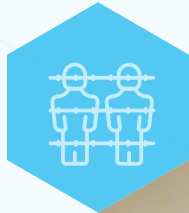




REIMAGINE JUSTICE FOR CHILDREN



TECHNICAL BRIEF

# CHILD-FRIENDLY LEGAL AID

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# INTRODUCTION

## Reimagine justice for children



Every child can access free legal aid, representation and services:

- Expand free legal aid for children and build national cadres of specialised lawyers and paralegal services.
- Integrate social work and child specialisation within the justice sector, and intersectoral coordination and collaboration.
- Support strategic litigation on justice for children, for broader policy impact.<sup>1</sup>

Children face numerous barriers in accessing justice. Aside from the justice system being daunting to children and few law professionals being skilled in handling children's cases, many children have no knowledge of their rights, no means to contact a lawyer or no financial resources for legal fees. In many country contexts, laws prevent children from directly making a claim or challenging a violation of their rights before a court because, among other reasons, they lack legal standing to bring actions. Too often, children have minimal participation in the justice process, denying them the opportunity to be heard in

major decisions that affect their lives. Even when children do participate, they are often left confused or, at worst, experience stigmatisation, trauma and re-victimisation as a result of the experience. Combined, this undermines trust in the justice system and its ability to reach decisions that promote and respect children's rights. The right to legal aid is a fundamental human right, enshrined in various international and regional human rights instruments. For children, this right is even more critical given the barriers they face. It is the duty of legal professionals to ensure that this right is not only upheld but done so in a manner that is sensitive, inclusive and tailored to their unique needs. Regardless of the rights involved, children should be able to access free, quality and timely legal aid, representation and services. The right to legal aid is essential for ensuring access to justice and effective remedies.<sup>2</sup> Legal aid is key to combating inequalities; claiming rights; challenging discriminatory and harmful practices; preventing violence, abuse, exploitation and the recurrence of any child rights violations and restoring entitlements that have been denied. This brief uses child-friendly to mean child-centred, or based on child rights as defined in the *Convention on the Rights of the Child (CRC)*.

## WHAT IS CHILD-FRIENDLY LEGAL AID?

Child-friendly legal services ensure that children are treated with care, understanding and respect for their rights when dealing with the justice system. Access to legal assistance, representation

and services is a comprehensive approach that ensures legal processes are accessible, age-appropriate, expeditious and tailored to children's unique needs and rights.

Child-friendly legal aid and services should adhere to the core principles of the CRC and prioritise the child's best interests, ensuring non-discrimination, the right to life, survival and development and, importantly, the right of the child to be heard. By integrating these principles, child-friendly legal aid plays a pivotal role in making justice systems more responsive and considerate to children, whether they are witnesses, victims, in conflict with the law or involved in civil proceedings.

Child-friendly legal services go beyond just helping children in court; it is about making sure their rights are fully respected and protected in every way. Legal aid, when done in a child-friendly manner and informed by CRC principles, can be a game changer in achieving all other rights.

**Legal aid** can be defined as 'legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it.'<sup>3</sup>

**Child-friendly legal aid** encompasses a variety of actions and attitudes designed to maximise the applicability of legal aid for children when they come in contact with justice systems. These can include standards of competence when providing legal representation to children:

- acting in a child's best interests and ensuring their effective participation;
- building a relationship with child clients;
- engaging in child-sensitive communication;
- providing reliable and relevant information; and
- working with family members and other supportive adults, and keeping children safe.

Various dimensions of child-friendly legal aid are detailed further in this brief.<sup>4</sup>

**Child-friendly justice** 'refers to justice systems that guarantee the respect and effective implementation of all children's rights at the highest attainable level. It is, in particular, justice that is accessible, age appropriate, speedy, diligent and adapted to and focused on the needs and rights of the child, respecting the rights of the child, including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.'<sup>5</sup>

# ACCESS TO JUSTICE AND LEGAL AID

**Access to justice** is the ability to seek and obtain a just, equitable and timely remedy for violations of rights. It includes the right to be recognised before the law and to a fair trial, including equal access to courts and equality before the law.<sup>6</sup>

The international human right to legal aid is essential for ensuring access to justice.<sup>7</sup> The right

to legal aid can be construed as both a human right and a child's right, and as an essential procedural guarantee for the effective exercise of other human rights, including the right to an effective remedy, the right to liberty and security of person, the right to equality before the courts and tribunals, the right to counsel and the right to a fair trial. Hence, it is not only about child-friendly

justice, but also about having essential access to justice more generally.

This brief focuses on access to appropriate legal representation in criminal, civil and administrative proceedings by children who, without access to legal aid, would not be able to access justice. A child may be involved in the criminal justice system either as a victim or witness to a crime or as a child alleged as, accused of or recognised as having infringed criminal law. Children may also be involved in civil or administrative proceedings, including child protection, guardianship, custody, migration, asylum and family law cases. Children may be victims of discriminatory, or otherwise harmful, practices or denied the enjoyment of their fundamental rights.

Children's access to justice covers all judicial and administrative proceedings affecting children, including customary and religious justice mechanisms, alternative dispute resolution and access to quasi-judicial mechanisms (e.g., national human rights institutions). It applies to constitutional, criminal, civil – public and private – administrative and military law at the national and international levels.<sup>8</sup>

Access to justice also requires the legal empowerment of every child and must consider their age, maturity and evolving capacity.<sup>9</sup>

In **Myanmar**, UNICEF worked closely with non-governmental partners such as International Legal Federation to provide quality legal advice and assistance, as well as mental health and psychosocial support, to an increasing number of children who are coming into contact with the law.

Lawyers worked to accelerate children's release from detention. They also helped a number of children in detention access medical assistance,

working closely with child protection case workers who have helped children connect with their families and psychosocial support services.<sup>10</sup>

The barriers children face in accessing justice, including legal aid, are more extreme for some groups of children – especially those in poverty, with disabilities, in the context of migration and displacement and belonging to marginalised and discriminated communities. Conflicts, violence, natural disasters and other humanitarian issues further exacerbate child rights violations and put added pressure on the justice system. Even when the justice system is not fully functional, legal aid is critical for many issues, including addressing document violations, restoring public documents and exploring options and other remedies.

Investment in timely, quality, free child-friendly legal aid is not only critical to the promotion, protection and fulfilment of the rights of children but also to just, peaceful and inclusive societies in line with the Sustainable Development Goals (SDGs), particularly SDG 16.3, which addresses access to justice for all, 16.2 on eliminating violence against children and 16.9 on legal identity.

Legal aid for children is notoriously underfunded and/or under-resourced. In many countries, there is a shortage of lawyers with the knowledge and skills to handle cases involving children, especially outside of urban centres. Although there are several models for the delivery of legal aid services, not all ensure good quality services to children. In many legal systems, legal representatives have sometimes been criticised for infringing upon children's other rights, such as the right to a speedy trial by requesting frequent postponements of children's cases, or immediately asking children to plead guilty under the mistaken impression that it is in their best interests or because they cannot pay.

Access to legal aid is a crucial element of child-friendly justice. This includes legal advice, legal assistance and legal representation. This is vitally important to promoting, protecting and fulfilling child rights in all sectors, including in development and humanitarian contexts. The provision of child-friendly legal aid is an important – but all too often neglected – part of broader rule of law and justice reform efforts and humanitarian preparedness, response and recovery measures.

### Legal representation, legal assistance and legal advice

- **Legal representatives** act on the voice of their client. Legal representation must be given by a practicing lawyer, who has the ‘particular skills and expertise to represent the child’ and the ‘ability to take the side of the child and act as his or her agent or ambassador’.<sup>11</sup> This must be distinguished from someone who represents the best interests of the child in a case.
- **Legal assistance** includes anything from the provision of perfunctory advice to the drafting of legal documents or conducting legal research. It need not be given by a practicing lawyer and could come from a paralegal or student working at a law clinic. Legal assistance is thus much wider than legal representation.
- **Legal advice** refers to the provision of a professional or formal opinion on a legal matter, or guidance on a specific course of action.

States should prioritise setting up agencies and programmes to provide legal and other assistance to children.<sup>12</sup> The *Committee on the Rights of the Child* (‘CRC Committee’) has stressed that children should be enabled to access relevant information and effective remedies to claim their rights, including through advice and support from community-based advisors and national human rights institutions, as well as legal, paralegal and other services.<sup>13</sup> All persons having contact with, or being responsible for, children in the criminal justice system should receive education and training in human rights, the principles and provisions of the CRC and other United Nations standards and norms in juvenile justice as an integral part of their training programmes, including lawyers and legal professionals.<sup>14</sup> In accordance with the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, States should ensure that child victims and witnesses are provided with appropriate access to justice, including fair treatment, restitution, compensation and social assistance. Child witnesses also need assistance in judicial and administrative processes. States should review, evaluate and improve, as necessary, the situation for children as witnesses of crime in their evidential and procedural law to ensure that the rights of children are fully protected, and promote the development of child witness preparation schemes to familiarise children with the criminal justice process prior to their giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal process.<sup>15</sup>

# INTERNATIONAL STANDARDS

Article 14(3)(d) of *The International Covenant on Civil and Political Rights* first established the right to legal assistance free of charge to persons accused of a criminal offence:

“ In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

The [UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#), 2013 are based on Article 14 of ICCPR.

*The European Convention on Human Rights* (ECHR) further developed by the European Court of Human Rights provides a similar guarantee of the right to legal aid:

“ Everyone charged with a criminal offence has the following minimum rights: c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”  
– ECHR, Article 6.3

In the Americas, the *American Convention on Human Rights* recognises the right to be assisted by counsel provided by the state:

“ The inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law.”  
– ECHR, Article 8(2)e

*The African Charter on Human and Peoples' Rights* recognised in Article 7 the right to defence. This right was elaborated on by the *African Commission on Human and Peoples' Rights in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* of 2003.

*The Arab Charter on Human Rights* provides for the general principle of the right to a fair trial.

“ Everyone has the right to a fair trial that affords guarantees before a competent, independent and impartial court that has been established by law to hear any criminal charge against him or to decide on his rights or obligations.”  
– ECHR, Article 13

All these rights apply to children. Moreover, children have the right to be heard directly and not only through a representative.<sup>16</sup> Under Article 12(1) of the CRC, a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting

them, and the views of the child must be given due weight in accordance with his/her age and maturity. The child's right to express his/her views includes the right not to be compelled to give testimony or confess guilt.<sup>17</sup>

In the context of judicial or administrative proceedings, Article 12(2) of the CRC, states that children must be 'provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.' Such representatives may include a lawyer or another legal service practitioner. The child's effective participation is important not only to uphold the child's right to be heard, but also to get the best evidence possible in the case whilst protecting the child from undue stress or harm.

There is no minimum age limit to exercise this right. Article 1 of the CRC provides that a child means every human being below the age of eighteen unless, under the law applicable to the child, majority is attained earlier.

The CRC Committee's General Comment No. 12 (2009) on the Right of the Child to be Heard explains that age alone cannot determine the significance of a child's view; information, experience, environment, social and cultural expectations and levels of support all contribute to the development of the child's capacities to form a view.

The phrase 'who is capable of forming his or her own views' in Article 12(1) is important. The CRC Committee states that rather than being regarded as a limitation, it should be viewed as an obligation 'to assess the capacity of the child to form an autonomous opinion to the greatest

extent possible.' Therefore, we should start with the presumption that a child is capable of expressing her or his own views, rather than placing the burden of proof on that child. The views of a child who has the requisite capacity must be 'seriously considered,' and it is not sufficient to simply listen to those views without taking them into account in decision-making.

Consistent with Article 12(1) of the CRC, the legal framework and stakeholders in the criminal justice system must be aware of and design themselves around the role of a child's legal representative, which is centred exclusively around their client. A child's lawyer would, by virtue of their role, place the express interest of the child defendant before the interests of other parties in the criminal justice system.

In the context of criminal proceedings, Article 40(2)(b)(ii) of the CRC provides more explicitly that children charged with an offence have the right to 'legal or other appropriate assistance' in the preparation and presentation of his or her defence. This means that the child must be '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.'<sup>18</sup> 'Other appropriate assistance' could include assistance from members of the social service workforce.<sup>19</sup> It is often vital for a social service worker to act in tandem with a legal representative, although it is contested by many that non-legally-qualified persons are able to offer effective legal representation to children.

The CRC Committee recommends that effective legal representation be provided free of charge for all children facing criminal charges, and that children should not ordinarily be allowed to waive their right to legal representation 'unless the

decision to waive is made voluntarily and under impartial judicial supervision.<sup>20</sup> The international law position is that all children under 18 should benefit from the protection accorded to children in conflict with the law, children in contact with immigration authorities and other areas where they interact with justice systems.<sup>21</sup>

### Waiver of legal representation

*South Africa Child Justice Act 75 of 2008 s 83:*



*Child may not waive legal representation in certain circumstances.*

*(1) No child appearing before a child justice court may waive his or her right to legal representation.*

*(2) If a child referred to in subsection (1) does not wish to have a legal representative or declines to give instructions to an appointed legal representative, the court must enter this on the record of the proceedings and a legal representative must, subject to the provisions of the Legal Aid Manual referred to in section 24 (1) of the Legal Aid South Africa Act, 2014, be appointed by Legal Aid South Africa to assist the court in the prescribed manner."*

Article 40(2)(b)(iii) of the CRC further provides that children accused, charged or convicted of a crime have the right to 'have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance.'

The formulation adopted under the CRC differs from other instruments in its provision for 'other appropriate assistance'. The same phrase can be found in article 37(d) of the CRC, which deals with the right of a child to challenge the deprivation of his or her liberty with the assistance of legal or other appropriate assistance. The drafting history of Article 40 'indicates that this formulation was intended to accommodate those jurisdictions that allow for a child's defence to be represented by non-lawyers.'<sup>22</sup> Nevertheless, it is conceded that there remain many challenges in these instances.

The CRC Committee has acknowledged that although assistance need not be legal, it must still be appropriate. Moreover, it has recommended that 'State parties provide as much as possible for adequately trained legal assistance, such as expert lawyers or paralegal professionals', thus indicating a preference for specialist legal assistance. It has, however, conceded that '[o]ther appropriate assistance is possible (e.g., social workers), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.' For assistance to be appropriate, the relevant person must have sufficient knowledge and understanding of the substantive and procedural legal issues relevant to the defence of the charges against the child; and sufficient competency and experience to actually defend the rights of the child in conflict with the law.

Various examples can be found for the delivery of legal aid services to children throughout the world. In some countries, a mixture of different services will be available. Examples are:

- Public defender models include salaried employees whose sole function is to represent indigent people in criminal (and sometimes civil) cases. This model is used in the **United States**. It is also used in **South Africa** for criminal trials.
- 'Judicare' model applies legal representation that is outsourced to private practitioners who claim set fees from government for each case they undertake. This model is used for civil cases in **England** and **Scotland**.
- 'Contract models' are where a government agency outsources the provision of legal representation to private sector defence lawyers (these exist in different forms in various places).
- Bar associations, law schools and civil society organisations offer pro bono schemes to offer legal representation to children. Examples of these pro bono schemes can be found in many countries, including **Norway, South Africa, Botswana, Ethiopia, Kenya, Namibia** and **Nigeria**. These often run alongside state-funded legal aid programmes to help meet the demand for legal aid.
- Volunteer lawyers and paralegals may step in to offer services, including mediation and sometimes psychosocial support.

Defence for Children International (DCI) has found that Socio-Legal Defence Centres (SLDCs) are effective in providing boys and girls with

the opportunity to effectively access justice and obtain remedies. The work of SLDCs consists in actively offering children in conflict with the law, child victims and witnesses and adults confronted with child rights violations direct access to justice and quality social-legal support, including:

- information;
- referrals to other services;
- psychosocial counselling; and
- free-of-charge legal advice and representation, including in court.<sup>23</sup>

The right to legal or other assistance includes a child's right to appoint their own legal representative at their own, or, more likely, their parents', expense. Costs borne by parents do not detract from the point that, in principle, children are exempt from means testing for legal aid eligibility.<sup>24</sup>

Unlike other instruments, the right to legal or other appropriate assistance under Article 40 is not qualified by the phrase 'if the interests of justice so require'. The absence of this qualification is suggestive of an unqualified obligation whereby a State would be required to ensure access to appropriate assistance irrespective of available resources, the seriousness and complexity of the offence or the likelihood of the child contesting the charges successfully.

Article 37(d) of the CRC makes it clear that every child deprived of his/her liberty, which includes arrest, has the right to 'prompt access to legal and other appropriate assistance'. Detaining

children has negative consequences for the child's development and seriously hinders his/her reintegration into society.<sup>25</sup> Given the harmful effects that the deprivation of liberty can have on a child, it is essential for the child to have prompt access to legal services in order to challenge the legality of his/her detention, to ensure that his/her detention is subject to continuous review by a judge and that the child is released as soon as the detention is no longer necessary and to have a prompt decision on the matter.

In **Cambodia**, children in conflict with the law are required to have a lawyer throughout the legal process. If a child does not have one, the court shall appoint a lawyer to fulfil the child's right to legal aid. The lawyer should also consider the child's best interests in the course of providing legal advice to the client, so that an informed decision can be made by the child.

Many countries have similar legal provisions requiring children to have a lawyer, but in practice, implementation is lacking or lawyers are not appointed soon enough after arrest or at the stage of police investigation.

Additionally, when providing legal aid to children, it must be ensured that the four general principles of the CRC – namely, non-discrimination (Article 2), best interests of the child as a primary consideration (Article 3(1)), life, survival and development (Article 6), a child's right to have his/her views given due weight (Article 12) – are respected, protected and fulfilled, as far as possible, within the scope of professional responsibilities. Challenges arise, for example, when there is conflicting interpretation of the child's best interests. Children, like adults, have a right to direct their representation, and the defence lawyer should give candid advice and work with the client to help him/her make the best

decision. Equipping children with the information and support needed to make decisions regarding their defence promotes their autonomy and positive development, and serves their best interests.<sup>26</sup> The entire CRC and its General Comments – particularly General Comments Nos. 12 and 14 – provide the parameters in the interpretation of the right of the child to be heard and the best interests of the child principle.

## WHEN MUST LEGAL AID BE PROVIDED?

### CRIMINAL PROCEEDINGS

Although Article 14 of the ICCPR and Article 6(3) (c) of the ECHR refer to legal assistance in cases where there is a 'criminal charge', the *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* recommends that the right to legal aid should apply to all stages of the criminal justice process and to persons who are detained, arrested or imprisoned, victims and witnesses and persons who are alleged as, accused of or recognised as having infringed criminal law.<sup>27</sup>

Legal aid must be provided for children at all stages of proceedings, including when the child is arrested or otherwise deprived of his/her liberty, or suspected, accused or convicted of a crime. Although Article 40(2)(b) speaks of 'charge', which technically occurs after an arrest, legal assistance prior to the child being charged is vital, as the legal professional can help negotiate release, diversion, non-custodial measures or discontinuance of the case. In the case of diversion, the CRC Committee provides that the child must be given the opportunity to obtain 'legal and other advice and assistance' in determining the appropriateness and desirability of the diversion proposed.<sup>28</sup> It should always be regarded in a child's best

interests to have access to legal advice and assistance, preferably through a qualified lawyer, particularly when being questioned about an alleged offence.

Therefore, children in conflict with the law must have access to timely, quality and free legal aid/representation from the moment of contact with the justice system. Free legal aid and counselling practitioners, if specialised in supporting children, can make a difference in ensuring child-friendly access to justice. For example, diversion and alternatives to pre-trial detention and to imprisonment are used more frequently in countries that have state-funded specialised legal aid services for children and legal aid providers who specialise in working with children.<sup>29</sup>

Regional human rights treaties similarly affirm the right to legal aid in criminal matters. Article 6(3)(c) of the ECHR provides that everyone charged with a criminal offence has, among other minimum rights, the right 'to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require'.

Article 7(1)(c) of the *African Charter on Human and Peoples' Rights* provides for the right to defence, including the right to be defended by counsel of choice. *The African Children's Charter* provides that every child who is accused of having infringed the penal law shall have the right to be 'afforded legal and other appropriate assistance in the preparation and presentation of his defence'.<sup>30</sup>

The non-binding *Beijing Rules on the Administration of Juvenile Justice* of 1985 specify in Rule 15(1) that throughout the proceedings, the child shall have the right to be represented by a legal advisor or to apply for free legal aid where there is provision for such aid in the country.

## CIVIL PROCEEDINGS

There are also references in international human rights law to legal aid in civil cases, but a right to publicly funded legal assistance in civil cases is not as widely conferred as it is for criminal cases. Nevertheless, it is well-recognised that the absence of effective legal aid can lead to the breach of other human rights, hinder access to justice and undermine trust in the justice system.<sup>31</sup> The Special Rapporteur on the independence of judges and lawyers has confirmed that the right to legal aid should apply in criminal and non-criminal contexts:

**“**The Special Rapporteur is of the view that the right to legal aid can be construed as both a right and an essential procedural guarantee for the effective exercise of other human rights, including the right to an effective remedy, the right to liberty and security of person, the right to equality before the courts and tribunals, the right to counsel and the right to a fair trial...<sup>32</sup>**”**

## DOES CHILD-FRIENDLY LEGAL AID REQUIRE A LAWYER?

Trained lawyers with experience are the preferred option, even though the CRC (and the CRC Committee) acknowledge that 'other appropriate assistance' is possible. Children should not be denied the right to legal assistance simply because other forms of assistance are available. The CRC Committee, in its General Comment 24, acknowledged that although assistance need not be legal, it must still be appropriate. Moreover, it has recommended that 'State parties provide as much as possible for adequately trained legal assistance, such as expert lawyers or paralegal

professionals,' thus indicating a preference for specialist legal assistance. For assistance to be appropriate, however, the relevant person must have sufficient knowledge and understanding of the substantive and procedural legal issues relevant to the defence of the charges against the child. There must also be sufficient competency and experience to actually defend the rights of the child in conflict with the law and trained in working with children. A guardian *ad litem* or support person is different from the right to legal aid.

Law school clinics in **Africa** train students to provide legal aid to children, including clinics in **Botswana, Ethiopia, Kenya, Namibia, Nigeria** and **South Africa**.

In **Zimbabwe**, Justice for Children (JCT) ensures access to justice and the enjoyment of human rights by all children below the age of 18 years through the provision of legal aid to children in difficult circumstances, and through empowering the children and adults with information on child protection laws and child rights and responsibilities. They may conduct research on issues affecting children and advocate for reform. The organisation is supported by international and national institutions and individuals to enable it to provide free legal services to children.<sup>33</sup> Its lawyers are registered both with the High Court of Zimbabwe and the Law Society of Zimbabwe. Through use of mobile legal aid clinics, the organisation is also ensuring that legal services are accessible to people in their various communities.

It must be recorded that the *UN Principles and Guidelines on Legal Aid in Criminal Matters* do not contemplate non-legal assistance.

#### Guideline 45(d)



*[It is necessary] to ensure that the counsel of the accused is present at all critical stages of the proceedings. 'Critical stages' are all stages of a criminal proceeding at which the advice of a lawyer is necessary to ensure the right of the accused to a fair trial or at which the absence of counsel might impair the preparation or presentation of a defence..."*

There are times when assistance to a child may take place outside of formal proceedings – for instance, in legal systems where child protection is an administrative or service-based function. A trained social worker, advocate or paralegal can provide effective services in cases where relief is sought from governmental agencies, as opposed to within the formal system, provided that such assistance is provided by persons with sufficient knowledge and understanding of the various legal aspects of the process.<sup>34</sup> With children in conflict with the law, paralegals may be able to provide assistance at some stages of proceedings, including initial interviews. However, once proceedings reach the adversarial stage, lawyers' services must be considered essential in proceedings.<sup>35</sup> Lawyers are considered officers of the court who have specialised training and practice. They are subject to disciplinary procedures of the court and code of ethics for lawyers.

In addition to a lawyer, children in conflict with the law may also require additional services where non-custodial sentences are used, or to facilitate rehabilitation and reintegration. For instance, in **Azerbaijan**, children in conflict with the law who were subject to non-custodial measures received social services, psychological support and legal aid. In **Iraq**, children who were in detention

received mental health and psychosocial support, hygiene kits and legal aid to help them with their cases and process their release.

Different considerations seem to apply based on whether children are in conflict with the law, are child victims or witnesses or are involved in civil or guardianship proceedings. Children in the latter instances may not be parties to the case, so legal representatives may not be able to intervene directly in the proceedings. Also, they may be too young to give instructions to a lawyer. However, legal representation may still be required to ensure that their best interests are adequately considered by the court or other authorities. An example of this requirement is the appointment of a 'guardian *ad litem*' to represent the interests of the child during litigation.<sup>36</sup>

## DOES THE MEANS TEST APPLY TO CHILDREN'S CASES?

Guideline 1 of the *UN Guidelines on Legal Aid* states that children should always be exempt from any means test used to determine eligibility for legal aid.<sup>37</sup>

“One exception to the means test is for applicants aged under 18, who are seeking legal aid for civil representation or family help (higher). In these cases, no financial determination will be required. Applications such as these are usually made on the child's behalf by a litigant, friend, children's guardian or guardian *ad litem*, and the certificate will be issued in the name of the child.”<sup>38</sup>

# SETTING UP A LEGAL AID PROGRAM

Governments can play a crucial role in establishing effective legal aid programs to ensure access to justice for all children.<sup>39</sup>

Here are some key steps and considerations:

## 1. Legislative framework

- **Enact enabling legislation** by creating laws that establish the legal aid program and define its scope, funding and governance.

- **Set standards and guidelines** by developing regulations to ensure consistent and high-quality legal services.

## 2. Funding and resources

- **Allocate a budget** by securing adequate funding from national and local budgets.
- **Seek additional funding and resources** by exploring grants, donations and partnerships

with non-governmental organisations (NGOs), private sector, bar associations, law schools and international bodies.

### 3. Infrastructure development

- **Set up legal aid offices in accessible locations**, especially in underserved areas.
- **Provide necessary resources**, including technology, legal databases and office supplies.

### 4. Staffing and training

- **Hire qualified personnel** by recruiting experienced lawyers, paralegals and administrative staff.
- **Provide training** by offering continuous professional development to ensure staff are up-to-date with legal practices and policies.

### 5. Service delivery

- **Develop service protocols** by creating procedures for client intake, case management and follow-up.
- **Offer diverse services** by providing assistance in various legal areas for children

such as family law, criminal and civil proceedings and immigration, among others.

### 6. Public awareness and outreach

- **Raise awareness** by conducting campaigns to inform the public about available legal aid services.
- **Engage with communities** by partnering with local organisations to reach marginalised groups.

### 7. Monitoring and evaluation

- **Track performance** by implementing systems to monitor the effectiveness and efficiency of legal aid services.<sup>40</sup>
- **Solicit feedback** by regularly gathering input from clients and stakeholders to improve services.

### 8. Compliance and ethics

- **Ensure legal compliance** by adhering to national and international legal standards.
- **Maintain ethical standards** by upholding confidentiality and professional ethics in all interactions.

# CHILD-FRIENDLY LEGAL AID

In 2018, the UNICEF Europe and Central Asia Regional Office (ECARO) worked with partners to develop the *Guidelines on Child-Friendly Legal Aid*.<sup>41</sup> The Guidelines consist of 12 pieces of advice for legal service providers on delivering legal services to children – whether privately hired, pro-bono or acting on legal aid – as follows:

1. Legal aid professionals and practitioners should have knowledge of relevant domestic laws and procedures, children's rights, children's developmental stages and how to communicate with children. They should keep up to date and refresh with regular professional development training.

2. Legal aid professionals and practitioners must act on a child's instructions with the best interests of the child as a primary consideration in all actions concerning the child.
3. Legal aid professionals and practitioners must ensure that a child's views and voice are heard and given due weight throughout the legal process.
4. Legal aid professionals and practitioners should build a relationship of trust and support with a child client.
5. Legal aid professionals and practitioners should communicate with children in a child-sensitive manner to ensure that children can participate effectively in the process.
6. Legal aid professionals and practitioners should provide children with reliable and relevant information so they can participate meaningfully in decision-making concerning their case.
7. Legal aid professionals and practitioners should ensure that children participate in formal legal proceedings in a meaningful and safe way with adequate support and procedural safeguards in place.
8. Legal aid professionals and practitioners should act on a child's instructions and in his or her best interests – not those of family members.
9. Legal aid professionals and practitioners must uphold a child's right to privacy during legal proceedings and ensure that all communication with the client is kept confidential in accordance with professional codes of conduct.
10. Legal professionals and practitioners should ensure that children are treated fairly and are

not discriminated against because of their age, gender, ethnicity, disability or other status.

11. Legal professionals and practitioners should keep children safe and enable them to participate in the legal process without risk of secondary victimisation (i.e., 'victimisation that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim').
12. A legal professional should work collaboratively with other organisations, provided that this is in the child's best interests.

These points are equally relevant to legal aid in other country contexts beyond Europe and Central Asia.

To implement the guidelines, a [training package](#) was developed,<sup>42</sup> which will be rolled out with the International Bar Association.

The [2023 GRF Legal Community Pledge](#) is a multi-stakeholder pledging initiative that aims to unite around a shared goal of working with refugees and other forcibly displaced people – including children – to advance their access to rights, justice and lasting solutions to their displacement, focusing on legal information and delivery of assistance services. The pledge suggests commitments in the following areas:

1. Legal assistance and legal empowerment of refugees and other displaced people
2. Legal assistance for refugee-led organisations and refugee rights NGOs
3. Refugee inclusion and hiring
4. Legal advocacy, policy engagement and asylum capacity development
5. Funding and resource mobilisation
6. Coordination, collaboration and legal capacity development

## NON-DISCRIMINATION

At every stage of a child's contact with the justice system, the lawyer/legal services practitioner should ensure that the child is offered appropriate services without discrimination. Each client must be handled with sensitivity and an understanding of the issues that children, or groups of children, may face due to their sex, age, ethnicity, disability and so on.

The right to non-discrimination is of particular relevance for legal practitioners when dealing with vulnerable groups in contact with the law, where special measures may need to be taken to ensure that their rights are equally upheld. For example, children who speak a minority language may require the use of an interpreter during legal proceedings.

Special consideration should be made to ensure that children with disabilities<sup>43</sup> have access to child-friendly legal services.<sup>44</sup> Child-friendly legal services in the context of criminal proceedings are particularly important where the child has a neurodevelopmental disorder or disability. The CRC Committee recommends that children with such disorders or disabilities – such as autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries – should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility.<sup>45</sup> If the child is not automatically excluded from the criminal justice system, such children should be individually assessed, in which case the role of the lawyer or other legal service provider becomes especially important, as they can help to ensure that the child's legal rights are upheld.

In **Türkiye**, UNICEF has successfully partnered with the Union of Turkish Bar Associations (UTBA) to develop a national training program for lawyers and other legal practitioners on providing child-friendly legal services, including for children on the move (based on the regional training program developed by UNICEF ECARO). The UTBA is introducing a

requirement for lawyers to go through child-friendly legal aid training before they provide legal aid to children. A lawyer's training manual on child-friendly legal aid services and a *Practical Guideline on Legal Aid for Persons with Disabilities in Criminal Justice* was developed in **Cambodia**.<sup>46</sup> **India** revised the Child Centric Legal Aid Services Scheme of the National Legal Services Authority to include legal empowerment and consideration for children with disabilities. In **Lao People's Democratic Republic**, mediators and paraprofessionals were trained to deliver and expand legal services to small villages. In **Sierra Leone**, UNICEF has supported the Legal Aid Board to provide services to children across the country with either legal representation, legal advice and assistance or legal education.<sup>47</sup> In **Ethiopia**, free legal aid services for children and other vulnerable groups are provided in urban areas, and a draft legal aid strategy was developed.

## CHILD DEVELOPMENT

The dynamic process of child development is not taught in law schools. However, legal professionals and other actors working with children in the justice system should know the basics of child development. This will guide the way they appreciate the child's testimony and agency, and the way they communicate with the child. Whether a child is a victim, witness or the accused in a proceeding, the child will be affected by a justice system that is not familiar to the child.<sup>48</sup>

Article 5 of the CRC provides that State parties shall respect the responsibilities, rights and duties of parents or, where applicable, members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the CRC.

The CRC Committee describes the evolving capacities of the child as ‘an enabling principle that addresses the process of maturation and learning through which children progressively acquire competencies, understanding and increasing levels of agency to take responsibility and exercise their rights.’<sup>49</sup>

Child development is not a linear, one-size-fits-all biological process but rather a dynamic process, influenced by a range of factors and circumstances including social, cultural and economic environments.<sup>50</sup> Consequently, assumptions should not be made about a child’s capacities and communication needs based solely on his/her age, personal assumptions or stereotypes about the child’s supposed ‘correct’ stage of development.

As the child’s capacities evolve and the child develops, the weight given to the child’s views, wishes and feelings in decision-making should also evolve. Furthermore, as the child grows, develops and as circumstances shift and change, the best interests of the child will similarly evolve.<sup>51</sup> The capacities of the child must be determined and considered in all stages of proceedings, when communicating with the child and when determining the best interests of the child. UNICEF **Chile** developed a tool to help professionals better ascertain the best interests of the child towards holistic access to justice.<sup>52</sup>

A critical component of procedural guarantees is the right to be heard, which is closely linked with civil rights and freedoms – particularly freedom of expression and the rights to information and privacy – without which the child’s views cannot be effectively sought and given due consideration. It is the child’s right to participate directly and not only through a representative.<sup>53</sup> Asking a child about his or best interests is also part of best interests determination.

## CHILD-SENSITIVE COMMUNICATION

Child-sensitive communication means adapting the approach to communication based around the individual needs and preferences of the child, and is the basis of good quality legal services.<sup>54</sup>

### *T and V v. United Kingdom, European Court of Human Rights, 16 December 1999*<sup>55</sup>

This case concerned two 10-year-old boys charged with murder.<sup>56</sup> The current minimum age of criminal responsibility in England and Wales is 10 years of age (in Scotland it is 12 years of age). A violation of the right to a fair trial, in breach of article 6(1) of the *European Convention on Human Rights*, was alleged. The court found that under Article 6(1), the accused must enjoy the right to understand what is happening at the trial and to play an active role in their defence, at least to the extent that could reasonably be expected of a child. Physical presence alone would not be sufficient. As the accused were unable to do so, they were denied a fair hearing in breach of Article 6. It is highly unlikely that the accused would have felt sufficiently uninhibited – in the tense courtroom and under public scrutiny – to have consulted with their legal representatives during the trial or, given their immaturity and disturbed emotional state, would have been capable outside the courtroom of cooperating with their lawyers and giving them information for the purpose of their defence. A child would likely find the highly formal setting intimidating, whether involved as a witness or a defendant.

Child-sensitive communication extends to informing children of their rights, including the right to legal aid. Children must be provided with information on their right to legal aid in a way that corresponds to their needs and in a language that they can understand. Children

must be provided information in a manner that corresponds to their age and maturity, in line with the child's evolving capacities.<sup>57</sup>

When providing legal services, legal practitioners must ensure children are able to express their views, opinions and concerns. Children should be able to participate actively throughout the justice process, unless it is not in their best interests to do so (see further below concerning child victims and witnesses).

Legal professionals should additionally respond to the different ways in which young children express themselves, including play, demeanour, interaction with caregivers and body language.

Depending on the child's situation and circumstances, such as his/her age, maturity, disability, language or impact of the crime on the child, communication aids or 'tools' may be useful or necessary to facilitate communication with the child (e.g., in cases concerning sexual offences against children, during which anatomically correct dolls are used to facilitate a child's communication as to what happened).

Child-sensitive communication is paramount when interviewing child clients. This includes being attuned to the age and maturity of the child and the child's ability to recall and convey information in an accurate and understandable way.<sup>58</sup> Legal professionals must endeavour to ascertain information about cultural, social, religious and other non-legal factors, which may influence the legal professional's ability to communicate effectively with the child.

The right of the child to remain silent and not to participate in interviews or interrogation by the police or other law enforcement agencies is equally important, and must be continuously emphasised.

To put this into practice, justice proceedings must be adapted specifically for children,<sup>59</sup> and they must receive adequate information about the process, the choices they have and the possible consequences of these choices. **Uzbekistan**, for example, provided Justice for Children training to relevant professionals, and further expanded the provision of child-friendly and gender-sensitive legal aid. In **Ukraine**, UNICEF, in cooperation with the state legal aid offices in the Ministry of Justice, has developed national training programs.

## EFFECTIVE PARTICIPATION IN FORMAL PROCEEDINGS<sup>60</sup>

Lawyers and other legal service practitioners must ensure that child participation in formal proceedings is carried out in a meaningful and safe way, with adequate support and procedural safeguards in place.

Participation may not always be direct. In some circumstances, for example, where a child is a victim or witness of a crime, it may not be in the child's best interest to participate directly in formal legal proceedings. This is because, if the child has to talk about traumatic events and be exposed to persons who have harmed them, it may cause them additional stress, re-traumatisation and even re-victimisation in certain circumstances.

The lawyer or legal services practitioner will therefore have to weigh the factors in each case when deciding whether or not it is in the child's best interests to participate directly in formal proceedings. Practitioners must also provide adequate education and information to children to empower them to make the

decision about whether they wish to directly or indirectly participate. This information must be communicated in a way that is safe and adjusted to a child's age, maturity, capacity and other relevant external factors such as socio-economic and familial contexts. Children must be advised of the positive and negative consequences of their participation and be given every appropriate opportunity to understand their role as participants in the proceedings.

Legal professionals who provide children with legal aid should have knowledge of relevant domestic law and procedures, children's rights, children's developmental stages and how to communicate with children. They should keep their skills up to date and refresh them with regular professional development training. However, providing competent and effective legal aid to children involves more – a high level of motivation, commitment and skill.<sup>61</sup>

Jurisdictions often lack suitably qualified personnel, which can be exacerbated by a perception within the legal system that the representation of children is inferior legal work. For example, it has been observed that, in the **United States**, 'children's attorneys often have the least experience, the lowest status and receive the lowest compensation within the legal community'.<sup>62</sup> In such an environment, it is difficult – if not impossible – to fulfil a child's right to receive appropriate legal representation.

Thus, it is incumbent upon states to take appropriate measures to ensure that lawyers and other professionals are provided with

appropriate training, recognition and incentives to enable them to provide effective representation of children. Such training must address not only the relevant laws and procedures, but also the skills required to assess a child's capacity to instruct, and how best to take instructions from, and communicate effectively with, a child. Incentives can be both monetary and non-monetary, including citation and career progression.

In **Tunisia**, UNICEF and the International Legal Federation, with support from the embassies of Japan and the Netherlands, cooperated with the Local Centre for Social Integration for Children, the Delegation for Child Protection, police stations, the public prosecutor and other institutions to provide comprehensive representation and protection for children in conflict with the law while empowering the children in the process.<sup>63</sup>

## PRIVACY, CONFIDENTIALITY AND DATA PROTECTION<sup>64</sup>

Children can be put directly in danger and experience severe physical or emotional harm if their identity is disclosed.

Children must be informed that all exchanges between themselves and their legal practitioner will be confidential. This will help build trust between the child and his/her legal practitioner and ensure that the child can speak to his/her lawyer freely and openly without fear of repercussions. Lawyer-client confidentiality is subject only to jurisdiction-specific waivers.

# WHAT NEEDS TO BE DONE?

In November 2023, 21 Chief Justices and judges from 15 countries of the Global South, from the regions of Africa, Asia and the Pacific, came together to be a part of the *Chief Justices' Roundtable on Equal Access to Justice for All in the Global South* at New Delhi, **India**. The Roundtable was conceptualised with a view to strengthen south-south cooperation, and exchange learnings and good practices to further efforts to ensure equal access to justice for all, including on the right to legal representation in civil and criminal cases and to legal aid. The Conference produced an outcome document known as the *New Delhi Principles*.<sup>65</sup>

Measures that governments could take include:

- **Prioritising investments** in legal aid services for all children, from the time of their first contact with justice systems, including for civil, criminal and administrative cases.
- **Supporting civil society organisations, paralegals and law schools** to increase outreach of legal information and integrate legal services with psychosocial support to address children's legal and non-legal needs.
- **Developing sustainable capacity-building strategies**, such as modules integrated in universities and continuing legal education, and provide incentives for taking these cases.
- **Enacting laws and providing budgets** that will guarantee the provision of timely, quality and free child-friendly legal aid for children, ensuring a comprehensive geographic coverage and removing obstacles for children to bring cases (e.g., financial, distance, physical accessibility, language).
- **Supporting child-friendly legal aid training for legal professionals**,<sup>66</sup> making it a requirement for lawyers providing legal aid services to children.
- **Establishing or strengthening child participation and legal empowerment**,<sup>67</sup> including mechanisms for children to express their views at all stages of judicial and administrative proceedings that affect them and in justice reforms.
- **Enhancing access to legal services** by working with civil society organisations, paralegals and law schools, as well as tapping mobile and community-based mechanisms such as mobile legal aid and other innovations.
- **Partnering with professional organisations such as bar associations and law societies**, which in many countries have the mandate and legal basis to influence the legal aid provided to children, encouraging them to enhance the capacities of their members to provide child-friendly legal aid and other legal services (including child-friendly pro bono services<sup>68</sup> and acting as guardians *ad litem*) to children.

# CONCLUSION

The essence of child-friendly legal aid lies in its holistic approach to ensuring that children navigating the justice system are met with compassion, understanding and the utmost respect for their rights. Whether as victims, witnesses or accused, and whether a criminal, civil or administrative proceeding, children deserve to have their rights fully respected and protected throughout the justice process.<sup>69</sup>

Greater action is needed to ensure that all children can access free, quality and timely legal aid, representation and services. Without legal aid, it is challenging for children to access justice and effective remedies. Whatever right is involved, legal aid is essential in addressing inequalities, asserting rights, challenging discriminatory and harmful practices, preventing violence, abuse and exploitation, stopping the recurrence of child rights violations and restoring denied entitlements.

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# GLOSSARY

**Age of criminal majority:** the upper age limit beyond which the juvenile justice system does not apply, and a person who commits a crime is treated as an adult in the ordinary criminal justice system.<sup>70</sup>

**Alternative measures:** solutions that do not encompass the deprivation of liberty of children who commit crimes, such as being released into the custody of parents to await trial.<sup>71</sup>

**Case study/social inquiry report:** a written report on the social case inquiry conducted by the social worker, covering the social, cultural, economic and legal status or condition of the child in conflict with the law.<sup>72</sup>

**Child:** any human being below the age of 18 years, unless the law of the country says otherwise.<sup>73</sup>

**Child in conflict with the law:** a child accused, charged or convicted with the commission of an act defined and punishable as a crime or offense under the law.<sup>74</sup>

**Child justice/juvenile justice system:** the legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to – and institutions and bodies set up to deal with – children considered to be offenders.<sup>75</sup>

**Deprivation of liberty:** any form of detention or imprisonment, or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.<sup>76</sup>

**Discernment:** the capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act.<sup>77</sup>

**Diversion:** measures for referring children away from the judicial system at any time prior to or during the relevant proceedings.<sup>78</sup>

**Informal justice:** used as a synonym for non-state justice and refers to the resolution of disputes and the regulation of conduct by a neutral third party that is not a part of the formal justice system.

**Intake report:** initial written report containing the CICAL's personal, and other, circumstances prepared by the social worker assigned to assist the child entering the justice system. It is not yet the full-blown case study or social inquiry report.<sup>79</sup>

**Legal aid:** legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it.

**Minimum age of criminal responsibility:** the minimum age below which the law determines that children do not have the capacity to infringe the criminal law.<sup>80</sup>

**Restorative justice:** any process in which the victim, the offender and/or any other individual or community member affected by a crime actively participates in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of the restorative process include mediation, conferencing, conciliation and sentencing circles.<sup>81</sup>

**Suspended sentence:** the holding in abeyance of the service of the sentence imposed by the court upon a finding of guilt of the child in conflict with the law, whereby the child undergoes rehabilitation within a fixed period under such terms and conditions as may be ordered by the court.<sup>82</sup>

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- 15 Ibid., para. 51.
- 16 United Nations Committee on the Rights of the Child, *General Comment No. 12: The Right of the Child to Be Heard*, CRC/C/GC/12 (2009).
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- 19 See UNICEF, 'Technical Brief on Role of the Social Service Workforce in Justice for Children,' UNICEF, New York, June 2025, <https://www.unicef.org/documents/reimagine-justice-children-technical-briefs>.
- 20 Ibid., para. 51.

- 21 An exception is in proceedings related to international child abduction, where the protections apply to children aged under 16 years; after that children can choose with which parent they wish to reside.
- 22 John Tobin and Cate Read, "Art. 40 The Rights of the Child in the Juvenile Justice System," in *The UN Convention on the Rights of the Child: A Commentary*, ed. John Tobin (2019): 1627, <https://searchworks.stanford.edu/view/13158582/>.
- 23 Defence for Children International, *Socio-Legal Defence Centres*, <https://defenceforchildren.org/socio-legal-defence-centres/> (accessed January 2025).
- 24 United Nations, *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2013, Guideline 41(c).
- 25 Although Article 37(d) refers to 'legal assistance' as opposed to 'legal aid,' given the seriousness of detaining a child and the potential harmful effects of detention, special consideration should be made to providing children with free legal services (advice, assistance and/or representation) when they are deprived or at risk of being deprived of their liberty, in line with the best interests of the child. This is reinforced in the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which provide that the right to legal aid should also apply to persons who are detained, arrested or imprisoned. See principle 3, para. 20.
- 26 UNICEF, *Guidelines on Child-Friendly Legal Aid*, 11.
- 27 *The UN Standard Minimum Rules for the Treatment of Prisoners* (the 'Nelson Mandela Rules') provide in Rule 119(2) that 'if an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.
- 28 Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, 20 July 2009, para. 59, <https://digitallibrary.un.org/record/671444?v=pdf>.
- 29 UNODC and UNDP, *Global Study on Legal Aid – Global Report*, United Nations Office on Drugs and Crime and United Nations Development Programme, October 2016, 116, [www.undp.org/publications/global-study-legal-aid](http://www.undp.org/publications/global-study-legal-aid).
- 30 *African Children's Charter*, art. 17(2)(c)(iii).
- 31 UNODC and UNDP, *Global Study on Legal Aid*, 2016, IV, retrieved from [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global\\_Study\\_on\\_Legal\\_Aid\\_-\\_FINAL.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf) on 17 January 2023.
- 32 Gabriela Knaul, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, A/HRC/23/43, 15 March 2013, para. 20, <https://digitallibrary.un.org/record/771914?v=pdf>.
- 33 Justice for Children Zimbabwe, <https://www.justiceforchildren.org.zw/> (accessed 6 March 2024).
- 34 UNDP, UNICEF, and UNODC, *Child-Friendly Legal Aid in Africa*, 2011, [https://www.undp.org/sites/g/files/zskgke326/files/migration/africa/Child\\_Friendly\\_Legal\\_Aid\\_in\\_Africa.UNICEF.UNDP.UNODC.en.pdf](https://www.undp.org/sites/g/files/zskgke326/files/migration/africa/Child_Friendly_Legal_Aid_in_Africa.UNICEF.UNDP.UNODC.en.pdf).
- 35 Ibid.
- 36 A 'guardian *ad litem*' is someone appointed by the court to safeguard a person's best interests during proceedings. See also UNICEF, 'Technical Brief on Role of the Social Service Workforce in Justice for Children,' UNICEF, New York, June 2025, <https://www.unicef.org/documents/reimagine-justice-children-technical-briefs>.
- 37 UNODC, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, UN Doc. A/RES/67/187, para. 41(c).
- 38 *Means Assessment Guidance* (publishing.service.gov.uk), 16.

- 39 American Bar Association, *Updated Standards for the Provision of Civil Legal Aid*, [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/); *Starting a Legal Aid Clinic: A Comprehensive Guide*, <https://www.judgedumas2021.com/starting-a-legal-aid-clinic-a-comprehensive-guide/>; Legal Services Corporation, *How We Work*, <https://www.lsc.gov/about-lsc/what-legal-aid/how-we-work>.
- 40 The International Legal Federation, *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*, November 2016, [https://www.theilf.org/\\_files/ugd/5213dec0890757c43f4bb8b8fb3d96e83fdc1f.pdf](https://www.theilf.org/_files/ugd/5213dec0890757c43f4bb8b8fb3d96e83fdc1f.pdf).
- 41 UNICEF, *Guidelines on Child-Friendly Legal Aid*.
- 42 UNICEF, *Training Package on Child-Friendly Legal Services*, <https://www.unicef.org/eca/reports/unicefs-training-package-child-friendly-legal-services>.
- 43 'Persons with disabilities' include those who have long-term physical, mental, intellectual (cognitive) or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others (Convention on the Rights of Persons with Disabilities, art. 1.).
- 44 See further UNDP, *Practical Guideline on Legal Aid for Persons with Disabilities in Criminal Justice*, 2020, <https://www.undp.org/cambodia/publications/practical-guideline-legal-aid-persons-disabilities-criminal-justice>.
- 45 CRC, *General Comment No. 24 (2019)*, para. 28.
- 46 Legal Aid Cambodia and UNDP, *Practical Guideline on Legal Aid for Persons with Disabilities in Criminal Justice*, 2020, <https://www.undp.org/cambodia/publications/practical-guideline-legal-aid-persons-disabilities-criminal-justice>.
- 47 See UNICEF Sierra Leone, *Giving Child Offenders in Sierra Leone Another Chance to Realize Their Full Potential*, <https://www.unicef.org/sierraleone/stories/giving-child-offenders-sierra-leone-another-chance-realize-their-full-potential>.
- 48 See also UNICEF, 'Technical Brief on Mental Health and Psychosocial Support for Children in the Justice System,' UNICEF, New York, June 2025, <https://www.unicef.org/documents/reimagine-justice-children-technical-briefs>.
- 49 Committee on the Rights of the Child, *General Comment No. 20 (2016) on the Implementation of the Rights of the Child During Adolescence*, CRC/C/GC/20, para. 18, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-20-2016-implementation-rights>.
- 50 UNICEF Innocenti Research Centre and Save the Children, *The Evolving Capacities of the Child*, 2005, <https://searchlibrary.ohchr.org/record/6891>.
- 51 UNICEF, *Guidelines on Child-Friendly Legal Aid*, 10.
- 52 See UNICEF, *Country Office Annual Report, Chile 2019*, <https://www.unicef.org/media/90481/file/Chile-2019-COAR.pdf>; UNICEF, *Country Office Annual Report, 2021*; UNICEF, *Country Office Annual Report, Chile 2021*, <https://www.unicef.org/media/115931/file/Chile-2021-COAR.pdf>.
- 53 CRC Committee, *General Comment No. 12 (2009)*.
- 54 UNICEF, *Guidelines on Child-Friendly Legal Aid*, Guideline 5.
- 55 *T v United Kingdom*, Application No. 24724/94 (ECtHR, 16 December 1999), <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-58593&filename=CASE%20OF%20T.%20v.%20THE%20UNITED%20KINGDOM.pdf>; *V v United Kingdom*, Application No. 24888/94 (ECtHR, 16 December 1999), <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-46109&filename=V.%20v.%20THE%20UNITED%20KINGDOM.pdf&logEvent=False>.
- 56 It should be noted that 10 years of age is well below the recommended minimum age of criminal responsibility (MACR). In General Comment 24, the CRC Committee recommends that the MACR be no lower than 14 years of age.
- 57 UNODC, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, UN Doc. A/RES/67/187, para. 42(d).

- 58 *Child-Friendly Legal Aid in Africa*, 21.
- 59 See UNICEF, 'Technical Brief on Mental Health and Psychosocial Support for Children in the Justice System,' UNICEF, New York, June 2025, <https://www.unicef.org/documents/reimagine-justice-children-technical-briefs>.
- 60 Effective participation in formal proceedings is reflected in Guideline 7 of the UNICEF ECARO Guidelines on Child-Friendly Legal Aid.
- 61 UNICEF, *Guidelines on Child-Friendly Legal Aid*, Guideline 1.
- 62 Tobin and Read, "Art. 40 The Rights of the Child," 1628.
- 63 UNICEF Tunisia, *Vers une assistance renforcée des enfants en contact avec la loi*, <https://www.unicef.org/tunisia/recits/lunicef-tunisie-vers-une-assistance-renforc%C3%A9e-des-enfants-en-contact-avec-la-loi>.
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- 68 'Pro bono' means free of charge.
- 69 UNICEF, *Training Package on Child-Friendly Legal Services*, <https://www.unicef.org/eca/reports/unicefs-training-package-child-friendly-legal-services> (accessed January 2025).
- 70 UN Committee on the Rights of the Child (CRC), 2019, *General Comment No. 24 on Children's Rights in the Child Justice System*.
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- 75 Ibid.
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- 77 Republic Act No. 9344, 2006, *An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council, Appropriating Funds Therefor, and For Other Purposes*, Republic of the Philippines.
- 78 CRC GC 24, 2019.
- 79 UNICEF EAPRO, 2018.
- 80 CRC GC 24, 2019.
- 81 United Nations Economic and Social Council, 2000, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, UN Doc. E/2000/INF/2/Add.2.
- 82 RA 9344, 2006.



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