

# OECD Child-Friendly Justice Framework



OECD Public Governance Policy Papers

# **OECD Child-Friendly Justice Framework**

Building a People-Centred Justice System



# OECD Public Governance Policy Papers

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# Abstract

Millions of children around the globe experience justice problems and legal needs, which are especially acute for children facing other adversities and disadvantages. To this end, this OECD Child-Friendly Justice Framework supports countries in developing a government-wide strategy to strengthen child-friendly practices in the justice system. Building on the analysis of the legal needs of children and challenges they face when confronting justice problems, this framework provides a basis for child-friendly reforms of justice systems, in line with international standards and obligations. Underpinned by a clear child-centric purpose, the framework provides guidance and good practice examples for (1) designing and delivering child-friendly justice services, (2) establishing the governance enablers and infrastructure to support child-friendly services, (3) empowering children and justice system workers to facilitate child-friendly justice, and (4) planning, monitoring and accountability needed to ensure that child justice reforms are effective and sustained.

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# List of Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
CFJ Framework	Child-Friendly Justice Framework
CRC	Convention on the Rights of the Child, 1989
LNS	Legal Needs Survey
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
SDG	Sustainable Development Goal
UNICEF	United Nations Children's Fund



# Executive Summary

Children are a particularly vulnerable and dependent group, which require special safeguards and care to meet their basic and specific needs, in view of their physical and mental immaturity. Yet, millions of children globally experience unresolved justice problems and unmet legal needs, caught in the wake of multiple barriers, such as complexity and structural issues in the justice systems and limited understanding of children's rights and legal procedures. Moreover, while the OECD Trust Survey shows that over half (57%) of people on average trust the courts and legal system, young people (those below 30 years old) have less trust in public institutions than people older than 50.

Gaps in accessing justice are particularly acute for children in vulnerable situations and those facing particular individual and environmental<sup>1</sup> circumstances. In this context, inability of children to address their legal needs and access justice may further amplify their exclusion and perpetuate inequities, thus creating a vicious cycle of poverty and marginalisation. As such, overcoming barriers to access to justice can be a critical tool to help combat poverty and exclusion; protect children from violence, abuse, exploitation and discrimination; and strengthen the rights of children in social protection, education and health care systems.

To this end, to support countries to improve access to justice for children, this OECD Child-Friendly Justice Framework outlines elements of a government-wide strategy to strengthen child-friendly justice practices. This Framework is based on OECD's People-Centred Justice Framework, the OECD Recommendation on Access to Justice and People-centered Justice Systems, as well as the analysis of legal needs of children and the barriers they face when interacting with the justice system. It aims to provide guidance and good practice examples to help countries align with international standards and obligations in children's rights. It is comprised of a foundation and four main pillars:

- The **foundation** emphasises a child-friendly focus of the justice system within a broader people-centred purpose. It should also be supported by the commitment to establish a deeply rooted culture where every element of the justice system and whole of government work together to attain the child-friendly purpose.
- The **first pillar** outlines **strategies to design and deliver child-friendly justice services**, in a manner that is tailored, inclusive, and appropriate and which should be grounded in a comprehensive understanding of children's legal needs from their own perspectives.
- The **second pillar** identifies **elements of a sound governance and infrastructure environment for child-friendly justice services**. Creating conducive legal and policy frameworks that are coupled with strong enforcement mechanisms and rely on collaboration among various actors, such as justice, social or health agencies, can foster the implementation of child-friendly justice services.
- The **third pillar** focuses on the **empowerment of children and justice system employees** as preconditions for effectively addressing children's legal and justice needs. Fundamental literacy and numeracy are important for legal capability and key to raising children's awareness of their rights and legal pathways. To ensure that children's input is meaningfully considered, and their legal needs adequately addressed, justice system employees can be empowered to establish and coherently offer child-friendly justice services.

- The **fourth pillar** provides guidance on strengthening **planning, monitoring and accountability mechanisms** as part of a child-friendly justice system to ensure reforms are effective and sustained. Evidence-based planning and measurement can support child-friendly justice services and is particularly important when resources are limited. This entails gathering relevant data and implementing robust data governance frameworks and clear accountability and oversight mechanisms.

The OECD Child-Friendly Justice Framework aims to lay the foundation for further analytical work, the collection of good practice examples and the development of good practice principles to support countries in operationalising the Framework.

# Introduction – Child-friendly justice

Every day, millions of children around the world experience justice problems and legal needs. In addition, vulnerable groups of children are likely to experience combined challenges and needs due to exclusion in sectors, such as in education, health and social protection which may further multiply their legal needs (Office for National Statistics, 2022<sup>[1]</sup>; Colvin, Gerard and McGrath, 2020<sup>[2]</sup>; Law Council of Australia, 2018<sup>[3]</sup>). As such, lack of access to justice and inability to resolve legal needs can further exacerbate exclusion of the most vulnerable groups of children and contribute to perpetual cycles of poverty and exposure to violence (OECD/Open Society Foundations, 2019<sup>[4]</sup>).

Children's legal needs may arise when they are parties in civil, family and administrative law matters: due to divorce, migration, violence or inadequate service delivery (NYU, 2019<sup>[5]</sup>). In addition, while ideally children would avoid unnecessary contact with the criminal justice system, they may encounter it in different ways:

- As victims: of crime or violence.
- As witnesses: often of violence, for instance in family violence situations.
- As children accused of a criminal offense: in criminal law matters.

Importantly, evidence shows that children who are already facing other adversities and disadvantage are more likely to come into contact with the justice system (Richards, 2011<sup>[6]</sup>).

Furthermore, research and global experience suggests that children face many barriers when confronting justice systems, including initiating certain legal action and seeking redress (see Box 1).

When faced with the justice system, children often confronted with procedures and institutions that are designed for adults, cannot easily be understood by children, and can have intimidating effects on children. In criminal, civil or administrative court processes and judicial proceedings, many children do not receive adequate support and protection by the justice system.

Moreover, children who find themselves in contact with the criminal justice system (be it as children accused of a criminal offense, victims or witnesses of crime), or involved in civil and administrative proceedings, are very often from marginalised and vulnerable groups and may require adapted and sensitive approaches (Government of Australia, 2023<sup>[7]</sup>). For example, children who have been placed into care or are at risk of entering care may experience a range of deprivations (e.g., risk of abuse and neglect, extreme poverty, disability etc.). Furthermore, children in care are more likely to be in contact with the criminal justice system. As recent data from the United Kingdom reveals, 'more than half (52%) of children in care had a criminal conviction by the age 24 compared to 13% of children who had not been in care' (Children's Commissioner for England, 2022<sup>[8]</sup>).

The COVID-19 pandemic further increased the vulnerability of children already at risk. For children in contact with the justice system, the pandemic caused delays in legal proceedings, suspension of trials and closures of courts, disruption to available services including legal aid and representation, mental health and psychosocial support of professionals working with children in the justice system, etc. Moreover, it reduced access to interventions in local communities. According to UNICEF's Socioeconomic Impact Survey of COVID-19 Response, case management services to prevent violence against children and home visits for children and women at risk of abuse were among the most commonly disrupted services with 52% of the surveyed countries reporting such disruption (United Nations Children's Fund, 2020<sup>[9]</sup>). Children in detention, including

immigration detention, military detention in the context of armed conflict or on national security grounds, face other risks such as lack of access to clean water and sanitation, nutrition, medical care and education, but also restrictions on freedom of movement and limited contacts with families.

Moreover, in many cases the pandemic accelerated moves towards the digitalisation of court proceedings and the associated reduction in in-person contact with children. Yet, these trends may risk reducing rehabilitative and restorative justice measures built on in-person contact with children and involving the development of relationships with the child (Committee on the Rights of the Child, 2021<sup>[10]</sup>).<sup>2</sup>

### Box 1. Barriers to access to justice for children

Children's special and dependent status creates challenges for them in accessing legal remedies and accessing justice generally:<sup>1</sup>

- Children face general barriers that are similar to those faced by adults. These include poverty, an inability to pay court and/or legal representation fees or travel expenses to reach courts or other venues, a lack of understandable information, an inability to understand complex and technical laws and procedures, the length of proceedings, the lack of legal aid and support services, language barriers, and a distrust of authorities.
- Children also face specific barriers. For example, in many cases they are not recognised as rights-holders due to their age. They are thus denied legal capacity to initiate legal action (CRIN, 2016<sup>[11]</sup>) but may not have adequate support to overcome this barrier by accessing independent representation and specialised legal assistance. This effectively limits their ability to participate and to be heard.
- Where deliberate efforts have not been made to develop child-friendly procedures, children may face 'child-insensitive' procedures and thus be disempowered through victimisation, discrimination, stigma, or lack of realistic access.
- Furthermore, there is often a lack of co-ordination among different agencies and stakeholders responsible for the well-being and fair treatment of children, such as child protection authorities and health, justice, and education services. This may result in no authority being responsible for the overall treatment and well-being of children engaging (or potentially engaging) with the justice system.
- Certain disadvantaged groups face additional difficulties in accessing justice. Individual factors contributing to child vulnerability stem from cognitive, emotional and physical capabilities or personal circumstances, for instance age, disability, a child's own disposition or mental health difficulties. They can be invariable, such as belonging to an ethnic minority or having an immigrant background, or situational, such as experiencing maltreatment, being an unaccompanied minor or placed in out-of-home care. Children with disabilities often face negative assumptions about their intellectual, psycho-social or physical capacities. Rather than being provided with additional support, they often face additional discrimination and limitations on their participation.
- Children in detention centres or closed health facilities face an obvious lack of access to normal family, community and legal professional supports, but they also often face additional discrimination and stigma and often lack accessible, independent and fair complaint mechanisms.
- Finally, without access to appropriate and readily available information and support, children will often simply be unaware of their rights and how to acquire assistance and support.

Note: 1 For much of this list of barriers see: Ton Liefwaard, Access to Justice for Children: Towards a Specific Research and Implementation Agenda, *International Journal of Children's Rights*, 27 (2019) 195-227

Source: (CRIN, 2016<sup>[11]</sup>; Pathfinders, 2022<sup>[12]</sup>)

To tackle these barriers and challenges, countries are encouraged to make their justice systems child-friendly and empower children to access justice. Child-friendly justice is justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs of the child, respecting the rights to due process, respecting the right to participate in and to understand proceedings, respecting the right to private and family life, and respecting the right to integrity and dignity (Council of Europe, 2010<sup>[13]</sup>). This entails adapting the justice system to be sensitive to children's needs and interests, and to be more responsive to children's participation in formal and informal decision making concerning them. For example, it should be recognised that placing children in detention should be a measure of last resort and last the shortest possible time (Noward, 2019<sup>[14]</sup>) – whether this be in a criminal, migration, or other context. Child-friendliness must be part of a broader people-centred purpose and culture.

Advancing a more child-friendly justice system also entails co-ordinating with social, health and other services to ensure that children are adequately supported and protected throughout the legal process (including being protected from their abuser and from being re-victimised). In criminal cases, a specialised child justice system and pathway are needed, considering a child's age and stage of development, especially when a child is placed in detention.

Since the adoption of the CRC, many countries have undertaken significant legislative and policy reforms to improve the situation for children in criminal justice processes. However, children's legal needs are much broader, including in civil and administrative spheres of national jurisdictions, customary and religious justice mechanisms, international jurisdictions, and alternative and restorative dispute resolutions (OECD, 2019<sup>[15]</sup>). Some of the specific elements of child-friendly justice were highlighted during the 5<sup>th</sup> OECD Roundtable on Equal Access to Justice in 2019 (see Box 2).

### **Box 2. Conclusions of the 5th OECD Roundtable on Equal Access to Justice, 2019**

Overall, participants of the 5<sup>th</sup> OECD Roundtable on Equal Access to Justice highlighted five dimensions necessary for access to justice of minors:

- First, children need to be informed about their rights, especially about how to safeguard them, as this is considered fundamental to preventing any risks in their lives, including violence. This implies making children feel that there are no barriers to accessing any institution that may provide a sense of fairness and justice to them.
- Second, children need to be empowered, confident and knowledgeable to participate in the administrative and judicial proceedings that affect their lives. It is important to make children understand the law (e.g., by using simple language, virtual reality) and the possible venues and solutions to their justice needs, the risks entailed, the consequences and the guidance in the process. It is also relevant to make children understand the roles and responsibilities of the actors and institutions that they engage, and who is best placed to support them at the right time. This encompasses providing legal information, legal aid and legal representation to children, with a view to enabling them to be heard in a genuine and effective manner. They should be provided to all children, including to those who are most vulnerable (e.g., children with disabilities, migrants, refugees).
- Third, it is important to develop a child-friendly environment guided by the best interests of the child. This entails understanding and identifying the needs of children across all possible circumstances; to train those who participate in decision making; and to make the environment physically close and accessible to children (e.g., by guaranteeing justice to children living in remote rural areas, making justice accessible for children with disabilities, and preventing biased attitudes by those who provide answers or guidance to children).

- Fourth, it is important to create a reliable, co-ordinated system for child protection and prevent the risks of re-victimisation and fragmentation of services (e.g., by ensuring child-friendly methods of hearings, by developing ways to prevent children from having to repeat the same story before different institutions, and by creating safe and comfortable conditions for children to participate in the justice process).
- And fifth, to create a transparent system ready to evaluate and to make public the results of a child-friendly justice system. This involves knowing to what extent the system is effective and meaningful for the justice needs of children and young people. In this regard, engaging with young people in the evaluation is relevant, especially engaging with those that have been involved with the justice system, as well as considering feedback and openness of the system to introduce the changes required.

Source: (OECD, 2019<sup>[15]</sup>) OECD Global Policy Roundtable on Equal Access to Justice, <https://www.oecd.org/gov/equal-access-to-justice-oecd-expert-roundtable-portugal-2019.htm>

Facilitating access to justice for children should also include providing them with the realistic ability (given their age, maturity and circumstances), to seek and obtain just, timely and effective remedy for violations of rights as provided for by international, regional and national legal frameworks. More broadly, it should provide children with access to age- and maturity level-appropriate information, advice and assistance on a range of legal issues they may confront. Effective access to justice requires a multi-disciplinary approach and should cover children's involvement with criminal, civil and administrative justice systems, including international and regional jurisdictions, and informal and alternative dispute resolution mechanisms, from prevention to post-resolution (OHCHR, 2013<sup>[16]</sup>).

In addition, the pathway to justice for children can arguably be as important as the ultimate outcome. If a child does not experience child-friendly processes and services, their access will be effectively limited, which, in turn, will affect the ultimate outcome. Thus, for children in particular, it has been argued that “What matters is both the destination (ask the question: *is the situation satisfactorily resolved for children?*), and the journey itself (ask the question: *are children treated in a child-friendly way along the way?*)” (Pathfinders, 2022<sup>[12]</sup>)

To this end, the OECD Child-Friendly Justice (CFJ) Framework aims to support all countries in implementing and investing in child-friendly justice policies and initiatives as part of a focus on people-centred approaches, reforms and initiatives. It seeks to capture the continuum of interactions children can have with justice systems. It proposes a comprehensive, holistic and child-centred approach to children's access to justice ensuring that the justice pathways and services are responsive to children's distinctive legal needs and to ensure that both justice is achieved and that children are supported. It offers practical tools and guidance for states and non-state actors when planning reforms relating to access to justice and is rooted in international and regional standards regarding children's access to justice.

The CFJ Framework builds on the OECD People-Centred Justice Framework (see Box 3) and the OECD Recommendation on Access to Justice, deepening and elaborating on the distinctive and specific elements for children and young people<sup>3</sup>. It also reflects a range of international treaties and conventions, as well as the *Justice for Children Call to Action* (see Annex B), as an international, multi-agency project, that was launched in 2019 to support collective global commitment to ensure that children are placed at the heart of the access to justice agenda (Davidson et al., 2022<sup>[17]</sup>)<sup>4</sup>. Moreover, the Framework draws on the Council of Europe's programme “Building a Europe for and with Children” and its Strategy for the Rights of the Child (2022-2027) “Children's Rights in Action: from continuous implementation to joint innovation”, developed through a consultative process involving children, national governments, international organisations and civil society organisations (Council of Europe, 2022<sup>[18]</sup>; European Commission, n.d.<sup>[19]</sup>).

In addition, it also builds on the discussions during the OECD Global Roundtables on People-Centred and Accessible Justice – attended by over one hundred ministry of justice officials, partner international

organisation representatives and thematic experts – as well as discussions during the World Forum on Justice with Children and valuable comments received by international and national experts. The Framework has benefited from the contributions of those working directly with children to provide justice for them, and from other experts. Finally, the Framework has been informed by an extensive body of international knowledge and research, and by a wide range of OECD and related publications as cited throughout this paper and listed in the bibliography.

### Box 3. The OECD People-Centred Justice Framework

The People-Centred Justice Framework (OECD, 2021<sup>[20]</sup>) aims to support countries in implementing their commitments and facilitate justice transformation by outlining elements for a government-wide strategy, inter-agency co-operation and communication, and mechanisms to ensure accountability and sustainability. It can also provide policy support to countries to help promote people-centred justice. While recognising the many challenges OECD Members and other countries face, including policy and practical implementation issues, the People-centred Justice Framework:

- develops a comprehensive vision for justice systems that is people-centred and integrated across sectors
- highlights the key role of state institutions in leading the transition to people-centred justice systems
- supports countries in achieving people-centred justice transformation by identifying core principles, building on the OECD criteria for people-centred design and delivery of legal and justice services (see Annex A)
- showcases good practice examples and highlights policy considerations for achieving equitable and people-centred justice
- provides the foundation for monitoring and accountability guides and indicators to assist governments in their transition to people-centred justice systems.

The People-centred Justice Framework consists of four interdependent pillars, such as

- Designing and delivering people-centred justice services
- Governance enablers and infrastructure
- People empowerment
- Planning, monitoring and accountability

The pillars are supported by a unifying foundation of child-friendly purpose and culture (see **Error! Reference source not found.**) and include a range of policy options, directions and considerations.

Figure 1. Key elements of a people-centred justice framework



Source: (OECD, 2021<sup>[20]</sup>), OECD Framework and Good Practice Principles for People-Centred Justice, <https://doi.org/10.1787/cdc3bde7-en>



# The Child-Friendly Justice Framework

To effectively address children’s legal and related needs, the justice system has to centralise a child-friendly approach. Therefore, the justice system has to specifically design and deliver child-friendly services and create an enabling governance and infrastructure environment for efficient justice service delivery. To this end, empowering children and justice system employees and establishing planning, monitoring and accountability structures are essential elements. This chapter details the elements of the Child-Friendly Justice (CFJ) Framework by outlining the purpose and vision of the child-friendly justice framework and its four pillars.

## The foundation: Purpose and culture

The 2023 OECD Recommendation on Access to Justice and People-centred Justice Systems highlights that defining a clearly articulated and shared understanding of the purpose of the justice system is critical to steer reforms, initiatives or new investments towards the desired outcome. For children and young people, the purpose of a child-friendly justice system and its components could be:

*“providing equal access to justice for all children by placing them at the centre of relevant parts of justice systems, and in particular identifying and meeting the legal and justice needs of children at their various stages of maturity and capacity and committing to a “culture” that seeks to support this child-friendly focus within a broader people-centred purpose.”*

Especially disadvantaged children will need targeted and tailored processes and pathways to ensure they have access to services and pathways that guide them at the centre of the legal processes they confront. Furthermore, implementation of a vision for child-friendly people-centred justice requires an ingrained culture that enables all relevant elements of the justice system, and indeed the whole of government, to be continuously focused on achieving (or contributing to the achievement of) the child-friendly purpose. This implies a systemic process to enable all elements of the justice system to refer to and align with that purpose.

A key factor in achieving a child-friendly purpose and culture will be the level of engagement with children and young people to ensure their voices are heard, valued and applied – including in the design of the justice system elements they will deal with. The methods to achieve this will vary with the age and maturity of children and a range of other factors. However, the general principle should be to ensure that the child’s voice is heard and acted upon to the greatest extent possible and appropriate given capacity and maturity factors in the design and delivery of policies and services that affect them. On this, the European Commission has noted “(...) nothing that is decided for children should be decided without children. It’s time to normalise child participation.” (European Commission, n.d.<sup>[19]</sup>)

Importantly, while concepts such as “the best interests of the child” are common throughout many legal systems, determining the best interests of the child can be difficult and contested. Most significantly, children have evolving levels of capacity, capability and maturity as they age. Seeking to engage with and hear the voices of children in relation to their legal needs should take account of these evolving levels of capacity and maturity.

A further challenge is that many children, particularly younger children, are deemed to lack (or may lack) sufficient legal capacity which means that adults must speak on their behalf and communicate the child’s

wishes. Thus, attempts to hear the voices of children and to engage them to support designing strategies will often require mediation by adults. Therefore, a holistic vision needs to be developed that would enable particularly younger children to have equal access to a full range of quality, *appropriate*, legal, justice and related services as far as possible.

In addition, there is a need to develop a child-friendly culture in relation to access to justice, which would require incorporating the elements highlighting in different pillars of this CFJ Framework throughout this document, including:

- *Understanding legal and justice needs of children from their perspectives* – A crucial first step in establishing and maintaining a child-friendly approach is to regularly identify the legal and justice needs of children *as they experience them*. Doing so requires taking into consideration all children and their circumstances. A people-centred justice culture for children would look beyond the formal institutions to identify legal and justice needs in their communities, as children and their families experience them.
- *Seeking to create and maintain appropriate legal, policy and institutional frameworks guided by international best practice* – The Convention on the Rights the Child, the three optional protocols associated with the Convention, and a host of other international covenants and standards provide a good practice basis for guiding country internal legal, policy and institutional reforms and frameworks.
- *Promoting the legal empowerment of children* – A crucial element of providing access to justice is empowering people to participate in and manage their own affairs, and to have a voice in the design and delivery of processes and services that affect them. For children, this requires dedicated arrangements to ensure that the necessary education, information, assistance and support provided to enable them to make informed decisions and participate, reflects their age, maturity and unique circumstances.
- *Committing to learning what works from the child's perspective* – The culture must include a commitment to learn – through rigorous evaluation research, user feedback, deep community engagement and data monitoring – what strategies and pathways are most effective, sustainable and appropriate for meeting the legal and justice needs of children and using this evidence-based approach to service design and policy development.
- *Ensuring child-friendly arrangements are prioritised for all stages along relevant pathways* – The growth of ‘human-centred design’ concepts in recent years reflects the fact that many justice system processes have evolved from an institutional perspective, rather than the perspective of the ordinary person. Services and processes impacting children need to be designed to be appropriate for them.
- *Promoting a whole-of-government and whole-of-state approach* – Children, like adults, have intertwined legal and justice issues and needs (family, civil, criminal) that are inter-twined with non-legal needs. The resolution of these legal and justice needs may only be possible with the resolution of other public service problems. Therefore, a culture in which all parts of government and state and non-government agencies work together to resolve holistically the problems experienced by children will be essential.
- *Ensuring appropriate capability development for actors involved in providing justice services* – Children confront the justice system and face legal problems at a unique disadvantage by virtue of age, capacity and maturity limitations. They must engage with many individuals, organisations and actors at all levels involved in providing justice services to children. These people and organisations have an important impact on children seeking to enforce their rights and to resolve legal problems and must have appropriate training and development to deliver child-friendly services within a people-centred environment.
- *Ensuring effective and sufficient resourcing, while promoting efficiency and innovation* – Ensuring the capacity of the actors involved in addressing legal and justice needs for children also requires securing a sufficient level of staffing, expertise, skills, tools, equipment, and other resources, which in turn requires adequate programme funding. For justice institutions at all levels, it is critical that sufficient,

appropriately trained staff and resources (including budgets) are allocated to ensure that the legal and justice needs of children are met as efficiently and effectively as is appropriate.

## Pillar 1: Designing and delivering child-friendly services

This pillar focuses on the design and delivery of justice services to facilitate child-friendly access to justice, in line with 2019 OECD People-centred Justice Services Criteria (see Annex A). It covers the following four elements:

- 1.1 Identifying children's legal needs;
- 1.2 Identifying strategies that 'work';
- 1.3 Providing a range of tailored, inclusive and appropriate services; and
- 1.4 Co-ordination and triaging child-friendly justice services.

### **1.1 Identifying legal and justice needs of children**

This section highlights the common legal and systemic needs of children in cases of criminal, civil or administrative proceedings. It then highlights the ways to deepen understanding of legal needs of children, including the use of legal needs surveys.

#### *Children's legal needs in criminal justice proceedings*

A child's position in criminal justice proceedings may vary depending on whether it faces the system as child accused of a criminal offense, victim or as a witness. It will also depend on different definitions of the age of legal responsibility for children in different countries as well as different understandings of 'childhood', relevant cultural norms, legislation and practices applicable to children, as well as knowledge, skills and attitudes of professionals who apply the laws and deal with children in each particular case.

#### *Children accused in criminal law matters*

Children and young people are particularly vulnerable in the area of criminal justice. They not only face additional barriers due to their age and level of maturity, but also are often not only subject to the general criminal law that applies to adults, but also for certain behaviours which would not be criminalised if committed by an adult. Such behaviours include, for example running away, begging, trespassing, breaking disciplinary rules, breaking curfews, etc (OHCHR, 2019<sup>[21]</sup>). Importantly, children already experiencing multiple disadvantages are often those most in contact with the criminal justice system (Richards, 2011<sup>[6]</sup>). For instance, unaccompanied child migrants and refugees are often placed in out-of-home care facilities, and in some countries, placed in juvenile detention facilities, which may also expose them to parts of the criminal justice system (IOM, 2008<sup>[22]</sup>; UNHCR, 2014<sup>[23]</sup>).

In jurisdictions where data is available,<sup>5</sup> it is generally found that crime can be committed disproportionately by young people (Richards, 2011<sup>[6]</sup>)<sup>6</sup> – although this does not mean that juveniles are responsible for the majority of recorded crime (Judicial Commission of New South Wales, n.d.<sup>[24]</sup>). Yet, there is evidence that most children can 'grow out' of offending behaviour (Richards, 2011<sup>[6]</sup>). As such this should be taken into account in the application of the criminal justice system to children, especially in light of the obligation under the CRC to take into account "...the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."<sup>7</sup> This is especially important, given that because of children immaturity and inexperience, they are particularly vulnerable at all stages of the criminal justice process, including interviews with and arrest by police, court settings and especially incarceration (UNICEF, n.d.<sup>[25]</sup>). In fact, it is widely acknowledged internationally that "juveniles should be subject to a system of criminal justice that **is separate**

**from the adult system and that recognises their inexperience and immaturity”** (see Box 4). This implies that countries should establish, to the extent possible, child-friendly criminal justice systems, as emphasised in the United Nations’ standard minimum rules for the administration of juvenile justice (the Beijing rules) (OHCHR, 1985<sup>[26]</sup>) which stressed the importance of nations establishing “a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights.” (Richards, 2011<sup>[6]</sup>; Judicial Commission of New South Wales, n.d.<sup>[24]</sup>). Child justice ‘systems’ should also be based on the premise that children differ from adults in their physical and psychological development, and this calls for the recognition of lesser culpability, but also an individualised, targeted approach based on specific characteristics of each particular child (OHCHR, 2019<sup>[21]</sup>).

#### **Box 4. Juvenile justice in Australia: Snapshot from the data**

##### **Juvenile justice in Australia – the importance of data**

Australia is a federal jurisdiction and criminal law, and youth justice are the responsibility of State and Territory jurisdictions. In general, the youth justice system in Australia is based on the principle that children who have offended should have opportunities for rehabilitation, and that detention should be a measure of last resort.

Research in Australia reveals that children under youth justice supervision are an especially disadvantaged group (RACP, 2011<sup>[27]</sup>). Research indicates that young people in the youth justice system have often experienced:

- high rates of child maltreatment and neglect, including time spent in out-of-home care (Cashmore, 2012<sup>[28]</sup>; Stewart, Dennison and Waterson, 2022<sup>[29]</sup>)
- drug and alcohol abuse (Kenny and Nelson, 2008<sup>[30]</sup>; Payne and Prichard, 2005<sup>[31]</sup>)
- trouble at school, including issues with poor school attendance and low performance
- parental substance abuse
- parental incarceration
- homelessness or unstable accommodation (JH&FMHN, 2017<sup>[32]</sup>; Payne and Prichard, 2005<sup>[31]</sup>)

These children are also more likely to have poor physical and mental health, reduced cognitive ability, and be parents themselves (JH&FMHN, 2017<sup>[32]</sup>; Kenny and Nelson, 2008<sup>[30]</sup>)

##### **In 2017-18 in Australia:**

- Around 1,100 children aged 10-14 years were under youth justice supervision<sup>[38]</sup>and<sup>[40]</sup>; on an average day (a rate of 73 per 100,000 children aged 10 to 14 years).
- Boys were more than three times as likely to be under supervision as girls.
- Indigenous children were substantially more likely to be under supervision than non-Indigenous children (835 per 100,000 compared with 28 per 100,000).
- Indigenous boys had the highest rate of children under supervision on an average day (a rate of 1296 per 100,000).

There is significant overlapping with other services:

- Nearly half of those under youth justice supervision had also received child protection services (Government of Australia, 2018<sup>[33]</sup>)
- Young Indigenous Australians were more likely than non-Indigenous Australians to have received both child protection services and youth justice supervision (Government of Australia, 2018<sup>[33]</sup>)

- In comparison with people who have only sought specialist homelessness services, those who have sought specialist homelessness services *and* experienced youth justice supervision were more likely to report having a drug and/or alcohol issue, more likely to have mental health issues, were more vulnerable and likely to end specialist homelessness services while still being homeless (Government of Australia, 2016<sup>[34]</sup>)
- Young people who received an alcohol and other drug treatment service were 30 times more likely as the Australian population to be under youth justice supervision (Government of Australia, 2018<sup>[35]</sup>)

### Juvenile justice in France

In France, juvenile justice brings together two missions: the protection of children in danger (civil aspect) and the responses to juvenile delinquency (criminal aspect). The child is not seen as a litigant like adult litigants. The main principles of criminal justice for minors are the partial mitigation of youth responsibility, precedence of educational measures above repressive ones, protection and specialisation of jurisdictions and procedures.

Parliamentary reports in France highlight the substantive link between children receiving child protection services and youth delinquency. About half of minors taken into criminal care were also under the supervision of child protection services, and a third of minors in child protection are subject to criminal proceedings at some point in their journey. The underlying causes of this link are often the gross negligence of which the child may have been the victim (lack of supervision, sexual violence, impaired development, lack of medical follow-up, etc.) as well as poor educational conditions and a dysfunctional family environment. School difficulties are also a factor and a symptom of the risk of falling into delinquency. Addictions can also lead to low school attendance, desocialisation and increased mental disorders which in turn can lead to further implications in the youth justice system (Assemblée Nationale, France, 2019<sup>[36]</sup>).

Sources: (Government of Australia, 2022<sup>[37]</sup>; RACP, 2011<sup>[27]</sup>; Cashmore, 2012<sup>[28]</sup>; Kenny and Nelson, 2008<sup>[30]</sup>; Government of Australia, 2018<sup>[35]</sup>; Government of Australia, 2016<sup>[34]</sup>; Government of Australia, 2018<sup>[33]</sup>; JH&FMHN, 2017<sup>[32]</sup>; Payne and Prichard, 2005<sup>[31]</sup>; Assemblée Nationale, France, 2019<sup>[36]</sup>)

One of the first questions that arise whenever a child is accused of a criminal offence is whether the child has sufficient capacity and maturity to form the necessary intent to commit a criminal offence. This question could be sensitive, given that the 'age of criminal responsibility' varies from country to country and even within countries in some cases<sup>8</sup>. Yet implementing a child friendly approach requires dedicating particular attention to this issue and seeking to base the decision on the age of criminal responsibility of the best available child-development, psychological and psychiatric evidence.

Once a decision to prosecute is made, the legal needs of children arise before or from the moment of the first contact with the police (stopping, apprehension), and ultimately continue until the reintegration of the child to society at the end of any period of detention or equivalent (if found guilty). This includes periods of initial questioning by police, while in pre-trial detention, during the entire investigation period and evidence collection, any medical examination, witnesses' questioning, preparation for court proceedings, participation during court proceedings, and in any post-trial phases (see Box 5). The difference for children is that whereas most adults will need legal and other advice and assistance at each of these stages, by virtue of their reduced maturity and capacity, children will require much more advice and assistance – which are also designed and targeted specifically for their level of maturity and particular situation.

## Box 5. Children aftercare and reintegration programmes

### The State of Louisiana reintegration process

The reintegration program of the State of Louisiana's Office of Juvenile Justice focuses on youth transitioning from placement back to their home community. It relies on collaboration with all stakeholders: youth, community service providers, Office of Juvenile Justice staff and families. It begins the day a youth enters a facility and continues through the youth's transition to and stabilisation in the community. There are three phases which create a continuum of care and services that overlay the juvenile justice continuum.

- **Phase I: the preparation process.** The probation and parole officers identify the permanent plan and follow-up services needed for the youth upon release to facilitate successful transition and reintegration into the community.
- **Phase II: transitioning home.** The probation and parole officers are in regular contact with the youth's family to facilitate communication, assess the family situation, and to ensure that a return to the family is a workable plan. Escorted passes, home passes and furloughs are an integral part of reintegration planning.
- **Phase III: staying home.** The Office sustains, supports and assists youth for successful reintegration by making available services upon release including individual, group, and family counselling; mentoring/tracking services; educational/vocational services or employment assistance.

The Office contracts with several reintegration service providers who are responsible for facilitating collaborative relationships to:

- provide for the safety and well-being of the youth, program staff, and community
- provide services aimed at promoting social and emotional adjustment, enhancing life skills and independent living skills, and eliminating destructive behavioural patterns
- provide services, when appropriate, to the youth's family or guardian to facilitate the successful reintegration of the youth into the community
- facilitate appropriate aftercare planning and services directed at reintegration

One of these contractors is the **Youth Empowerment Project**. This program links each young person with a youth advocate from their community, who provides case management services and meet with each client 3-5 times each week. They serve as mentors for the youth and can assist with school re-enrolment, a difficult process in New Orleans' school system. The program lasts 6 months but can be extended for a full year depending on the individual's needs. The service is successful because it allows a trust relationship to be developed between the client and the youth advocate, who both share a common community.

### The Irish CEHOP model

In line with Article 40 of the UNCRC, a new model of care, based on the Ireland Children Act 2001, was introduced in Oberstown Children Detention Campus in 2014. The "CEHOP" model provides interventions focused on Care (C), Education (E), Health (H), Offending Behaviour (O), and Preparation for leaving (P). Through this model, the emphasis is shifted from looking back at what the young person has done to focusing on their future. Depending on the youth length of detention, a short-, medium- and long-term plan are developed to best fit their needs with a view of reintegration into the community and reducing the risk of re-offending. Preparation for leaving involves practical programmes that cover all aspects of children's care including accommodation, living skills, finances, work, education and health.

The involvement of all relevant parties is required: young person themselves, parents/family, carers and representatives from care, education, health. In addition to that, an Advocacy Officer was appointed to support young people in making their voices heard.

Source: (State of Louisiana Office of Juvenile Justice, n.d.<sup>[38]</sup>; State of Louisiana Office of Juvenile Justice, n.d.<sup>[39]</sup>; Oberstown Children Detention Campus, 2020<sup>[40]</sup>; Oberstown Children Detention Campus, n.d.<sup>[41]</sup>)

However, despite the widespread recognition of these reality, children's legal needs are not always met in practice. They are reported to still be exposed to lengthy proceedings, sometimes involving extended time spent in detention, are not always informed (in a child-friendly manner) of all procedural steps and roles of the authorities involved, potential outcomes of the proceedings. When a child is deprived of liberty, they often do not receive high quality psycho-social and legal support and assistance. As a result, they will often not be able to meaningfully participate in the process (European Union Agency for Fundamental Rights, 2022<sup>[42]</sup>).

Given the range of support required at each of these stages in what can be a long process, children's legal needs will only be met – and thus their effective participation facilitated – if provided in a multi-disciplinary manner. Each child should be assessed in a holistic way, considering their needs of protection, education, training, social integration, health, the child's unique personality, level of maturity, overall background and any other specific potentials, risks and developmental challenges. This assessment should be carried out at the earliest time possible to create tailor-made support services that are in the best interests of each child.<sup>9</sup> The role of a supporting lawyer representing the child is crucial in safeguarding the rights of the child in all phases of the proceedings.

#### *Children as victims and witnesses of crime*

Children victims and witnesses of crime are very vulnerable in the justice system. The testimony of witnesses is often vital to investigate and prosecute a crime, however, their participation, whether when reporting the crime initially, giving statements to the police or prosecutor, or in a court hearing, is usually a stressful experience. Their needs arise from the first contact with the authority when reporting the crime and last throughout the whole process, including to the post-trial and, for them, a recovery phase. In each of these phases, children need legal and psychosocial support and assistance to ensure they are safe, properly heard, properly supported to make their claims, and provided with access to basic services such as those related to security, protection, shelter, housing, social welfare benefits, education, health, employment and psychosocial support.

Given the range of support required at each of these stages, children's legal needs will only be met – and thus their effective participation facilitated – if provided in a multi-disciplinary manner. Each child should be assessed in a holistic way, considering their needs of protection, education, training, social integration, health, the child's unique personality, level of maturity, overall background and any other specific potentials, risks and developmental challenges. This assessment should be carried out at the earliest time possible to create tailor-made support services that are in the best interests of each child.<sup>10</sup> The role of a supporting lawyer representing the child is crucial in safeguarding the rights of the child in all phases of the proceedings.

A child-friendly approach in criminal settings will always understand the need to reach an appropriate balance between the normal rights of the accused (to question accusations, cross-examine witnesses etc.) and the need to act in the best interests of the child. Appropriate special protective measures aimed to protect the child and to prevent secondary victimisation will be essential (see Box 6).

### Box 6. Example: The Judicial Interview Room in Türkiye

The Judicial Interview Room is a designated space within a courthouse that enables children and others who are vulnerable to feel safe and thus more willing to provide the information the courts need to conduct fair trials. The Room also helps prevent secondary victimisation (threats, abuse, stigmatisation), safeguards the right of children and other users to be heard, and ensures that their best interests are protected as they move through a complex and sometimes intimidating process. It serves not only children who have been abused or otherwise victimised but all children who are in contact with the law, including offenders and witnesses, as well as adult victims of sexual violence, domestic violence or other situations that put them at risk.

Source: (UNICEF, 2014<sup>[43]</sup>), Judicial Interview Room, Türkiye; <https://www.unicef.org/turkiye/en/reports/judicial-interview-room>

### *Children's legal needs in civil and administrative proceedings*

Children's legal needs in civil or administrative proceedings are often related to family law matters such as divorce or separation of parents, child support, custody and contact, parenting arrangements and decision-making, child protection issues (such as the removal of a child from a family and placement into residential (out-of-home) care), and other issues such as the referral of the child to medical or psychiatric or residential substance abuse treatment. In these proceedings children may be involved as plaintiffs, witnesses or the subject of the proceedings, and need continuous high quality legal and psychosocial support and assistance and the protection of their privacy.

These issues are often very sensitive, involving the state, parents (often opposing each other), and the child. Such proceedings can be prone to privilege the rights and arguments of the state and/or the adult parents, if only because they will be better resourced, more informed, more articulate and be given greater opportunity. However, it is important that the child's voice is heard (Article 12 CRC) and that appropriate weight be given to that voice. Despite policies and intent to give the child adequate opportunity to be heard, in practice this may rarely be the case. In recent research in Australia, adults who, had been part of contested family proceedings when they were children stated that without positive and deliberate intent to support, represent and empower children, their perspectives have often not been given sufficient weight (Nelson, 2022<sup>[44]</sup>).

Children must also have meaningful opportunities to seek effective redress and remedies through child-friendly means in relation to a range of issues in administrative proceedings, including for example, issues relating to birth registration, nationality, asylum requests, migration procedures, education (such as discipline, expulsion and suspension, access to services), healthcare services, child protection and out-of-home care residence issues, employment, insurance and general contract issues (see Box 7).

### Box 7. Children, young people and contract law

In most countries children can enter a range of contracts before they reach the age of adulthood. These include employment contracts (such as working for fast-food outlets), mobile phone contracts and car purchase contracts (which often involve loan/finance agreements). What are the implications for child-friendly justice?

#### **Standing, access and support**

A people-centred justice system will provide avenues for ordinary citizens to address contract issues in a form and manner that is meaningful and accessible to them, in their circumstances. In the case of



children, this requires additional and targeted support to provide realistic and meaningful access to civil law. But it may also require specific legal framework variations.

For example, if contract issues arise before the child reaches adulthood, they must have legal standing to pursue appropriate remedies. They must also have appropriate support to enable them to realistically pursue these remedies. If, however, the child does not identify the contractual issues until after they reach adulthood, the law should recognise the fact that they were a child at the time of contracting and provide the (former) child with retrospective rights considering their reduced capacity (and experience) at the time of contracting.

### **Pre-emptive legislative reform?**

Countries seeking to adopt people-centred and child-friendly approaches may wish to investigate contracting regimes for certain types of contracts that require additional precautions (such as mandating independent legal advice and other support for a child entering a contract) at the time of contract, if the contract is to be valid.

Source: Based on feedback and discussions with Youth Law Australia, Sep 2022.

In practice, ensuring the child's views and opinions are heard and given due weight, and that all decisions must be made by giving primary consideration to the child's best interests (Article 3 CRC) (OHCHR, 2009<sup>[45]</sup>) have often proved challenging to implement. The implementation of these CRC principles varies widely and there seems an inconsistent understanding of how these principles should be applied in practice. Achieving greater consistency in how to implement these principles could be a focus for multinational collaborative effort as a means of assisting countries to implement child-friendly justice.

### *Legal needs survey and contemporary legal needs assessment strategies*

As tools to identify and assess legal needs of children, this section introduces Legal Needs Surveys (LNSs) and legal needs assessment strategies. Developing an understanding of the legal problems experienced on a day-to-day basis by children and young people, what impact these problems have on them, and how they can be addressed is essential for the establishment of a child-friendly justice system – as part of a people-centred justice system. This understanding needs to consider the legal needs as they are experienced by the child or the young person. Research to identify these legal needs to be regular and ongoing as those needs will change over time. For instance, the rise of mobile technology, with a multitude of online social, commercial and other applications, has affected the lives of young people more than many other age groups. This has brought a range of new legal issues that did not exist even a decade ago, and yet impact children and young people disproportionately.

So far, only a few countries have LNSs with the specific focus on children (Box 8), out of the more than 60 national-level LNSs conducted around the globe (OECD, 2019<sup>[46]</sup>). The difficulties lie in the fact that the questions (and legal problems) appropriate for a 10-year-old tend to be very different to those relevant for an adult. As such, while LNSs may well be appropriate for children and young people, they will likely differ markedly from an adult survey, and differ between the age/maturity levels amongst children. Importantly, the findings of adult LNSs can also be relevant for children. Crucially, LNSs have revealed that only a very small proportion of the legal issues and needs of the community finds its way into the formal justice system. Across countries, on average only 11% of respondents with justiciable problems have recourse to formal justice institutions, and another 4% to other processes (including mediation and arbitration) (OECD/WJP, 2019<sup>[47]</sup>). These insights are likely to apply to even more children, but there remains a need to dedicate targeted research to maintain an ongoing understanding of the day-to-day legal needs of children and young people.

## Box 8. Examples of children's legal needs assessments

### The 2001 Florida Bar's Commission on the Legal Needs of Children Survey

In 2001, the Commission on the Legal Needs of Children of the Florida Bar surveyed children's views regarding legal issues relevant to them. Results from that survey revealed a great desire for independent legal representation for children in divorce, custody and care proceedings, and in relation to school expulsions and police questioning. Other issues identified included bullying from classmates, unfair discipline from school administrators and harassment from the police.

### The 2013 Northern Ireland's Department of Justice study on legal needs of children

In 2013, Northern Ireland's Department of Justice commissioned a study on the legal needs of children and young people in the region, following a Survey of Legal Needs exclusively focused on adults.

The survey questionnaire was developed based on the key themes emerging from focus groups with children and young people. Findings included the lack of knowledge as a crucial barrier to young people's legal needs being met: the wide range of legal issues faced by them (from bullying, to buying faulty goods or being spoken to by the police); and their need to be recognised as right-holders.

### The 2017 Needs assessment of legal empowerment of youth in the Republic of Moldova

In 2017, the Soros Foundation Moldova in co-operation with the Moldovan Ministry of Justice conducted a legal needs survey of young people aged 14-23 years with a particular emphasis on vulnerable groups. The study revealed that one in four young people had legal issues in the last 12 months. In most cases, youth turned to family, friends and colleagues for help. Other issues included discrimination (Roma youth), reluctance to seek police help (especially sex workers), employment and health issues.

### Multi-year consultation process of youth in France

In 2019 the French Constitutional entity **Defender of Rights** (*Défenseur des droits*) launched a consultation process of youth called « *J'ai des droits, entends-moi* »<sup>1</sup> regarding the right of children to participate in issues that affect them. The three iterations of this consultation are:

- **2019:** enabled 2,200 children aged between 4 and 17 years to learn and reflect on their rights.
- **2021:** focused on mental health of children and young people. Enabled nearly 600 children aged 3 to 18 years to express their reflections and recommendations on this subject.
- **2022:** focused on children's right to privacy. Roundtable discussions, participatory workshops and meetings with professionals were planned.

Note: 1. "I have rights, listen to me!"

Sources: (The Florida Bar Commission on the Legal Needs of Children, 2002<sup>[48]</sup>; Emerson et al., 2014<sup>[49]</sup>; Soros Foundation-Moldova, 2017<sup>[50]</sup>; Défenseur des droits, 2021<sup>[51]</sup>)

To fully understand the legal needs of children and young people, LNSs would need to be complemented by several other key data sources (OECD, 2021<sup>[20]</sup>). These include:

- Data and insights gathered through long-term engagement of social workers, civil society and researchers working with children and young people. These insights can reveal information about the lived experience of children and the legal and justice issues they face.
- Administrative (service delivery) data, which can provide insights to understand the demand for and actual access to justice services. If well collected and managed, it can help connect knowledge across human services to better identify legal and justice needs.<sup>11</sup>

- Criminal court and related data, which can reveal specific representational and support needs of children confronting the criminal justice system.
- Official data, for example from national census, which can provide insights into the nature and location of vulnerable groups. When compared to service delivery and other data, it may reveal gaps or underservicing of children in need.

### *Provision and accessibility of child-centred services*

When seeking to enforce their rights, especially as victims, children can be significantly disadvantaged with their views and experiences not given adequate weight, and at times restricted by having to rely on consent or support from their abusers (Davidson et al., 2022<sup>[17]</sup>). Further, as international experience makes clear, (af Ursin and Haanpää, 2017<sup>[52]</sup>; Todres, 2020<sup>[53]</sup>; Akengin, 2008<sup>[54]</sup>) children and their families often have very little knowledge and understanding about the rights of a child and where and whether to seek help in specific situations. Therefore, the obstacles to accessing justice services must be identified and addressed.

Children who find themselves in contact with the justice system come from all segments of population but are very often from marginalised and vulnerable groups. Addressing their needs requires specifically adapted and sensitive approaches. This demonstrates that justice systems play a key role in securing the rights of the most vulnerable children. In addition, generic justice measures very often do not reach the most vulnerable children, and more targeted efforts and interventions which are adapted to children's age and specific needs are necessary.

As such there is a need to provide accessible, effective child-friendly services by:

- Identifying what strategies, services and interventions 'work' for which children in their particular circumstances;
- Providing a range of appropriate services (for the child's particular capabilities) along a continuum of services to meet their diverse needs;
- Ensuring services are inclusive, targeted and provide meaningful access for all children;
- Ensuring that services are properly co-ordinated, needs are triaged and there is adequate focus on prevention and referral.

### **1.2 Identifying strategies that 'work'**

Developing child-friendly justice systems requires systematically identifying the most effective strategies to reach children in different age cohorts and attending to their circumstances. For example, to reach and engage with children and young people, services may maintain face to face outreach services to youth centres or other places that children and young people are. Certain countries provide a range of online, telephone and email services (including anonymous services) that are designed to be suitable for tech savvy children and young people, such as those provided by Youth Law Australia (Youth Law Australia, n.d.<sup>[55]</sup>).

While there have been important advancements in some OECD countries in identifying strategies that work for people-centred justice overall, OECD work has identified that the existing evidence base on what works and equally what does not, and why in meeting the legal and justice needs is still limited and uneven, has been rather slow to develop, and faces a number of challenges (OECD, 2019<sup>[46]</sup>).

As such, countries should individually and collectively seek to develop a comprehensive, co-ordinated evidence base (OECD/LJF, 2019<sup>[56]</sup>) on effective strategies in tailoring and delivering child-friendly justice systems, processes and services by:

- identifying, collecting, assessing and making evidence accessible of (cost-)effective strategies for specific contexts and ensuring this data and analysis is disaggregated by age and further relevant characteristics such as disability etc.;

- identifying the key gaps in the existing knowledge base; and
- systematically seeking to address the evidence gaps through:
  - establishing partnerships among the community of actors involved in access to justice (including legal assistance and access to justice providers) for continued engagement and research in areas in which knowledge of successful strategies is scarce, and
  - investing in the appropriate rigorous trials and evaluation of justice solutions targeting children to ensure they are child-friendly (OECD, 2021<sup>[20]</sup>).

### **1.3 Providing a range of tailored, inclusive and appropriate services**

A child-friendly justice system would provide a range of justice and related services, ranging from the most local and informal, including age- and maturity-level appropriate plain language information and education, through to formal judicial processes. These would be adapted to the range of different and evolving maturity levels relevant to developing children and young people. This is also acknowledged in the OECD Recommendation of the Council on Creating Better Opportunities for Young People, which focuses on young people from the age of 15-29 years, states that providing accessible, barrier-free, people-centred and user-friendly public services for young people including through digital means, to facilitate their access to information and counselling across all public service areas, including to legal, juvenile and other justice services is essential (OECD, 2022<sup>[57]</sup>). Importantly, for legal matters that extend over years, such as long-term family law and child-residency disputes, child-friendly justice systems will provide services that can change over time to match the evolution of a child's age, maturity and level of understanding.

#### **Box 9. Child-friendly approaches in New South Wales, Australia**

##### **Children's Court**

When children confront the criminal justice system in New South Wales, they do so through the Children's Court rather than the more general Magistrate's Court. Except for regional and remote areas, generally the magistrate presiding over the case will be a specialist children's Court Magistrate with expertise and experience in dealing with children and children's matters.

##### **Care and protection matters: independent Children's Solicitor**

In *Care and Protection* proceedings in New South Wales, which concern the potential removal of a child from the family environment, the children concerned are provided with an **independent children's solicitor** by the Legal Aid Commission (LANSW) to represent their interests (separate to their parents/carers and government interests) during the proceedings.

##### **Specialist children's legal services**

Several legal assistance services provide specialist targeted services to children and young people. For example, New South Wales Legal Aid has a specialist children's legal service section, a national specialist community legal centre to assist children and young people (Youth Law Australia), and several community legal centres with a dedicated specialist children's lawyer as part of their team.

Note: Note that in Australia, legal Aid Commissions are independent government bodies that have large in-house' capabilities. While private solicitors are often 'briefed' to deliver services on behalf of Legal Aid, in NSW for example around one half of matters are handled by in-house lawyers. For the appointment of independent child solicitors, generally only accredited specialists (either in-house or private) are used.

Source: (Mulherin, 2016<sup>[58]</sup>), Law and Disadvantage, <https://www.legalaid.nsw.gov.au/>

To successfully target and reach children and young people (generally, and specifically) with legal and justice needs, the range of services would need to include:

- Services that ‘attract attention’. Appropriate means of attracting the attention of and engaging with children and young people with legal needs and providing a means for them to contact the service,
- Appropriate entry points. Whether targeting young people or the community in general, justice services require *appropriate entry points* that have been designed with a people-centred perspective. Entry points designed and proven suitable for children and young people are necessary.
- Services that ‘go to where children are’. Effective outreach services targeting the various groups of children and young people in appropriate ways and where they are comfortable, including through engagement with other human services and agencies relevant to children and young people.

Merely providing a wide range of options for sourcing legal advice and assistance is not enough though. Too many choices for an individual (who may often have inadequate knowledge of the legal system, the law and their nuances) may confuse rather than help and may not help reach the service most appropriate to their needs. This will be the case even more so for children and young people who, by virtue of their age, inexperience and maturity, will often be less able to identify and navigate to the most appropriate path through a seemingly complex array of options. When seeking to provide a child-friendly justice system, a “no wrong door” approach that seeks to ensure that through sound co-ordination and triage, children with legal issues can be supported and guided efficiently to the service most appropriate for them will be crucial. As discussed for the previous element, this requires knowledge of ‘what works’ for needs and for particular children in their particular circumstances, and should be systematically learned.

### *Co-designed child-justice services and the use of digital technology*

Children have unique needs when it comes to effective access to justice. This has come to light during the COVID-19 pandemic, when children were more negatively affected than adults, for instance as a reduction in face-to-face contact with services or through the move of many court and justice processes online. Involving children in co-design can help ensure the child-friendly justice services are tailored, inclusive and accessible. Although this may present challenges, due to their age and maturity, appropriate strategies can be employed to engage children in the design of justice services and programs intended for them.

The rapid increase in the use of digital technology is an important factor that needs to be considered when (co-)designing services for children. While some children will be effectively excluded from using such technology due to their age, poverty or other disadvantages, many other children are capable and competent with digital technology and would benefit from appropriate access to digital services. In designing child-friendly services, it is important that assumptions are not made by (adult) policy makers and service providers about whether children can or cannot appropriately use digital services, but that children of different ages and circumstances are engaged to co-design relevant digital services.

### *Language and information*

Legal needs research shows that people outside the justice system can find it alienating, intimidating and inaccessible. This is partly due to the complexity and inaccessibility of legal language and processes. Traditionally, these have been designed for the benefits of the legal professionals and courts staff, instead of prioritising a people-centred perspective.

For children, this inaccessibility is far more pronounced. If children are to be truly engaged and provided with services that are meaningful to them, and to participate in processes that are meaningful to them, the legal system language and information relevant to them must be ‘translated’ into child-appropriate language. It is not enough that external information resources, such as information about rights of the child, are set in child-appropriate language, but the language they confront all through the justice system process must also be understandable.

Implementing this approach may present challenges for justice systems, however, creating and utilising child-specific strategies can have impact in advancing child-friendly justice services (Box 10).

### **Box 10. Appropriate services: Child-sensitive measures**

Child-sensitive measures, appropriate for the age, maturity and circumstances of the child, are essential for the child to have meaningful access to justice.

At stages and places involving children in the criminal, civil and family justice systems, all measures, processes and procedures used should be child-friendly. Children should always be provided with child-friendly settings, including a separate or modified room, safe waiting areas and separate entrance as well as audio-video link. Hearing of the child should be carried out by trained professionals.

Such support measures are also required for a range of decentralised, community-based, multi-disciplinary information and support services, including within the most vulnerable communities, to help children and their families learn about their rights, access information, and get referral to support services (psychosocial, medical etc.) A trained support professional might ideally be assigned as contact point person to inform and prepare children throughout the proceedings.

Information to be provided to children will need to be translated into various languages of national minorities, adapted to children using non-verbal and other alternative modes of communication. Children victims of crime are amongst the most vulnerable groups of children in contact with the justice system, thus they require increased sensitivity of all professionals involved and a range of protective measures in place. Special arrangements for children with disabilities to provide for communication methods that enable them to read, hear, see and communicate are required, while children who are deaf and/or blind have available information provided to them in Braille, plain language or alternative formats. Physical barriers that prevent children with disabilities from accessing judicial and administrative bodies should be identified and overcome; for example, by introducing ramps, lifts, signage in braille and sign language interpreters.

Source: (Roelen and Sabates-Wheeler, 2012<sup>[59]</sup>), A Child-Sensitive Approach to Social Protection: Serving Practical and Strategic Needs, <https://gsdrc.org/document-library/a-child-sensitive-approach-to-social-protection-serving-practical-and-strategic-needs/>

### *Specialised and free child-friendly legal assistance*

In addition to lower capacity and maturity at many ages, children generally have limited or no financial means by which to engage legal support. Therefore, to give effect to child-friendly justice, children will need support (and often legal representation) but will not have the means to pay for it and may lack the ability to find it. Therefore, for a wide range of legal issues, children should have available to them free legal assistance providing them with wide support along a continuum, from the provision of basic legal information and minor legal assistance to more intensive services, including representation services prior to and in court settings.

All of these services should be provided in a child-friendly way by individuals and service providers who are competent to operate in a child-friendly manner (see Box 11) (OECD, 2019<sup>[46]</sup>).

### **Box 11. Specialised legal services and representation for children and youth in Israel for children – “A lawyer of my Own”**

In Israel, the Legal Aid Department within the Ministry of Justice established the Child Representation Unit "A Lawyer of My Own" to provide highly specialised legal aid and representation free of charge to

children and young people in civil and administrative proceedings (mainly child protection proceedings and family law proceedings). It applies the “No-wrong-door policy” which is child-friendly and confidential, and information is provided by phone, e-mail, address, fax, front desk, referral, legal aid website. More than 6,300 children/youth are represented annually in more than 4,500 cases in Israel.

Source: (Government of Israel, n.d.<sup>[60]</sup>), Ministry of Justice, Legal Aid, [https://www.gov.il/en/departments/ministry\\_of\\_justice\\_legal\\_aid/govil-landing-page](https://www.gov.il/en/departments/ministry_of_justice_legal_aid/govil-landing-page)

### **1.4 Co-ordinating and triaging child-friendly services**

Co-ordinating and triaging services play a critical role in establishing a child-friendly justice system. Co-ordination of services involves the working together of various organisations – from government departments and government funded legal aid services, to community legal services, court support services and the private (especially pro bono) sector, and other human services. To be effective, co-ordination requires robust mechanisms and processes for sharing resourcing to achieve common goals (see Pillar 2).

Triage is another important step in the process for addressing the legal and justice needs of children and young people. In the field of child-friendly justice, triage involves identifying the shortest pathway to get children to the right service. An effective triage mechanism ensures that the targeted children are reached, their problems assessed, and then directed to or provided with the most appropriate and effective services. It can help determine what strategies are best to address children’s legal needs and make a referral to the most appropriate justice services.

## **Pillar 2: Governance enablers and infrastructure**

Designing and delivering justice services for children requires a targeted legal and policy framework and effective institutional structures that assist children in addressing their legal needs in a satisfactory manner to support their personal development and transition to adult life.

This pillar concerns the role of government and other key justice actors and governance enablers in establishing and maintaining justice systems that are accessible and effective for children and young people in addressing their legal and justice needs. It covers:

- 2.1** The legal and policy frameworks;
- 2.2** The partnership and co-ordination mechanisms;
- 2.3** Effective enforcement mechanisms;
- 2.4** The integration of a child-friendly access to justice ‘lens’ to justice decision-making;
- 2.5** Ensuring processes, technology and information requirements are suitable to support children and young people;
- 2.6** The need for adequate investing in a full range of child-friendly justice services.

### **2.1 Legal and policy frameworks**

Governments have the principal responsibility for ensuring that legal, policy and institutional frameworks are in place to achieve child-friendly justice services.

The concept of child-friendly justice is firmly grounded in international human rights law and acknowledges not only children’s particular vulnerabilities but also their capability to exercise their rights in a manner consistent with their evolving capacities.

Since the 1924 Geneva Declaration of the Rights of the Child was adopted by the League of Nations<sup>12</sup>, the rights of children have been enshrined in international law. The enhanced Declaration of the Rights of the Child agreed by the UNGA in 1959<sup>13</sup> brought the rights of the child into the post-World War II era. Since the adoption of the Convention on the Rights of the Child (CRC) in 1989 (UN General Assembly, 1989<sup>[61]</sup>), there have been a number of international covenants and standards that guide governments on the treatment of children, and in particular, on children's access to justice. Box 12 identifies the key covenants and provisions concerning the rights of the child in relation to justice systems.

Importantly, these covenants expand upon several principles and themes concerning the protection of children and ensuring their ability to be heard and to exercise their rights effectively, namely:

- Providing for children's basic needs to safeguard their right to life, survival and development;<sup>14</sup>
- Protecting children against discrimination, neglect and exploitation; (UN General Assembly, 1989<sup>[61]</sup>)<sup>15</sup>
- Continuously considering children's best interests;<sup>16</sup>
- Protecting children's sense of dignity, respect and well-being;<sup>17</sup>
- Securing children's right to express their views and ensuring their participation in decisions affecting them;<sup>18</sup>
- Guaranteeing children's *appropriate* (distinctly tailored to their needs) access to (legal) assistance and effective remedies;<sup>19</sup>
- Establishing appropriate accommodations that fit children's needs;<sup>20</sup>
- Promoting alternative measures for dealing with children, without resorting to judicial proceedings.<sup>21</sup>

In addition, the UN Committee on the Rights of the Child has elaborated on the justiciability of rights, noting that children's special and dependent status creates challenges for them in accessing legal remedies (United Nations, 2003<sup>[62]</sup>). This implies ensuring that there are effective, child-sensitive procedures available to children and their representatives, including child-friendly information, advice, advocacy, support for self-advocacy, and access to independent complaints procedures and to courts with necessary legal and other assistance. The Committee further provides that, where rights are found to have been violated, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration. These mechanisms are to be further elaborated in national law that sets out entitlements in sufficient detail to enable remedies for non-compliance, hence,<sup>22</sup> removing common barriers in accessing justice.

### **Box 12. Key international legal standards and statements on children's access to justice**

#### **Universal Declaration of Human Rights, 1948**

- Article 8: Everyone has the right to an effective remedy by national tribunals for acts that violate the fundamental rights granted by the constitution or by law.

#### **International Covenant on Civil and Political Rights, 1976**

- Article 2: State Parties must ensure that anyone whose rights or freedoms have been violated has an effective remedy.

#### **Convention of 25 October 1980 on the Civil Aspects of International Child Abduction**

- The objectives of the present Convention are:
  - to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and



- to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

### **Convention on the Rights of the Child (CRC), 1989**

- Article 3: In all actions concerning children undertaken by courts of law, the best interests of the child shall be a primary consideration.
- Article 12: Children have the right to be heard in judicial and administrative proceedings affecting them.
- Article 37: No child shall be deprived of liberty unlawfully or arbitrarily. Children deprived of liberty have the right to legal assistance and to challenge their detention.
- Article 39: Victims of violence, torture or armed conflict have the right to physical and psychological recovery and social reintegration.
- Article 40: Every child accused of or convicted breaking the law has the right to be treated in a manner that safeguards their sense of dignity and worth.

### **Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, 2000**

- Article 8: Appropriate measures to protect the rights and interests of child victims of practices prohibited at all stages of the criminal justice process.

### **Third Optional Protocol to the CRC, 2014**

- Article 5: Children have the right to lodge individual communications before the Committee on the Rights of the Child in the case of an alleged violation of the Convention or its Optional Protocols by a State.

### **Committee on the Rights of the Child, General Comment No. 5 Implementation of the CRC, 2003**

- Paragraph 24: Effective, child-sensitive procedures must be available to children and their representatives, including the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration.

### **Committee on the Rights of the Child, General comment No. 24 on children's rights in the child justice system, 2019**

- Paragraph 20: Children who are below the minimum age of criminal responsibility at the time of the commission of an offence cannot be held responsible in criminal law proceedings.
- Paragraph 28: Children with developmental delays, neurodevelopmental disorders or disabilities should not be in the child justice system, even if they have reached the minimum age of criminal responsibility.

### **Convention on the Rights of Persons with Disabilities, 2006**

- Article 3: Respect for the evolving capacities of children with disabilities
- Article 4(3): Consultation with persons with disabilities, including children with disabilities, in the development and implementation of legislation to implement the present Convention.
- Article 7: Children with disabilities enjoy all human rights on an equal basis with other children, including right to express their views freely on all matters affecting them and to be provided with disability and age-appropriate assistance to realise that right.

- Article 9: Obligation to ensure accessibility to facilities and services.
- Article 13: Persons with disabilities have the right to effective access to justice on an equal basis with others, including through the provision of procedural and age-appropriate accommodations
- Article 23(3): States shall ensure children with disabilities have equal rights with respect to family life and shall provide comprehensive information and support to children with disabilities and their families.

#### **International Principles and Guidelines on Access to Justice for Persons with Disabilities, 2020**

- Principle 3: Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

#### **United Nations Declaration on the Rights of Indigenous Peoples, 2007**

- Article 22: States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### **Committee on The Rights of the Child, General Comment No. 11, Indigenous children and their rights under the Convention, 2009**

- Paragraph 23: Indigenous children have the inalienable right to be free from discrimination and should be reflected in all domestic legislation. Effective remedies should be timely and accessible.
- Paragraph 75: Appropriate measures should be taken to support indigenous peoples to design and implement traditional restorative justice systems in accordance with the rights set out in the Convention.

Ensuring alignment with the international legal framework can support countries in defining the national legal framework and subsequent policies for a child-friendly justice system. Generally, there is considerable diversity in constitutional approaches across (OECD) member countries on how international treaties are integrated into national law. Some countries such as France automatically adopt ratified international treaties as part of their national law, while other countries such as Australia require specific domestic legislation to give effect to ratified international treaties.

While establishing the appropriate legal frameworks is essential, without the supporting policy and institutional frameworks, and adequate resourcing to implement these, the legal frameworks would often not be sufficient to create a sustainable environment of child-friendly justice. Therefore, child-friendly policies and respective strategies and action plans that contribute to these policies are an integral component of broader people-centred justice policies and strategies (see Box 13).

#### **Box 13. The EU Strategy on the Rights of the Child and the European Child Guarantee**

The new comprehensive EU Strategy on the Rights of the Child and the European Child Guarantee are major policy initiatives put forward by the European Commission to better protect all children, to help them fulfil their rights and to place them right at the centre of EU policy making. Both initiatives have been informed by extensive consultations with citizens, stakeholders and, most importantly, more than 10,000 children.

Importantly, *child-friendly justice* was identified as one of the six key thematic areas within the Strategy:

### Thematic areas of the Strategy

- Child participation in political and democratic life: EU actions to empower children to be active citizens and members of democratic societies
- Socio-economic inclusion, health and education: EU actions to fight poverty, promote inclusive and child-friendly societies, health and education systems
- Combating violence against children and ensuring child protection: EU actions that help children grow free from violence
- Child-friendly justice: EU actions to support justice systems that uphold the rights and needs of children
- Digital and Information Society: EU actions to ensure that children can safely navigate the digital environment and harness its opportunities
- The Global dimension: EU actions supporting, protecting and empowering children globally, including during crisis and conflict.

Source: (European Commission, n.d.<sup>[19]</sup>), The EU Strategy on the Rights of the Child and the European Child Guarantee, [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en)

## 2.2 Partnership and co-ordination mechanisms

Implementing a child-friendly justice system requires the establishment of necessary institutional frameworks that provide clear roles, responsibilities and co-ordination/collaboration arrangements across all elements of the justice chain and with other sectors (see Box 16). Especially when addressing legal, justice and other needs of children, the provision of co-ordinated services can help address them in an integrated and inter-related manner. More than any other vulnerable group in society, effectively addressing the legal and justice needs of children should involve:

- *A whole of society approach.* At all ages, but particularly at younger ages, children are heavily or entirely reliant upon parents, families, communities and public services for their well-being and daily needs. Whether it be shelter, health, parenting, education or any other human need, children will be dependent upon others for their provision. Therefore, few legal or justice problems for children will be able to be resolved without the delivery of care and services from across the whole of society.
- *A whole of the state approach.* Laws, legal systems and their institutions and processes are controlled by the state. While communities, parents, NGOs and others have key roles to play, for children with legal or justice needs or confronting the justice system, a system whereby all the state's policies and agencies are working in the same child-friendly direction is essential (see Box 17).
- *The whole of justice system approach.* Similarly, all elements of the justice system itself would need to work together in a child-friendly direction if child-friendly justice is to be delivered. For example, if police policy and practice is inconsistent with criminal court policy and practice or inconsistent with child and juvenile detention policies and practice, positive efforts by one part of the justice system may not result in a positive outcome overall for children.

### Box 14. Actors in child justice systems

Sound institutional frameworks with clearly defined roles and responsibilities among all involved key actors can assist the delivery of efficient and effective child-friendly justice. These include among others:

- central governments which can play a strong role in facilitating the design and implementation of a shared vision for child-friendly justice that is reflected in policy, legislation and resource decisions. They also have a key leading role in prompting and supporting government and non-government/civil society partners to participate, collaborate and co-ordinate towards a child-friendly whole of nation approach.
- ministries of justice which can play a leading role in designing and delivering child-friendly justice services and will be principally responsible for establishing the policy frameworks and resource allocations to ensure the implementation.
- formal justice institutions, such as courts and the police, which can ensure their internal policies conform to child-centred justice policies.
- child-friendly justice co-ordinating bodies and advisory committees which can advise governments on an ongoing basis concerning national policies and resource allocations to achieve a child outcome.
- subnational and local governments which can play a role in planning and co-ordinating child-friendly services within their areas of responsibility.
- national statistics agencies and other government, government funded or research agencies which can deploy surveys and collect data to play a vital role in gathering the necessary information to inform the delivery of child-friendly justice.

Source: Author's elaboration

As such, to ensure that appropriate co-ordinated and holistic services are delivered to ensure child-friendly justice, there needs to be effective methods of co-ordination and integration across institutions, across government departments and portfolios, and even between government and the community and private sectors. This calls for planning, co-ordination and priority setting and resource sharing between departments and portfolios at all levels of hierarchy. It also calls for establishing processes and protocols to facilitate the working together of different government departments, including those from different levels of government, and for governments to work together with non-government community service organisations and other NGOs to deliver whole-of-government and government supported services. This may involve a range of actions, including:

- Providing necessary leadership and political commitment to ensure cross-portfolio actions.
- Establishing interdepartmental and inter-governmental co-ordinating teams.
- Ensuring appropriate financial and resource-sharing mechanisms and processes.
- Developing collaborative planning mechanisms.
- Establishing, where appropriate, integrated and co-ordinated services, such as health-justice partnerships and similar arrangements.
- Ensuring that digital technologies and data are implemented to facilitate whole-of-government approaches and seamless sharing of information, while maintaining privacy and complying with personal data protection standards, when dealing with children's matters.
- In addition, while the public sector has an important role to play in responding to legal and justice needs and in providing key justice services, non-governmental and private sector providers can also enable child-friendly justice through the provision of a wide range of legal, justice and related services in an innovative and cost-effective manner. Governments could stimulate the availability and accessibility of such services through appropriate financing, investment, and the enabling infrastructure and environment for private sector development, including promoting NGOs' growth. In addition, governments have a strong role in providing the appropriate safeguards and regulatory frameworks to mitigate the risks associated with non-governmental and private sector service provision.

### **Box 15. Barnahus Model – A whole-of-state approach to child services**

The Barnahus model developed in the Nordic countries represents example of integrated child-centred, multidisciplinary and inter-institutional response for children who are victims of sexual, physical and/or domestic abuse. With the aim to avoid secondary victimisation of children, it brings together relevant authorities and services at one place to provide the child with a co-ordinated response of justice and child protection authorities. The child gets information on the process, is forensically interviewed, medically assessed and treated, and gets adequate psychosocial support and response to trauma. It avoids repeated interviews with the child by many agencies in different locations, ensures valid evidence for the court process and due process. It has been replicated in more than 20 countries.

Source: (Johansson et al., 2017<sup>[73]</sup>; OECD, 2023<sup>[74]</sup>)

## **2.3 Effective enforcement mechanisms**

For justice systems to be effective, the outcomes of dispute resolution mechanisms - which can be generated by courts, tribunals, from ADR bodies or can be results of informal agreements and arrangements (e.g., either courts, tribunals or ADR mechanisms) - need to be implemented and enforced.

The evolving nature of child capacity and ability to engage in legal processes means that the child participant in the justice system will need just as much assistance in ensuring enforcement of decisions and the practical implementation of rights confirmed as it will take them to engage in the legal process itself. This is of particular relevance to younger children. Thus, a child-friendly justice system will be one that develops and employs a system of appropriate (and possibly pro-active) mechanisms to ensure the enforcement and avoid limitations of justice outcomes for children. Free legal assistance will almost certainly be required amongst other legal and nonlegal support services to ensure effective enforcement.

## **2.4 Integrating a child-friendly lens into decision-making process**

Establishing a child-friendly system within a people-centred justice system requires efforts to ensure child-friendly considerations are systematically embedded in relevant decision-making processes at all levels.

An increasingly used practical tool for governments are impact assessments for different legislative and policy reforms. To achieve child friendly justice, there is potential for governments to conduct impact assessments on existing institutions, policies and processes and on any new justice policy, law or process reforms to assess whether or not these achieve or contribute to a child-friendly justice system. Other relevant mechanisms are the appointment of Children's Rights Ombudsman, Commissioners, or Inspectorates which typically have mandates to report on the situation of children in the justice system.

## **2.5 Tailored processes, technology and information requirements**

Technology has been one of the main drivers of change in dispute resolution in the past decade and can serve as a powerful enabler of integrated, inclusive and people-centred justice ecosystems. It has the potential to help facilitate everyday justice, transform formal justice and reinvigorate service delivery through process automation and data collection, creating new justice pathways and providing direct access to services (e.g., Online Dispute Resolution). From the users' perspective, technology creates new avenues to conflict resolution and can help close significant justice gaps.

Above a certain age and level of maturity, children and young people can quickly become leading users of information technology, such as new forms of social media. Therefore, new technologies are one essential pathway for the provision of accessible services to many (older) children and young people. However, the use

and choice of appropriate mediums and digital services requires utility assessments before implementation to have positive effects for all affected children. For instance, the assumption of ‘digital by default’ service delivery for children should be avoided as not all children might have access to digital technologies. Instead, several factors have to be considered when designing child-friendly services:

- The ages and maturity levels in which children and young people have independent access to online and new technologies.
- The recognition that while many children and young people have access to online sources of assistance and information, they do not necessarily have the necessary critical knowledge and experience to distinguish sound and safe sources from others.
- A proportion of children and young people, especially younger ones, is likely to only access online technologies with the assistance and/or supervision of an adult. This suggests different approaches for certain types of legal matters where alternative support or assistance is required. It also suggests that online and similar information and assistance should also be targeted to those who will assist young people in accessing it.
- For all members of society, information in understandable language is an essential component of people-centred justice. Given the disadvantages children face, their evolving age and maturity levels, providing legal and related information that is understandable to children at the differing ages and maturity levels is important, notwithstanding that its further assistance hereto might still be required.
- As with adults, there are children who, through experiencing other disadvantages (poverty, disability, language difficulties, remoteness, etc), may find it difficult or impossible to access online and new technology services, and pathways need to be provided for these children who are the most vulnerable to the experience and impact of legal and justice problems.
- Risks arising from the increased use of digital technologies (digital fingerprints, electronic forgery, drones mean) in terms of privacy and data protection for children. This entails ensuring compliance with ethical standards on the use of digital technologies, including emerging technologies and data, to avoid biased or unfair outcomes for children.

## **2.6 Adequate investments in child-friendly justice services**

Children are a particularly vulnerable group, which deserves particular attention in the allocation of resources under justice budgeting. To support children appropriately and to implement child-friendly justice services, there will be a need for investment to services targeted to meet the needs of children at differing ages and capabilities, to provide them with a generous range of support through free legal assistance services and other holistic services. As child-friendly justice services go beyond measures funded by the traditional ‘justice budget’, e.g., focusing on allocating funds for court services, establishing a broader funding basis could be critical to promote a broader child-friendly justice system. In determining budget priorities and allocations, access to justice for children could be considered as part of the overall child rights or child well-being budgeting.

In many countries the lack of funding is a significant constraint to children’s equitable access to justice. Many judicial and administrative bodies dealing with children are generally perceived to face heavy workloads and are understaffed. The investment in access to justice for children should include costs for continuous specialisation of all professionals working with children – both sectoral and multi-sectoral, free legal aid for children and their families, children’s rights education (for children, their families and those working with them), information and promotion of access to justice, interventions and programmes for prevention (e.g., of child offending), intervention (e.g., diversions) and recovery at local level, formal justice institutions that resolve conflicts and disputes, and alternative mediation mechanisms to resolve the conflicts and disputes.

## Pillar 3: Empowerment

Legal institutions and procedures can be alienating, difficult to navigate, and often intimidating for people outside the legal system, and especially for children and young people. Empowering individuals to engage with the various parts of the justice system is a key challenge when seeking to establish and maintain a people-centred justice system. Empowering children (and the families and other adults that may support them) to participate in justice processes and to assert their rights, is an even greater challenge.

This requires dedicated and targeted arrangements that ensure that information, assistance and support reflect unique circumstances and is designed in an age and maturity-appropriate way.

To deliver these dedicated and targeted arrangements, justice systems require training mechanisms that develop capable and 'empowered' workers who understand and can implement child-friendly policies and practices. This pillar focuses on the development of capabilities and empowerment of:

- 3.1 Children as users of the child justice system; and
- 3.2 Justice system employees as main facilitators of the implementation of child-friendly justice systems.

### 3.1 Empowerment and participation of children as users of the legal system

#### Box 16. Article 12, Convention on the Rights of the Child

- 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.
- 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.

Source: (UN General Assembly, 1989<sup>[61]</sup>), Convention on the Rights of the Child, <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf>

Fundamental literacy and numeracy are important elements of legal capability (Pleasence et al., 2014<sup>[75]</sup>). These core skills underpin people's engagement with society and the economy, and thus impact heavily upon their vulnerability to experiencing legal issues and having legal and justice needs, as well as their ability to resolve them. Therefore, the OECD People-centred Justice Framework identified that a sound national education system that ensures all segments of society can reasonably obtain sound levels of literacy and numeracy is a fundamental enabler of enhanced legal capability in a general sense, and thus of people-centred justice more specifically.

Empowering children to participate appropriately in legal and justice processes can be even more challenging and involves many steps and reforms, as outlined below.

#### *Education and access to justice*

While younger children may have little or no experience with the justice system, a key enabler of developing child maturity, knowledge and ultimately legal capability to participate in legal processes is the availability of and their participation in high-quality education systems. This is an important example of the interrelatedness of legal and justice issues with other human services. Crucially, all children must have real opportunity and

access to the education system, regardless of other factors. This means that for children to have the basic capability to participate as they age, they need to actively participate in learning through the education system. For this to occur, they must have unrestricted and supportive access to high-quality education. To achieve this, countries will need to not only provide a framework of educational services across the jurisdiction with appropriate support mechanisms in place (such as for children in remote areas, for children from minority groups), but children should also not be prevented from actively participating in education. Thus, school disciplinary measures must not be allowed to interfere with the continued engagement of the child with the education system and their learning. For example, should suspension or exclusion of a child from a particular school be necessary, real and effective alternative arrangements to ensure continued access to education and school-related services such as sport activities must be put into place at the time. Similarly, in situations where a child or young person is confronting the criminal justice system, rehabilitation and detention mechanisms must also be accompanied by real and effective access to continued quality education.

### *Legal awareness for children*

Meaningful access to justice requires children to be informed and aware about their rights in a child-friendly manner and where they can seek support and assistance when needed. Children's awareness of their rights empowers them to protect themselves from violence or any other violation of their rights. When they are aware of their rights, children could also provide support to their peers and support them through challenging situations. Families and communities could also play an important role in raising awareness when informed about children's rights and available mechanisms children have at their disposal<sup>23</sup>. Children should be provided with child-friendly, accessible, sensitive and age-appropriate information about their right to express their views and how this process will take place, its scope, purpose and potential impact, taking into account specific circumstances of the procedures (as different information should be provided to children in either criminal, civil or administrative proceedings). It is important to develop a wide range of means to maximise the outreach to children from diverse backgrounds and facing various circumstances. These can include information on websites and online counselling services and initiatives to raise awareness, such as human rights education, discussions and presentations in schools, organisation of court visits and moot courts.

### *Legal status/standing of children*

A common dilemma confronting countries seeking to implement child-friendly justice policies is how to manage the maturity and capacity of children and thus their ability to participate effectively in the justice system. This can be a dilemma because of the limited capacity of children at younger ages to have legal standing to initiate legal action or invoke administrative proceedings by themselves and in their own name, while at the same time jurisdictions will often confront challenges such as arguments for raising the minimum age of criminal responsibility (the age below which children are generally deemed not to have the capacity to form the necessary intent to commit a crime). In this regard, it would be important for countries to seek to establish clear and understandable policies and guidelines concerning the situations when a child can be granted standing to initiate legal actions on their own behalf, and those where the child may need to act through a representative. These policies should also guide decisions around the choice of representation, the role of parents and guardians, and the opportunities to listen to the voice and perspectives of the child. Beyond issues of formal standing, Article 12 of the CRC makes it clear that all efforts should be made to ensure that the child's views are expressed and considered. It would be important for countries to consider the mandating of publicly funded independent children's lawyer appointments for all matters concerning children where, while the child may not have traditionally been considered to be a formal party to proceedings, their rights and interests could be affected. This concerns for instance family law/divorce matters, care and protection/child removal matters, and other civil matters.



### *Involving children in law reform affecting them*

Involving children in law reform affecting them can help ensure that the reforms are responsive to their specific needs. Similar to other vulnerable groups, children and young people may benefit from the support of community service organisations and similar services, to participate in the law reform processes affecting them. As such there is scope to invest in appropriate support organisations and facilitate the processes to ensure that children and young people can participate in relevant law reform processes.

### *Dedicated and targeted support for services for children*

Dedicated and targeted support services for children are essential. Even older children will lack crucial experience and maturity in engaging with courts, tribunals, lawyers and other parts of the justice system. Therefore, free legal assistance and representation is essential for any child to have equality before the law. The dedicated and targeted support must be broader than simply legal support but should rather include all their other needs including health, housing and education.

### *Co-design of services*

In a similar manner to the co-design of services with other targeted communities, services that have been developed in conjunction with the young people for whom the services are intended are more likely to be effective and used. This will require the effective and ongoing engagement of children at different ages and circumstances, and the realistic supporting of them to actively participate in co-design processes which will ensure that services are more likely to be suitable and 'friendly' for children.

### *Supporting children through supporting families and other adult supports*

Children of all ages, but especially younger children, can access justice with the support of parents, family members and/or other adult supporters and service providers. Yet many of these potential supporters may themselves lack essential information and legal capability in relation to dealing with the legal system and resolving legal and justice problems. Therefore, another element in empowering children and young people is to support and empower the parents, family members, carers and other adult supporters who will be accompanying and supporting children in their justice pathway. In some situations, the role of parents and carers in relation to the children can be complicated. In cases of child abuse, parents or carers may be implicated as potential abusers, while in care and protection matters parents or carers may be at risk of losing their children as a result of alleged negligence or incapacity. However, in many more cases parents and carers are likely to be those people with the greatest knowledge of the child and their interests and will be their principal advocates. They need legal and other assistance necessary to empower themselves to effectively advocate for and assist the child or young person to achieve access to justice.

#### **Box 17. Child Victims and Witnesses Support Materials, United States**

The Office for Victims of Crime in the U.S. Department of Justice, based on the input of national experts and lived experience experts, created the *Child Victims and Witnesses Support Materials* to teach children about how the justice system works, what their rights are, the roles of the different practitioners they'll meet, and how they can cope with the difficult feelings they might have.

- For children, participating in the justice system as a victim or witness can be especially confusing, distressing, and even re-traumatising. Child Victims and Witnesses Support Materials was created to support children and youth during their involvement with the justice system as a victim or witness to a crime.

- Based on the input of national experts, these materials are intended to teach children about how the justice system works, what their rights are, the roles of the different practitioners they'll meet, and how they can cope with the difficult feelings they might have. For children who have to testify, there are also tips to help them prepare for going to court.
- These materials were specifically designed to appeal to children of different age groups (ages 2–6, ages 7–12, and ages 13–18).
- For each age group, there are materials about the criminal justice system and the child welfare system. The goal of these materials is to provide effective, trauma-informed, developmentally appropriate information and support to children in a way that they can more easily understand, so they can feel informed, supported, and empowered.

Source: (Department of Justice United States of America, n.d.<sup>[76]</sup>), Child Victims and Witnesses Support Materials, <https://ovc.ojp.gov/child-victims-and-witnesses-support>

### **3.2 Empowering justice system employees**

People working within the justice sector have a critical role in facilitating access to justice for those with legal and justice needs in a people-centred way. At the very core of justice institutions and services are the individuals who work to uphold and deliver justice, including judges, police, lawyers, administrators, social and community workers, those in information and communications technology, and other employees. Equally important, reception, administrative, community engagement and social support staff often play a crucial role as the first points of contact for everyday people engaging with this part of the justice system for the first or rare time. Enabling and empowering these individuals to participate in people-centred justice transformation and create a culture that is supportive of reform, service improvement and innovation is necessary if there is to be sustainable reform in the justice sector (OECD, 2017<sup>[77]</sup>).

This role should be the one that seeks to demystify and make understandable and accessible the part of the justice system that the potential client is seeking to utilise. These staff members can, through the quality of their engagement with the person seeking assistance, make the difference between an accessible and people-centred service, and one that is alienating and inaccessible to the potential client.

The importance of these roles when engaging with children in the justice system is particularly acute.

#### *Training of justice system employees*

The delivery of child-friendly legal services requires those services to be delivered by professionals and justice system employees that are trained and sufficiently expert in delivering child-friendly services to children. This will involve the appropriate selection and training as well as the ongoing coaching and mentoring of staff to ensure they become and remain 'child-friendly' professionals. Achieving this will involve sufficient funding across the whole justice system and in each relevant institution and organisation, to ensure that specialised child service professionals and workers are employed, supported and thus available to deliver the necessary services.

Professionals primarily responsible for engaging with children need to be capable of determining the best interests of the child in each case. Implicit in this is the capacity to engage and communicate with children and young people and to learn from their lived experience. All other professionals that come in contact with children must be competent in children's rights and on service delivery to children, for instance professionals working in NGOs, health system (doctors, nurses, dentists, pharmacists and other health professionals), teachers etc. Examples of models of training and equipping schools and staff are shown in Box 18.

### Box 18. Training and equipping workers: Ireland and the United Kingdom

#### Ireland

The Youth Justice Strategy 2021 – 2027 recently developed in Ireland covers several issues relevant to children in contact with the justice system. It aims to provide specific training for professionals involved in the criminal justice system to provide effective services, including development of multi-disciplinary training modules (Strategic Objective 1.9).

#### The Big Legal Lesson – Public Legal Education Initiative in England and Wales

This schools' campaign, led by the education charity Young Citizens, is the biggest public legal education event of its kind as it introduces the fundamentals of the Justice system in England and Wales. In 2021, more than 700 schools nationwide took part.

Young Citizens created the classroom resources in partnership with global law firm Allen and Overy, so teachers in primary and secondary schools could use age-appropriate content and activities for key stages 1-4 (pupils aged 5-16 years). The classroom resources look at the fundamentals of the rule of law, and the role of parliament, government and the justice system. It will be an 'entry-level' resource, suitable for those children and young people with the least understanding of the rule of law and justice.

Source: (Department of Justice, Ireland, 2021<sup>[78]</sup>; Young Citizens, n.d.<sup>[79]</sup>)

## Pillar 4: Planning, monitoring and accountability

This pillar focuses on establishing the key enablers needed to support and monitor implementation of a child-friendly justice system. It concerns evidence-based mechanisms to support the planning, delivery and monitoring of child-friendly justice services, including:

- 4.1 Evidence-based planning and measurement;
- 4.2 Data requirements and data governance; and
- 4.3 Accountability, measurement and oversight mechanisms.

### 4.1 Evidence-based planning and measurement

Legal and justice services, as any public services, will always face tight fiscal constraints. As such there are growing expectations for strengthening their efficiency and effectiveness and making the most of limited resources available. Efficient and effective targeting of scarce resources to best meet the legal and justice needs of children in ways most appropriate to them will best be achieved through application of sound evidence-based planning that (see Box 19):

- incorporates sound engagement with children and young people to jointly identify and measure their needs for services and assistance;
- seeks to collect and make optimum use of relevant data sources and analysis; and
- forms part of a collaborative planning environment where the services needed by children across a range of legal and human services can be co-ordinated, planned and delivered holistically.

### Box 19. OECD's planning model for legal and justice services

Building on decades of international research, the OECD proposed in 2019 a broader planning model for legal and justice services, which could be adapted to children and young people, focusing on the following key questions:

- What types of legal and justice problems are experienced by whom?
- Where and when are these needs experienced?
- What works in designing services that meet these needs?
- Where should services be delivered and how they should be evaluated?

Source: (OECD, 2019<sub>[80]</sub>)

## 4.2 Data requirements and data governance

Allocating limited resources in the most efficient way and making the most effective evidence-based decisions in the justice sector require good data. Moreover, better access to justice data can assist governments and justice systems in recognising new patterns and anticipating new vulnerabilities. Yet, legal sectors globally trail many other sectors, especially health, in access to good-quality data. Collecting and utilising more and better data (e.g., through open justice approaches) to support the most effective and affordable delivery of justice to the community is not only important for the most effective planning and delivery of services, but it can also assist governments to make progress in their global commitments, such as those in the SDGs.

The OECD Framework for People-centred Justice provides further guidance on the establishment of an appropriate 'data ecosystem' to support people-centred justice<sup>24</sup> reforms and decision-making, based around sourcing the data to answer the key questions necessary to plan and deliver people centred services:

- What are the legal and justice needs of the community?
- Where are these legal and justice needs located?
- How can legal capability be recognised and understood?
- "What works" to address legal and justice needs for different parts of the community, sustainably?
- How can legal services best be targeted where they are needed?
- What data are needed for monitoring, evaluating and planning?

Importantly this ecosystem model includes a range of different data sources and types targeted to answer these key questions. These data sources include legal need survey data, official data, administrative (service delivery) data as well as the robustly collected qualitative data coming from the targeted and ongoing engagement with priority groups – in this case, children. This 'data ecosystem' guidance applies to the support of child-friendly services within a people-centred justice environment, as it does to other vulnerable groups.

For many countries and justice systems establishing and developing robust data collection and analysis systems remains a key challenge, which is particularly acute in the case of children's experience with the justice system. The OECD's Trust Survey on young people's trust in the judiciary (OECD, 2020<sub>[81]</sub>) revealed, for example, that the systematic collection and use of age-disaggregated data remains a challenge for OECD countries in justice, as reported by 29% responding countries. Similarly, regarding youth policies, many OECD countries pursue a cross-sectoral approach to youth policy and their national youth strategies cover commitments for young people in a wide array of service areas including education (24 out of 25, 96%), health (23 out of 25, 92%) and sports (21 out of 25, 84%). However, fewer OECD countries focused on justice (7 out

of 25, 28%), where youth organisations also expressed lower levels of satisfaction. On a scale of 1 (very dissatisfied) to 5 (very satisfied), the average satisfaction score was 2.5 for justice services (OECD, 2020<sup>[81]</sup>).

There are also substantial efforts across countries to collect and report data in relation to children's unique legal problems, such as issues of removal of children from families in care proceedings, ages of children facing criminal procedures, the numbers of children in detention and the numbers of children in adult detention facilities are examples. These efforts can provide a foundation for more consistent data collection policies and practices across whole justice systems and the whole of government.

If sound data collection and management mechanisms are in place, data collected and managed with appropriate disaggregation can be analysed and used for evidence-based policy making and system reforms. For example, 'administrative' data covering the number of children in all judicial and administrative proceedings, their demographic profile and circumstances, the reasons for initiation of legal action and outcomes of the case could be obtained through sound and consistent data collection and reporting policies and practice involving data collected at least from: police, prosecution, courts, prisons/correctional institutions, mediation services/centres, social welfare/counselling, probation offices, legal aid/bar association, civil society organisations. This can then be matched to legal and justice need data to guide service delivery planning.

Governments that are informed by the evidence, and have good quality data for the right variables, will be well placed to determine whether they are meeting the requirements of delivering child-friendly justice. Improving data quality to assist in the delivery of child-friendly justice will likely involve increased emphasis on:

- identification of key variables needed to answer the key child-friendly justice questions;
- more consistent measurement and reporting of these variables; and
- the use of appropriate child-friendly justice indicators to help governments, justice systems and civil society monitor and evaluate system effectiveness, and to facilitate ongoing improvement.

Child-friendly justice would also benefit from sound and transparent governance of the data across the full justice chain. Therefore, it is important to guide access to and sharing of data across justice institutions and across different policy areas. Good data governance could assist governments and support agencies to prevent, anticipate and effectively respond to legal issues faced by people and businesses, while preserving privacy. It can also benefit a pool of public sector organisations that share common goals and that mandate, produce, need to access, and share or reuse common datasets (OECD, 2019<sup>[80]</sup>).

### **Box 20. Justice for children – Justice for all**

#### **Proposed actions for evidence and data collection for justice for children:**

- Establishing an evidence and data framework for monitoring the targeted child outcomes and the impact of policy on the evolution towards these outcomes. This enables tracking of progress and enhancing interventions towards the national vision for justice for children.
- Promoting the use of age-disaggregated evidence and data in already-established deliverables. Disaggregate these further by applying intersectional analyses that includes characteristics of children who are overrepresented in their contact with justice systems to better inform the focus for reform.
- Promoting awareness of the importance of reliable and ethically sourced evidence and data about children's experience of justice problems and tailored methodologies for obtaining these evidence and data.
- Supporting governments to improve the quality of reporting against SDG 16 indicators through Voluntary National Review Processes, including evidence and data disaggregated for under-18-year-olds (where available) alongside robust qualitative data from participatory and inclusive consultations with children"

Source : (Davidson et al., 2022<sup>[17]</sup>; OECD, 2023<sup>[74]</sup>)

### 4.3 Accountability, measurement and oversight mechanisms

All aspects of legal and justice service delivery, whether they are for all people or for child-friendly services in particular, should be accompanied by regular monitoring processes. This calls for developing and implementing evaluation, measurement and accountability mechanisms to collect data and regularly assess and report on progress. Effective implementation of these mechanisms also requires fostering a culture of monitoring, evaluation and learning among public officials by increasing their capacity and their incentives to continuously monitor and regularly conduct research and evaluation in collaboration with relevant stakeholders. This includes developing benchmarks and indicators and gathering credible and relevant data on the level of implementation, performance and overall effectiveness of the people-centricity of the justice system. In addition, there is a need to develop robust processes to monitor, evaluate and report on progress 1) towards and/or against child-friendly standards and 2) towards achieving key outcomes (individual and systemic).

In most cases, the effectiveness of legal advice, assistance or information needs to be measured through research programmes that start at the beginning of a user's justice journey, follow them throughout the different procedures, and finally follow up on the outcome and degree of satisfaction experienced.

In addition, effective child-friendly justice will require establishing mechanisms and institutions to actively provide oversight of child-friendly justice procedures and goals, and to support the implementation of child-friendly practices. These mechanisms may range from parliamentary committees, Ombudsmen offices, and internal audit institutions to non-governmental organisations, expert advisory committees, human rights mechanisms, citizen oversight of the police, and complaints mechanisms.

#### *Measuring child-friendliness of justice systems*

An important element of people-centred access to justice is the regular assessment of the people-centricity of justice systems. The same applies in relation to a child-friendly justice system: there should be regular assessments across an extensive range of variables to assess and monitor the adoption and maintenance of child-friendly strategies.

To this end, the following list of potential indicators could further guide the development of relevant indicators and measures can assist countries in monitoring their progress towards more child-centred justice processes and services (see Box 21). Following the pre-defined objective to monitor child-friendly justice, the list of potential indicators comprises general information on children and indicators targeting specific areas of justice service delivery for children, such as the legal and policy framework, the governance structures and resources needed for the implementation of these or the accessibility of justice services.

#### **Box 21. Potential indicators to monitor child-friendly justice**

##### **Potential indicators to monitor child-friendly justice**

The list below highlights several potential indicators that would assist countries to monitor ongoing progress towards child-friendly justice. These could be tailored and adapted to specific needs of the countries.

##### **Overall impact of child-focused policy, law and institutions**

- Age of criminal responsibility
- Number / rate(s) of children in detention (disaggregated by priority groups as appropriate)
- Number / rate(s) of children living in detention with their mother (disaggregated)
- Availability of separate detention facilities for children (i.e., children are not incarcerated with adults)
- Number / rate(s) of children in out-of-home care (disaggregated)

### **Established and maintained appropriate child-focused legal, policy and institutional frameworks**

- Ratification of the CRC and its three Optional Protocols, and other relevant agreements
- (Extent of) integration of the provisions of the CRC, protocols and relevant agreements into national domestic law
- Compliance of the national legal framework with international norms
- Existence of rights of children to adequate, effective and appropriate legal support and remedies in courts, tribunals and any other legal or quasi legal and administrative proceedings which are (a) adequately practically established and (b) adequately funded
- Existence of a national children's rights/child-friendly access to justice strategy and/or action plan
- Existence of legislation, policies and guidelines to provide for clear division of roles and responsibilities of all key professionals and co-ordination mechanisms (including judges, prosecutors, police officers, lawyers, social workers, support workers, service providers, staff in institutions, detention and other facilities, mediators, teachers, health, education professionals etc.)
- Existence of appropriate legal obligations, adequate resources and spaces for close multi-sectoral co-operation between different professionals and institutions with the aim to ensure protection and support to children
- Existence of legislated and implemented requirements for the appointment of Independent Children's Lawyers in (at least) family law, domestic violence, care and protection (removal) proceedings, and other relevant proceedings.

### **Legal status of the child**

- The right exists for children to initiate legal action on their own behalf, and be assisted/supported to do this, such as through a parent/guardian, or through a chosen legal representative is provided by law.
- Existence of legal obligation to respect the right of children to be heard in all judicial and administrative proceedings affecting them, either directly or through a representative or appropriate body.
- The right (and practical implementation of the right) to appropriate support for a child to ensure that they can truly exercise their right to be heard.
- The child is prepared for the proceeding and receives information about the option of expressing views directly or indirectly.
- Professionals who engage with, and, who interview and take statements from the child have completed a specialist training on communication with children.
- Whether independent child lawyers are appointed to represent children and to ensure their voices are heard.

### **Plain language legal information for child awareness**

- Children are informed of their rights in a child-friendly manner.
- Existence of education of children's rights in education system/local community.

### **Data collection and governance**

- Data on needs and experiences of children in contact with the justice system are collected.

- Data on the number of children participating in judicial and administrative proceedings, their profiles and the reasons for their participation and outcomes of their cases is as follows:
  - disaggregated (Data should be disaggregated to ensure that decisions can be informed by the data in relation to different age groups and in relation to priority and target groups of children.)
  - regularly collected
  - publicised
  - used in policy planning
  - protected through data privacy standards, clear accountability lines and oversight mechanisms

#### **Access to legal assistance services**

- State-funded free legal assistance is established and is resourced, available and offered to children as beneficiaries in all areas of the country.
- Lawyers working with children are specialised in children's rights, relevant national law and procedures, children's developmental stages and how to communicate with children.
- Free legal assistance is also available to families with children with legal needs, including in care and protection matters.
- Premises where children are heard provide safe and child-friendly settings, including:
  - a separate or modified room
  - designated and safe waiting areas
  - a separate entrance
- Equipment such as audio-video link, internet connection and recording technology is available and used properly and regularly.
- Existence of decentralised, community-based, multi-disciplinary information and services to help children and their families to learn about their rights, access information, and get referral to support services (e.g., psychosocial, medical).
- All judicial and administrative facilities are physically accessible for children with disabilities, including ramps and elevators.
- Existence of a trained support professional as contact person to inform and prepare children throughout the proceedings.
- Social and psychological support services are in place and accessible to all children participating in justice processes.
- Information is available in languages of national minorities, adapted for children, including using non-verbal and other alternative modes of communication.
- Physical barriers that prevent children with disabilities from accessing judicial and administrative bodies are identified and overcome.
- Children's cases are prioritised and dealt with expeditiously.
- Number of hearings for children is limited, and video recordings are admissible as evidence in both criminal and civil proceedings.

#### **Specialisation of professionals and staff working with children**

- Continuous, institutionalised, specialised, high quality, multi-disciplinary training exists for all professionals dealing with children in contact with judicial and administrative bodies.



- Specialised training exists for professionals working in NGOs dealing with children, health and education systems.
- Guidelines for determination of children's best interests are available to all proceedings.
- Specialist training and accreditation is mandated for independent child lawyers.
- Child satisfaction surveys and engagement: the voice of children.
- Are programs in place to ensure that children engaging in the justice system are systematically and independently surveyed/interviewed to assess their understanding of / satisfaction with the justice processes confronted.
- The proportion of children interviewed / surveyed.
- Measure 'scores' for variables such as: 'understanding of process', 'whether they felt supported or not', 'satisfaction with the process', and 'satisfaction with the outcome'.

### **Resourcing**

- Availability of specific and recognised budget lines for (a) free legal assistance in relevant matters, (b) specialisation training and development for professionals, (c) promotional campaigns, (d) co-ordination (e) preventive and response interventions and programmes, (f) data and monitoring, (g) alternative mediation mechanisms in the national budget.

Note: It is important to note that some of the potential indicators listed above would need to be considered on an institution-by-institution basis, and in federal jurisdictions, probably on a state-by-state basis. Performance is likely to vary across various institutions and processes within a jurisdiction, and so there will likely be separate sub-indicators required to make up a national indicator.

Source: Author's own elaboration.

# Annex A: OECD criteria for people-centred design and delivery of legal justice services

<b>Evidence-based planning</b>	People-centred legal and justice services are based on and respond to an empirical understanding of legal and justice needs and legal capabilities of those who require or seek assistance.
<b>Equality and inclusion</b>	People-centred legal and justice services are inclusive and targeted at those most in need. They are responsive to the specific access needs of particular groups likely to suffer from social and economic disadvantage or that are otherwise marginalised or vulnerable, and those with complex needs. They are designed to contribute to equality, poverty reduction and social inclusion.
<b>Accessibility</b>	People-centred legal and justice services are accessible and designed to actively overcome the range of barriers to the assistance people require.
<b>Availability</b>	People-centred legal and justice services are available across the justice chain and are provided in a range of formats, programmes and service types.
<b>Prevention, proactivity and timeliness</b>	People-centred legal and justice services are proactive and contribute to preventing legal issues and to the timely resolution of problems. Recurring legal issues are addressed on a systemic basis to address underlying causes, thereby reducing reoffending rates.
<b>Appropriateness and responsiveness</b>	People-centred legal and justice services are appropriate and responsive to the individual, the issues they face and their situation. They are tailored, proportionate, efficient and flexible to accommodate local circumstances.

<b>Empowerment</b>	People-centred legal and justice services empower people’s meaningful participation in the justice system and build people’s legal capabilities.
<b>Collaboration and integration</b>	People-centred legal and justice services are part of a coherent system that provides seamless referrals and integrated services through collaboration among legal, justice and other human service providers. People obtain access to all the services they need to solve the legal and related non-legal aspects of their problems holistically, regardless of the entry point for assistance.
<b>Outcome-focus and fairness</b>	People-centred legal and justice services contribute to fair process and fair outcomes and to better and more sustainable procedural, substantive and systemic outcomes – including increased trust and confidence in the justice system and better performance of that system – and to the attainment of societal objectives such as social inclusion.
<b>Effectiveness</b>	People-centred legal and justice services are effective and continually improved through evaluation, evidence-based learning and the development and sharing of best practices.

# Annex B: Justice for Children

## Call to Action

The *Justice for Children Call to Action* (Davidson et al., 2022<sup>[17]</sup>) highlights that specific needs, rights and capacities of children differentiate them from adults and consequently identifies specific challenges that children face and should be tackled to ensure that children are not left behind. These challenges are as follows:

1. Guarantee the wellbeing and inclusion of all children through preventive measures, progressive policies, multi-sectoral co-operation, as well as investment in family, education, health care and community-based services and interventions;
2. Promote child-friendly, gender-sensitive and rights-based justice systems that guarantee equal access, protection and support to children;
3. Prevent unnecessary contact with the justice system and the criminalisation of children through legislative reform, promotion of alternatives to detention and non-custodial measures, diversions and restorative justice approach;
4. Ensure the right to a legal identity for all children that is a pre-condition to exercise all other rights and access legal mechanisms and basic services;
5. Prevent all forms of violence against children through establishing legislative and policy framework ensuring that children have equal protection from violence, including a comprehensive ban of all forms of violence in all settings;
6. Safeguard the rights of children who have been recruited, used by or associated with armed, violent extremism and other criminal groups or who have been accused of national security-related offences through ending over-criminalisation of children and focusing on preventive programmes and interventions, as well as protection, reintegration and rehabilitation measures;
7. Eliminate arbitrary and unlawful detention and ensure that deprivation of liberty is used only as a measure of last resort, in exceptional circumstances and for the shortest period;
8. Promote and ensure the empowerment and meaningful participation of children in all decision-making that affects their lives when in contact with prevention and justice systems;
9. Secure sustained political commitment to accelerate the achievement of high-quality justice for children;
10. Ensure responses are based on international standards and evidence-based policies that enable measuring success and outcomes of justice for children.

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## Notes

<sup>1</sup> **Individual factors** contributing to child vulnerability stem from cognitive, emotional and physical capabilities or personal circumstances, for instance age, disability, a child's own disposition or mental health difficulties. They can be invariable, such as belonging to an ethnic minority or having an immigrant background, or situational, such as experiencing maltreatment, being an unaccompanied minor or placed in out-of-home care. **Environmental factors** contributing to child vulnerability operate at both family and community levels. Family factors include income poverty and material deprivation, parents' health and health behaviours, parents' education level, family stress and exposure

to intimate partner violence. Community factors are associated with school and neighbourhood environments. Environmental factors illustrate the inter-generational aspect of child vulnerability and the concentration of vulnerable children within certain families and communities.

<sup>2</sup> Para 120, Committee on the Rights of the Child, General comment No 25 on children's rights in relation to the digital environment

<sup>3</sup> In this framework, the term "children and young people" refers to children under age 18 as per the United Nations Convention of the Rights. A reference to "young people" has been included regarding the fact that many OECD countries define young people from the age of 15 (OECD, 2022<sup>[57]</sup>).

<sup>4</sup> The Justice for Children Project was commissioned by Pathfinders for Peaceful, Just and Inclusive Societies, with the Task Force on Justice, led by CELCIS, and developed with the Office of the Special Representative of the Secretary General on Violence against Children, and the Child Justice Advocacy Group, coordinated by Terre des hommes and Defence for Children International (Davidson et al., 2022<sup>[17]</sup>).

<sup>5</sup> For example, in NSW, Australia, led by the Bureau of Crime Statistics and Research (BOCSAR), sound criminal data collection, standardisation and analysis practices have been in place for several decades. <https://www.bocsar.nsw.gov.au/>

<sup>6</sup> Persons aged 15 to 19 years are more likely to be processed by police for the commission of a crime than are members of any other population group. In 2007–08, the offending rate for persons aged 15 to 19 years was four times the rate for offenders aged more than 19 years (6,387 and 1,818 per 100,000 respectively. (Richards, 2011<sup>[6]</sup>).

<sup>7</sup> (UN General Assembly, 1989<sup>[61]</sup>), CRC Article 40 1.

<sup>8</sup> These can range from six years of age for certain criminal matters in some US states, to up to 16 such as in Portugal, Argentina and Cape Verde. Across the OECD countries responding to the OECD Youth Governance Surveys, the average age of criminal responsibility is 14.5 years (OECD, 2020<sup>[81]</sup>).

<sup>9</sup> Directive (EU) 2016/800 of the European Parliament and the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, art. 35

<sup>10</sup> Directive (EU) 2016/800 of the European Parliament and the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, art. 35

<sup>11</sup> Explained further in the OECD Framework and Good Practice Principles for People-Centred Justice, (OECD, 2021<sup>[20]</sup>).

<sup>12</sup> Adopted on 26 September 1924, Geneva Declaration of the Rights of the Child, UN Documents, <http://www.un-documents.net/gdrc1924.htm> (accessed 4 June 2023).

<sup>13</sup> Office of the United Nations Commissioner for Human Rights, Legislative History of the Convention on the rights of the child, New York and Geneva, 2007, <https://www.ohchr.org/sites/default/files/Documents/Publications/LegislativeHistorycrc1en.pdf> (accessed 3 June 2023).

<sup>14</sup> (UN General Assembly, 1989<sup>[61]</sup>), Article 6 CRC.

<sup>15</sup> (UN General Assembly, 1989<sup>[61]</sup>), Article 2 CRC; Article 37 (a) CRC; Article 39 CRC; Article 7.1 Convention on the Rights of Persons with Disabilities; Article 23.3 Convention on the Rights of Persons with Disabilities; Guideline 31 of the International Principles and Guidelines on Access to Justice for Persons with Disabilities, 2020; Article 22.2 United Nations Declaration on the Rights of Indigenous Peoples, 2007; Paragraph 23 of the Committee on The Rights of the Child, General Comment No. 11, Indigenous children and their rights under the Convention, 2009.

<sup>16</sup> (UN General Assembly, 1989<sup>[61]</sup>), Article 3.1 CRC; Article 9.1 CRC ; Article 37 (c) CRC; Article 37 (c) ; Article 8.3 Optional Protocol to the CRC on the sale of children, child prostitution and child pornography; Article 7.2 Convention

on the Rights of Persons with Disabilities; Paragraph 75 Committee on The Rights of the Child, General Comment No. 11, Indigenous children and their rights under the Convention, 2009; Principle 11 of the Principles and Guidelines on access to legal aid in criminal justice systems (2012).

<sup>17</sup> (UN General Assembly, 1989<sub>[61]</sub>), Article 3.2 CRC; Article 8 CRC; Article 16 CRC; Article 37 (c) CRC ; Article 39 CRC ; Article 40 CRC ; Article 37 (c) CRC ; Article 40.1 CRC ; Article 40.4 CRC; Paragraph 41 Committee on The Rights of the Child, General comment No. 21 on children in street situations, 2017.

<sup>18</sup> (UN General Assembly, 1989<sub>[61]</sub>), Article 9.2 CRC; Article 12 CRC; Article 8.1 (c) Optional Protocol to the CRC on the sale of children, child prostitution and child pornography; Article 5 Third Optional Protocol to the CRC on communications procedure; Article 4(3) Convention on the Rights of Persons with Disabilities; Article 7.3 Convention on the Rights of Persons with Disabilities; Guideline 32 (c) International Principles and Guidelines on Access to Justice for Persons with Disabilities, 2020; Paragraph 120 Committee on The Rights of the Child, General comment No. 25 on children's rights in relation to the digital environment, 2021; General comment No. 12 on children's right to be heard (2009).

<sup>19</sup> (UN General Assembly, 1989<sub>[61]</sub>), Article 8 UDHR; Article 2.3 International Covenant on Civil and Political Rights; Article 37 (b) CRC; Article 37 (d) CRC; Article 40.2 CRC; Article 8.1 (d) Optional Protocol to the CRC on the sale of children, child prostitution and child pornography; Article 7.3 Convention on the Rights of Persons with Disabilities; Principle 3.3, 10 and 11 of the Principles and Guidelines on access to legal aid in criminal justice systems (2012); Paragraph 23 Committee on The Rights of the Child, General Comment No. 11, Indigenous children and their rights under the Convention, 2009; Paragraph 77 Committee on The Rights of the Child, General Comment No. 11, Indigenous children and their rights under the Convention, 2009; Paragraph 44 Committee on The Rights of the Child, General comment No. 25 on children's rights in relation to the digital environment, 2021; Paragraph 22 Committee on The Rights of the Child, General comment No. 21 on children in street situations, 2017.

<sup>20</sup> (UN General Assembly, 1989<sub>[61]</sub>), Article 37 (c) CRC; Article 40.1 CRC ; Article 40.3 CRC ; Article 8.1 (a) Optional Protocol to the CRC on the sale of children, child prostitution and child pornography; Paragraph 20 Committee on the Rights of the Child General comment No.24 on children's rights in the child justice system, 2019; Paragraph 28 Committee on the Rights of the Child General comment No.24 on children's rights in the child justice system, 2019; Principle 3 International Principles and Guidelines on Access to Justice for Persons with Disabilities, 2020; Guideline 4 (e) of the Principles and Guidelines on access to legal aid in criminal justice systems (2012).

<sup>21</sup> (UN General Assembly, 1989<sub>[61]</sub>), Article 40.3 (b) CRC; Paragraph 13 Committee on the Rights of the Child General comment No.24 on children's rights in the child justice system, 2019; Paragraph 117 Committee on The Rights of the Child, General comment No. 25 on children's rights in relation to the digital environment, 2021; Paragraph 16 General comment No. 24 on children's rights in the child justice system (2019).

<sup>22</sup> (United Nations, 2003<sub>[62]</sub>), CRC Committee, CRC/GC/2003/5, 2003: paras. 24 and 25

<sup>23</sup> (OHCHR, 2009<sub>[45]</sub>), General Comment N° 12, para. 134 (b), CRC Committee

<sup>24</sup> See Box 2.20, OECD Framework and Good Practice Principles for People-Centred Justice, (OECD, 2021<sub>[20]</sub>).