

MARCH 2024

Core training for lawyers and other legal service practitioners on providing child-friendly legal services

Participant's Handbook

Acknowledgements

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This training was tested with participants from Albania, Azerbaijan, Bulgaria, Greece, Moldova and Türkiye, during a training-of-trainers held in Türkiye in August 2023. Many thanks are given to the participants for their commitment, time and invaluable suggestions which helped develop this training.

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PART 1 OF 3 – INTRODUCTION

About this handbook

This handbook contains the course materials for lawyers and legal service practitioners for the core training course on providing child-friendly legal services.

Children come into contact with the law for various reasons. Children may be involved in the criminal justice system as a victim or witness to a crime, or as a child suspected, accused or convicted of crime. Children may also be involved in civil or administrative proceedings, including child protection, migration, asylum and family law cases. However, too often, children have minimal participation in the justice process, denying them the opportunity to be heard in major decisions which 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 just decisions in the best interests of the child.

The provision of child-friendly legal services (advice, assistance and representation) is an essential part of ensuring that children have access to a child-friendly justice system. A child-friendly justice system is one which:

- Guarantees respect and effective implementation of all children's rights at the highest attainable level;
- Provides justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child; and
- Respects 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.¹

To support lawyers and other legal service providers deliver child-friendly legal services, the UNICEF Europe and Central Asia Regional Office (ECARO) developed the Child-Friendly Legal Aid Guidelines. These Guidelines are rooted in the UN Convention on the Rights of the Child and other international and regional child rights standards on the delivery of child-friendly justice. Building upon these efforts, UNICEF ECARO has worked with regional partners to develop this training programme for lawyers and other legal service providers on the implementation of the Child-Friendly Legal Aid Guidelines and other international and regional standards on the provision of child-friendly legal services.

1 Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010), II c.

Training objectives

The **objectives** of this training are to:

1. Develop your knowledge of international and regional standards on providing child-friendly legal services (advice, assistance and representation);
2. Develop your understanding of how to apply the key international and regional standards on child-friendly legal services in practice in your national contexts;
3. Develop your skills in providing child-friendly legal services; and
4. Encourage you to reflect upon and challenge any underlying assumptions, perceptions and attitudes which may be acting as a barrier to the delivery of child-friendly legal services.

Who is this training for?

This training targets lawyers and all other providers of legal services who have little or no prior knowledge of or skills in child-friendly justice or child-friendly legal services. This training is also suitable for lawyers and legal service providers who wish to refresh their core knowledge and skills in this area.

Legal service providers include public and private providers, fee-paid, voluntary, 'pro bono' or legal aid providers, as well as lawyers and other categories of professionals which provide legal advice, assistance or representation to children. While several parts of this training will be useful for prosecutors, it has broader application and therefore may contain activities and modules that are not directly relevant to prosecutors.

Who this training is not for?

This training is not suitable for individuals who already have good knowledge and experience in applying the UNICEF ECARO Child-Friendly Legal Aid Guidelines in practice. While elements of this training may be useful for social workers and other categories of professionals and practitioners, it is specifically tailored for lawyers and other professionals/ practitioners who provide legal advice, assistance or representation to children. As such, aspects of this training will need some adaptation before being delivered to social workers, psychologists, judges, police officers or other professionals and practitioners.

Approach to the training

The training is designed to be highly interactive whereby facilitators will support the exchange of information between you and other participants and the development of your knowledge, skills and attitudes, rather than solely on presenting information to you. You are encouraged to play an active role in the training in order to get the most out of it.

Overview of the handbook

This handbook contains all the information and guidance that you will need to participate in this training. You are advised to keep this handbook with you during the training and to use it/refer to it as the course is being delivered.

The handbook is divided into the following three parts:

- This **Part 1** sets out the background to the development of this training, the training objectives, guidance on how to use the handbook, and the materials required to participate in the training;
- **Part 2** contains the course content and materials, which are divided into the following **[nine]** modules:
 1. Welcome and introductions;
 2. Introduction to Children's Rights;
 3. Child-Friendly Legal Services and Access to Justice;
 4. Child Development;
 5. Child Sensitive Communication;
 6. Working with Others;
 7. Effective Participation in Formal Proceedings;
 8. Privacy, Confidentiality and Data Protection; and
 9. Closing.

[Note to training providers, if you wish to also deliver any of the optional modules, please amend this list accordingly and delete this note.]

- **Part 3** annexes additional documents you will need to participate in the training, including:
 - Pre- and post-training assessment forms; and
 - Evaluation forms to complete at the end of the course.

[Note to training providers, the annexes also contain the optional modules. If you wish to deliver any of them, please integrate them into the training and update the agenda accordingly. Otherwise, delete them from the annex. Please also delete this note.]

Form of delivery and duration

This training is designed to be delivered in person. The nine modules are estimated to take a total of 19 hours 10 minutes to deliver (excluding breaks).

[Note to training providers, if you wish to also deliver any of the optional modules, please amend the duration accordingly and delete this note.]

Each module is divided into sessions. Each session begins with the following information:

- Session number;
- Timing estimate;
- Training objectives.

The session outline then includes the course materials.

The following icons have the following meanings in this handbook:



PowerPoint Presentation slides and (space for) notes



An activity or exercise



Group discussion



Completing a questionnaire or form

Materials required

To participate in this training, you should have before you the following materials:

- This participant's handbook;
- A copy of the Guidelines on Child-Friendly Legal Aid;
- Pens to write notes in the spaces provided in this handbook;
- Pre-training assessment form to complete at the start of the training and post-training assessment form to complete at the end of the training;
- Evaluation forms to complete at the end of the training.

Certificates of completion will be presented to you during the closing ceremony.

PART 2 OF 3 – CORE COURSE CONTENT

[Note to training providers, if you wish to also deliver any of the optional modules or wish to deliver the training in chunks over a longer period of time, please amend the agenda accordingly and delete this note.]

Agenda

Day 1

SESSION NUMBER	CONTENT / DESCRIPTION OF THE SESSION	TIMING ESTIMATES
Module 1: Welcome and Introductions		
	Opening ceremony, welcome and introductions	40 minutes (e.g. 9.00-9.40)
	Ground rules	10 minutes (9.40-9.50)
Module 2: Introduction to Children's Rights		
	Children's rights and the Convention on the Rights of the Child	1 hour (9.50-10.50)
Break		
	General principles of the Convention on the Rights of the Child	1 hour 40 mins (11.05-12.45)
Lunch		
Energiser		
	General principles of the Convention on the Rights of the Child in the national framework	30 minutes (14.00-14.30)
Module 3: Child-Friendly Legal Services and Access to Justice		
	Child-friendly legal services: context	1 hour (14.30-15.30)
Break		
	Child-friendly legal services: key components	40 minutes (15.40-16.20)
	Child-friendly legal services: national framework	40 minutes (16.20-17.00)
End of day 1		

Day 2

SESSION NUMBER	CONTENT / DESCRIPTION OF THE SESSION	TIMING ESTIMATES
	Applying the child-friendly legal aid guidelines: case studies	1 hour 15 minutes (9.00-10.15)
Module 4: Child Development		
	Child development and communication	45 minutes (10.15-11.00)
Break		15 minutes (11-11.15)
	Trauma, victimisation and stigmatisation	45 minutes (11.15-12.00)
Module 5: Child-Sensitive Communication		
	Introduction to child-sensitive communication	1 hour (12.00-13.00)
Lunch		1 hour (13.00-14.00)
Energiser		15 mins (14.00-14.15)
	Planning communication	1 hour (14.15-15.15)
Break		15 minutes (15.15-15.30)
	Interviewing children	1 hour (15.30-16.30)
	Non-verbal communication techniques	30 minutes (16.30-17.00)
End of day 2		

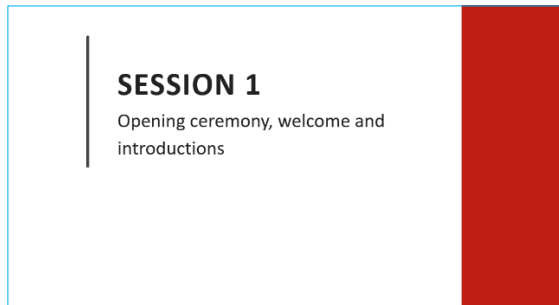
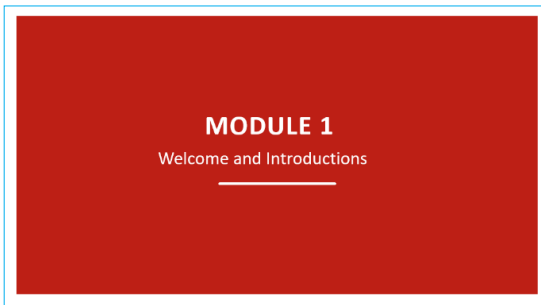
Day 3

SESSION NUMBER	CONTENT / DESCRIPTION OF THE SESSION	TIMING ESTIMATES
	Child-sensitive communication in practice	1 hour 15 minutes (9.00-10.15)
Module 6: Working with Others		
	Working with family members and other supportive adults	1 hour (10.15-11.15)
Break		
	Working with other professionals and practitioners	1 hour 10 minutes (11.30-12.40)
Lunch		
	Energiser	15 minutes (13.40-13.55)
Module 7: Effective Participation in Formal Proceedings		
	'Best interests' decision-making regarding direct participation	35 minutes (13.55-14.30)
	Effective participation in formal proceedings	1 hour (14.30-15.30)
Break		
Module 8: Privacy, Confidentiality and Data Protection		
	Privacy, confidentiality and data protection: key standards	1 hour (15.45-16.45)
Module 9: Closing		
-	Closing	25 minutes (16.45-17.10)
End of day 3 and the core training		

Module 1: Welcome and introductions

SESSION 1: OPENING CEREMONY, WELCOME AND INTRODUCTIONS

Timing: 40 minutes

A large slide with a light pink background. On the left, there is a dark red rectangular box containing the word "INTRODUCTIONS" in large white capital letters. Below it is a bulleted list: "• Name", "• Organisation", "• Professional title", and "• What is your hope for this course?". A thin white horizontal line is at the bottom of the red box. To the right of the red box, there is a black silhouette of two people standing and shaking hands.

The facilitator will lead participants through an activity to introduce yourselves to each other and share your hopes for the course.

To ensure that the forms are anonymous when collected, the facilitator will allocate a number to you and ask you to write that number at the top of the form. Please do not forget this number as you will be asked to write the same number at the top of the post-training assessment form at the end of the training. This will allow the trainer to match your pre- and post-training assessment forms without using your name.

AGENDA

- Welcome and Introductions
- Introduction to Children’s Rights
- Child-Friendly Legal Services and Access to Justice
- Child Development
- Child-Sensitive Communication
- Working with Others
- Effective Participation in Formal Proceedings
- Privacy, Confidentiality and Data Protection
- Closing

[Space for notes]

SESSION 2: GROUND RULES

Timing estimate: 10 minutes

**** This is the end of Module 1 - Welcome and introductions ****

Module 2: Introduction to Children's Rights

SESSION 3: CHILDREN'S RIGHTS AND THE CONVENTION ON THE RIGHTS OF THE CHILD

Timing estimate: 1 hour

MODULE 2

Introduction to Children's Rights

SESSION 3

Children's rights and the Convention on the Rights of the Child

01

Develop a clear understanding of the concepts of human rights and children's rights and their relevance and importance to working with children

02

Develop awareness of the UN Convention on the Rights of the Child and its Optional Protocols

03

Develop an understanding that these instruments create binding international obligations for state parties to respect, protect and fulfil the rights of children within their jurisdiction

SESSION 3: OBJECTIVES

WHAT ARE HUMAN RIGHTS?



Freedom and standards which all individuals are entitled to



They create binding obligations on the state – the 'duty bearer'



States have the obligation to:

- Respect;
- Protect; and
- Fulfil human rights



These apply to adults and children

- Human rights are freedoms and standards that all individuals – including children - are entitled to.
- Human rights create binding obligations on the state, which is referred to as the 'duty bearer.'
- The state is responsible for ensuring that human rights are respected, protected and fulfilled for all individuals throughout its jurisdiction.
 - The obligation to **respect** human rights means that the state must refrain from interfering with or curtailing the enjoyment of human rights.
 - The obligation to **protect** human rights means that states must protect individuals against violations of their human rights, including by non-state actors.
 - The obligation to **fulfil** human rights means that states must take steps – positive action - to facilitate the enjoyment of human rights.



WHAT ARE CHILDREN'S RIGHTS?

- These are additional rights to which all children are entitled
- These rights recognize the particular needs, interests, vulnerabilities and evolving capacities of children
- States have obligations to respect, protect and fulfil children's rights, just as they do other human rights

- Children are also entitled to an additional set of rights – 'children's rights - that recognise their particular interests, needs, vulnerabilities and evolving capacities (a concept we will discuss in more detail later in the course). The state has an obligation to respect, protect and fulfil children's rights, just as it does other human rights.
- As we will come to shortly, the internationally-agreed standard for the definition of a child is a person under the age of 18. When we refer to children's rights throughout this training, we are therefore referring to the rights to which all individuals are entitled up to the age of 18 years.
- When working with children, including when providing them with legal services, it is essential that we respect their human rights. Also, as we will explore later in the course, by providing child-friendly legal services, we are also contributing to protecting and fulfilling a range of children's rights, including the child's rights to access 'child-friendly justice.'

UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

- This is the key international human rights treaty relating to children
- State parties are obliged to respect, protect and fulfil the rights in the CRC for all children within its jurisdiction without discrimination (Art. 2(1))
- CRC rights cannot be derogated from or suspended
- There are 196 State parties to the CRC
- All States in Europe and Central Asia are party to the CRC

- The UN Convention on the Rights of the Child (also referred to in this handbook as the 'CRC') is a human rights treaty setting out a range of children's rights.
- States which are party to the CRC have an obligation under international law to respect, protect and fulfil the full range of rights in the CRC for all children within its jurisdiction without discrimination of any kind.
- These rights apply at all times and cannot be derogated from or suspended, including in situations of armed conflict or national emergency.
- As at 31 July 2023, 196 states were party to the CRC, making it the most widely-ratified/acceded² to human rights instrument in the world. There is only one UN state which is not party to the CRC (the USA).
- All states in Europe and Central Asia are party to the CRC and therefore have an obligation under international law to apply it to all children within their jurisdiction, subject to any reservations or declarations made by the state party which remain in force.

² These are the technical terms describing the ways in which a state becomes a party to a treaty and bound by its terms under international law.

DEFINITION OF THE 'CHILD'

- *“Every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier” (Art. 1 CRC)*
- Even where legal majority is attained earlier (e.g. 16 years), children should still be entitled to their rights in the CRC

- Article 1 of the CRC provides that, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
- In some states, it may be possible for a child to reach legal majority (i.e. stop being a minor) earlier than 18 years. Even where this is the case, the child should still be entitled to the rights in the CRC.
- The age at which children are permitted to undertake certain acts, such as the age of sexual consent, or the age at which a person can drive, are different concepts to the age of majority, though the laws in some states align these minimum ages with the age of majority. An in-depth exploration of the international standards on the minimum ages at which children may undertake certain acts falls outside the scope of this training.

OPTIONAL PROTOCOLS TO THE CRC

- Optional Protocol on the involvement of children in armed conflict
- Optional Protocol on the sale of children, child prostitution and child pornography
- Optional Protocol on a communications procedure
 - Independent committee – UN Committee on the Rights of the Child – may receive and investigate individual complaints, known as ‘communications’

- The CRC has three Optional Protocols, which states may also become party to:
 - The Optional Protocol on the involvement of children in armed conflict;
 - The Optional Protocol on the sale of children, child prostitution and child pornography; and
 - The Optional Protocol on a communications procedure, whereby the state party agrees to an international committee of independent experts – the UN Committee on the Rights of the Child (CRC Committee) - receiving and investigating complaints. These complaints are referred to as ‘communications.’ Communications may be submitted by individuals or a group of individuals within the state party’s jurisdiction about alleged violations of their rights under the CRC by that state.
- Under the third Optional Protocol, the CRC is also permitted to undertake an inquiry into grave or systematic violations of children’s rights by a state party, except where the state party has made a declaration that it does not recognise the Committee’s functions in this regard. As at 31 July 2023, out of the countries in Europe and Central Asia who are party to the Optional Protocol, only Monaco had issued this declaration.
- We will be looking at the communications and inquiry procedures in more detail in Module 9 on ‘Child Rights Strategic Litigation.’

UN COMMITTEE ON THE RIGHTS OF THE CHILD

- Committee of 18 independent experts established under the CRC
- Key roles and responsibilities:
 - Receiving and investigating individual communications on alleged violations by state parties to the 3rd Optional Protocol
 - Issues general comments providing recommendations and guidance on interpretation and implementation of the CRC
 - Monitors implementation of the CRC by state parties through periodic reviews and issues ‘concluding observations’ to the state party

- The CRC and its Optional Protocols are monitored by the CRC Committee.
- The CRC Committee has several functions, one of which is the communications and inquiry procedures under the third Optional Protocol to the CRC mentioned on the previous slide.
- The CRC Committee also issues guidance and recommendations – referred to as ‘General Comments’ - on how to interpret and apply the provisions of the CRC in practice. Whilst these General Comments are not binding under international law, they form part of a body of ‘soft law’, which guides the implementation of states’ binding international obligations

under the CRC. We shall be referring to the General Comments where relevant throughout this training.

- The CRC Committee also carries out periodic reviews of a state party's implementation of the CRC, based on periodic reports submitted to it by the state, as well as 'shadow reports' submitted to it by civil society and other interested organisations, such as national human rights institutions. Based on its inquiries into and reviews of these reports, the CRC Committee issues 'concluding observations', which are a series of recommendations to the State party on how it can strengthen its implementation of the CRC.

When did your state become party to the CRC?

Which of the CRC's Optional Protocols is your state party to?

Does your state have any declarations or reservations to the CRC or Optional Protocols in force?

When was your state's last set of concluding observations from the CRC Committee?

Has the CRC Committee issued any concluding observations recommending your state to withdraw any declarations or reservations?

When is your state's next periodic review before the CRC Committee?

What is the age of majority in your state?

Has the CRC Committee issued any recommendations to your state regarding the age of majority in your state?

[Note to training providers, please see the Facilitator's Handbook which provides guidance on tailoring the last part of this section according to your national context. Please amend the Participant's Handbook accordingly and delete this note.]

SESSION 4: GENERAL PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD

Timing estimate: 1 hour 40 mins

SESSION 4

General principles of the Convention
on the Rights of the Child

01

Be able to identify the four general principles of the CRC

02

Understand the importance of the four general principles to working with children

03

Develop your skills in using the general principles to guide your approach to providing legal services to children

SESSION 4: OBJECTIVES

GENERAL PRINCIPLES OF THE CRC

Right to non-discrimination

Article 2

Best interests of the child as a primary consideration

Article 3 (1)

Right to life, survival and development

Article 6

Right to be heard

Article 12

- The CRC contains the following four rights and principles, which the UN Committee on the Rights of the Child also refers to as the 'general principles' of the CRC:
 1. Right to non-discrimination (Article 2 of the CRC);
 2. Best interest of the child as a primary consideration (Article 3(1) of the CRC);
 3. Right to life, survival and development (Article 6 of the CRC); an
 4. Right to be heard (Article 12 of the CRC).

- They are called the 'general principles' because, not only are they rights which must be respected, protected and fulfilled in their own right, but they are also the foundation for all other children's rights.
- In any given situation, several children's rights may be implicated, such as the right to a fair trial, right to education, right to protection from harm etc. Also, the rights of adults and other considerations, such as national security, public safety, budgetary issues, lack of resources etc. may also be relevant. The general principles provide us with a 'compass' or framework to help us make decisions in such contexts in a way that ensures that children's needs and interests are at the forefront. This is particularly important for children who do not have the same ability or standing to voice their concerns and protect their interests as adults.
- When providing legal services to children, we must ensure that we respect, protect and fulfil these principles *as far as possible within the scope of our professional responsibilities*. Challenges may arise, for example, when we act for a child client whose instructions are not, in our view, in the child's best interests. We will be exploring how to deal with these situations throughout this course.
- We will look at each of the general principles in turn to develop a deeper understanding of what they mean in practice.

NON-DISCRIMINATION

NON-DISCRIMINATION (Art 2)

"1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

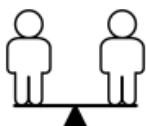
- Children are entitled to the rights in the CRC without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- Children are also entitled to be protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.



Which groups of children are particularly vulnerable to discrimination in your state?
Can you give an example of how these children are discriminated against?

DIRECT V. INDIRECT DISCRIMINATION

- **Indirect:** when a law, policy or practice applies to everyone but places an individual or group with a protected characteristic at a particular disadvantage
- **Direct:** when an individual or group is treated less favourably than someone else in a comparable situation because of a protected characteristic
- Discrimination can occur in the absence of intention or awareness – self-reflection, and identifying and challenging biases, are key!



- Discrimination may be **indirect**. This occurs when a law, policy or practice applies to everyone but places an individual or group with a protected characteristic at a particular disadvantage. For example, if everyone had to climb up a flight of stairs to get to a lawyer's office, this would discriminate against children who could not do that because of a physical disability.
- Discrimination may also be **direct**. This is when a person or group is treated less favourably than someone else in a comparable situation because of a protected characteristic. For example, a judge takes the view that evidence from a child with a physical disability has less weight than that of a child without a disability because they make unfair and incorrect assumptions about the child's capacity.
- The principle of non-discrimination is a challenge to all of us. Discrimination may occur in the absence of an intention to discriminate or awareness by the discriminator. We are all products of our upbringing and socialisation and often have some bias that we use to justify inequalities between groups of people. We have to identify these biases and challenge ourselves, our institutional practices and our opinions in relation to long-held beliefs and practices.

BEST INTERESTS OF THE CHILD AS A PRIMARY CONSIDERATION

BEST INTERESTS (Art 3(1))

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”



- Under Article 3(1) of the CRC, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- This principle involves two stages:
 - First, to identify what is in the child’s best interests; and
 - Second, to ensure that the child’s best interests are given primary consideration.

BEST INTERESTS: SOME FACTORS TO CONSIDER

- Child’s views
- Child’s identity (sex, national origin, religion and beliefs, sexual orientation, cultural identity, personality etc.)
- Preservation of a family environment
- Care, protection and safety of the child
- Disability
- Situation of vulnerability
- Health
- Educational needs
- Other e.g. migration status

- In General Comment No. 14 (2013), the CRC Committee provides a non-exhaustive list of factors which should be considered when assessing the child's best interests.
- These include:
 - The child's views;
 - The child's identity, bearing in mind that children are not a homogenous group and therefore the child's characteristics such as sex, national origin, religion and beliefs, sexual orientation, cultural identity, personality etc. should be taken into account;
 - Preservation of a family environment;
 - Care, protection and safety of the child;
 - Whether or not the child has a disability and the child's corresponding needs;
 - Situation of vulnerability, for example, the child is living in a street situation, or is a victim of abuse;
 - The child's health situation and right to health;
 - The child's educational needs and right to education;
 - Other statuses including migration status or situation of statelessness, refugee status, etc.

'BEST INTERESTS' ASSESSMENTS AND DETERMINATION

- Must be assessed on a case-by-case basis based on the child's circumstances and needs in that particular situation
- Overall purpose is to ensure the child's effective enjoyment of their rights under the CRC and holistic development
- Dynamic, flexible and adaptable concept
- Best interests may evolve as the child grows and circumstances shift

- What is in a child's best interests must be assessed and determined on a case-by-case basis, based on the particular circumstances and needs of the child/children involved in the particular situation in question.³
- It is useful to always bear in mind that the overall purpose of the 'best interests principle' is to ensure the effective enjoyment of the rights contained in the CRC and the child's holistic development.
- The best interests of the child is a dynamic, flexible and adaptable concept and may evolve as the child grows and as circumstances shift and change.

HOW CAN WE DECIDE WHAT IS IN THE CHILD'S BEST INTERESTS?

- **Speak to the child and understand the child's views, wishes and feelings**
- **Speak to the parents/guardians to understand their views on the child's needs**
- **Consult with relevant experts**
- **Make your own expert decision based on this information**

- To decide what is in the child's best interests, you should:
 - o Speak to the child - what does the child say she/he needs? What are the child's views, wishes and feelings?
 - o Speak to the child's parents / legal guardians to understand their views on the child's needs.
 - o Consult with an expert - e.g. a social worker or psychologist who has spoken with the child and ask them for their opinion.
 - o Make your own expert decision based on this information.

3 UN Committee on the Rights of the Child, General Comment No. 14 (2013), para 32

RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (Art 6)

“1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”



- Under Article 6 of the CRC, children have the inherent right to life and state parties are required to ensure, to the maximum extent possible, the survival and development of the child.
- This right extends beyond matters of life and death; state parties have an obligation to take positive steps to ensure, to the maximum extent possible, the survival and development of the child. ‘Development’, for these purposes, is interpreted broadly to refer to the holistic development of a child, including the physical, psychological, social, cultural, spiritual, emotional, economic and intellectual dimensions of his or her being.

RIGHT TO BE HEARD



RIGHT TO BE HEARD (Art 12)

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

- 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 the child, and to have the views of the child be given due weight in accordance with his/her age and maturity.
- The importance of this principle in the context of judicial or administrative proceedings is reflected in Article 12(2) of the CRC which specifically states that the child must be provided with the opportunity to be heard in these contexts, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

RIGHT TO BE HEARD CONTINUED...

- Integral part of the child's right to participation
- Not a momentary act but applied continuously
- It is a right, not an obligation
- No minimum age requirement for exercising this right
- Start with the presumption that the child is capable of expressing their views
- Views of the child with requisite capacity must be 'seriously considered'

- The right to be heard is essential for the child to be able to participate. Participation is a continuous process of information sharing and dialogue between the child and others and allows the child to understand how their views and those of adults are taken into account in shaping the decisions that affect them.⁴ The right to be heard is therefore not a 'momentary'⁵ act, but one that is applied continuously during the exchanges involved in the participation process.
- The right to be heard applies to individual children as well as to groups of children, or children in general. As this is a *right*, not an obligation, a child should not be forced to provide his or her views – it is their choice.⁶

4 Committee on the Rights of the Child, General Comment No. 12 (2009), *The Right of the Child to be Heard*, para 3

5 Committee on the Rights of the Child, General Comment No. 12 (2009), *The Right of the Child to be Heard*, para 13

6 Committee on the Rights of the Child, General Comment No. 12 (2009), *The Right of the Child to be Heard*, para 16

- Note there is no minimum age limit to exercising this right. The CRC Committee's General Comment 12 (2009) explains that age alone cannot determine the significance of a child's view and that 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 regarding this as a limitation, it should be viewed as an obligation for states 'to assess the capacity of the child to form an autonomous opinion to the greatest extent possible.'⁷ 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 the child.⁸
- The phrase 'the views of the child being given due weight in accordance with the age and maturity of the child' makes it clear that the views of a child who has the requisite capacity must be '*seriously considered*,' and that it is not sufficient to simply listen to those views without taking them into account in the decision-making.⁹



Activity

The facilitator will lead you through an activity on the application of the general principles in the context of providing legal services.

7 Committee on the Rights of the Child, General Comment No. 12 (2009), *The Right of the Child to be Heard*, para 20

8 Committee on the Rights of the Child, General Comment No. 12 (2009), *The Right of the Child to be Heard*, para 20

9 Committee on the Rights of the Child, General Comment No. 12 (2009), *The Right of the Child to be Heard*, para 28

NON-DISCRIMINATION AND THE PROVISION OF LEGAL SERVICES

- Lawyer/legal services practitioner should ensure that the child is offered appropriate services without discrimination
- Handle each client with sensitivity and understanding of the issues that they may face because of their sex, age, race, disability etc.
- Particularly relevant when working with vulnerable groups of children where special measures may be needed to protect the child, facilitate their participation and ensure that their other rights are upheld

- 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, race, disability and so on.
- The right to non-discrimination is of particular relevance for legal practitioners when dealing with vulnerable groups of children 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.

BEST INTERESTS AND PROVIDING LEGAL SERVICES

- Should inform all aspects of dealing with a child client including:
 - How you build a relationship of trust with the child
 - How you develop and adapt case strategies to achieve the best legal outcome
 - How you interact with other key stakeholders such as police and judges to ensure that the child's best interests are a primary consideration
 - How you advocate for a child's best interests to be interpreted by the court
 - Minimising delays during legal procedures
- Lawyers/ legal services practitioners should take into account the child's views and give them due weight so that the child plays a significant role in determining what is in their best interests

- The best interests' principle applies to lawyers and other practitioners providing legal services and should inform all aspects of dealings with a child client, including:
 - How the legal practitioner builds a relationship with a child, including committing time and resources to building a trusting relationship with the child to understand what is in the child's best interests;
 - How the legal professional develops and adapts case strategies to achieve the best legal outcome; for example, in context of criminal proceedings, the professional might decide that it is in a child's best interests to enter into a plea bargain, to remain silent during a police interview or to advocate for diversion or restorative justice proceedings as an alternative to prosecution;
 - How to interact with other key actors, such as the police or judges, to ensure that the child's best interests are a primary consideration at different stages of the process; for example, a legal professional may decide it is in a child's best interests to advocate strongly that delays in a case be kept to a minimum, for a child-friendly environment in a court-room or to reduce the need for repeated interviews by disclosing information to other professionals (with the child's consent);
 - How to advocate for a child's best interests to be interpreted by the court or tribunal; and
 - Keeping delays to a minimum.
- When evaluating the best interests of a child at various stages of proceedings, legal service practitioners should take into account the child's views and give them due weight. This helps to facilitate the child's participation in determining what is in her or his best interests.
- Later in the course, in Module 6, Session 17 (Working with family members and other supportive adults), we will discuss cases where the child's views conflict with what the lawyer considers to be in his/her best interests and how to handle such situations.

RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT AND PROVIDING LEGAL SERVICES

- Protect the child from harm that could arise during proceedings
- E.g. keep child witnesses safe from harm from perpetrators
- Advocate to ensure that the deprivation of a child's liberty is used only as a measure of last resort and for the shortest appropriate period of time (Article 37(b) CRC)
 - All forms of deprivation of liberty (arrest, detention, imprisonment) can have negative consequences for the child's survival and development

- Putting this right into practice means protecting children from harm that could arise during legal proceedings; for example, keeping child witnesses safe from retribution by perpetrators.
- All forms of deprivation of liberty (including arrest, detention and imprisonment) can have negative consequences for a child's survival and development. Legal professionals should ensure, to the best of their abilities, that children are deprived of their liberty only as a measure of last resort and for the shortest appropriate time (Article 37(b) CRC; CFLA Guidelines, page 11).

RIGHT TO BE HEARD AND PROVIDING LEGAL SERVICES

- Children must be able to express their views, opinions and concerns
- Children should be able to participate actively throughout the justice process provided it is in the child's best interests to do so
- The child has the right to remain silent and not to participate
- Justice proceedings must be specifically adapted for children
- Children must receive adequate information about the process, the choices they have and possible consequences of those choices
- You should give due weight to the child's views according to the child's age and maturity

- When providing legal services, children must be able to express their views, opinions, and concerns
- Children should be able to participate actively throughout the justice process provided it is in their best interests to do so.
- The right of the child to remain silent and not to participate is important.
- To put this into practice, justice proceedings must be specifically adapted for children, and they must receive adequate information about the process, the choices they have and the possible consequences of these choices.
- Legal professionals need to assess a child's age and maturity and the relative weight that should be given to that child's views, opinions, concerns, and testimony.

SESSION 5: GENERAL PRINCIPLES OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD IN THE NATIONAL FRAMEWORK

Timing estimate: 30 minutes

SESSION 5

General principles of the UN
Convention on the Rights of the Child
in the national framework

01

Develop knowledge of how the general principles of the CRC are reflected in the national legal framework

02

Be able to identify the ways in which your national legal framework may be strengthened to reflect the general principles of the CRC in full

03

Develop an understanding that you can apply the general principles as a matter of good practice, even when the national legal framework does not fully or explicitly enshrine the general principles

SESSION 5: OBJECTIVES

General Principle	Legal provisions which enshrine this principle	Analysis of the extent to which the general principle is reflected in these legal provisions
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1. Best interests of the child as a primary consideration

2. Right to life, survival and development

3. Right to be heard

4. Non-discrimination

**** This is the end of Module 2 - Introduction to children's rights ****

Module 3: Child-Friendly Legal Services and Access to Justice

SESSION 6: CHILD-FRIENDLY LEGAL SERVICES: CONTEXT

Timing estimate: 1 hour

MODULE 3
Child-Friendly Legal Services and
Access to Justice

SESSION 6
Child-friendly legal services: Context

SESSION 6: OBJECTIVES

- 01** Develop knowledge and understanding of the meaning and importance of the right of the child to access justice and a child-friendly justice system
- 02** Develop knowledge and understanding of key international and regional standards on providing child-friendly legal services and legal aid
- 03** Recognise the importance of providing child-friendly legal services and legal aid to children in particularly vulnerable situations



'What types of cases involving children do you work on?'

ACCESS TO JUSTICE

“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 recognized before the law and to a fair trial, including equal access to courts and equality before the law..... Access to justice requires the legal empowerment of every child and must consider their age, maturity, and evolving capacity.”

(UNICEF, #Reimagine Justice for Children, p 2)

- Children have an international right to access justice.
- Access to justice is the ability to seek and obtain a just, equitable and timely remedy for violations of rights including those in the CRC. It includes the right to be recognized before the law and to a fair trial, including equal access to courts and equality before the law.
- Access to justice requires the legal empowerment of every child and must consider their age, maturity and evolving capacity.

CHILD-FRIENDLY JUSTICE

““...justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level.... It is, in particular, justice that 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 rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”

(Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, 2010, II c)

- To help realise children's access to justice, justice systems should be child-friendly. This means that they should guarantee the respect and effective implementation of all children's rights at the highest attainable level and be:
 - Accessible;
 - Age-appropriate;
 - Gender-responsive (i.e. the system that takes into account and is designed to meet the needs of children of different genders);
 - Speedy;
 - Diligent;
 - Adapted to and focused on the needs and rights of the child;
 - Respect the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect the child's private and family life and to integrity and dignity.

- This is based on the definition of child-friendly justice in the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (part II c, 2010).

RECALL ART 12(2) CRC

“2. the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

- The right to effective legal services (advice, assistance and representation) is an essential part of a child's right to access justice and a child-friendly justice system. Though not stated explicitly in CRC, recall that Article 12(2) on the right to be heard provides 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 other legal service practitioner.¹⁰

¹⁰ 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. 36.

ART 40(2)(b)(ii)-(iii) CRC

“(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

....

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have **legal or other appropriate assistance** in the preparation and presentation of his or her defence;

(iii) 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** and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;”

- 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.
- Article 40(2)(b)(iii) further provides that children suspected, accused 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...(.).*’ (emphasis added).

ART 14(3)(d) ICCPR

“3. 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;”

Although Articles 40(2)(b)(ii)-(ii) refer to legal *or* other appropriate assistance, Article 14(3)(d) of the International Covenant on Civil and Political Rights, which is a key human rights treaty, makes it clear that all individuals, including children, must have *legal* assistance assigned to them in the determination of a charge (i.e. once the individual has been charged and criminal proceedings have commenced) in any case where the interests of justice so require. This legal assistance must be free of charge if the person does not have sufficient means to pay for it.

BEIJING RULES

“15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.”

This is reinforced in the UN Standard Minimum Rules for the Administration of Juvenile Justice (also known as the ‘Beijing Rules’),¹¹ which provide that, ‘throughout proceedings,’ the child has the right to be represented by a legal adviser (or to apply for free legal aid where this is provided for in the country).

ART 37(d) CRC

“Every child deprived of his or her liberty shall have the right to prompt access to **legal and other appropriate assistance**, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

¹¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Adopted by General Assembly Resolution 40/33 of 29 November 1985.

- However, even before charge, the child should be provided with legal assistance.
- 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' (emphasis added).
- Detaining children, regardless of its purpose, has negative consequences for the child's development and seriously hinders his/her reintegration into society. 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:
 - o challenge the legality of their detention;
 - o ensure that their detention is subject to continuous review by a judge and hence that the child is released as soon as the detention is no longer necessary; and
 - o to have a prompt decision on the matter.

RIGHT TO LEGAL ASSISTANCE CONTINUED...

- In the context of child justice and diversion, the child must be given the opportunity to obtain legal and other advice and assistance (CRC Committee, General Comment No. 12, para 59)
- Recall the best interests principle – it should always be regarded as in a child's best interests to have access to legal advice and assistance when questioned about an offence
- Children should not be denied legal assistance simply because other forms of assistance are available

- In the case of diversion, including mediation, the Committee on the Rights of the Child 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.¹²
- Further, the principle concerning the best interests of the child applies at all stages of proceedings. It should always be regarded as 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.¹³

¹² 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.

¹³ Hamilton, C., Guidance for Legislative Reform on Juvenile Justice, May 2011, pp. 44-45.

- Further, children should not be denied the right to have legal assistance simply because other forms of assistance are available.¹⁴

WHAT IS LEGAL AID?

- This refers to the right to legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it (UNDP and UNODC Global Study on Legal Aid, 2015)
- Legal aid is essential for ensuring access to justice

- The provision of legal services is so important that there is an international human right to legal aid, namely: 'legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it.'¹⁵
- The right to legal aid is essential for ensuring access to justice.¹⁶

RIGHT TO LEGAL AID IN CRIMINAL CASES

- Legal aid is part of a fair, humane and efficient criminal justice system based on the rule of law and is a foundation for the realisation of other human rights
- Recall Art 14(3)(d) ICCPR
- Everyone charged with a criminal offence has 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'. (Art. 6(3)(c) ECHR)
- 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, as well as persons who are suspected, accused or charged with a crime (UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 8)

14 Hamilton, C., Guidance for Legislative Reform on Juvenile Justice, May 2011, p. 45.

15 UNDP and UNODC et al., Global Study on Legal Aid, Global Report, 2015, p. 241.

16 UNDP and UNODC et al., Global Study on Legal Aid, Global Report, 2015, p. IV.

- The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems emphasise the importance of legal aid in criminal cases. They provide that legal aid is part of 'a fair, humane and efficient criminal justice system that is based on the rule of law'¹⁷ and is also a foundation for the realisation of other human rights, particularly the right to fair trial.¹⁸
- This is affirmed in Article 14(3)(d) of the International Covenant on Civil and Political Rights mentioned earlier.
- Regional human rights treaties similarly affirm the right to legal aid in criminal matters. Article 6(3)(c) of the European Convention on Human Rights (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'.
- The right to legal aid in criminal cases applies to all stages of the criminal justice process. Although Article 14 of the ICCPR and Article 6(3)(c) of the ECHR refers 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 clarify 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, as well as persons who are suspected, accused or charged with a crime.¹⁹

RIGHT TO LEGAL AID IN NON-CRIMINAL CASES

- '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. Owing to its importance and considering its potential scope, the right to legal aid should be recognized, guaranteed and promoted in both criminal and non-criminal cases.' - Special Rapporteur on independence of judges and lawyers, 2013
- 'Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'
Art. 47 Charter of Fundamental Rights of the EU

17 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, preamble and principle 1.

18 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, preamble and principle 1.

19 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 8.

- There is also an international right to legal aid in civil cases. 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.²⁰ In a report to the UN Human Rights Council in 2013, the then Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, stated,

*'Legal aid is an essential component of a fair and efficient justice system founded on the rule of law. It is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights, including the right to a fair trial and the right to an effective remedy. Access to legal advice and assistance is also an important safeguard that helps to ensure fairness and public trust in the administration of justice.'*²¹

- Based on the general comments and jurisprudence of human rights treaty bodies on the interpretation of treaty obligations (particularly the Human Rights Committee's interpretation of Article 14(3)(d) of the ICCPR),²² the Special Rapporteur on the independence of judges and lawyers 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. Owing to its importance and considering its potential scope, the right to legal aid should be recognized, guaranteed and promoted in both criminal and non-criminal cases.'*²³

- European Union (EU) laws provide a more explicit affirmation that the right to legal aid applies to both criminal and non-criminal cases. Article 47 of the Charter of Fundamental Rights of the EU (on the right to an effective remedy and fair trial) states that,

'Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

20 UNODC/UNDP Global Study on Legal Aid, 2016, p IV, retrieved from https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf on 17 January 2023.

21 Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, to the Human Rights Council, A/HRC/23/43, 15 March 2013, para. 20.

22 The Human Rights Committee has stated that although Article 14(3)(d) refers to legal assistance in criminal proceedings, 'States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so', for example, for the constitutional review of irregularities in a criminal trial in which a person is sentenced to death; Human Rights Committee, General Comment No. 32 on the Article 14: Right to equality before courts and tribunals and to a fair trial, para. 10.

23 Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, to the Human Rights Council, A/HRC/23/43, 15 March 2013, para. 28.

LEGAL AID FOR PERSONS IN DETENTION

- Right to legal aid should apply to all persons who are detained, arrested or imprisoned (UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 8)
- 'an untried prisoner shall be allowed to apply for free legal aid where such aid is available' (Standard Minimum Rules for the Treatment of Prisoners, para 93)
- Recall Art. 37(d) CRC and the best interests of the child

- International standards emphasise the importance of legal aid for persons on remand (i.e. in pre-trial detention) and other forms of detention.
- 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 on a child's physical, psychological, social, educational and cultural development, 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.²⁴
- Paragraph 93 of the Standard Minimum Rules for the Treatment of Prisoners provide that, for the purposes of his/her defence, 'an untried prisoner shall be allowed to apply for free legal aid where such aid is available' (which, as we have just discussed, the UN Principles and Guidelines clarify should be available in all states). Further, persons on remand are entitled to receive visits from their legal adviser to prepare their defence and provide confidential instructions, and to speak to their legal adviser out of earshot of the police or institution official.²⁵
- Recall Art 37(b) of the CRC and the 'best interests' principle, which supports the argument for ensuring that children have prompt access to legal assistance when deprived of their liberty and that such assistance should be free of charge where children or their parents/guardians do not have sufficient means to pay for it.

24 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 8.

25 Standard Minimum Rules for the Treatment of Prisoners, para. 93.

SESSION 7: CHILD-FRIENDLY LEGAL SERVICES: KEY COMPONENTS**Timing estimate:** 40 minutes

SESSION 7

Child-friendly legal services:
Key components

01

Develop awareness of the Guidelines on Child-Friendly Legal Aid and its relevance to providing legal services

02

Develop core knowledge and understanding of the guidance in the Guidelines on Child-Friendly Legal Aid

03

Start being able to identify the ways in which you can make the provision of legal services child-friendly in practice

SESSION 7: OBJECTIVES

WHAT MAKES LEGAL SERVICES CHILD-FRIENDLY?



- Application of the four general principles of the CRC
- Special measures are taken to ensure that legal services are gender-responsive and age-appropriate
- Special measures are taken to meet the needs and preferences of children with specific needs

- What makes legal services child-friendly?
- As for all matters concerning children, the four general principles of the CRC continue to apply.
- Special measures should be taken to ensure that the legal services are gender-responsive and age-appropriate.²⁶
- Further special measures may also be needed for children with specific needs, including children who have experienced sexual abuse, children with disabilities, children with mental illnesses, children living with HIV and other serious contagious diseases, stateless children, refugee children or children seeking asylum, migrant children and internally displaced children.²⁷

CHILD-FRIENDLY LEGAL SERVICES FOR CHILDREN WITH DISABILITIES

- Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various other barriers may hinder their full and effective participation in society on an equal basis with others (Art. 1 CRPD)
- Children with disabilities may face different or additional barriers associated with their other characteristics, such as their sex, migration status etc.
- Children with neurodevelopmental disorders or disabilities e.g. autism should not be in the child justice system at all or should be individually assessed (CRC Committee General Comment No. 24, para. 28)

26 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 10/para. 32.

27 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 10/para. 32.

- Special consideration should be made to ensure that children with disabilities have access to child-friendly legal services.
- Persons with disabilities include those who have long-term physical, mental, intellectual (i.e. 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.²⁸
- Disabilities encompass a wide range of conditions and can result in very different barriers to accessing justice from one child to the next. This is particularly likely to be the case where a child faces different or additional barriers associated with their other characteristics, such as gender, migration or other status.²⁹
- The provision of child-friendly legal services in the context of criminal proceedings is particularly important where the child has a neurodevelopmental disorder or disability. The Committee on the Rights of the Child recommends that children with such disorders or disabilities, such as autism spectrum disorders, foetal 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.³⁰ 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.

GUIDELINES ON CHILD-FRIENDLY LEGAL AID

- Developed by UNICEF Europe and Central Asia Regional Office and its partners in 2018
- Guidelines for professionals and practitioners on providing child-friendly legal services (though it uses the term 'legal aid')

28 Convention on the Rights of Persons with Disabilities, Article 1.

29 Mental Disability Advocacy Centre, *Access to Justice for Children with Mental Disabilities: Core Concepts, Disability and Childhood – Intersectionality*, <http://mdac.org/A2J-training-site/core-content/disability-childhood/>, accessed 2 February 2023.

30 CRC, General Comment No. 24 (2019) on Children's Rights in the Child Justice System, 18 September 2019, para. 28.

- In 2018, the UNICEF Europe and Central Asia Regional Office worked with partners to develop the Guidelines on Child-Friendly Legal Aid, which you should have a copy of in front of you.
- These Guidelines are for professionals and practitioners delivering 'child-friendly' legal services.
- Although the Guidelines refer to 'legal aid,' the guidelines define this to include all categories of legal advice, assistance and representation, regardless of whether or not it is paid for by the recipient of the service.
- The Guidelines consist of 12 guidelines for legal service providers on delivering legal services to children.

12 GUIDELINES ON CHILD-FRIENDLY LEGAL AID

- | | |
|--|--|
| 1. Competence when providing legal aid to children | 7. Effective participation in formal proceedings |
| 2. Acting in the child's best interests | 8. Working with family members and other supportive adults |
| 3. Effective participation | 9. Privacy and confidentiality |
| 4. Building a relationship | 10. Protecting children from discrimination |
| 5. Child-sensitive communication | 11. Keeping children safe |
| 6. Providing reliable and relevant information | 12. Working with others |

- The 12 guidelines are as follows:

Competence when providing legal aid to children	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, which they should keep up-to-date and refresh them with regular professional development training.
Acting in the child's best interests	Legal aid professionals and practitioners must act with the best interests of the child as a primary consideration in all actions concerning the child.
Effective participation	Legal aid professionals and practitioners must ensure that a child's views and voice are heard and given due weight throughout the legal process.
Building a relationship	Legal aid professionals and practitioners should build a relationship of trust and support with a child client.
Child-sensitive communication	Legal aid professionals and practitioners should communicate with children in a child-sensitive manner to ensure that children can participate effectively in the process.

Providing reliable and relevant information	Legal aid professionals and practitioners should provide children with reliable and relevant information so they can participate meaningfully in decision-making concerning their case.
Effective participation in formal proceedings	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.
Working with family members and other supportive adults	Legal aid professionals and practitioners should act on a child's instructions and in his or her best interests and not those of family members.
Privacy and confidentiality	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.
Protecting children from discrimination	Legal professionals should ensure that children are treated fairly and are not discriminated against because of their age, gender, ethnicity, disability or other status.
Keeping children safe	Legal professionals should keep children safe and enable them to participate in the legal process without risk of secondary victimization (i.e. 'victimization that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim'). ³¹
Working with others	Professionals and practitioners should work collaboratively with other organizations, provided that this is in the child's best interests.

SESSION 8: CHILD-FRIENDLY LEGAL SERVICES: NATIONAL FRAMEWORK

Timing estimate: 40 minutes

SESSION 8

Child-friendly legal services:
National framework

³¹ Justice in Matters involving Child Victims and Witnesses of Crime Model Law and Related Commentary, UNODC, 2009; UNICEF, Guidelines on Child-Friendly Legal Aid, UNICEF ECARO, October 2018, p. 7.

SESSION 9: APPLYING THE CHILD-FRIENDLY LEGAL AID GUIDELINES: CASE STUDIES**Timing estimate:** 1 hour 15 minutes**SESSION 9**

Applying the child-friendly legal aid guidelines: case studies

Start to develop your skills in applying the Child-Friendly Legal Aid Guidelines holistically in a range of contexts

**SESSION 9:
OBJECTIVE**

The facilitator will invite you to complete an activity involving the application of the child-friendly legal services to the case studies.

Case Study: Aydin

Aydin is a 12-year-old boy from an ethnic minority group who has been apprehended by the police several times for different offences. On this occasion, Aydin has been arrested together with several older adolescents for creating a public disturbance and fighting. A pro bono lawyer arrives at the police station following Aydin's apprehension in order to advise and represent Aydin during police questioning.

As soon as the lawyer arrives at the police station, the police officer in charge briefs the lawyer on Aydin's background, saying,

"Aydin is one of our usual suspects. He is often found loitering on the streets and truanting from school. He is from an ethnic minority. You know how people from this ethnic minority cause disturbances on the streets! Aydin's mother obviously cannot control him or look after him properly as she is a single parent. You will see what I mean when you see Aydin – his clothes and face are always dirty. There is no point speaking to him as he will not listen to you and will be very rude. From experience, it is best to wait a few hours before starting the police interview. By that point, Aydin will have realised the seriousness of his actions and will be more compliant during questioning."

The police officer then leaves the lawyer sitting in the waiting room for over four hours until she invites the lawyer into the interview room to start the police questioning. Upon entering the interview room, the lawyer finds Aydin sitting solemnly, staring at the table. Aydin is handcuffed. The police officer explains to Aydin that the lawyer is there to represent him during the interview and that if he has any questions, he should ask his lawyer. The police officer then immediately starts the interview in the presence of the lawyer, saying to Aydin, *"The more you answer my questions, Aydin, the sooner we will all go home."* No one else is present in the interview room.

Questions:

- **In your opinion, did the lawyer apply the general principles of the CRC correctly? Why/why not?**
- **What would you have done differently in this case to deliver child-friendly legal services?**

Module 4: Child Development

SESSION 10: CHILD DEVELOPMENT AND COMMUNICATION

Timing estimate: 45 minutes

MODULE 4

Child Development

SESSION 10

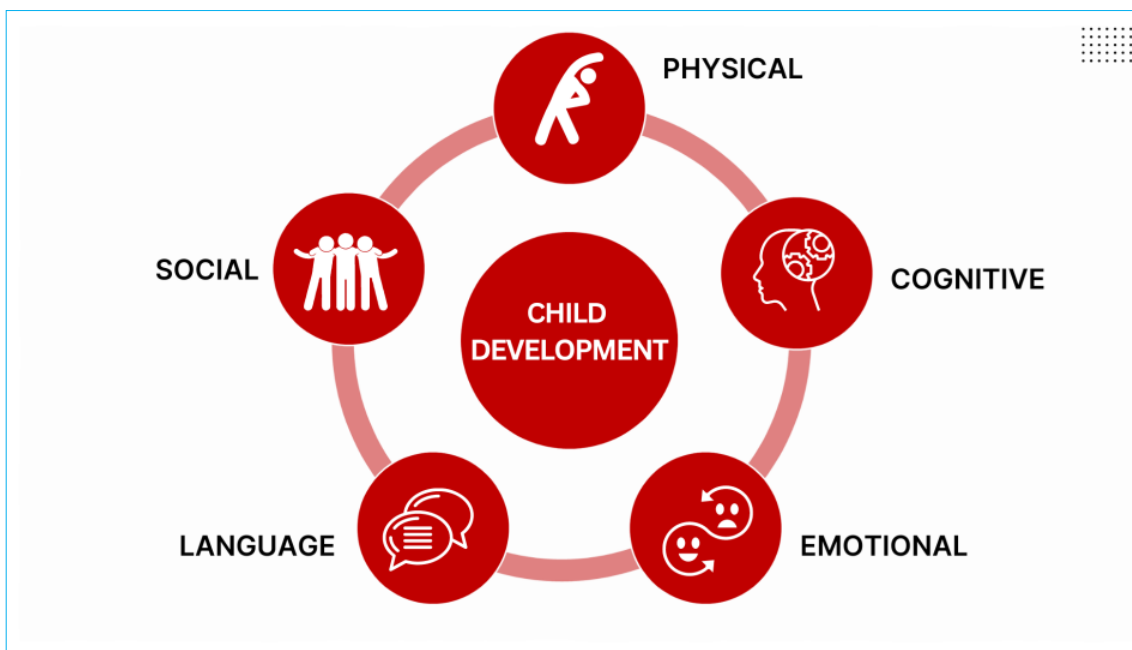
Child development and
communication

01 Develop knowledge and understanding of the basic concepts of child development

02 Develop an understanding of the relevance of child development to communication

03 Develop child-sensitive communication skills

SESSION 10: OBJECTIVES



- Child development may be described as physical, cognitive, emotional, language, and social changes that an individual experiences from infancy through to adolescence.³²
- **Physical** development refers to physical changes in the child.

³² Levin, E. (2011). Child Development. In: Goldstein, S., Naglieri, J.A. (eds) Encyclopedia of Child Behavior and Development. Springer, Boston, MA. https://doi.org/10.1007/978-0-387-79061-9_523

- **Cognitive** development refers to the acquisition of thinking, reasoning, problem solving and other intellectual processes.³³
- **Emotional** development broadly refers to understanding feelings and emotions and naming them.
- **Language** development refers to the process of developing ways of communication and interaction with others.
- **Social** development refers to learning to interact with others.
- Today, it is generally accepted that both genetic and environmental factors shape a child's development, though discussions remain on the extent to which they contribute to this.³⁴

EARLY CHILDHOOD DEVELOPMENT

*'Children's brains are built, moment by moment, as they interact with their **environments**. In the first few years of life, more than one million neural connections are formed each second – a pace never repeated again. The quality of a child's early experiences makes a critical difference as their brains develop, providing either strong or weak foundations for learning, health and behaviour throughout life.'* *Emphasis added (UNICEF)*



- Environmental factors are particularly important in early childhood.
- As UNICEF highlights, children's brains develop 'moment by moment, as they interact with their environments. In the first few years of life, more than one million neural connections are formed each second – a pace never repeated again. The quality of a child's early experiences makes a critical difference as their brains develop, providing either strong or weak foundations for learning, health and behaviour throughout life.'

33 Jean Piaget (1896–1980) referenced in Levin, E. (2011). Child Development. In: Goldstein, S., Naglieri, J.A. (eds) Encyclopedia of Child Behavior and Development. Springer, Boston, MA. https://doi.org/10.1007/978-0-387-79061-9_523

34 Levin, E. (2011). Child Development. In: Goldstein, S., Naglieri, J.A. (eds) Encyclopedia of Child Behavior and Development. Springer, Boston, MA. https://doi.org/10.1007/978-0-387-79061-9_523



ADOLESCENCE

- *'...a life stage characterized by growing opportunities, capacities, aspirations, energy and creativity, but also significant vulnerability. Adolescents are agents of change and a key asset and resource with the potential to contribute positively to their families, communities and countries.'* (CRC Committee, General comment No. 20 para 2)
- *For the purposes of data collection, CRC Committee guidance refers to children aged 10 to 18 (General Comment No. 20, para 5)*

- Child development is not only relevant for early years but throughout childhood, including adolescence.
- The UN Committee on the Rights of the Child describes this period as, 'a life stage characterized by growing opportunities, capacities, aspirations, energy and creativity, but also significant vulnerability. Adolescents are agents of change and a key asset and resource with the potential to contribute positively to their families, communities and countries.'³⁵
- Note that the UN Committee on the Rights of the Child does not define adolescence as it acknowledges that children mature at different rates and to varying extents, and is something that is influenced by a range of contextual and environmental factors.³⁶
- However, to facilitate consistent *data collection*, the Committee states that its guidance on the rights of adolescents applies to all children between the ages of 10 and 18.³⁷

35 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 2

36 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

37 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 5



Can you think of any examples of external factors that may influence a child's development?

CHILD DEVELOPMENT AND COMMUNICATION

- Child development is not linear; there is no 'one size fits all'
- It is a dynamic process influenced by a range of factors including social, cultural and environmental
- Assumptions should not be made about a child's capacities and communication needs based solely on age, personal assumptions or stereotypes about the child's supposed 'correct' stage of development
- Decisions on methods and manner of communicating with the child should be based on the individual child's needs, preferences and best interests

- As we have discussed, 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.³⁸ Therefore, assumptions should not be made about a child's capacities and communication needs based solely on their age, personal assumptions or stereotypes about the child's supposed 'correct' stage of development.
- There is no 'one size fits all' approach to child-sensitive communication. Each individual child is unique, such that decisions on the methods and manner of communication should be made based on the individual child's needs, preferences and best interests.

³⁸ UNICEF Innocenti Research Centre and Save the Children, *The Evolving Capacities of the Child*, 2005.

CRC AND EVOLVING CAPACITIES OF THE CHILD

- “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the 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 recognized in the present Convention.” (Art 5 CRC)
- This is an ‘enabling principle that addresses the process of maturation and learning through which children progressively acquire competences, understanding and increasing levels of agency to take responsibility and exercise their rights.’ (CRC Committee General Comment No. 20, para 18)

- The dynamic process of child development is acknowledged in the CRC.
- 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 recognized in the CRC.
- The UN Committee on the Rights of the Child describes this 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.’³⁹

³⁹ 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

EVOLVING CAPACITIES OF THE CHILD CONTINUED..

- Respecting the child's evolving capacities means we should continually adjust the levels of support and guidance offered to the child, taking into account the child's
 - Interests
 - Wishes
 - Capacities for autonomous decision-making and comprehension of their best interests

(CRC Committee, General Comment No. 7, para 17)

- In line with the UN Committee on the Rights of the Child's guidance, respecting a child's evolving capacities means that we should continually adjust the levels of support and guidance offered to a child, taking account of a 'child's interests and wishes as well as the child's capacities for autonomous decision-making and comprehension of his or her best interests.'⁴⁰
- In other words, as the child's capacities evolve, the weight given to the child's views, wishes and feelings in decision-making should also evolve.

⁴⁰ Committee on the Rights of the Child, General Comment No. 7 (2005), Implementing Child Rights in Early Childhood, para 17

SESSION 11: TRAUMA, VICTIMISATION AND STIGMATISATION**Timing estimate:** 45 minutes**SESSION 11**Trauma, victimisation and
stigmatisation**01**

Develop understanding of the importance of minimising the risk of (re-) traumatisation, victimisation and stigmatisation of the child

02

Develop your skills in identifying the steps which should be taken to minimise the risk of (re-) traumatisation, victimisation or stigmatisation of the child when providing legal services

**SESSION 11:
OBJECTIVES**

TRAUMA

- Is the result of a negative experience
- Often comes with negative thoughts and feelings that may be overwhelming and challenging for a child to deal with
- Can be the result of a single incident or several incidents occurring over a longer period of time
- Can affect the child's physical and emotional health, behaviour, relationships and how the child learns
- Our response as lawyers/ legal service practitioners can make a difference to how the child copes and is able to move forward

- Trauma may be described as the result of a negative experience and often comes with negative thoughts and feelings that may be overwhelming and challenging for a child to deal with.⁴¹
- Trauma may be the result of a single incident or several incidents occurring over a longer period of time.⁴²
- Trauma can affect a child in different ways and its impact can be profound. It can affect a child's physical and emotional health, behaviour, relationships, and how he/she learns.⁴³
- Your response, as providers of legal services, to trauma can make a big difference to how the child copes with the negative experience and is able to move forward.⁴⁴

41 Source: Jelly Beanz, UNICEF et al., *Psychological first aid for children, adolescents and families experiencing trauma: A guide for first responders*, (ENG), <https://www.unicef.org/southafrica/media/5731/file/ZAF-psychological-first-aid-children-adolescents-families-experiencing-trauma-2021.pdf>, accessed 21 April 2023.

42 Source: Jelly Beanz, UNICEF et al., *Psychological first aid for children, adolescents and families experiencing trauma: A guide for first responders*, (ENG), <https://www.unicef.org/southafrica/media/5731/file/ZAF-psychological-first-aid-children-adolescents-families-experiencing-trauma-2021.pdf>, accessed 21 April 2023.

43 Source: Jelly Beanz, UNICEF et al., *Psychological first aid for children, adolescents and families experiencing trauma: A guide for first responders*, (ENG), <https://www.unicef.org/southafrica/media/5731/file/ZAF-psychological-first-aid-children-adolescents-families-experiencing-trauma-2021.pdf>, accessed 21 April 2023.

44 Source: Jelly Beanz, UNICEF et al., *Psychological first aid for children, adolescents and families experiencing trauma: A guide for first responders*, (ENG), <https://www.unicef.org/southafrica/media/5731/file/ZAF-psychological-first-aid-children-adolescents-families-experiencing-trauma-2021.pdf>, accessed 21 April 2023.



What sorts of factors may influence the impact of trauma on a child?

STIGMA AND (RE-)VICTIMISATION

- Stigma may be described as a strong feeling of disapproval that most people in a society have about something
- Victimization is when a person is treated in an unfair way especially because of their race, gender, beliefs etc.
- Re-victimisation occurs when the victim is treated in a way which exposes them to further harm

- Stigma may be described as a strong feeling of disapproval that most people in a society have about something.⁴⁵
- Victimization may be described as treating a person in an unfair way especially because of their race, gender, beliefs etc.⁴⁶
- Re-victimisation refers to when the victim is treated in a way which exposes them to further harm, for example, because of the way they are treated in the justice system.

45 <<https://dictionary.cambridge.org/dictionary/english/stigma>>.

46 <https://dictionary.cambridge.org/us/dictionary/english/victimize>.



More generally, lawyers/legal service practitioners may also experience burn out if they have a heavy caseload without sufficient breaks and rest. List below some tips on how to prevent burnout and look after your physical and mental health and wellbeing during your work.

Lined area for writing tips on preventing burnout.

**** This is End of Module 4 - Child Development ****

Module 5: Child-Sensitive Communication

SESSION 12: INTRODUCTION TO CHILD-SENSITIVE COMMUNICATION

Timing estimate: 1 hour

MODULE 5

Child-sensitive communication

SESSION 12

Introduction to child-sensitive communication

01

Develop knowledge and understanding of the meaning of child-sensitive communication and its importance

02

Develop your skills in identifying basic types of communication tools and intermediaries to facilitate child-sensitive communication

SESSION 12: OBJECTIVES



The facilitator will lead you through an activity on the importance of child-sensitive communication for (i) the child, (ii) legal services provider and (iii) justice system.

- Recall Module 4 on Child Development, which highlighted that a child's development is shaped by their environment and experiences. No two children are the same and therefore we should be careful not to make assumptions based on the child's age, gender, disability status, or other characteristics when planning communications with the child.
- Children do not use and understand language in the same way as adults, and there can be a wide range of ability in communicating among children of the same age.
- Younger children can have problems understanding abstract and ambiguous language and may have difficulty with concepts of time, space and measurements and in shaping clear narratives.
- Pre-school children can have difficulties in perceiving other people's perspectives, so they may assume that other people must think and feel in the same way as them.
- Older children may also have these developmental characteristics and also be more sensitive to being patronized or 'talked down to'.
- Children can have short attention spans and limited vocabulary and ability to relate events in a chronological order.
- Children may be fearful of the repercussions for them or their families of disclosing certain information, and be experiencing overwhelming feelings of shame, distress or guilt.
- Many children wish to please adults in authority, including legal professionals, by saying things which they feel are expected of them, or they may have been brought up to listen to adults but not to speak to them.
- Children may simply not understand the complexity of the legal issues and be puzzled by terminology.

VERBAL AND NON-VERBAL COMMUNICATION

"...the child is able to form views from the youngest age, even when she or he may be unable to express them verbally." (CRC Committee General Comment No. 12)

POSSIBLE COMMUNICATION TOOLS/AIDS

- Language interpreters
- Signers
- Facilitator/intermediary to facilitate interpreting the child's speech in a way the professional may find it easier to understand
- Card prompts
- Visual aids (signs; symbols; pictures)
- Drawing
- Using toys/objects to represent people and explain events



- Interpreters and signers;
- A facilitator or intermediary may be needed where the child has a disability which affects the way in which he/she communicates and a facilitator is needed to 'interpret' the child's speech in a way that the professional may find easier to understand and vice versa;
- Card prompts;
- Visual aids e.g. signs, symbols and pictures to facilitate a discussion;
- The child may be asked to draw to help them express what they want to say;
- Toys/objects may be used by the child to represent themselves, family members, pets, professionals etc. and to describe events or people important to them.

SESSION 13: PLANNING COMMUNICATION

Timing estimate: 1 hour

SESSION 13

Planning communication

Develop your skills in planning communications with children to ensure that they are child-sensitive, contributing to the delivery of child-friendly legal services

SESSION 13: OBJECTIVE



PLANING COMMUNICATION

- Why?
- What?
- Where?
- How?
- When?
- Who?

- Good preparation will help to ensure that the communication is 'child-sensitive.'
- It will help to ensure that the communication goes smoothly and that you are able to achieve the objectives of meeting, interview, telephone, email exchange - whatever the form of the communication.
- Good preparation avoids subjecting the child to unnecessary interventions and helps to build the child's trust in you as their legal service provider and a collaborative working relationship.
- When planning communication, consideration should be made to:
 - **Why** you need to communicate with the child.

- o **What** information you need to provide or obtain from the child.
- o **Where** you will undertake the communication (e.g. a meeting or interview). Is it more effective to speak to the child in person rather than online? For in-person meetings, is it at the police station, your offices, or other location? Is the location accessible to the child? Considerations include whether the child has any mobility or physical needs, whether you need any specialist facilities and how you would arrange the room.
- o **How** you will communicate with the child and structuring the communication. Consider whether the child has any communication needs that require you to make any preparations, such as an interpreter, sign language, or other appropriate intermediary.
- o **When** you should communicate with the child. For example, if you need to schedule a meeting with a child, do not interview them while they should be in school or too late in the day, particularly if they are a young child.
- o For in person or online communications, **who** should be present and why. This consideration goes hand-in-hand with **how** and whether any intermediaries need to be present. Also consider whether any other professionals or parents/carers should be present.
- o Whether you need to inform the child or consult with the child about anything before the interview.



The facilitator will lead you through an activity to practice planning child-sensitive communications with a child with reference to the following case studies.

Case Study: Aydin

Recall the case study of Aydin from earlier in the training. By way of a reminder, Aydin is a 12-year-old boy from an ethnic minority group who has been apprehended by the police several times for different offences. On this occasion, Aydin has been arrested together with several other older adolescents for creating a disturbance and fighting in public. Aydin is being held in police custody in the police station. You are Aydin's pro bono lawyer and are about to go to the police station to meet Aydin for the first time to represent him.

Case study: Osman

Recall the case study of Osman, the 16-year-old boy who arrived unaccompanied in your state from a conflict zone and who is seeking refuge. He states that his uncle and aunt live here. Osman does not have a birth certificate, passport or any other form of ID. Migration authorities believe that Osman is an adult *“as his appearance very clearly indicates that he has passed puberty and is an adult.”* In the absence of any proof, the authorities send Osman for a medical assessment to determine his age. Pending the outcome of the medical assessment, Osman is detained in an immigration detention centre for adults on the charge of illegal entry and stay in the state.

Osman’s uncle and aunt contact you to represent Osman. You would like to speak to Osman on the phone, before scheduling your first meeting with him as his lawyer.

Case study: Mila

Recall the case of Mila, who is a 10-year-old girl who reported to the police that she had been sexually assaulted by her 16-year-old brother, Deniz. You are the prosecutor in the case and, having reviewed all the evidence, have decided not to charge Deniz because there is not enough evidence in the case. You need to communicate this decision to Mila and her representatives.

Case study: Andrea

Andrea is a 14-year-old girl with cerebral palsy which was caused by her brain not getting enough oxygen during birth. She has some challenges with speech and reduced movement due to muscle stiffness. Andrea's parents want to seek your advice on a potential case against the local education authorities who they claim are not making adequate provision for Andrea in mainstream school and, instead, wish to place Andrea in a special school for children with disabilities. The parents do not want to place Andrea in a special school as they consider that she is well able to attend mainstream school as long as the education authorities provide her with some support, as they are entitled to do under the law. You are preparing for your first meeting with Andrea and her parents.

SESSION 14: INTERVIEWING CHILDREN

Timing estimate: 1 hour

SESSION 14

Interviewing children

Develop your skills in child-sensitive interviewing including:

- Building a rapport, introductions and clarifying expectations with the child
- How to obtain an account and free narrative from the child
- How to ask questions in a child-sensitive manner
- Using age-appropriate language
- How to demonstrate active listening
- Closing interviews

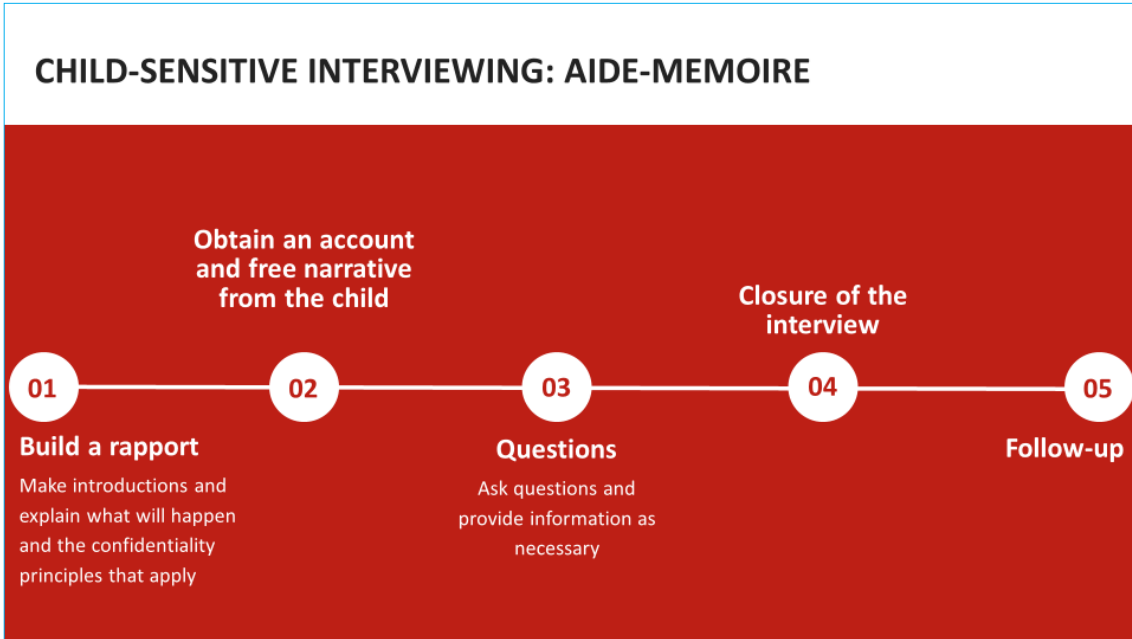
**SESSION 14:
OBJECTIVE**

SKILLS AND STRATEGIES FOR CHILD-SENSITIVE INTERVIEWING

- Giving children the information they need
- Active listening
- Giving the child the opportunity to have support persons with them
- Being patient and understanding
- Speaking clearly and precisely in terms the child can understand
- If you are being instructed by a child client, talk through the different options in a non-judgemental manner so the child can retain control of decision-making

- As legal service providers, you will often be called upon to interview children.
- Child-sensitive interviewing requires a range of skills and strategies including:
 - Giving children the information that they need;
 - Active listening;
 - Giving the child the opportunity to have support persons with them during consultations (for example, a parent/guardian, a trusted professional, a sibling or a friend);
 - Being patient and understanding;
 - Speaking clearly and precisely in terms that the child can understand.

- Importantly, when instructed by a child client, child-sensitive communication involves talking through different options in a non-judgemental manner so that the child can retain control of decision-making.
- Although this session focuses on interviewing, the same principles and tips may be applied to other forms of interactions with children.



This is a useful aide-memoire for structuring interviews with children:

- Build a rapport, make introductions and explain what will happen and the confidentiality principles that apply;
- Obtain an account and free narrative from the child;
- Ask questions and providing information as necessary;
- Closure; and
- Follow-up.



Activity on child-sensitive interviews with children.

Obtaining an account and free narrative

- Children are more likely to express themselves best if given the freedom to do so in their own way and in their own time
- Be patient, respect silences and do not rush the child
- Do not put words in the child's mouth
- Tell the child that it is okay to say 'I don't know' when they do not know how to answer
- Inform the child that there are no right or wrong answers
- Inform the child that it is acceptable to use 'rude' words where needed
- Acknowledge and accept displays of emotions and give reassurance it is okay to feel and show these feelings; change the focus of the discussions until the child is ready or take a break as necessary

- Children are likely to express themselves best if given the freedom to do so in their own way, in their own time.
- It is important to be patient, to respect silences and not to rush children or put words into their mouths.
- Children should be told that it is acceptable to say, 'I don't know' when they do not know the answer to a question or cannot remember, and that they can ask if they do not understand the nature of a question.
- Although there is no 'right' or 'wrong' answer to the questions being asked, it is important to give truthful information and to be as accurate as possible.
- They should be reassured that it is acceptable to use 'rude' words where needed.
- If the child displays emotions during the conversation (such as bursting into tears or being highly agitated) then acknowledge and accept those emotions ('I can see that it makes you sad.') and reassure the child that it is alright to feel that way and show feelings. You can change the focus of the conversation to something less distressing until the child is ready to return to it; this may be on the same day or another time altogether depending on the intensity of the emotions.

Asking questions and providing information

- Summarise what the child has said
 - Ask specific questions to check child has understood the information given
e.g. 'what date is your next hearing?'
 - Try alternative ways of communication and use of aides if necessary
 - Use open-ended questions when requesting further information or clarifying events
 - Do not use leading or suggestive questions
 - Avoid repeating questions
 - Develop a child-friendly glossary of legal terms so you are ready to explain legal jargon
- Summarize what the child says. This is a key skill in bringing structure to the interview. The lawyer/legal services practitioner can use this tool to confirm understanding of the case, bring together different aspects raised by the child and then either explore further what the child has already introduced or move the interview on to a new topic.
 - When checking the child understands the information given, it is better to ask specific questions such as 'what date is your next hearing?' rather than asking 'do you understand?'
 - If one way of explaining does not work, try another way. If communication is very challenging then it may be necessary to work with other professionals (e.g. a designated intermediary) to facilitate communication.
 - When it is necessary to ask questions to clarify events or request further information, they should be as open-ended as possible. Questions using the phrase 'Tell me' or the word 'Describe' are useful examples of this type of question.
 - Leading or suggestive questions that push a child towards a certain answer should never be used.
 - Repeating questions should be avoided as this can signal to children that the previous answers, they gave were unacceptable or 'wrong'.
 - The child may not understand legal terminology and that the legal issues at play may be complex. Terminology that is used every day by a practitioner such as 'social worker', 'courts', 'hearing', 'appeal' and so on, may all be unfamiliar to a child who has never experienced the justice process before. For example, even if a child's parents have separated, the child may not know what the term 'divorce' actually means. Complex terminology such as 'presumption of innocence' can be even more problematic. It can be helpful to develop a child-friendly glossary of key terms that children and their families can take away with them.
 - Use visual aids if needed, such as diagrams, flowcharts and pictures, to conveying information.

Closing

- Ask the child if there is anything they would like to tell you or any questions they would like to ask
- Reiterate how the information will be used
- Explain next steps and applicable time frames
- Make the child aware of any support services available
- Thank the child for their time

- Closing a meeting properly is vital.
- Ask the child if there is anything else they would like to mention or wish to tell you, or any questions they would like to ask.
- It is important to reiterate how the information will be used and to manage the child's expectations about what may happen in the future.
- Explain any applicable time frames for the next steps in the process.
- Make the child aware of any support services available to her or him.
- Thank the child for his/her time.

Direct participants to the checklist for communication on pages 23 to 24 of the Guidelines for Child-Friendly Legal Aid.

SESSION 15: NON-VERBAL COMMUNICATION TECHNIQUES**Timing estimate:** 30 minutes**SESSION 15**Non-verbal communication
techniques**01****Develop awareness of the importance of non-verbal communication with children as a part of providing child-friendly legal services****02****Develop your skills in adapting your non-verbal communication according to the child's individual needs, preferences and circumstances****SESSION 15:
OBJECTIVES**

Activity on non-verbal communication.

Non-verbal communication

- Facial expressions
- Eye contact
- Posture
- Proximity
- Touch
- Level at which you engage with the child

At the end of the discussion, emphasise that, above all, the non-verbal communication techniques used will depend on the needs, preferences and circumstances of each individual child. These include:

- *Facial expressions*: facial gestures which demonstrate shock, anger or surprise may make the child worry that they are saying something that they should not and can even risk re-traumatising the child.
- *Eye contact*: the effectiveness of this as a communication technique depends on a number of factors, including the cultural context and background of the child. Too little eye contact may, for example, suggest to the child that you are bored, lack interest, disapprove of them, or even undermine the child's trust in you. Excessive eye contact, on the other hand, may be intimidating for the child. The child's circumstances and context should help you gauge what is appropriate.
- *Posture*: How we stand or sit (straight back, slumped etc.) is a powerful non-verbal communication tool. For example, turning your body towards the child can reinforce that you have their attention. Sitting with your body facing away from the child may suggest that you are doing something else and that you are not giving them your full attention.

- *Proximity:* Whether physical proximity is appropriate is highly dependent on the specific relationships between the individuals and circumstances. Sitting or standing too far away can be perceived by the child as distant, creating barriers to communication both practically (i.e. making it more difficult to hear the other person speaking) and interpersonally (by limiting the ability to build a rapport and trust with the child). However, getting too close may invade the personal space of the child and make him/her feel anxious or threatened.
- *Touch:* As professionals, you need to build a rapport and trust with the child but it is important to respect boundaries and to not make the child feel uncomfortable or threatened. Whether touch is appropriate depends on the circumstances of the child and context, including gender of the professional and child, cultural context, circumstances of the child, and nature of the matter, among others. For example, a child who is the victim of a physical or sexual crime may not want to be touched as they may find this re-traumatising and invasive.
- *Level:* Position yourself at the same level as the child, as sitting at a higher level or standing above them can be intimidating for a child and make them feel as if they are inferior.

Non-verbal communication: reminders and tips

- Do not assume things about the child based on their body language
- Do not play with your phone or fiddle with objects
- Do not get up and walk around the room while the child is speaking unless it is for the purposes of the interview or to help the child and explain what you are doing
- Demonstrate active listening through verbal and non-verbal techniques
- Be patient during silences; remind the child to take their time
- Be proactive in making the child feel safe and comfortable

Reminders / tips:

- Reading body language is not an exact science and professionals should not assume things about the child based on their body language. For example, if a child avoids eye contact, this does not mean that the child is not telling the truth.
- Do not play with your phone or watch or fiddle with objects in the room as this can suggest that you are bored, not listening and can be very distracting for the child.
- Do not get up and walk around the room while the child is speaking, unless this is for the purposes of the interview or to help the child and you explain to the child what you are doing.
- Indicate that you are actively listening to the child through verbal and non-verbal communication techniques (e.g. saying 'okay'; reiterating what the child has said and asking them to continue in their own words).

- Nodding or shaking your head vigorously can come across as appraising or disapproving of the child's responses and should be avoided - there are no right or wrong answers during an interview.
- Be patient during silences as the child may need to pause, in which case you may remind the child to take their time, ask the child if they are happy to continue or need a break.
- Sometimes reluctance to give instructions comes from nerves or fear, or an overwhelming sense of distress at disclosing painful memories. In such situations, the practitioner should be proactive in making the child feel comfortable and safe, and, where needed, adopt a different approach to taking instructions. If necessary, practitioners should consider seeking the assistance of others to help establish a child's wishes and instructions.

SESSION 16: CHILD-SENSITIVE COMMUNICATION IN PRACTICE

Timing estimate: 1 hour 15 mins

SESSION 16

Child-sensitive communication in practice

01

Develop your verbal and non-verbal skills to ensure child-sensitive communication

02

Further develop your skills in adapting your verbal and non-verbal communication techniques to meet the needs, preferences and circumstances of the child

SESSION 16: OBJECTIVES



Role play to practice child-sensitive communication.

**** This is the end of Module 5 - Child-Sensitive Communication ****

Module 6: Working with Others

SESSION 17: WORKING WITH FAMILY MEMBERS AND OTHER SUPPORTIVE ADULTS

Timing estimate: 1 hour

MODULE 6

Working with Others

SESSION 17

Working with family members and
other supportive adults

01

Develop a clear understanding of the importance and content of Guideline 8 of the Guidelines on Child-Friendly Legal Aid on working with family members and other supportive adults

02

Understand how to apply Guideline 8 in practice

SESSION 17: OBJECTIVES

The child client

- Be clear from the outset that you will be instructed by the child and not the parents/ others
- Clarify that professional confidentiality does not apply to conversations with family members
- Where needed, recommend parents to seek their own legal representation / refer them to other appropriate service
- Communication should be directed at the child
- Develop cooperative and supportive relationships with the child's family and other supportive adults
- Be aware of power dynamics between the adults and child
- Interests of parents or siblings should not take priority over those of the child

- In this session, we will be focusing on Guideline 8 of the Guidelines on Child-Friendly Legal Aid which relates to working with family members and other supportive adults.
- When providing legal services to a child, whether it is advice, assistance or representation, the child is your 'client'.
- Where the child has the capacity to provide instructions, it is important to be clear from the outset that you will be instructed by the child and not the parents or other adults involved in the child's matter.
- This also means that professional confidentiality does not apply to conversations with family members (as they are not your 'client'). Where needed, parents can be recommended to seek their own legal representation or referred to other service providers.

- Even with younger children, communication should be directed at the child, though supplemented by communication with the adults supporting them as appropriate. Sometimes it may be necessary to ask supporting adults to wait outside so that a child can speak more freely (and vice versa).
- However, it is still important to develop a cooperative and supportive relationship with a child client's family or with other supportive adults involved in the matter.
- Practitioners need to be aware of the power dynamics in adult and child relationships and to be alert to the possibility that a child is being manipulated or intimidated.
- It is important that the interests of others such as parents or siblings, who may be more articulate and vocal, do not conflict with or take priority over the interests of a child client. This is particularly important in situations in which parents are paying the legal professional's fees and may therefore assume that their interests trump those of the child client.

Potential challenge: views of the child conflict with their best interests

- Try to convince the child by drawing on the pre-existing relationship of trust and clearly identifying the alternative choices
- Collaborate with other professionals to gain a full understanding of the child's needs and wishes and risks associated with the decision
- Explain to the child why you consider the specific course of action to be in their best interests
- Do not silence the child – your role is to obtain the child's informed consent on the best strategy to use
- Check laws and codes of conduct on how to handle such situations if the child insists on acting on their wishes

- A potential challenge is when the child client's views, wishes and feelings on a course of action conflict with or are not aligned with your view of what is in the child's best interests.
- In such cases, it is important to explain to the child, in a child-sensitive manner, the options available to the child, recommend the course of action that you consider would be in the child's best interests and why. The lawyer/legal service practitioner should try to convince the child, as would be done with an adult client, by drawing on the pre-existing relationship of trust. You may also need to collaborate with other professionals to gain a full understanding of the child's needs and wishes, and the risks associated with the decision.
- It is very important that you do not silence the child's voice if you disagree with the child, as your role is to obtain the child's informed consent on the best strategy to use.
- If the child insists on following a course of action which you consider is not in the child's best interests, check the provisions of your laws and codes of conduct for the legal professional to see what they say about handling such situations. For example, the law or code of

conduct may provide that, if the child does not have the capacity to provide instructions to their lawyer or if the child's wishes would result in a high risk of serious harm to the child, the lawyer/legal services practitioner should inform the court what he/she considers to be in the child's interests and, if the child agrees, that this departs from the child's wishes. In such cases, the law may empower the court to appoint a representative for the child specifically to represent his/her best interests in proceedings.

[Note to training providers, please update this last bullet point according to the national context (see Facilitator's Manual for additional guidance) and delete this note.]

Representing both child and adult

- If you are representing both the child and adult (e.g. parent) and their interests conflict, an independent representative should be appointed to represent the views and interests of the child.

In cases in which a legal professional represents both a child and an adult and there are conflicting interests, an independent representative should be appointed to represent the views and interests of the child.



Activity on the application of Guideline 8 of the Guidelines on Child-Friendly Legal Aid to a series of case studies.

01

Develop a clear understanding of the importance and content of Guideline 12 of the Guidelines on Child-Friendly Legal Aid on working with other professionals and practitioners

02

Develop your knowledge and awareness of the roles and responsibilities of other key practitioners and professionals who may be involved

03

Developed an understanding of how to apply Guideline 12 in practice

SESSION 18: OBJECTIVES

Working with other professionals and practitioners

- Collaboration with other professionals/ practitioners is essential for upholding children's rights
- Professionals/ practitioners include police, prosecutors, judges, interpreters, social workers, psychologists, court officials, teachers, medical staff etc.
- Lawyers/ legal service practitioners play an important role in ensuring that all have a full understanding of the child's needs and work together to uphold the child's rights
- NB the principle of confidentiality

- This Module focuses on Guideline 12 of the Guidelines on Child-Friendly Legal Aid, which relates to working with others.
- Legal professionals need to collaborate with other professionals to guarantee that a child's rights are upheld. Other professionals may include the police, prosecutors, judges, interpreters, social workers, psychologists, court officials, teachers, medical staff, etc.
- Other professionals sometimes perceive lawyers and other legal service practitioners as having an adversarial rather than collaborative approach to representing children. However, lawyers and legal service practitioners have an important role to play in encouraging close cooperation between professionals working with children so that all those concerned have a full understanding of the child and their needs and work together to deliver their rights.

- At the same time, the principle of confidentiality should not be breached without the express and informed consent of the child. We will be looking at the principle of confidentiality more closely in a subsequent module.

Working with other professionals and practitioners

- Know how the system works and who the different actors are
- Be able to explain their roles to the child in a child-sensitive manner
- Promote the views and opinions of the child with other professionals/ practitioners while respecting confidentiality
- Be aware of available service providers / types of services that help children
- Link the child with other professionals / services where appropriate
- Attend multi-disciplinary trainings to strengthen collaboration

What does this mean in practice? Guideline 12 of the Guidelines on Child-Friendly Legal Aid state that this means that legal service providers should:

- Know how the system works and who the different actors are, and be able to explain their roles to their child client;
- Promote the views and opinions of the child with other professionals while also ensuring that the child's confidentiality is maintained where required;
- Be aware of service providers that help children and the services they offer;
- Be a link between other professionals and the child; and
- Attend multi-disciplinary training events and meetings which can help to build the understanding of the various professionals supporting children.
- During this session, we aim to build this knowledge and awareness.

Module 7: Effective Participation in Formal Proceedings

SESSION 19: BEST INTERESTS DECISION-MAKING REGARDING DIRECT PARTICIPATION

Timing estimate: 35 minutes

MODULE 7

Effective Participation in Formal
Proceedings

SESSION 19

Best interests decision-making
regarding direct participation

01

Develop your knowledge and understanding of Guideline 7 of the Guidelines on Child-Friendly Legal Aid

02

Develop your skills in applying Guideline 7 in practice and making decisions on whether it is in a child's best interests to participate directly in formal proceedings

SESSION 19: OBJECTIVES

Effective participation in formal proceedings

- Lawyers and other legal service practitioners must ensure that child participation in formal proceedings is done in a meaningful and safe way with adequate support and procedural safeguards in place
- This is important for ensuring the child's right to be heard
- It helps to ensure that the best evidence possible is obtained
- It also serves to protect the child from undue stress or harm

- This Module focuses on Guideline 7 of the Guidelines on Child-Friendly Legal Aid, which relates to effective participation in formal proceedings.
- Under Guideline 7, 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.
- Formal proceedings include trials and court hearings.
- This Guideline 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 also protecting the child from undue stress or harm.

Participation need not be direct....

“...it would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned.”

European Court of Human Rights (Grand Chamber), judgment of 8 July 2003, Sahin v. Germany, No. 30943/96, paragraph 73.

- It is not always in a child’s best interests to participate directly in formal legal proceedings. For example, a child victim or witness of a crime participating directly in formal proceedings may have to talk about traumatic events and be exposed to persons who have harmed them, which may cause them additional stress, re-traumatisation and even re-victimisation in certain circumstances.
- By way of another example, in custody cases, the child may be exposed to inappropriate and harmful information about their family circumstances. See the quote from the European Court of Human Rights which reinforces that the question of whether or not the child should participate directly in formal proceedings should be decided on a case-by-case basis.
- The lawyer/legal services practitioner will therefore have to weigh up the factors in each case when deciding whether or not it is in the child’s best interests to participate directly in formal proceedings.



In your opinion, what factors would be useful to consider when deciding whether or not it would be in the child’s best interests to participate directly in formal proceedings?

Factors to consider for best interests decision-making regarding direct participation

- How essential the child's oral evidence is to further the case
- Quality of alternative evidence
- Age, maturity, vulnerability, understanding and capacity of the child
- Length of time passed since the events in question occurred
- Level of support that the child has from family or others
- Child's wishes
- Views of the parents/ guardian



Activity

Case study: Galya and George

Galya and George are siblings whose parents are in the process of a divorce and are in dispute over the custody arrangements of their children. Galya is eight years old and George is three. The father is accusing the mother of not being able to look after the children and has applied to the court for sole custody. On the other hand, the mother is arguing before the court that the father is aggressive and abusive, and that the children are afraid of him, such that she should be given sole custody. You are representing the mother.

- **Would you call the children to give their evidence to the court directly in person? Why/why not? If not, how else can you ensure each child's right to be heard?**

Case study: Nabila

Nabila is a 16-year-old migrant from Sudan and is staying in a hostel for unaccompanied migrant children. You are appointed as Nabila's legal aid lawyer and have arranged the assistance of an interpreter to facilitate your discussion with her.

During your private lawyer-client discussions with Nabila, you notice that she has wounds and bruises on her body. When you ask her about this, she says that it was done to her by a group who arranged her travel to the country. She explains that the group promised her a stable job in the country to help pay off a debt owed by her family in Sudan. Nabila says that the group also promised her that they would arrange her visa and work permit. However, when Nabila arrived in the country, the group confiscated her passport and said they would only arrange her visa and work permit if she worked in domestic work for a local family. Nabila had been working with the family for four months before labour inspection authorities identified her as not having the necessary work permits and referred her to the migration police.

During her time working for the family, Nabila tells you that she was given only one main meal a day and was warned not to leave the house in case she was arrested. Nabila tells you that she feels hopeless and scared as she is worried about how her family are going to be able to pay off their debts in Sudan.

Following an investigation, the public prosecutor has charged four men on counts of trafficking Nabila to the country. Nabila's statement to the police about the allegations against the gang was video-taped but the defence lawyer asks the judge for Nabila to be summoned to court for cross-examination in person. Nabila does not want to go to court as she is afraid of the gang.

- **Do you agree with the defence lawyer's request for Nabila to be cross-examined in court in person? Why/why not?**

SESSION 20: EFFECTIVE PARTICIPATION IN FORMAL PROCEEDINGS**Timing estimate:** 1 hour**SESSION 20**

Effective participation in formal proceedings

Develop your skills in applying Guideline 7 to a range of contexts to ensure that where children do participate in formal proceedings, they do so meaningfully, safely and with adequate support and procedural safeguards in place

**SESSION 20:
OBJECTIVE**



Role play

Case Study: Aydin

Recall the case study of Aydin from earlier in the training. By way of a reminder, Aydin is a 12 year-old boy from an ethnic minority group who has been apprehended by the police several times for different offences. On this occasion, Aydin has been arrested together with several other older adolescents for creating a disturbance and fighting in public. After his police interview, Aydin is charged with a criminal offence and is released on bail pending his trial.

- **Prepare the role play for Aydin's court hearing.**

Case study: Gulizar

Gulizar is a 13-year-old girl who is a key witness in a criminal trial against two men who have been arrested for serious physical assault against an elderly woman in the local community and for stealing from her home. Gulizar, supported by her parents, reported the matter to the police. They are very keen to bring the accused to justice because they know the elderly lady, who has lived in the community all her life and "is friends with everyone in the community."

- **Prepare a role play for the hearing where Gulizar provides her evidence and is cross-examined.**

**** This is the end of Module 7 - Participation in Formal Proceedings ****

Module 8: Privacy, Confidentiality and Data Protection

SESSION 21: PRIVACY, CONFIDENTIALITY AND DATA PROTECTION: KEY STANDARDS

Timing estimate: 1 hour

MODULE 8

Privacy, Confidentiality and Data
Protection

SESSION 21

Privacy, confidentiality and data
protection: key standards

Importance of confidentiality and privacy

- Children can be put in danger and experience severe physical or emotional harm if their identity is disclosed (e.g. due to reprisals)
- Children may experience discrimination, stigmatisation and/or re-victimisation if their involvement in a legal matter is publicised
- Lawyers/ legal service practitioners play an important role in making other justice professionals aware of potential breaches of these rights

- Children can be put directly in danger and experience severe physical or emotional harm if their identity is disclosed.
- Children may experience discrimination, stigmatization and/or re-victimisation if their involvement in a legal matter is publicized. Consider, for example, cases where a child is accused of a crime and the stigma the child may experience if the child’s identity is publicised.
- Breaching the right to privacy may not always be clearly apparent to other justice professionals involved in the case, such as judges or prosecutors, so lawyers and other legal service practitioners have an important role in making other justice professionals aware of any potential breaches of their client’s right to privacy.



What sorts of steps can you, as a lawyer or legal service practitioner, take to protect the child’s right to privacy?

Privacy and confidentiality in practice

- Inform the child client that their exchanges with you will be confidential
- Explain that exchanges between legal professionals and family members are not protected by the same rules of confidentiality
- Be vigilant about securing the confidentiality of all forms of communication
- Ensure that the child's personal data such as case files are protected according to national law, are kept securely and cannot be accessed by third parties unless it is in accordance with the child's best interests and data privacy laws

- In most countries, the relationship between a client and a lawyer is subject to strict rules about confidentiality, and this applies as much to children as to adults. The rules apply to meetings, correspondence, telephone conversations and other forms of communication such as via social media. This is a vital part of building a relationship of trust with a child client and ensuring the child can speak to the lawyer freely and openly.
- Even where such codes of conduct are not in place, as a matter of good practice, lawyer / legal service practitioner should apply these rules.

In practice, this means that the lawyer/ legal service practitioner should:

- Inform the child client that their exchanges with you will be confidential.
- Explain to the child that exchanges between legal professionals and family members are not protected by the same rules of confidentiality.
- Be vigilant about securing the confidentiality of all forms of communication. For example, if meeting with a client in a police station or the hallway of a courtroom, ensure that they cannot be overheard and, if speaking on the telephone with a child client who is in detention, check with the child whether they can be overheard).
- Ensure that the child's personal data such as their case files are protected in accordance with national law and are kept securely and cannot be accessed by third parties unless in accordance with the best interests of the child and data protection legislation. This implies that no information or personal data is made available or published, particularly in the media, which could reveal (directly or indirectly) the child's identity. This includes: images, detailed descriptions of the child or the child's family, names or addresses, audio and video records.

When can you waive confidentiality?

- Check the provisions of your national laws and regulations
- In many jurisdictions, the strict rules of lawyer-client confidentiality can be waived if there is a risk that non-disclosure could lead to the death or personal injury of a person, or if what the child reveals relates to a criminal activity
- Guidance on whether or not to waive confidentiality may be available from the Bar Association's ethics committee or similar body

- There may be exceptional circumstances, permitted in national regulations, in which lawyers/legal services practitioners should reveal confidential information about their clients to an appropriate authority. In many jurisdictions, the strict rules of lawyer-client confidentiality can be waived if there is a risk that non-disclosure could lead to the death or personal injury of a person, or if what the child reveals relates to a criminal activity. Such situations may include cases in which the child reveals information that indicates continuing sexual or other physical abuse but refuses to allow disclosure of such information to third parties.
- Similarly, there may be situations in which an adult discloses abuse committed either by himself or herself or by another adult against a child but refuses to allow any disclosure.
- This can be a very challenging situation as the principle of confidentiality lies at the heart of building a trusting relationship with a child client. There are no clear-cut answers, but in such circumstances the practitioner must weigh up the position in national law regarding when it is acceptable to breach confidentiality.
- In many jurisdictions, support with these difficult ethical considerations can be given by the Bar Association's ethics committee, which can help discuss the national provisions and whether it is in the child's best interests to breach the strict rule of confidentiality because of threats to the child's life or health, both mental and physical.



Activity to identify the main provisions of national laws, regulations and codes of conduct applicable in your jurisdiction concerning the protection of a child's right to privacy, confidentiality and data protection, and the circumstances in which the legal and regulatory framework permits the legal service professional to waive those rules. Consideration should also be made as to whether the national legal and regulatory framework in this regard is in line with the international standards mentioned above.

Provision

Implications of this provision on the child's right to privacy, confidentiality or data protection

**** This is the end of Module 8 - Privacy and Confidentiality ****

Module 9: Closing

Timing estimate: 25 minutes

MODULE 9: CLOSING

Closing ceremony



Completion of the post-training assessment form and evaluation form

Please remember to write your unique number on the form rather than your name.



Thank you for your time and congratulations on completing the training.

**** This is the end of Module 9 (Closing) and the end of the training course ****

PART 3 OF 3 – ANNEXES

Optional Module A: Introduction to Child Rights Strategic Litigation

[Note to training providers, if you chose to deliver any of the optional modules, please integrate them into the Participant's Handbook and amend the agenda accordingly. If not, delete the optional modules from the Annex. Please also delete this note.]

SESSION X: WHAT IS CHILD RIGHTS STRATEGIC LITIGATION?

Timing estimate: 30 minutes

OPTIONAL MODULE A

Introduction to Child Rights Strategic
Litigation

SESSION 22

What is child rights strategic
litigation?

01

Developed your knowledge and understanding of what child rights strategic litigation is and its importance

02

Be aware of the general context for bringing strategic litigation in the national context, including potential barriers and enabling factors

SESSION 22: OBJECTIVES

What is strategic litigation?

“Strategic litigation aims to bring about broad societal changes beyond the scope of the individual case at hand. It aims to use legal means to tackle injustices that have not been adequately addressed in law or politics.”

(European Center for Constitutional and Human Rights)

- Strategic litigation is a term used to describe litigation which aims to bring about broad societal changes beyond the scope of the individual case and to tackle injustices that have not been adequately addressed in law or politics. This is based on the description given to the term by the European Center for Constitutional and Human Rights, which is on the slide. (European Center for Constitutional and Human Rights, <https://www.ecchr.eu/en/glossary/strategic-litigation/>, accessed on 19 July 2023)
- Other similar terms include ‘impact litigation,’ ‘public interest litigation’ or ‘test-case litigation’.

What is child rights strategic litigation?

“Litigation that seeks to bring about positive legal and/or social change in terms of children’s enjoyment of their rights”

(Nolan and Skelton 2022)

- Child rights strategic litigation may be described as, ‘litigation that seeks to bring about positive legal and/or social change in terms of children’s enjoyment of their rights’.⁴⁷
- Strategic litigation can be used to contribute to upholding the rights of children beyond those involved in the case. This can be achieved, for example, by establishing an important point of law.
- Strategic litigation is also an important tool to raise awareness of children’s rights and to help amplify the voices of children who are often unheard.

Examples of strategic litigation

- Coram Children’s Legal Centre (CCLC), England, uses strategic litigation to bring about significant changes in law, practice and public awareness to protect children’s rights
- It does this by:
 - Advising and representing the child
 - Intervening in the case as a third party
 - Submitting witness statements

47 Nolan, A. and Skelton, A., ‘Turning the Rights Lens Inwards’: The Case for Child Rights-Consistent Strategic Litigation Practice, *Human Rights Law Review*, Volume 22, Issue 4, December 2022, ngac026, <https://doi.org/10.1093/hrlr/ngac026>, accessed 21 July 2023.

- For example, the Coram Children's Legal Centre based in London, England, uses strategic litigation to bring about significant changes in the law, practice or public awareness in order to protect children's rights: <https://www.childrenslegalcentre.com/promoting-childrens-rights/strategic-litigation/> (accessed 19 July 2023).
- It does this, not only by advising and representing the child, but also through other means by intervening in the case or by submitting witness statements, drawing upon its expertise and evidence gained through working directly with children and practitioners.
- Intervening in the case means joining the case as a third party with an interest in the matter and submitting arguments to the court to consider when reaching its decision.

Examples of strategic litigation continued

HC (A Child), R (on the application of) v Secretary of State for the Home Department & Anor [2013] EWHC 982 (Admin)

- CCLC intervened in this case to challenge the position under the Police and Criminal Evidence Act 1984 and its Codes of Practice of treating 17-year-olds as adults rather than children, denying them the right to contact their parents when arrested or to have an appropriate adult present when questioned by police
- The High Court held that the failure to treat 17-year-olds as children was inconsistent with the UN Convention on the Rights of the Child

By way of example, in the case of HC (A Child), R (on the application of) v Secretary of State for the Home Department & Anor [2013] EWHC 982 (Admin), the Coram Children's Legal Centre intervened in this case, which challenged the position under the Police and Criminal Evidence Act 1984 and its Codes of Practice of treating 17-year-olds as adults rather than children, denying them the right to contact their parents when arrested or to have an appropriate adult present when questioned by the police. In that judgment, the High Court held that the failure to treat 17-year-olds as children was inconsistent with the UN Convention on the Rights of the Child.

Examples of strategic litigation continued

C, T, M and U, R v London Borough of Southwark [2016] EWCA Civ 707

- The CCLC intervened in this case in the Civil Division of the Court of Appeal in order for it to give deeper consideration of children's best interests in its judgment.
- The judgment in question concerned the level of support provided by local authorities to destitute families who cannot access mainstream support due to their immigration status.
- Although the Court of Appeal held in favour of the local authority, referring to CCLC's intervention, one judge remarked:

"A level of support considered adequate simply to avoid destitution in the case of a failed asylum-seeker is unlikely to be sufficient to safeguard and promote the welfare of a child in need and by extension the essential needs of the parent on whom the child depends for care. Ultimately what matters is whether the assessment [carried out by the local authority] when completed adequately recognises the needs of the particular child".

- Sometimes, the children represented in the case do not 'win' in court though the case is nevertheless important strategically.
- For example, in the case of C, T, M and U, R v London Borough of Southwark [2016] EWCA Civ 707, the Coram Children's Legal Centre intervened in this case in the Civil Division of the Court of Appeal (the second most senior court in England and Wales) in order for it to give deeper consideration of children's best interests in its judgment. The judgment in question concerned the level of support provided by local authorities to destitute families who cannot access mainstream support due to their immigration status.
- The facts of the case were as follows: a woman (unnamed), who was referred to as C, was the mother and 'litigation friend' of three children between the ages of 6 and 12 years and a baby, all of whom were dependent on her. The children were Nigerian nationals who had been refused leave by the government to remain in the UK on humanitarian grounds. C herself had remained in the UK after the expiry of her visa and was in breach of immigration controls. C, represented by lawyers, brought the case against the local authorities who were responsible for making decisions about the level of financial support to the family, who had the right to recourse to public funds.
- The Court of Appeal dismissed C's appeal and held for the local authority. However, referring to Coram Children's Legal Centre's intervention, one judge remarked that, *'a level of support considered adequate simply to avoid destitution in the case of a failed asylum-seeker is unlikely to be sufficient to safeguard and promote the welfare of a child in need and by extension the essential needs of the parent on whom the child depends for care. Ultimately what matters is whether the assessment [carried out by the local authority] when completed adequately recognises the needs of the particular child'*.
- The 'strategic' part of the term, 'strategic litigation' is very important; litigation may do more harm than good. It is therefore extremely important to carefully weigh up the potential impact of the case to your broader purpose of protecting and promoting children's rights.
- During this module, we will be looking at the key considerations that you should make when deciding whether or not to bring strategic litigation.



In your opinion, is there a culture of bringing strategic litigation in your jurisdiction? What are the enabling factors and barriers to bringing strategic litigation in your jurisdiction?

Remember to...

- Consider the broader political, social, legal, economic and cultural contexts in which you work
- Consider your safety and whether, by bringing the case, the risk of harm outweighs the benefits that are likely to be achieved
- Ensure that the best interests of the child are a primary consideration – it is imperative that you consider the impact of the strategic litigation on the child or children in question in the event that the case is or is not successful
- If strategic litigation is not appropriate, consider whether other avenues for advocacy, awareness-raising or education are appropriate

- You should always consider the broader political, social, legal, economic and cultural contexts in which you work when deliberating whether or not to take on a strategic litigation case. While our aim is to protect and promote children's rights, you must also consider your safety and whether, by bringing the case, the risk of harm outweighs the benefits that are likely to be achieved.

- As always, the best interests of the child are a primary consideration – it is imperative that you consider the impact of the strategic litigation on the child or children in question in the event that the case is or is not successful, particularly in cases where the children are in a particularly vulnerable situation.
- If, after considering the options, you decide that strategic litigation is not appropriate, you should consider whether other avenues for advocacy, awareness-raising or education are appropriate to contribute towards achieving your broader strategic goal.

SESSION 23: IDENTIFYING YOUR STRATEGIC GOAL

Timing estimate: 1 hour

SESSION 23

Identifying your strategic goal

Develop your skills in taking a child rights-based approach to identifying potential topics for strategic litigation to protect and promote children's rights in the national context

**SESSION 23:
OBJECTIVE**

Identifying the appropriate complaints mechanism: some factors to consider

- Possibility of identifying the state body or event the state responsible
- Is the state body or state subject to the complaints mechanism?
- Potential impacts of the litigation on the child / children
- How to use the outcome to contribute to your strategic goal
- Are other means of advocacy, awareness raising, education more effective and less risky?
- Potential remedies that the mechanism is able to provide
- Have domestic remedies been exhausted?
- Admissibility criteria
- Estimated time for a decision
- Available funding, material resources and expertise
- Enforcement mechanisms for the outcome of the case

- Sometimes the court or complaints mechanism will be clear to you. For example, if a case is being appealed in your [supreme court][constitutional court] and relates to an issue of children's rights in which you are able to intervene as a third party, the question of which forum to bring your case is more straight forward. However, at times, the court/complaint mechanism in which to bring your strategic litigation is not so clear. For example, the case may have been through the domestic criminal courts but a question relating to the legality of the law applied in that case may be your subject of concern. In such cases, you may consider whether to bring the case before the constitutional or other court, or whether to use regional or international complaints mechanisms.
- There are therefore a number of factors which may need to be considered when deciding on the appropriate forum in which to bring your case/complaint. When considering these factors, you should always consider the implications on your broader goal of protecting and promoting children's rights.
- Factors to consider include:
 - Is it possible to identify the state body (or even the State) responsible for the violation and against which the complaint/case will be brought?
 - Is the state body or state subject to or has it recognised the competence of the court / complaint mechanism?
 - Have domestic remedies been exhausted? For example, if the case has been through the national courts or where a timely effective remedy in the national courts is not possible, you may wish to consider regional and international mechanisms.
 - What are the potential impacts of the litigation on the child/children involved if the case is 'successful' or 'unsuccessful'?
 - How do you propose to use the outcome of the litigation to contribute towards your strategic goal?

- o Are other means of advocacy, awareness-raising or education likely to be more effective and less risky?
- o What are the remedies that the court/complaint mechanism is able to make and whether they are binding or recommended/advisory?
- o What are the grounds on which the appeal or complaint can be made and is there already established case law or precedent which will help / undermine your case?
- o What is the admissibility criteria and does your case meet or is it likely to meet that criteria (e.g. time limits, eligible applicants, subject matter, exhaustion of domestic remedies etc.)?
- o What is the estimated time that it will take for a decision/judgment on the matter? For example, if it is an urgent case, you may consider mechanisms which have the power to impose interim measures.
- o Do you have sufficient funding, material resources and expertise to make the complaint and, if not, are there any other sources which you can approach for support?
- o What are the enforcement mechanisms for judgments, rulings, decisions or recommendations by the court/ complaint mechanism?

[Note to training providers, if you have tailored the remainder of this Module (see Facilitator's Manual for guidance), please amend the following material in this Participant's Handbook accordingly and delete this note.]

EUROPEAN COURT OF HUMAN RIGHTS



- Regional human rights court established within the framework of the Council of Europe
- Based in Strasbourg, France
- Receives applications for alleged violations of rights under the European Convention on Human Rights (ECHR)
- Judgments are binding on state parties
- Implementation of judgments are supervised by the Committee of Ministers
- Case law is used as precedent in future cases

- The European Court of Human Rights is a regional human rights court established within the framework of the Council of Europe. It is based in Strasbourg in France.
- As we heard in the video, individuals may submit an application to the court for alleged violations of their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms – more commonly known as the European Convention on Human Rights (ECHR) - by a state party.
- The judgments of the ECHR are binding on the State party. The actions taken by the national authorities in response to judgments from the court are supervised by the Council of Europe's Committee of Ministers.
- There is a body of case law from the European Court of Human Rights which is used as precedents in future cases.
- The European Court of Human Rights may, under certain circumstances, hear inter-State applications though these are not the focus of this training.

EUROPEAN CONVENTION ON HUMAN RIGHTS

- Right to life
- Prohibition of torture
- Prohibition of slavery and forced labour
- Right to liberty and security
- Right to a fair trial
- No punishment without law
- Right to respect for private and family life
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry ('marriageable age')
- Right to an effective remedy
- Prohibition of discrimination
- Rights and freedoms set out in protocols

- The European Convention on Human Rights is a regional human rights treaty which first entered into force on 3 September 1953 but which has been amended since then to integrate a broader range of rights.
- All 46 Council of Europe member states are party to the European Convention on Human Rights.⁴⁸
- There are 14 rights in the Convention, and further rights set out in its protocols.
- Under Article 1 of the ECHR, State parties have an obligation to secure the rights and freedoms in Section I of the ECHR to all individuals within its jurisdiction. The rights and freedoms in Section I consist of the following:
 - Right to life (Article 2);
 - Prohibition of torture (Article 3);
 - Prohibition of slavery and forced labour (Article 4);
 - Right to liberty and security (Article 5);
 - Right to a fair trial (Article 6);
 - No punishment without law (Article 7);
 - Right to respect for private and family life (Article 8);
 - Freedom of thought, conscience and religion (Article 9);
 - Freedom of expression (Article 10);
 - Freedom of assembly and association (Article 11);
 - Right to marry, which applies to men and women of a 'marriageable age' (Article 12);
 - Right to an effective remedy (Article 13);
 - Prohibition of discrimination (Article 14), which requires that the enjoyment of the rights and freedoms in the ECHR must be secured without discrimination on any ground.
- Rights and freedoms in the protocols include:
 - Right to protection of property (Article 1 of the First Protocol to the ECHR);
 - Right to education (Article 2 of the First Protocol to the ECHR);
 - Right to free elections (Article 3 of the First Protocol to the ECHR);
 - Prohibition of imprisonment for debt (Article 1 of the Fourth Protocol to the ECHR);
 - Freedom of movement (Article 2 of the Fourth Protocol to the ECHR);
 - Prohibition of expulsion of nationals (Article 3 of the Fourth Protocol to the ECHR);

48 Following its expulsion from the Council of Europe on 16 March 2022, the Russian Federation ceased to be a party to the ECHR on 16 September 2022; Council of Europe, *The European Convention on Human Rights – how does it work*, <https://www.coe.int/en/web/impact-convention-human-rights/how-it-works>, accessed 17 Jan 24.

- o Prohibition of collective expulsion of aliens (Article 4 of the Fourth Protocol to the ECHR);
- o Procedural safeguards relating to expulsion of aliens (Article 1 of Protocol No. 7 to the ECHR);
- o Right of appeal in criminal matters (Article 2 of Protocol No. 7 to the ECHR);
- o Compensation for wrongful conviction (Article 3 of Protocol No. 7 to the ECHR);
- o Right not to be tried or punished twice (Article 4 of Protocol No. 7 to the ECHR);
- o Equality between spouses (Article 5 of Protocol No. 7 to the ECHR);
- o General prohibition of discrimination (Article 1 of Protocol No. 12 to the ECHR), which, unlike Article 14 of the ECHR, is a standalone provision which does not require the applicant to argue that they have been discriminated against *in the enjoyment of a ECHR right* but, rather, in the enjoyment of a discriminated against by a public authority on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status).
- o Abolition of the death penalty (Article 1 of Protocol No. 13 to the ECHR).

Examples of case law on children's rights

R.B. v. Estonia (22597/16)

- Concerned a criminal trial against a father for sexually abusing his daughter.
- The failure to advise a four-year old child of her duty to tell the truth and her right not to testify against her father, led to the exclusion of her testimony by the Supreme Court and consequently her father's acquittal.
- The court held that Estonia had violated its obligations under Article 3 of the ECHR on the prohibition of torture and Article 8 of the ECHR on the right of the child to respect for private and family life.

Throughout the years, cases have been brought against State parties for violations of children's rights under the ECHR. For example:

- In the case of R.B. v. Estonia (22597/16) in a judgment issued on 22 June 2021 in a case which concerned a criminal trial against a father for sexually abusing his daughter. The court found that the failure to advise a four-year old child of her duty to tell the truth and her right not to testify against her father, led to the exclusion of her testimony by the Supreme Court and consequently her father's acquittal. The court held that Estonia had therefore violated its obligations under Article 3 of the ECHR on the prohibition of torture and Article 8 of the ECHR on the right of the child to respect for private and family life.

Examples of case law on children's rights

R.B. v. Estonia (22597/16) continued..

“for the effective protection of children’s rights in line with international standards, it is essential to safeguard their testimony both during the pre-trial investigation and trial. Estonian law, as regards the warnings to be given to witnesses, does not make a distinction between witnesses according to their age, and thus does not provide for exceptions or adaptations for child witnesses..... in the present case the applicant’s testimony was found to be inadmissible precisely because of the strict application of procedural rules which made no distinction between adults and children.....” (para 102)

In paragraph 102 of the judgment, the court held that “for the effective protection of children’s rights in line with international standards, it is essential to safeguard their testimony both during the pre-trial investigation and trial. Estonian law, as regards the warnings to be given to witnesses, does not make a distinction between witnesses according to their age, and thus does not provide for exceptions or adaptations for child witnesses. The Court notes in this connection that, according to the Council of Europe Committee of Ministers’ Guidelines on child-friendly justice, where less strict rules on giving evidence or other child-friendly measures apply, such measures should not in themselves diminish the value given to a child’s testimony or evidence, without prejudice to the rights of the defence However, in the present case the applicant’s testimony was found to be inadmissible precisely because of the strict application of procedural rules which made no distinction between adults and children. The Court reiterates that it is not concerned with the responsibility of any particular national authority, since what is at issue in all cases before it is the international responsibility of the State.....”

EUROPEAN SOCIAL CHARTER

- Includes rights which can be relied upon to protect children directly (e.g. in the areas of child protection, education, health, social protection) or indirectly by supporting rights of parents / guardians (e.g. in the areas of work, health)
- Monitored by the European Committee of Social Rights
 - State reporting mechanism
 - Collective complaints procedure
- Collective complaints must relate to violations of a general nature and not of cases of specific individuals
- Domestic remedies do not have to be exhausted

- The European Social Charter includes rights which can be relied upon to protect children directly (e.g. in the areas of child protection, education, health, social protection) and indirectly by supporting the rights of their parents/ guardians (in the areas of work, health).
- The European Social Charter is monitored by the European Committee of Social Rights via a state reporting mechanism and the 'collective complaints procedure.'
- The latter involves complaints lodged by social partners and non-governmental organisations to the European Committee of Social Rights for consideration and for rulings on alleged non-implementation of the Charter by states which have accepted its provisions and the collective complaints procedure.
- However, the complaints must relate to violations of a general nature as opposed to cases of specific individuals – i.e. complaints that a State's law or practice violates the Charter rights.
- Unlike many other international and regional complaints mechanisms, domestic remedies do not need to be exhausted to submit a complaint to the Committee.

UN treaty bodies: CRC Committee

- Permitted to receive complaints – 'communications' – from or on behalf of individual(s) within the jurisdiction of a state party to the third optional protocol
- Communications must relate to alleged violation(s) of rights in the CRC or optional protocols to which that state is party
- Communications submitted on behalf of individual(s) must be with their consent unless the author of the communication can justify acting without it

- UN treaty bodies, most notably the UN Committee on the Rights of the Child, are key international complaints mechanisms.
- The UN Committee on the Rights of the Child is the body of 18 independent experts that monitors implementation of the Convention on the Rights of the Child by its States parties. It also monitors implementation of the Optional Protocols to the Convention, on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.
- If a State is party to the Optional Protocol to the Convention on the rights of the child on a communications procedure, the Committee on the Rights of the Child is permitted to receive individual complaints – referred to as 'communications' - submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights in the Convention on the

Rights of the Child or its Optional Protocols (on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography).

- Communications submitted on behalf of an individual or group of individuals must be with their consent unless the author of the communication can justify acting on their behalf without such consent.

Europe and Central Asian states party to the CRC Optional Protocol on communications procedure

- Albania
- Andorra
- Armenia
- Belgium
- Bosnia and Herzegovina
- Croatia
- Cyprus
- Czech Republic
- Finland
- France
- Georgia
- Germany
- Ireland
- Italy
- Liechtenstein
- Lithuania
- Luxembourg
- Monaco
- Montenegro
- Portugal
- San Marino
- Slovakia
- Slovenia
- Spain
- Switzerland
- Türkiye (subject to its declarations and reservations to the CRC and its Optional Protocols)
- Ukraine



As at 21 July 2023, the following States in the Europe and Central Asia region were party to the CRC's Optional Protocol on a communications procedure: Albania; Andorra; Armenia; Belgium; Bosnia and Herzegovina; Croatia; Cyprus; Czech Republic; Finland; France; Georgia; Germany; Ireland; Italy; Liechtenstein; Lithuania; Luxembourg; Monaco; Montenegro; Portugal; San Marino; Slovakia; Slovenia; Spain; Switzerland; Türkiye (subject to its declarations and reservations to the CRC and its Optional Protocols); and Ukraine.

CRC Committee inquiry procedure

- Under the third Optional Protocol, the CRC Committee may undertake an inquiry into grave or systematic violations of children's rights
- A state party may however make a declaration that it does not recognise the CRC Committee's functions in this regard
- As of 31 July 2023, out of the countries in Europe and Central Asia who are party to the third Optional Protocol, only Monaco had issued this declaration
- Not explored in detail in this training

- The Committee is also permitted to undertake an inquiry into grave or systematic violations of children's rights, except to the extent that the State party has made a declaration that it does not recognise the Committee's functions in this regard. As at 31 July 2023, out of the countries in Europe and Central Asia who are party to the Optional Protocol, only Monaco had issued this declaration. This is not explored in detail in this training.
- There is an inter-state complaints mechanism under the Optional Protocol though this is not explored in this training.

CRC Committee communication procedure

1. CRC Committee may request interim measures from the state party
2. Decision on admissibility
3. Brings the communication to the attention of the state party confidentially
4. State party must submit written explanations or statements as soon as possible and in any event within six months
5. CRC Committee 'makes available its good offices' to the parties to reach a friendly settlement
6. Consideration by the CRC Committee of the communication; examination of the communication takes place in closed meetings
7. CRC Committee provides its views and recommendations to the state party
8. State parties are obliged to give due consideration to the CRC Committee's views and any recommendations and submit its response including information on any action taken, as soon as possible and in any event within six months
9. CRC Committee may invite the state party to submit further information on action taken in its next periodic state report

- At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee on the Rights of the Child may transmit to the State party concerned for its urgent consideration a request that the State party take such *interim measures* as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.
- The Committee will decide on the admissibility of the communication. A communication is inadmissible if:
 - It is anonymous;
 - It is not in writing;
 - The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the UN Convention on the Rights of the Child and/or its Optional Protocols;
 - The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
 - All available domestic remedies have not been exhausted, except where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;

- o The communication is manifestly ill-founded or not sufficiently substantiated;
 - o The facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned, unless those facts continued after that date;
 - o The communication is submitted one year after exhausting domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit.
- Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee must bring the communication to the attention of the State party confidentially and as soon as possible.
- The State party must then, as soon as possible and in any event within six months, submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided.
- The Committee will 'make available its good offices to the parties concerned' with a view to them reaching a friendly settlement of the matter. If a friendly settlement is reached under the auspices of the Committee, the case is closed under this communications procedure.
- Pending the discussions on a friendly settlement or if a friendly settlement is not reached, the Committee must nevertheless consider the communication as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is also transmitted to the parties concerned. To do this, the Committee holds closed meetings to examine the communication. Where the author of the communication has requested interim measures, the Committee must expedite the consideration of the communication.
- After examining a communication, the Committee shall, without delay, transmit its views on the communication and any recommendations to the parties concerned.
- Under Article 11 of the Optional Protocol, State parties are required to give 'due consideration to the views of the Committee, together with its recommendations, if any' and must submit to the Committee a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party must submit its response as soon as possible and in any event within six months.
- The Committee may then invite the State party to submit further information about any measures the State party has taken in response to its views or recommendations or implementation of a friendly settlement agreement, if any, including, as deemed appropriate by the Committee, in the State party's subsequent periodic reviews before the Committee.

Other UN treaty bodies with similar procedures

- Human Rights Committee
- Committee on the Elimination of Discrimination against Women
- Committee against Torture
- Committee on the Elimination of Racial Discrimination
- Committee on the Rights of Persons with Disabilities
- Committee on Enforced Disappearances
- Committee on Economic, Social and Cultural Rights
- Committee on Migrant Workers

Similar procedures are available with other UN treaty bodies, as set out on the slide, though you should always check whether your State is bound by the individual communications procedures (has it issued relevant declarations, where required, confirming it recognises the treaty body's individual communications procedure?). You should also check whether your state has issued any declarations or reservations to opt out of or limit the rights which are the subject of the procedure, and check that you meet the admissibility criteria and procedures for that mechanism, before using them. The following treaty bodies may, under certain conditions, receive and consider individual complaints or communications from individuals:

- Human Rights Committee (monitors the International Covenant on Civil and Political Rights);
- Committee on the Elimination of Discrimination against Women (monitors the Convention on the Elimination of All Forms of Discrimination Against Women);
- Committee against Torture (monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment);
- Committee on the Elimination of Racial Discrimination (monitors the International Convention on the Elimination of All Forms of Racial Discrimination);
- Committee on the Rights of Persons with Disabilities (monitors the Convention on the Rights of Persons with Disabilities);
- Committee on Enforced Disappearances (monitors the Convention for the Protection of All Persons from Enforced Disappearance);
- Committee on Economic, Social and Cultural Rights (monitors the International Covenant on Economic, Social and Cultural Rights);
- Committee on Migrant Workers (monitors the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families).

UN special procedures

Include, among others:

- Special Rapporteur on the sale, sexual exploitation and sexual abuse of children
- Special Rapporteur on trafficking in persons, especially women and children
- Special Rapporteur on violence against women and girls, its causes and consequences
- Working Group on discrimination against women and girls
- Special Rapporteur on the rights of persons with disabilities
- Special Rapporteur on the right to education

- The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.
- As at 21 July 2023, these included:
 - Special Rapporteur on the sale, sexual exploitation and sexual abuse of children;
 - Special Rapporteur on trafficking in persons, especially women and children;
 - Special Rapporteur on violence against women and girls, its causes and consequences;
 - Working Group on discrimination against women and girls;
 - Special Rapporteur on the rights of persons with disabilities;
 - Special Rapporteur on the right to education;
 - Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
 - Special Rapporteur on the human rights of migrants;
 - Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity;
 - Special Rapporteur on the situation of human rights in Belarus;
 - Special Rapporteur on the situation of human rights in the Russian Federation;
 - Among others.

- Special procedures are important because they may undertake country visits, act on individual cases of reported violations and concerns of a broader nature by sending communications to the States concerned, contribute to the development of international human rights standards, engage in advocacy, raise public awareness and provide advice for technical cooperation.
- You should always check the remit of the mandate of the relevant special procedure and their procedural protocols before considering whether they are a suitable mechanism to use for your matter.

Further reading/videos:

- OHCHR, *Special Procedures of the Human Rights Council*, <https://www.ohchr.org/en/special-procedures-human-rights-council>, accessed 21 July 2023.
- Nolan, A. and Skelton, A., '*Turning the Rights Lens Inwards*': *The Case for Child Rights-Consistent Strategic Litigation Practice*, *Human Rights Law Review*, Volume 22, Issue 4, December 2022, ngac026, <https://doi.org/10.1093/hrlr/ngac026>, accessed 21 July 2023.

SESSION X: BRINGING STRATEGIC LITIGATION IN PRACTICE

Timing estimate: 1 hour 30 minutes

SESSION 25

Bringing strategic litigation in practice

Develop your skills in identifying appropriate complaints mechanisms/forums for bringing child rights strategic litigation or complaints by applying the learning so far to a series of fictional case studies

SESSION 25: OBJECTIVES



Activity to consider the following questions in relation to your allocated case study:

In your opinion, is this an appropriate case for strategic litigation? Why/why not?

If yes, which court/complaints mechanism would you use? Why?

OR

If no, what other approaches could be taken to protect and promote the rights of the child in the case?

Case study: Julia

Julia is a 16 year old girl who was arrested for contempt of court during a civil case and was kept in a police cell over night. Julia has severe physical disabilities. The cell in which she was held was not adapted for disabled persons, forcing her to sleep in her wheelchair over night and where she complained of the cold. She also had to rely on male prison guards to help her to the bathroom facilities. Efforts to bring the case in the domestic courts were dismissed on the grounds that Julia's treatment had not violated the provisions of the domestic law.

Pre-Training Assessment Form

Participant's Number:

Please place a ✓ in the relevant box to mark your response.

1. What is your level of understanding about the following:	None	Poor	Average	Good	Excellent
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a. The meaning of 'children's rights'

b. Meaning of 'child-friendly legal services'

c. Meaning of a 'child friendly justice system'

d. The right to access justice

e. Key international standards and guidelines on providing child-friendly legal services

f. National laws and standards on providing child-friendly legal services

2. How would you rate your skills in the following when providing legal services to children?	Very poor	Poor	Average	Good	Excellent
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a. Acting and making decisions in the best interest of the child

b. Ensuring that the child's views are heard in decisions and processes affecting the child

c. Protecting the child from discrimination

d. Keeping the child safe

e. Upholding the child's
right to their holistic
development

f. Child-sensitive
communication

g. Building a relationship of
trust with a child client

h. Ensuring the child's
effective participation in
formal proceedings

i. Working collaboratively
with family members of
the child client

j. Working collaboratively
with other professionals
and practitioners involved
in the child's case

k. Providing child-friendly
legal services to children
with disabilities

l. Providing gender-
sensitive legal services

2. How important would you rate the following when providing legal services to children?	Not important	Slightly important	Moderately important	Very important	Essential
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a. Acting and making
decisions in the best
interest of the child

b. Ensuring that the child's
views are heard in
decisions and processes
affecting the child

c. Protecting the child from
discrimination

d. Keeping the child safe

Post-Training Assessment Form

Participant's Number:

Please place a ✓ in the relevant box to mark your response.

1. What is your level of understanding about the following:	None	Poor	Average	Good	Excellent
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a. The meaning of 'children's rights'

b. Meaning of 'child-friendly legal services'

c. Meaning of a 'child friendly justice system'

d. The right to access justice

e. Key international standards and guidelines on providing child-friendly legal services

f. National laws and standards on providing child-friendly legal services

2. How would you rate your skills in the following when providing legal services to children?	Very poor	Poor	Average	Good	Excellent
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a. Acting and making decisions in the best interest of the child

b. Ensuring that the child's views are heard in decisions and processes affecting the child

c. Protecting the child from discrimination

d. Keeping the child safe

e. Upholding the child's right to their holistic development

f. Child-sensitive communication

g. Building a relationship of trust with a child client

h. Ensuring the child's effective participation in formal proceedings

i. Working collaboratively with family members of the child client

j. Working collaboratively with other professionals and practitioners involved in the child's case

k. Providing child-friendly legal services to children with disabilities

l. Providing gender-sensitive legal services

2. How important would you rate the following when providing legal services to children?

Not important

Slightly important

Moderately important

Very important

Essential

a. Acting and making decisions in the best interest of the child

b. Ensuring that the child's views are heard in decisions and processes affecting the child

c. Protecting the child from discrimination

d. Keeping the child safe

Participant's Evaluation Form

Please place a ✓ in the relevant box to indicate the extent to which you agree or disagree with each of the following statements about the Training on Providing Child-Friendly Legal Services.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
1. The content of the training is relevant to my work					
2. The training is well-paced					
3. The materials are easy to use					
4. The materials are helpful					
5. Participants are encouraged to take an active part in the training					
6. The training strikes the right balance between developing <i>knowledge, skills and attitudes</i> regarding child-friendly legal services					
7. The training was well delivered					
8. The training was well organised					
9. The training will help me to deliver child-friendly legal services					
10. I would recommend this course to my colleagues					

1. If you responded 'neither agree or disagree', 'disagree' or 'strongly disagree' for any of the statements above, please explain your response. There is more space at the end of this form.

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