, she/her will be subject to administrative sanctions.²⁸¹

The courts, police and other relevant criminal justice agency, service providers and other relevant authorities have obligation to inform the victim in an adapted language and means of communication about available social and legal protection mechanisms and services. In addition, police have obligation to inform the victim about the perpetrator`s release from the penitentiary institution and take measures for protection of the victim from repeated violence.²⁸²

Findings:

- According to the State Care Agency, in cases of removal of the child from family due to domestic violence, the child`s views towards the removal is considered as long as the child`s age and development level allow. If the child is against the removal, the social workers try to enforce the decision in a way that will render minimum harm to the child as possible.
- There are lack of effective enforcement and monitoring mechanisms regarding the decisions on cases of violence against the child and interim measures to protect children from violence during the criminal investigation as well.
- Lack of child-friendly procedures, scarcity of human resources and specialized services do not allow adequate follow-up with child victims of violence and their short and long-term support and psychosocial rehabilitation.

Existing framework: access to justice and enforcement in administrative (non-judicial) proceedings

N.B: Police issues a restraining order to protect the child from violence in and outside the family through non-judicial administrative proceedings (as discussed in the above paragraph on violence).

The General Administrative Code provides rules for issuance and enforcement of the administrative legal acts. In this process, administrative bodies shall observe human rights and freedoms, public interests and rule of law.²⁸³

Anyone can address a relevant administrative body (a state agency or municipal body, public entity (except religious and political unions) and any other institution which carries out public law authorities) to solve a matter directly concerning his/her rights and legal interests. An administrative body is under an obligation to review the application and/or complaint within its authorities and take an appropriate decision. An

²⁷⁹ The Code, art. 26. N. B. in relation to this matter, art. 14 of the Law on Violence against Women, Domestic Violence and Assistance to Victims of Violence - not amended yet.

²⁸⁰ Art. 10, 12 (1)

²⁸¹ Art. 10 (4)

²⁸² Art. 17¹

²⁸³ General Administrative Code, art. 1

administrative body shall prioritize proceeding applications/complaints concerning children. ²⁸⁴

Findings

- In accordance with the legislation, administrative bodies (a state agency or municipal body, public entity (except religious and political unions) shall observe human rights and freedoms, public interests and rule of law in the proceedings of publishing and enforcement of administrative legal acts, including on matters concerning children. They are under an obligation to review the application and/or complaint within their authorities and take appropriate decisions. Furthermore, administrative bodies shall prioritize proceeding applications/complaints concerning children.
- However, except the general guidance principle provided by the Code, the laws do not provide general or specific child-friendly procedures and/or standards related to enforcement of the child-related decisions of administrative bodies. Similar to this, there are no rules and/or procedures on the follow-up and monitoring mechanisms for the decisions concerning children.
- According to the State Care Agency, in case of administrative body's decision on the eviction of a family with a child from unlawfully occupied apartment, the Agency seeks solutions to ensure the shelter for the child. If the child is under the risk of staying homeless, the Agency refers the case to the municipality and informs the National Enforcement Bureau.

Existing framework: access to justice for children in penitentiary institutions (juvenile justice)

- According to the penitentiary authorities, juvenile prisoners can contact the Ombudsman's office via hotline "1481" or call the Legal Aid Service at any time and enjoy unlimited time for meeting with the lawyer. In addition, there is a confidential complaints box in a visible place in the prison without surveillance.
- In case of complaints on maltreatment, abuse or torture, the penitentiary institution's director or PDO are informed within 24 hours. Furthermore, the prison's medical personnel have obligation to identify and report signs of violence in the penitentiary institutions.

Recommendations: enforcement, access to justice and remedies in all types of proceedings

Access to justice:

- » **Government, with the assistance of NGOs and others, should develop a national strategic plan with children to promote child-friendly justice including access to justice**

In doing so government should recognise and facilitate the role of NGOs and other independent bodies or institutions such as the Public Defender in supporting children's effective access to all types of justice systems, both on a national and international level.

The national plan should address discrepancies existing in accessibility of justice systems for all children. Children living in remote areas and children in state or church-run alternative care including boarding schools are less likely to be able to access justice.

Access to justice for children in penitentiary institutions or deprived of liberty

- » **Ensure children are informed and aware of their rights when entering a place where they are deprived of liberty. Children must understand what it means to make a complaint or call Legal Aid and under what circumstances they can do so. Children should also have regular access to and the support of an independent adult whom they can trust who is trained in child rights.**

Enforcement and remedies:

- » **Government should take all necessary steps to ensure judicial decisions involving/affecting children are enforced without delay. (see also section 3.2.6)**

This requires investing now in ensuring children have access to effective complaints mechanisms. If decisions are not enforced, children should be informed, preferably through a lawyer, of available remedies through judicial mechanisms or access to justice.

- » **Government should provide support to enable children involved in judicial proceedings to access remedies or compensation for violation of rights and failure to act.**

Enforcement in family matters

- » Implementation of judgments by force should be a measure of last resort in family cases when children are involved. After judgments in highly conflictual proceedings, guidance and support should be offered, ideally free of charge, to children and their families by specialized service.²⁸⁵

In many family matters, the judgment does not necessarily mean that the conflict or problem is definitely settled. 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, unless 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.²⁸⁶

The European Court of Human Rights on enforcement of family matters concerning children:

Gakharia v Georgia, ECtHR, application no. 30459/13

“The care of the minor always has priority over the finality of a decision once taken. An amending decision requires cogent reasons that have a long-term effect on the welfare of the child.” (Concurring opinion)

N.TS and Others v Georgia ECtHR

“The reunion of a parent with a child who has lived for some time with other persons may not be able to take place immediately and may require preparatory measures being taken to this effect. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned will always be an important ingredient.” (para 71).

285 CFJG paras 78-79.
286 CFJG para 136.

3.3.3 Support and access to services

Why is support necessary for children involved in justice proceedings?

In many cases, the end of the dispute does not necessarily mean the conflict or problem is definitely settled. This is particularly the case in proceedings concerning family conflict or violence where the child may experience ongoing trauma or continue to be exposed to difficult personal relationships.

Specific types of support can include:

- Support to enable a child involved in judicial proceedings to access remedies or compensation for violation of rights or a failure to act
- Support in cases of non-compliance by parents or others with court orders affecting children – e.g. custody / access or contact decisions
- Support accepting decision that goes against wishes of the child
- Support reuniting with a parent

Basis in international and regional law and standards

Article 4 of the CRC requires States parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. The concept of supporting children and their rights throughout all stages of justice proceedings is at the core of child-friendly justice, and requires that there be sufficient resources in place to properly support the needs, interests and rights of children. The Committee has clarified that Article 4 obliges States to ensure laws and policies are in place to support resource mobilization, budget allocation and spending to realize children's rights.²⁸⁷

This section focuses on supporting children after proceedings which is underscored in the Guidelines on child-friendly justice.²⁸⁸ However, it is important to note that children require support and access to services at all stages or proceedings. Services that are proactive and preventative, for example, can prevent children from entering justice systems in the first place.

Support in family matters - existing framework

Family Support Programs

The Code provides that the Ministry of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Protection and municipalities shall develop and implement family support programs aiming at sustainable empowerment of the child in the family. The program's duration, content and scale shall be in accordance with the needs and circumstances of the child and his/her caregivers. Family support program shall be in line with the child's best interests and family assessment and may include one or more measures/activities, among others:²⁸⁹

- o Information and consultation services on positive parenting and non-violent communication
- o Training courses on positive parenting and childcare skills and consulting on family life and during family disputes and divorce processes
- o Supporting social services (day care centre, mediation and reconciliation services during family disputes, treatment of alcoholism, drug addiction or in case of other psycho-emotional need, etc.)

The State Care Agency implements the State program on monetary assistance for the most vulnerable families living under the poverty line.²⁹⁰ In addition, the Ministry runs the State healthcare programs²⁹¹

287 General Comment 19, para 21.

288 CFJG paras 136-138.

289 *The Code*, art. 28

290 State Program of Monetary Social Assistance (subsistence allowance) – Information on the Official website of the Social Service Agency http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=35

291 Official information on State Healthcare Programs - Ministry of Internally Displaced Persons from the Occupied Territories, health, Labour and Social Protection <https://www.moh.gov.ge/en/706/>

includes treatment of alcoholism and drug addiction and crisis intervention and shelter for children and adults with mental disorders.

Findings

At implementation level, there are no State programs or services offering consultation and support for children and parents in the context of judicial proceedings on family disputes. Moreover, there is no training courses on positive parenting and non-violent communication at system level. Some NGOs carry out project activities in this area with limited funds and geography and for small groups of target beneficiaries. The State program on monetary assistance targets the most vulnerable families living under the poverty line does not relate to supporting children and parents in dealing with family law disputes. The existing State health services (only referring to treatment alcohol and drug addiction and crisis intervention with children in case of mental disorders) do not adequately respond the needs and moreover, there are no linkages or coordination between these healthcare services and justice system to ensure supporting children and parents during family law disputes or matters on domestic violence.

Support and rehabilitation for victims of crime and violence - existing framework

The Code provides several measures and obligations for the State for the protection of child victims of violence/crime, such as bellow:²⁹²

- o Health protection measures for child victims and witnesses of crime (programs for physical and mental healthcare and psychosocial rehabilitation in dignified and healthy environment based on individual needs and the best interests of the child)
- o In the justice proceedings, ensuring multidisciplinary approach towards child victims and witnesses of crime in one space with participation of social workers, forensic experts, medical experts, psychologists, paediatricians, police, prosecutors and lawyers in order to prevent secondary victimization.
- o Civil and administrative judicial and administrative non-judicial proceedings with participation of the child and/or concerning the child on any matters shall be administered through multidisciplinary approach to assess the child's psychological, social, emotional and physical state and determination of the child's best interests.
- o Administrative bodies and the Court implement multidisciplinary approach on children's matters through formal cooperation procedures with specialists of the state agencies, independent experts and/or organizations.
- o Protection, support and rehabilitation of child victims and witnesses of crimes and/or violence: The State shall ensure available programs and services for short and long-term rehabilitation, protection from humiliation, re-traumatization, complaints and redress mechanisms
- o Child victim of crime and/or violence has the right to receive compensation from the State through speedy procedures when such speedy redress is impossible to receive from the perpetrator.

Findings

Support, Rehabilitation and Redress for Child Victims of Crime/Violence

- The Code requires implementation of the high standards for assistance, support and rehabilitation of child victims, while at implementation level there are scarcity of resources, knowledge, skills and services in this regard – not meeting even the basic needs of child victims of violence/crime.
- The Juvenile Justice Code does not provide any guarantees for child victims to short and long-term psycho-social support and rehabilitation and other assistance, except the court's obligation to explain the child about the right to demand compensation for the damages.

292 Art. 43, 61, 72 of the Code

- On 17 September 2020, the Government of Georgia issued an ordinance on the approval of the concept of psycho-social service center for child victims of violence and obligated the relevant Ministries to develop standard operational procedures for the realization of the concept by 15 December 2020. The implementation of the Ordinance is still pending.
- The existing services mainly offer temporary shelters, one-off crisis interventions and telephone consultations. Moreover, they are limited and do not respond to complex short and long-term needs of child victims of violence in and outside the family and other types of crime.

Victims - After Juvenile Justice Proceedings

The Juvenile Justice Code provides that after the announcement of the judgement, the court shall inform the child victim and his/her legal representative about results of the court review and explains them about the right to demand redress and compensation.²⁹³

Available Services

According to the Law on Violence against Women, Domestic Violence and Assistance to Victims of Violence, the State Care Agency shall provide social services including assistance to families in resolution of family conflicts, supporting victims of violence, designing and implementing programs for victim support and social rehabilitation.²⁹⁴ In addition, there are some services, which the Agency can offer victims of violence against women and/or domestic violence. These services are mainly for women and their child dependents who are often also victims and/or witnesses of violence. The services include²⁹⁵:

- o Temporary shelter inclusive of legal and psycho-social consultations (3 months subject to extension)
- o Crisis centre – temporary accommodation inclusive of legal and psycho-social consultations
- o Free hotline telephone – consultations on response and protection mechanisms in case of violence against women/domestic violence 191
- o Right to compensation from the State for victims of violence against women and/or domestic violence (valid from 1 January 2022) 17 (1, d)

In addition, the State healthcare programs²⁹⁶ include:

- o Mental healthcare and crisis intervention, stationary service and shelter for children and adults with mental disorders
- o Referral services include contraception, tests on sexually transmitted diseases and related treatment for victims of sexual violence

Recommendations

- **The Parliament of Georgia must invest now to ensure that children have access to ongoing support and services (such as those prescribed in the Code) throughout all stages of proceedings. This requires that the government put laws and policies in place to support resource mobilization and appropriate budget allocation and spending.**

The Committee has underlined that States parties have an obligation to show how the public budget-related measures they choose to take result in improvements in children's rights. States parties shall show evidence of the outcomes obtained for children as a result.²⁹⁷ Article 89(2) of the Code requires the Parliament of Georgia to ensure the primary consideration of the best interests of the child in implementing the state budget. It is important that all steps taken by the Parliament to do so are transparent and made widely available.

²⁹³ Art. 25 of Juvenile Justice Code

²⁹⁴ Art. 8 (2).

²⁹⁵ Law on Violence against Women, Domestic Violence and Assistance to Victims of Violence, art. 17 (1, d), 17², 18¹, 19¹.

²⁹⁶ Official information on State Healthcare Programs - Ministry of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Protection <https://www.moh.gov.ge/en/706/>.

²⁹⁷ General Comment 19, para 24.

In its 2017 Concluding Observations of Georgia, the Committee specifically stressed the need for Georgia to set up a budgeting process that includes a child-rights perspective, that specifies clear allocations to children in the relevant sectors and agencies and that includes specific indicators and a tracking system to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated for implementation of the Convention.²⁹⁸

- In the context of **family matters**, this includes providing guidance and support measures for children and their families by specialized services to avoid the adverse consequences of the judicial proceedings on family relations, which should be free of charge.²⁹⁹
- » In the context of matters concerning violence, 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.³⁰⁰ It is important to establish **short and long term psycho-social and medical rehabilitation and support services and programmes for child victims of violence in and outside the family and other types of crime.**

Support reuniting with a parent

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.³⁰¹

3.3.4 Data and evaluation

Why data and evaluation is important

The collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation.³⁰² Ongoing data collection and periodic review and evaluation is necessary to properly implement the core elements of child-friendly justice, identified and discussed above.

Existing framework

Article 84 of the Code requires the State to develop a unified electronic system of data collection in relation to the implementation of children’s rights in different areas.

Article 97 of the Code authorizes the PDO to monitor implementation of the Code, the CRC and other international treaties. The Parliament of Georgia is responsible for developing a system of review (Article 89(1)).

Findings

No provision in the Code relates specifically to the collection of data in relation to children and their interaction with justice systems. Although the PDO is authorized to monitor implementation, no provision in the Code directs any body to systematically conduct periodic review of the implementation of the core elements of child-friendly justice.

298 Committee on the Rights of the Child, Concluding Observations, Georgia, 2017 CRC/C/GEO/CO/4, para 9.

299 CFJG, para 80.

300 CFJG, para 80.

301 CFJG, para 136.

302 General Comment 5, para 48.

There is an initiative supported by UNICEF Georgia on data,³⁰³ however, throughout this review it became apparent that there is no nation-wide systematic way of collecting data and evaluating the engagement of children in justice systems. There is little to no data available concerning children in regional and remote areas, institutional settings, living on the streets and their access to and interaction with justice systems.

Recommendations

- » **The government, together with the PDO and with support from civil society and inputs from children, should develop a system of children’s rights indicators to enable effective ongoing monitoring of the implementation of core elements of child-friendly justice. These should reflect how courts and public authorities implement child-friendly justice across the country.**

Indicators should be developed in consultation with children, and incorporate the core elements of child-friendly justice identified and discussed above.

In its 2017 Concluding Observations, the Committee highlighted the lack of data as an area of concern and recommended that Georgia strengthen its efforts to develop a comprehensive data collection system on the implementation of the Convention, especially at municipal level, which reaches all regions of the country. The Committee recommended that data be disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background, in order to facilitate analysis of the situation of all children, particularly those in situations of vulnerability and especially in the areas of child abuse, neglect, exploitation, sexual exploitation and of children in street situations. 304

- » **Ensure regular evaluations of child justice systems, that review in particular the effectiveness of the measures taken, are conducted.**

Include children in evaluation and research, particularly those who have had contact with justice systems.

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See: <https://www.unicef.org/georgia/documents/children-and-youth-georgia-2020> .
Committee on the Rights of the Child, Concluding Observations, Georgia, 2017 CRC/C/GEO/CO/4, para 1.0

4. CONCLUDING OBSERVATIONS – A ROAD MAP FOR GEORGIA CONCERNING CHILD-FRIENDLY JUSTICE³⁰⁵

Introduction – Child-friendly justice before, during and after justice proceedings

In September 2019, the Parliament of the Republic of Georgia (Georgia) adopted the *Code on the Rights of the Child*³⁰⁶ (*the Code*). This new law has introduced legal safeguards, underpinned by international standards, to ensure that rights of children are adequately protected and that children themselves are able to independently exercise their rights and access justice through child-friendly justice in all justice proceedings affecting them. The *Code* clearly provides a mandate for child-friendly justice in *all* justice proceedings in which children are involved or which affect children, and it builds on the 2015 Juvenile Justice Code, which as part of the Juvenile Justice Reform programme in Georgia, has initiated reform in the context of juvenile justice and introduced the concept of child-friendly justice to Georgia.

In line with the Council of Europe Guidelines on child-friendly justice³⁰⁷, *the Code* defines child-friendly justice as:

“The justice system, which ensures respect and effective realization of all the rights of the child through the principles of child participation, primary consideration of the best interests of the child, respect dignity, equality and rule of law. The child friendly justice is administered by the specialized professionals and is accessible, age-appropriate, understandable, speedy, fair, diligent and adapted to children’s rights and needs.”³⁰⁸

Child-friendly justice refers to justice systems designed or adjusted to be child sensitive to particular issues that children face when they come into contact with the law and with the justice system. **Child-friendly justice is meant to serve as a concept to enable children to initiate, engage with and/or participate in justice system, both formally and informally.**³⁰⁹ The concept extends well beyond the juvenile justice system and recognizes that children can have **different roles** in the various justice systems, including children as participants, as victims and/or witnesses, as affected and/or interested parties or as initiators (i.e. seeking access to justice). Child-friendly justice systems respect children’s rights **before, during and after justice proceedings**. It enables children to be involved and participate effectively throughout all stages of justice proceedings that concern them. Access to information; effective participation; specialized and trained professionals; adapted procedures, the right to legal representation; and access to justice and effective remedies are cross-cutting elements of child-friendly justice regardless of the justice context in which it has to function and materialise.

Where the Juvenile Justice Code provides specific rules and guidance for children in conflict with the law (i.e. as (alleged) offenders) and for children victims and witnesses, the Code provides child friendly justice principles and guarantees for administrative proceedings and judicial proceedings on matters of civil and administrative laws involving children. It strengthens safeguards and procedural guarantees for children in criminal justice proceedings as well. In particular, these provisions introduce broader and stronger system of institutional specialization, access to legal aid for all children in contact with justice system, multidisciplinary approach and obligation of the common courts to administer criminal, civil and administrative justice proceedings involving children in line with the Code. The Code together with the Juvenile Justice Code therefore provide a comprehensive framework for the establishment of a child-friendly justice system covering all domains of justice where children may appear.

305 This concluding chapter has been drafted in such a way that it can be used as a stand alone publication next to the Full Report: Child-Friendly Justice in Georgia – Concept for Implementation in Practice by Ton Liefwaard, Nana Chapidze and Jessica Valentine, commissioned by UNICEF Georgia, and completed in July 2021 (hereinafter: the Full Report).

306 Available in English at <https://matsne.gov.ge/en/document/view/4613854?publication=0>

307 Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice 1, 13 (2010), available at www.coe.int/childjustice (hereafter ‘CFJG’).

308 See the art. 3 “I” and 13 (1) of the Code.

309 Much can be said about the term child-friendly justice; see the Full Report. Although we use the term ‘child-friendly’ as a term reflected in the Council of Europe’s guidelines, other terms could be favoured such as child-sensitive (see e.g. the 2005 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Economic and Social Council resolution 2005/20), child-responsive, child-adapted or child focused (see e.g. the 2016 Guidelines on Children in Contact with the Justice System of the International Association of Youth and Family Judges and Magistrates). Child-friendly justice must be considered separately from the implementation of children’s rights, which is a broader imperative under international law.

A comprehensive legislative framework, however, is not enough. Ultimately, child-friendly justice is a concept that has to be enforced and lived by professionals and by the stakeholders as part of their joint responsibility to protect children's rights across the board. Consequently, mindsets and actions of key actors in the system must also become child-friendly to ensure that all children in all areas of the Georgian justice system benefit from the Code when they are involved in justice proceedings or when they seek justice. Key decisions about or affecting children occur at all stages of the justice chain and child-friendly justice must not only be available during justice proceedings; child-friendly justice must also be ensured before and after justice proceedings. Specific and practical recommendations are therefore needed to ensure the entire justice chain in Georgia can become truly child-friendly in practice as mandated by the Code on the Rights of the Child and Georgia's commitment to international human and children's rights law, in particular the UN Convention on the Rights of the Child (see the many recommendations throughout the Full Report).

This concluding chapter reflects on the cross-cutting challenges that can be identified on the extensive analysis of the Georgian legal system as well as the legal practice (see the Full Report) and sheds light on critical steps that ought to be considered in order to promote and ultimately secure the full realization of the concept of child-friendly justice. In that sense this chapter serves as a road map for the coming years through which Georgia can continue to play its leading role in the region in the promotion and protection of international children's rights.

Cross-cutting challenges

Through desktop research, consultations and insights from national experts, this report identifies a number of cross-cutting challenges standing in the way of the realisation of child-friendly justice throughout the Georgian justice system. The challenges can be broadly categorised under three headings: **I. Law and implementation; II. Institutions; and III. People**, with direct implications for children themselves. The challenges are relevant for any contact of the child with the justice system and is not limited to a specific justice context, although the particular implications may differ depending on the legal context or the specific role the child plays or is supposed to play.

I. Law and implementation – Lack of Guidance

Although a comprehensive legal framework on the protection of the rights of children exists, with the Code as its flagship, it is clear that **the legislative framework lacks specificity** and is generally not (yet) implemented in practice. In relation to this, the Full Report has identified that there are **conflicting legal provisions** between the Code and other legislation, for example with regard to children's legal capacity to access civil justice proceedings.

Moreover, there is a **lack of specific authoritative guidance** for both professionals and institutions, in laws, regulations and policies, as to how to properly include children in the processes before, during and after proceedings, bearing in mind that these proceedings are not designed for children. Moreover, there is a lack of guidance on how to ensure that children can participate effectively in the different types of justice proceedings, bearing in mind the different roles children can play.

II. Institutions – Lack of child-specificity and child-sensitivity

For the full operationalisation of the legislative framework, various institutions play a vital role. These key institutions include the judiciary, the public prosecution service, the bar association (i.e. lawyers), police or law enforcement, detention centres and institutions for alternative care, social workers and psychological services, and, of course, different Ministries. On the basis of the various interviews with stakeholders as well as the desk research, it has become clear that **key institutions often lack a child-specific focus, let alone a solid understanding of the implications of child-friendly justice**. In addition, **separate, specialized courts for children's matters are largely absent or cannot be guaranteed in certain parts of Georgia**. Apart from this being problematic for the level and quality of the **child-sensitivity** of the professionals in and around justice proceedings, it also fails to meet the required level of child-specificity in order to respond to children's needs and interests in an adequate, effective and children's rights manner.

A related challenge that cuts through all justice systems in Georgia concerns **the lack of trained and specialized professionals working in justice systems with or for children**. Despite the availability of a basic training for professionals, there is no continuous education, training and intervision. More fundamentally, there is **no culture of ongoing professional training on child-friendly justice, and on children's rights more broadly**, let alone that the training has sufficient depth and reaches the required level of rigour and specificity.

Another issue of concern is the **absence of justice environments and infrastructures**, including court buildings, police stations and lawyers' offices, **that are adapted to children**, bearing in mind that age and maturity. The Psycho-Social Service Center (based on Barnahus model) operates only in Tbilisi and serves at this stage only to child victims and witnesses of sexual violence. This reinforces the need to make children's encounter with the justice system more child-friendly and more adjusted to children's rights, needs and interests equally available for all children throughout the country.

There is also a **lack of coordination and information sharing between justice professionals**, which can negatively impact children's experiences of justice proceedings. As a consequence of this children may be exposed to various, different professionals, who are not aware of children's previous contact with other professionals and may force children to repeat what has been said before. This is not only problematic from the perspective of the **prevention of re-victimisation**, in case of a child as a victim, it may also negatively impact children's experiences with the justice and children's trust in the system, including its outcomes, altogether. In other words, it may negatively impact children's experience with and perception of procedural justice. Another implication of the lack of coordination and information sharing is that procedures take too long and overlook the fact that **time (and the lapse of time) is perceived differently by children compared to adults**.

The Full Report furthermore points at **the lack of accountability mechanisms, including effective ways for children to seek effective remedies in case of rights violations**. This also stretches out to the negligence of children's rights, which encompasses children's specific right to access to justice, the right to effective participation and the right to be protected against (re-)victimization. In this regard, it is important to note that **not all children in Georgia benefit from the increased awareness around and focus on children's rights implementation**. It has been reported that children belonging to the most stigmatized, excluded and discriminated groups in society, including girls and young women, children belonging to certain ethnic minorities, children with disabilities and children in conflict with the law, are often denied adequate protection of children's rights, which essentially boil down to the most fundamental right, the right to have one's rights equally recognized throughout the entire Georgian legal system. This is a serious challenge that is present across all justice systems in Georgia, relates to existing and persistent perceptions in Georgian society, and goes against the very heart of the UN Convention on the Rights of the Child (UN CRC), including the right to non-discrimination as laid down in Article 2 of the UN CRC.

Last but not least, it must be noted that there is also a **lack of data concerning child-friendly justice**, including disaggregated data on crucial aspects of the Georgian legal system such as children's access to justice, children's involvement in justice proceedings, children's legal aid and other forms of assistance and outcomes of the proceedings. Moreover, there are **no evaluations of children's involvement in justice systems** as a result of which there is a **lack of information on how children experience the justice system** and what could be done to make the Georgian system more responsive to children's experiences and needs.

III. People – Lack of awareness of children's rights across the board

The third category of cross-cutting challenges concerns people, referring to **society at large** as well as to the individual professionals working in the different Georgian justice systems.

It was reported by many respondents that there is a **general lack of understanding and awareness of children's rights in Georgia**: children are not generally perceived as rights holders, let alone that all children are seen as such. As was reported under II., large discrepancies exist between certain groups of children, which often *de facto* exclude certain groups of children from children's rights protection and from

accessing justice systems. There is also a lack of understanding and awareness of child-friendly justice, and its practical implications. This extends to justice professionals who lack awareness of *the Code* and, as was mentioned under I., many professionals working in justice systems do not understand the meaning and implications of child-friendly justice or do not perceive child-friendly justice to be a credible and legitimate concept to implement in practice. This is a rather fundamental challenge that ought to be addressed as a collective effort around the furthering children's rights in the hearts and minds of the public as well of professionals, while **leaving no one behind**.

In relation to this general lack of understanding and awareness of children's rights, it must be acknowledged that children themselves often suffer from **an information gap**. It was reported that **children often do not receive any information about their rights, and the information provided is not adequate and adjusted to children's age and maturity**. Information is one of the most critical elements of child-friendly justice and while it is crucial to provide children with information on their rights *before* justice proceedings commence, it is equally important to continue to provide children with information during the proceedings as well as after the proceedings. The latter element of the provision of information is often overlooked and is an imperative to provide information as well as (legal) assistance after the closure of the proceedings. Judicial authorities have role to play here, among others in 'translating' their decision into child-friendly means of communications (e.g. child-friendly judgements) and to point children into the direction of effective remedies.

Key recommendations

The cross-cutting challenges that are relevant for all justice systems in which children participate or with which children engage, ought to be prioritized in order to make the Code practically relevant and meaningful. This will also enable Georgia to live up to its commitments under international and regional children's rights law. On this basis, the following **key recommendations** are made, again categorized under I. Law and implementation; II. Institutions; and III. People, and **in addition to the many specific recommendations made in the Full Report**.

I. Law and implementation

The challenges with regard to conflicting legal provisions within the Georgian legislative framework as well as the lack of specificity of certain legal provisions require continuous efforts to carefully review existing laws and regulations. It is therefore recommended to undertake **an audit of existing legislation** to ensure any conflicting provisions between the Code and other legislation are identified and amended to reflect requirements in the Code. This would also show the way in making existing legislative provisions, pre-dating the Code, more child-specific where needed.

In order to provide more specific and authoritative guidance to institutions and professionals in the Georgian justice systems, it is important to develop a **comprehensive implementation strategy on child-friendly justice**. As part of this strategy, which should be an integral part of the broader implementation strategy of the Code as a whole, it is recommended to **develop and share specific legislative guidance, policies and practices** to ensure the Code is implemented at all stages of all types of justice proceedings affecting children. This strategy should be subject **to periodic evaluation and review** and should have the **following deliverables**:

- making **children visible throughout all stages of justice proceedings** by recognizing and addressing the different roles children play in the various (stages of) justice proceedings;
- including **ethical and professional standards and requirements** for those working for and with children in the justice system;
- offering **concrete and specific guidance** to the various professionals on the operationalization of child-friendly justice before, during and after the proceedings, among others on the provision of information to children, the place of the child in the justice proceedings, legal and other appropriate assistance to children, the role of parents and others responsible for children, the filing of motions by or on behalf of children and the conduction of cross-examination, best interests of the child determinations, the hearing

of children, the provision of feedback to children and access to effective remedies for children;

- making sure that there are **sufficient human and financial resources** securing the availability of relevant professional expertise (including for example specialized psychological support for children), as a matter of priority in the public budgeting by the Georgian Government (see also further below) to fully implement the Code.

A final important recommendation in relation to law and implementation concerns **legislative guidance**, which assists with the **clarification of the different roles and responsibilities of stakeholders in ensuring the protection of children's need, interests and rights**. In the context of this recommendation, it is recommended to invest in **systems for information sharing among professionals**, while ensuring that children's right to privacy is adequately protected.

II. Institutions

In order to overcome cross-cutting challenges concerning the lack of child-sensitivity and child-specificity of institutions relevant for the Georgian justice system, it is first and above all recommended **to invest in permanent and high quality education and training of all actors in the justice system as a matter of priority**. This should include continuous specialist training for key actors including members of the judiciary, lawyers, prosecutors, police, social workers and psychologists working with children. In addition, it is recommended **to include specialist training in the professional development standards and/or codes of conduct** for each of the relevant professions and to make this **a mandatory element of permanent education**. The existing basic training offered to professionals can serve as a stepping stone to a comprehensive strategy in which professional education is approached from the perspective of **life long professional learning, specialization and intervision**. This professional education, training and intervision should as a minimum include **dedicated attention for children's rights, the concept of child-friendly justice and the significance of the prevention of discrimination, exclusion and stigmatization of children**.

In addition, it is recommended to develop a systematic way of ensuring that every institution that engages with children in the justice system adopts a child specific approach and makes this explicit to other relevant institutions, to children and to the wider public. In doing so, **systematic child sensitive approaches are promoted in a structural manner and made more visible**, which also promotes **accountability**. Systematic child sensitive approaches include child-sensitive professional standards grounded in the concept of child-friendly justice and in children's rights more broadly, but also adapted infrastructures and facilities in order to make these more child sensitive. In particular, it is strongly recommended to expand multidisciplinary approach and safeguards against secondary victimization as provided by the Psycho-Social Service Center (based on Barnahus model) for all children as victims and witnesses of all types of violence. This has implications also for standard proceedings, for example in the court room, as part of the adversarial nature of the Georgian justice system. It is recommended that Georgia makes more work of the establishment of **specialized and separate courts for family and children's matters** bearing in mind challenges concerning geographical reach, judicial traditions and the availability of human resources.

The final recommendation in response to the cross-cutting challenges concerning institutions relate **to monitoring and data collection**. It is strongly recommended to develop **a system of children's rights indicators** enabling effective monitoring of the implementation of both core elements of child-friendly justice as well as its specific features. These indicators should reflect how courts and other relevant public authorities implement the concept of child-friendly justice and secure its functioning with benefits for both children and the quality of justice. Monitoring and data collection are a state responsibility.³¹⁰ Therefore, the Government of Georgia should be in the lead here. **Independent monitoring**, however, remains critical as well.³¹¹ Therefore, it is recommended that the Public Defender of Georgia (ombudsperson) as well as civil society continue to engage in the monitoring and data collection efforts. In this regard, universities could be invited to play a role as well.

310 UN Committee on the Rights of the Child, *General Comment No. 5, General Measures of Implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 48ff.

311 *Ibid.* para. 65ff.

III. People

The final set of recommendations revolve around the cross-cutting challenges brought together under the category of people. It is clear that influencing the hearts and minds of people, as members of both the broader public and the professional work force, is a longlasting endeavour. It may require a change of culture and it certainly requires addressing existing and often persistent perceptions. **It is nevertheless critical to target the mindset as well as the perceptions towards children, their rights and the overarching power of the Code among people in the Georgian society.** It will be difficult if not impossible to change the attitudes of professionals in the justice system, without investing in more education and awareness raising around the rights of children without leaving some children behind. It is strongly recommended that the Ministry of Education is involved in offering more children's rights education and in redesigning education curricula. However, it ultimately requires a coordinated effort led by the Georgian Government, which finds its basis in a national strategy, reaching out to cities and local communities and including key stakeholders, such as city councils, community and religious leaders, schools and also parents. Moreover, it is crucial and therefore **highly recommended to include children as change makers.** Children know better than anyone else how important rights are. And it is fair to assume that only children with experience in the justice system or with experience in being excluded, stigmatized or discriminated know how to make child-friendly justice and children's rights work. Children should therefore be invited to co-design the national strategy around children's rights awareness raising and education.

Another important recommendation relates to the **provision of information to children.** Receiving information adapted to a child's level of development, maturity and age is critical for children to participate effectively in justice proceedings. This information should not only be about rights but also about procedures, interests at stake and expectations. Information is ultimately critical for the empowerment of children, which can be seen as an important prerequisite for children's access to justice.³¹²

The provision of information to children should also be inclusive, which relate to the final recommendation made here, that is: **the adoption of an inclusive, child-friendly justice approach for all children.** It is recommended to ensure that all steps to implement child-friendly justice extend to *all* children. **Consultation with children** following from this Full Report should take place with a range of children including children from remote areas, children in streets situations, children in alternative, out of home care, children with disabilities, and children of different ages and gender with lived experience of justice systems.

Child-friendly justice – a joint responsibility

Making justice systems child-friendly requires collaborative efforts and assumes a joint responsibility of various stakeholders. The implementation of the 2015 Juvenile Justice Code provides many examples on how legislation can be operationalized and implemented in practice. Civil society and professional organisations have played a critical role in this process. These experiences can and should be used for the implementation of the Code on the Rights of the Child. It must be acknowledged, however, that it is **the Georgian government that bears the primary responsibility for the implementation of children's rights,** as laid down in international, regional and domestic law (see art. 4 of the UN CRC and the Code Art 99(2)). The implementation of child-friendly justice as a concept of children's rights that is derived from Georgia's obligations as state-party to the UN Convention on the Rights of the Child, and as a member state of the Council of Europe, therefore starts by acknowledging the critical role of the government. It is also the government that leads the implementation of the new Code on the Rights of the Child.

At the same time, **child-friendly justice is a concept that has to be lived and carried out by professionals and stakeholders as part of their joint commitment and *de facto* responsibility to protect children's rights across the different justice systems.** The judiciary, for example, has an important function in securing the lawfulness of government actions and plays, at the same time, a critical role in the implementation of child-friendly justice in and around its courts across the country. Lawyers turn out to be essential for children's effective participation in justice system and the quality of their work largely defines the effective protection of children's rights and interests before, during and after justice proceedings. A similar critical role is played

³¹² T. Liefwaard, 'Access to Justice for Children: Towards a Specific Research and Implementation Agenda', International Journal of Children's Rights 2019/27.

by social workers who provide, among others, vital information to law enforcement, public prosecutors, the judiciary and others responsible for decision-making before, during and after justice proceedings and their expertise should be valued and supported. Law enforcement, public prosecution, probation services and institutions have an important task in protecting and supporting children who are in conflict or in contact with the criminal justice system; the quality of their work can prevent re-victimisation and contribute to children's sense of procedural justice and respect for their human dignity and worth. Last but not least, civil society as well as Georgia's Public Defender (Ombudsperson) have proved to play an important role in service providing, in supporting children and families, in the monitoring of the various justice systems, including informal justice systems, and in securing children's independent right to access to justice.

The Georgian Government must therefore liaise, coordinate and partner with these stakeholders in the implementation of child-friendly justice in the various justice systems and across the country. It is recommended to jointly develop a **National Plan of Action around Child-Friendly Justice including a special public budget scheme**³¹³ on the basis of which the many challenges that lie ahead can be addressed and taken away. It is extremely to identify an agency at state level which will perform the required leading and coordinating role and will work closely with all other governmental agencies. It does not need much explanation that UNICEF can provide technical advice and assistance to the Georgian government where needed, as mandated by article 45 of the UN CRC, and support different implementation efforts to make the Code practically relevant and effective.

Children's access to justice is essential for children's rights implementation. It is fair to say that Georgia has – again – created an opportunity to lead the way in making children's rights work and count.

313 See in this regard the recommendations of the UN Committee on the Rights of the Child on public budgeting; UN Committee on the Rights of the Child, General comment No. 19 on public budgeting for the realization of children's rights (art. 4), CRC/C/GC/19, 20 July 2016; see also UN Committee on the Rights of the Child, General Comment No. 5, General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 51 and 52.

5. ANNEXURES

1. Legislative framework and Georgian justice system
2. Georgian justice system and roles and responsibilities of key actors
3. Example of practical training documents involving case studies
4. List of online training documents and resources for children in justice contexts

Annexure 1: Legislative framework and Justice System in Georgia

Brief Overview of the Legal Framework

Georgia is a State party to most major international and regional instruments for the protection of human rights. Georgia ratified the CRC in 1994 and its subsequent optional protocols. It has ratified the International Covenant on Civil and Political Rights (ICCPR). On the regional level, Georgia is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Georgia is also a Member State of the Council of Europe.

The Constitution of Georgia (1995) provides for the rights of children to be protected by law (Art 30(2)). It provides for an independent judiciary (Art 59) and guarantees every individual's right to apply to a court for protection of her/his rights (Art 31(1)). A child is defined as a minor under 18 in *the Code* (Art 3(a)) and full legal capacity is obtained at the age of 18 (Civil Code).

The adoption of the *Juvenile Justice Code* in 2015 was a significant step to introduce child-friendly justice in the Georgian criminal justice system. The *Juvenile Justice Code* brings Georgia's juvenile justice system in line with international standards and, with the support of UNICEF, extensive work has been done on implementing these standards.

The Code was adopted in 2019 and was noted as being 'a major step forward' in ensuring Georgia meets its legal obligations under the CRC.³¹⁴ *The Code* guides State agencies and other administrative bodies, municipalities, the Courts, public and private entities and natural persons in their activities and decision-making on matters affecting children in the areas of family, education, social well-being, safety, healthcare, justice and other spheres/spaces and environments.³¹⁵ *The Code* does not abolish other laws concerning children, rather it commits to aligning, interpreting and enforcing other legislative and subordinate normative acts of Georgia with the Constitution of Georgia, the CRC, its Optional Protocols and other treaties of Georgia. The Code guides the State agencies and other administrative bodies, municipalities, the Courts, public and private entities and natural persons in their activities and decision-making on matters affecting children in the areas of family, education, social well-being, safety, healthcare, justice and other spheres/spaces and environments³¹⁶.

The Law on Combatting Violence against Women, Domestic Violence and Protection and Support of Victims of Violence defines forms of violence against the child (including "neglect") and provides specific protection measures, including separation of the child from parents or other legal guardians. The Law also provides a possibility to separate a perpetrator from the child instead of vice versa. Police issues a restraining order for immediate response on violence incidents, while the court issues protective order to protect long-term protection of the victim as needed. According to the Code on Administrative Offences, failure to obey the decision of a social worker on the separation of the child from perpetrators is an administrative offence subject to administrative detention up to seven days or corrective works up to one month.

The Civil Code regulates family law matters concerning children, including parental rights, duties, and prohibition, legal Capacity of the Child, guardianship and care/custody.

The Civil Procedure Code provides for specialization in civil and administrative proceedings, exemption from court expenses, procedural capacity of the child, right of the child to apply to the court, justification of judgements, examination of Child Witness, enforcement of Judgments, etc.

The Administrative Procedure Code provides procedural rules for the Common Courts for review and resolution of administrative cases. The administrative cases may include disputes on legality of acts/decisions and meeting obligations by the administrative bodies (state agencies, municipalities, other public law entities). Administrative judicial proceedings involving children may include: court's protection order for the child in case of domestic violence, appeal against police restraining order, decision on sending a child with difficult behaviour to the juvenile referral facility (semi-closed boarding school), etc.

314 2020 Report of UN OHCHR on cooperation with Georgia (A/HRC/45/54), 17.08.2020 / para. 13 <https://www.ohchr.org/en/countries/enacaregion/pages/geindex.aspx>.

315 Art. 1, 2 of the Code on the Rights of the Child

316 Art. 1, 2 of the Code on the Rights of the Child

Annexure 2: Justice system in Georgia and roles and responsibilities of key stakeholders in establishing child-friendly justice

Justice system and the role of the Judiciary:

Georgia operates a civil legal system. The adversarial nature of the justice system in Georgia is reflected in Article 4 of the Civil Procedure Code. The Common Courts of Georgia³¹⁷ consist of the Supreme Court³¹⁸ (the highest court of appeal) the Tbilisi Court of Appeals (for Eastern Georgia), the Kutaisi Court of Appeals (Western Georgia), city courts and district courts³¹⁹ (the courts of first instance). Key roles of the judicial actors in child-friendly justice system:

- Common Courts shall ensure the administration of criminal, civil and administrative proceedings involving children based on the principles of child-friendly justice (Art 95(1))
- High Council of Justice shall ensure professional training and set up the specialization standards for the judges, guide development of appropriate infrastructure for the implementation of child-friendly justice at all levels of the common courts system.
- High School of Justice is responsible for ensuring quality professional trainings for candidate judges, judges, assistants to judges and other court staff.

Civil and Administrative Judicial Proceedings

Article 1 of the Civil Code of Georgia defines the scope of application of civil law – it “regulates property, family and personal relations of a private nature, based on the equality of persons.” Pursuant to Article 8(1) of the Civil Code, any natural or legal person may be a subject of private law relations. A child may be a participant in the civil judicial proceedings on matters related to divorce, deciding on the child’s residence (with whom she/he would live), parents’ rights and timeframe to visit/see the child, alimony, disposal of the child’s property, etc.

As for the scope of application of the administrative law, pursuant to Article 21 of the Administrative Procedures Code, a common court shall hear disputes arising from legal relations that are regulated by administrative legislation. Administrative judicial proceedings concern acts and decisions of administrative bodies. These may include matters concerning the child’s access to education, healthcare, social protection, family support, access to clean water and environment, failure to report and adequately response violence against the child etc. Furthermore, the Administrative Procedure Code provides certain matters for administrative judicial review³²⁰, such as:

- o The court’s protective order as a provisional measure to protect children from domestic violence (by request of a victim, victim’s family member or the State Care Agency)
- o Removal of the child from parents based on domestic violence
- o A request of the Juvenile Referral Center on sending a child with difficult behaviour to the juvenile referral facility (semi-closed boarding school)

The courts also review matters concerning children under the Code of Administrative Violations³²¹, including certain forms of violence against the child in and outside of the family (negligence failure in performing parental duties, disobedience of the court decisions concerning parental duties towards the child, harmful influence on the child, and sexual harassment against the child). In addition, the courts review financial sanctions against the public agencies and responsible persons to report violence against the child.

317 <https://court.ge/eng>

318 <http://www.supremecourt.ge/eng/>

319 https://court.ge/geo_courts [Rap 2016 re adversarial justice systems..]

320 Administrative Procedure Code, Chapter VII3, art. 21¹² – 21¹⁵

321 The Code of Administrative Violations, adopted on 15/12/2984, last amended on 18/02/2021/ related articles 45¹, 166¹, 170¹, 172, 172⁶, 173¹³ and 175² <https://matsne.gov.ge/ka/document/view/28216?impose=translateEn&publication=381>

Juvenile Justice Proceedings

Children encounter criminal justice system when they get into conflict with the law (age of criminal responsibility is 14) or as victims or witnesses of crime. In most of the cases, the child's first contact in justice system is the police. The Prosecutor's Office carries out criminal prosecution, procedural guidance of the Police investigation, supports state prosecution in court.

Roles and responsibilities of other key stakeholders in establishing child-friendly justice

Government/State bodies

Under the Code, all Government Ministries and the administrative bodies operating under them must adopt child-friendly justice approaches.³²² It is important to note that the Ministry of Internal Affairs, the Prosecutor's office and Georgian Bar Association are not namely mentioned, however, the Code provides a number of obligations to ensure child-friendly justice (informing children, child-friendly proceedings, adapted and fair procedures, specialization).³²³ Key Ministries and other state agencies³²⁴ include:

- The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (MOH): Key relevant agency under the Ministry's control is the Agency of State Care and Assistance to Victims of Trafficking functions (the Agency) with the main roles and functions as bellow:
 - o Provide procedural representation of children in family law, administrative and juvenile justice judicial proceedings as required by the law
 - o Provision of temporary shelter and/or crisis centre for victims of trafficking and violence in and outside of the family
 - o Coordinate the processes related to guardianship and care, adoption and foster care
 - o Oversight activities of guardians, caregivers and support persons (for persons including children with disabilities)
 - o Issue an order for imposition of an administrative penalty to the agencies or authorised employee for failure in identification and reporting violence against the child
 - o Administer and coordinate state social protection programs
 - o Promote raising qualification of the Agency's employees
 - o Consider and make decisions on applications, complaints and proposals of citizens within its authorities
- The Ministry of Internal Affairs (then - Police): key relevant agencies are the Ministry's territorial representations – same as the Police Territorial Departments, Central Criminal Police, Patrol Police, Human Rights and Investigation Quality Monitoring Department. Key role and functions of Police:
 - o Protect law and order and public safety
 - o Protect the State interests, human rights and freedoms, legal persons
 - o Reveal and respond crime and other violations of the law
 - o Conduct operative and investigation activities
 - o Fight against crime and other violations of the law
 - o Fight against domestic violence and carry out prevention activities

322 Chapter XII, Code on the Rights of the Child. The Ministry of Internal Affairs not explicit under Code, but see Art XX
323 The Code, art. 70 (4), 73 (4), 74 (2)
324 The Code on the Rights of the Child, art. 89-98

- o Fight against illegal migration, detain and move illegal migrants to temporary detention/ placement centre
 - The Ministry of Justice (MOJ): The Ministry carries out legal drafting and ensures legal examination of the draft laws related to child rights in accordance with the relevant international standards. Key relevant agencies are Special Penitentiary Service, LEPL National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation, and Juvenile Referral Center. Key roles and functions:
- o The Special Penitentiary Service runs two key divisions: the Security Division and the Department for Rehabilitation and Resocialization. Their functions are to provide secure environment for juvenile prisoners, visual surveillance in their special living spaces,³²⁵ ensure their access to information, bio-psycho-social assessment by the multidisciplinary team, individual sentence planning, monitoring etc.
- o LEPL National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation ensures management and development of the Juvenile Diversion Programs, also provides program for rehabilitation and re-socialization of former prisoners;
- o The Juvenile Referral Center has the Specialists` Group to review the referral of the child with difficult behavior to different programmes and services. One of the key issues the Center makes a decision is on sending the child with a difficult behavior to the juvenile semi-closed facility.
 - Ministry of Education and Science provides relevant programs to ensure equitable access to education/inclusive education for all children, protect children from violence, enhancing social work in schools. One of the key agencies in relation to protection of children in schools, is the Service of the School Resource Officers which has the key functions as below:
- o Ensure safety and public order in the schools
- o Inform children about their rights and refer them to relevant programs and services in case of violence or other needs
- o Provide psychosocial service (through its Psycho-social Service Center) to the school students with psychological, behaviour and emotional disorders
 - Prosecutor`s Office: key functions are to:
- o Carry out criminal prosecution
- o Provide procedural guidance to Police in the investigation of criminal cases and conducting investigative operations
- o Provides service of victim and witness coordinators to facilitate participation of witnesses and victims in the proceedings, reduce the stress caused by crime and prevent re-victimization and secondary victimization.

State Institution to provide legal aid and protect human rights

- **Legal Aid Service (LAS)** which is the constitutional body and shall provide, upon request and when required by the law, state-funded legal aid and legal counsel to children regardless of their status in all types of proceedings
- **Public Defender of Georgia (PDO)**, which is the constitutional body, monitors and protects human rights and carries out human rights educational activities. The Child Rights Department of PDO is responsible to monitor the implementation of national and international acts concerning children`s rights. The Department of Equality examines cases of discrimination and make recommendations or general proposals to public and private entities.

- **Georgian Bar Association (GBA) is a legal entity of public** ensures the organization of nation-wide qualification exams for lawyer attorneys and grants qualification certificate that is a necessary license to work as a lawyer attorney (represent the clients` interests in criminal, civil and administrative proceedings). GBA also organises specialization trainings for private lawyers and provides specialization certificate in juvenile justice/children`s rights

Local Self-Government

Municipalities are to promote equal and effective participation of children in their activities and ensure child-friendly approaches in administrative proceedings conducted by the municipal bodies, in particular, through the child protection structural units.

Annexure 3: Training documents involving case studies

Source: Academy of European Law:

http://www.era-comm.eu/child_friendly_justice/training_materials.html accessed on 20 June 2021.

Case study 1: Family Law Proceedings

Case scenario

Tom and Julie have been married for 15 years and in the past few months have decided that their marriage is no longer working out and they wish to separate. They cannot agree on contact and living arrangements concerning the children so they decide to go to court. Tom and Julie have three children: Jenny (3 ½), Bell (6) and Martin (12). Julie has explained to the children that she and Tom no longer intend living together and that the court is going to make a decision about their living arrangements. She tells the children that she wants them to make their views known to the court.

Jenny asks if she can say hello to the Judge. Bell states that she does not want to talk to anyone about living arrangements – she wants things to stay the way they are. Anyway, she thinks court is for bad people and she doesn't know what she did wrong. Martin writes a letter to the Judge, which reads:

Dear Judge,

Please don't make me choose. ☹

Martin

Questions for Consideration

1. Share your experiences of how this issue would be addressed in each of your own jurisdictions? Choose the most Article 12 CRC compliant with a view to reporting back to the group.
2. If you were a professional involved in this particular case, what steps would you take to ensure that the rights of these children under Article 12 and the CRC are protected under the circumstances?

Solution

There are a number of factors to be considered in this case.

As Article 12 provides that all children capable of forming views have the right to be heard, all three children should have the opportunity to contribute to this decision making process. Thus, the first part of this process is that the children be given an opportunity to express their views which should be communicated to the decision-maker – in this case the judge. Once their views have been expressed on the matter in this case affecting them, whether through speech or alternative forms of expression, those views must be considered seriously by the Judge, with due weight being given to the views of each of the children in accordance with the age and maturity of each child. Age by itself (no matter how young the child is) should never be a reason for not treating the views of the child seriously. Children are not a homogenous group and so an individualized approach needs to be adopted in such cases.

Children should never be forced to participate in a decision-making process affecting them. Children should be provided with the opportunity to be heard in a child appropriate environment where they can talk freely without fear or judgment. Furthermore, children need to be informed in child-appropriate language not only about the decision being made but also about the process surrounding it. It is unfair to expect anyone including a child to contribute to a decision that they do not understand. For example, it needs to be made very clear that it will be the Judge in this case who makes the decision – not the children and even though the children will the judge know their views, these are not always determinative, they are just one factor of the bigger decision being made for which the judge takes full responsibility.

Children also need to be advised about the consequences of them contributing to the decision making process. They should be told that feedback concerning the decision will be given to them as soon as the decision is made. It is imperative that the children in this case are given individual feedback about the decision making process and what this will mean for them in their lives.

Children also need to be advised that they can contribute to the decision-making process directly or indirectly – the method should be of their choosing. Direct participation involves either speaking directly to the Judge or contributing their views in non-conventional or alternative ways (as envisaged by Article 13) such as through art, or a letter or play. Indirect participation will vary from one case to the next and from jurisdiction to jurisdiction but generally will include: communication of views

through a social worker, as part of the court report for example, or through a separate legal representative or a Guardian Ad Litem. Whichever mechanism is used, any communication with the children should take place in a space that is child – appropriate and they should be spoken to and informed in a language that they understand.

It is important to remember that Article 12 is a right of the child and thus must be adhered to in all decision-making processes concerning children. Indeed, in order to be able to make a decision in a child’s best interests, it is important that their views (which gives important information to the decision-maker concerning the life of this child) are considered seriously as part of this process. Generally, the intention behind Article 12 is not that the information from the child would be used for forensic purposes, Article 12 should be used for the benefit of the child in question and their wellbeing.

Case study 2: Administrative Proceedings

Case scenario

Tristan (8) boy has recently been subject to a physical attack from John (9) in the school playground. When he comes home one day with a black eye and a broken nose, his mother goes into the school principal and demands that some form of disciplinary action be taken against John. This is not the first time that John has attacked Tristan physically and he regularly taunts him in class when the teacher is not looking.

Unbeknownst to most, Tristan has been sending social media messages in the evenings to John which has caused him much hurt and upset which is why he lashes out each time he sees Tristan.

The Principal of the School calls John's parents into the school to tell them that the School is suspending John pending further investigation. John's parents demand to know if Tristan is also being suspended but the principal asserts that there is no evidence to support such action.

Questions for consideration:

1. How do you think this issue would be addressed from the point of view of ensuring the boys views are considered in your respective jurisdictions? Share your experiences and choose one experience which you think is the most Article 12 compliant – explain why.
2. From an Article 12 CRC perspective, what are the appropriate actions to be taken here by the School Principal as decision-maker?

Solution

In this scenario there is a decision going to be made by the school principal which will directly affect the lives of two young boys here – John and Tristan. This, under the circumstances, once each boy is deemed capable of forming views, each boy should be provided with the opportunity to express those views and have them considered by the decision maker. Neither boy should be forced to contribute views on the matter in question.

It is important that both boys are facilitated in contributing their views in a safe space and initially in a confidential environment. Furthermore, each boy should have the circumstances surrounding the decision explained to each of them in a manner that they each understand including the potential consequences for each of them. It should also be explained to each of them that they can choose the manner in which they contribute their views to the process – this can be directly with the principal or indirectly through their parent or a teacher perhaps, whichever way makes them feel comfortable. Furthermore, they are not expected to contribute solely through speech, they can contribute their views in a variety of ways such as through art or letter.

Once a decision has been made, this should be communicated back to the two boys in a manner that is appropriate to their age and understanding with a clear explanation as to how the decision in question was reached under the circumstances.

Annexure 4: List on online training documents and resources for professionals working in justice systems on child-friendly justice

- Judges
 - o Council of Europe HELP (coe.int), course brief available here: <https://rm.coe.int/help-course-brief-child-friendly-justice/16808b4f27>
- Lawyers
 - o UK: <https://yjlc.uk/barristers-training/> and <https://yjlc.uk/youthjusticetraining/>
 - o [Changing the Frame Practitioner Knowledge, Perceptions, and Practice in New York City's Young Adult Courts](#) (Center for Court Innovation):
 - Training in 4 areas: adolescent brain development, positive youth development, procedural justice, and risk-need-responsivity)
 - o <https://elf-fae.eu/training-material/> for lawyers in the EU
 - o Specialisation standards: New Zealand [Family Court Practice Note](#)
- Training for all actors on child-friendly justice
 - o Council of Europe HELP online courses on child-friendly justice: <http://help.elearning.ext.coe.int/login/index.php>
 - o CBA <https://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit>
- Training specifically on participation and the right to be heard (see also case studies in Annexure 3)
 - o <https://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit/theChild/Child-Participation>
 - o <https://academy.childhub.org/enrol/index.php?id=14>
- Participation for those affected by Sexual violence
 - o Webinars: <https://childhub.org/en/child-protection-webinars?keys=>
 - o Gender Based Violence: Training manual (Part of BRIDGE project):
 - o http://tdh-europe.org/upload/document/7289/BRIDGE%20training_manual_-_english.pdf
- Training for actors working with children in child protection
 - o <https://academy.childhub.org/> offers courses for child protection professionals in South East Europe. The content has been developed with renowned experts in the field as well as academics from Universities in Europe

- Migration: Guidelines on making best interests assessment migration:
 - o <https://www.refworld.org/pdfid/5c18d7254.pdf> (Checklist 130-131)

- Victims:
 - o UN: (see Module 4, best interests of Victims)
 - o https://www.unodc.org/documents/justice-and-prison-reform/Training_Programme_on_the_Treatment_of_Child_Victims_and_Child_Witnesses_of_Crime_-_Law_Enforcement.pdf
 - o New Zealand: <https://www.orangatamariki.govt.nz/youth-justice/supporting-victims/>

- Juvenile justice & role of police
 - o UN Professional Training Series: Pocket Book: Human Rights Standards and Practice for the Police:
 - Training: <https://www.ohchr.org/documents/publications/training5add3en.pdf>
 - Police accountability: https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf (not specific to children, but international examples of police accountability and pp 45-6 complaints against the police)
 - New Zealand <https://www.justice.govt.nz/assets/Documents/Publications/YCAP-summary.pdf>
 - o Examples of innovative program encouraging better relationships between police and children from minotiries:
 - Australia: <https://www.perthnow.com.au/community-news/wanneroo-times/danny-green-wa-police-collaborate-on-boxing-program-for-kids-c-1381228>
 - USA: <https://www.ny1.com/nyc/brooklyn/news/2019/05/01/new-york-city-cops-and-kids-boxing-club-how-the-nypd-is-keeping-teens-out-of-trouble-with-boxing>

Resources for children in justice contexts

- Education kit for police interactions: <https://www.legalaid.vic.gov.au/find-legal-answers/free-publications-and-resources/street-law-education-kit>
- Children in family matters: <https://www.familieschange.ca/> guide for children whose parents separating / divorcing and have separate guides for teens and kids Alberta: children were part of design or review process.
- Tips for going to court: <http://childrenscourt.courtexus.com/>
 - o how to address the magistrate, how to dress, what certain terms mean e.g. 'applicant'; offers virtual tours of the court for criminal matters.
- [Child-friendly summary](#) of the EU Strategy on the Rights of the Child 2021.

Other:

- COVID-19 explained for children in New Zealand: <https://www.kidshealth.org.nz/resources-help-explain-coronavirus-covid-19-children>

