



# TWELVE

Children's right to participation  
and the juvenile justice system

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THEORY & PRACTICES FOR IMPLEMENTATION

The cloud in the cover has been composed with some of the many keywords shared by children and professionals involved in the TWELVE consultations and training sessions.

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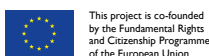
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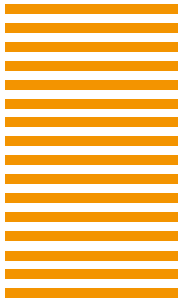
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# TWELVE

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and the juvenile justice system



## THEORY AND PRACTICES FOR IMPLEMENTATION



DEFENCE FOR CHILDREN  
*International-Italia*



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# FOREWORD

**Prof. Kirsten Sandberg**

Rapporteur UN Committee  
on the Rights of the Child

Any person who comes into conflict with the law is entitled to procedural guarantees under the rule of law, including the right to state his or her view on the matter in question, on whether he or she is guilty and on the possible sanctions imposed. It should be self-evident that children are entitled to the same. However, the case for children's participation in this context is even stronger. Under article 12 of the CRC children have the right to express their views on all matters affecting them. The issue of what is going to happen to a child in the justice system is something affecting him or her strongly. This is true for every step in the process, from the child's meeting with the police, through issues of police detention and pretrial custody as well as prosecution and court hearings, to the kind of reaction that might be imposed. The alternative route through diversion from the criminal justice system, which is strongly recommended by the UN Committee on the Rights of the Child, needs involvement of the child himself all the more as it requires that the child agrees.

I use the word 'child' here, knowing very well that a young person of 16 or 17 years would not call himself a child. The reason to use that term is that children are protected by the Convention on the Rights of the Child all the way up to the age of 18, meaning that there should be a specialised juvenile justice system dealing with them until that age. All actors need to be well-trained, be it police, prosecutors, lawyers, judges, court social workers or other staff. Training must include how to make children participate in a meaningful way. The reasons for children's participation in this respect are manifold. Decisions in the justice system may have strong consequences for them. A finding of guilt may be damaging for their future prospects. Deprivation of liberty, whether before or after trial, has great harmful effects on a child and should only be used as a very last resort. The best interests of the child are to be the guiding principle for all decisions in the justice system, and the child's own views are essential in determining what is in his or her interests.

Moreover, children who come into conflict with the law often have a difficult background with little control over their own lives. It is necessary to give them the feeling that they can influence what happens to them, thereby improving their chances of managing their lives afterwards. This can only happen by involving them throughout the process. Based on General Comment No. 12 by the Committee on the Rights of the Child, this handbook gives practical guidance on how to ensure an effective and meaningful participation of children within the juvenile justice system. Through the use of concrete examples and lessons learnt it fulfills a much felt need, and I hope it will be actively used by all actors.

# ACKNOWLEDGEMENTS

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This publication aims to reflect the rich and valuable advice, orientations and recommendations shared by professionals and children in the context of the project activities.

# INTRODUCTION

The Handbook TWELVE aims to promote meaningful child participation in the context of the juvenile penal justice system. It was developed within the framework of the project ‘TWELVE’ – Promoting the Implementation of Article 12 of the UN Convention on the Rights of the Child in the Juvenile Justice System.<sup>1</sup> The Handbook is a result of collective reflections and shared experiences in EU Member States involving professionals and officials working in the juvenile justice context as well as adolescents in penal justice institutions.

Since the adoption of the UN Convention on the Rights of the Child in 1989, the concept of ‘participation’ has gradually gained in importance. In recent years, reference to the participation of children has become increasingly prominent in the national and European debates, including in legislation, official reports and political agendas on children and young people.<sup>2</sup>

Despite this important progress, the participation of children and youth within the realm of the justice system has not yet been analysed in a comprehensive way. In 2011, the European Commission adopted the EU Agenda for the Rights of the Child, which promotes, among others, actions to support “the training of judges and other professionals in order to foster optimal participation of children in judicial systems”.<sup>3</sup> Thus far, specific guidelines in this area focus mostly on the situation of child victims and witnesses of crime and their participation in criminal investigations and proceedings, as well as the hearing of children in civil law matters such as family conflicts.<sup>4</sup> Matters concerning the participation of adolescents serving a custodial or non-custodial sentence have not been addressed to the same extent.

The Handbook ‘TWELVE - Children’s right to participation and the juvenile justice system’ aims to address this gap. It provides an overview of relevant international standards and explores ideas and good practice examples to promote the participation of children within the juvenile penal justice system.

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<sup>1</sup> For more information on the project TWELVE, please see the project website: <http://www.defenceforchildren.it/projects/118-twelve-promoting-the-implementation-of-article-12-of-the-crc-in-the-juvenile-justice-system.html>

<sup>2</sup> See for instance: Council of Europe, *Have your say! Manual on the revised European Charter on the Participation of Young People in Local and Regional Life*, Council of Europe Publishing, 2008, available at [http://www.coe.int/t/dg4/youth/Source/Resources/Publications/Have\\_your\\_say\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/Resources/Publications/Have_your_say_en.pdf) [accessed on 17.02.2016].

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An EU Agenda for the Rights of the Child, /\* COM/2011/0060 final \*/*, [http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm) [accessed on 12.02.2016].

<sup>4</sup> O’ Donnell D., *The right of children to be heard: Children’s right to have their views taken into account and to participate in legal and administrative proceedings*, Unicef Innocenti Research Centre, 2009, available at [http://www.unicef-irc.org/publications/pdf/iwp\\_2009\\_04.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2009_04.pdf), [accessed on 17.02.2016]



The Handbook introduces the concept of child participation on the basis of the UN Convention on the Rights of the Child and other relevant international standards. It discusses the main rights and articles that together constitute the ‘participatory rights’ of children. The Handbook promotes an understanding of participation as an essential element of a child rights-based approach within the juvenile penal justice system.

The participation of children in the penal justice context is of fundamental importance for children who are serving a custodial or non-custodial sentence. It is equally important for the process of rehabilitation and social inclusion, an underlying aim of all measures in the juvenile justice system.



## CHILD PARTICIPATION

The concept of ‘child participation’ derives from international standards, in particular the UN Convention on the Rights of the Child. **Article 12** of the Convention provides for the right of the child to be heard and to have his or her views taken into account.

The Article constitutes the key to the ‘participatory rights’ of children. It states:

- 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.**
- 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.**

The right of the child to be heard is one of the four **guiding principles** of the UN Convention on the Rights of the Child and informs the interpretation and implementation of all the other rights of the Convention.

Children's right to participate must therefore be considered in all matters concerning children.<sup>5</sup>

### BOX N° 1

<sup>5</sup> Unicef, Fact sheet on the right of participation, available at [http://www.unicef.org/crc/index\\_30228.html](http://www.unicef.org/crc/index_30228.html) [accessed on 17.02.2016]



## THE PROJECT TWELVE AND ITS PARTICIPATORY METHODOLOGY

*The project TWELVE was implemented between October 2014 and March 2016 by a partnership of non-governmental organizations in six European countries. Each partner rolled out the project activities in its country and contributed to the development of the Handbook: Defence for Children International (DCI) – Italy as the project coordinator, DCI Belgium, the Pulse Foundation Bulgaria, the University of Tartu in Estonia, ARSIS Greece and DCI Spain.*

*In a first step, needs assessments were carried out in Belgium, Italy and Spain. The assessments analysed national laws and policies regulating the juvenile penal justice system and their compliance with relevant child rights standards. The assessments were informed by consultations with children serving custodial or non-custodial sentences and focus group discussions with professionals, officials and volunteers involved in the juvenile penal justice system. The consultations aimed to gather the voices, perspectives and daily experience of professionals, officials, volunteers and children in the juvenile penal justice context. The results were compiled in national reports and informed the development of a multi-disciplinary training tool for promoting the participation of children in the juvenile penal justice system. The training tool was piloted in all six countries that participated in the project. In total, 30 training seminars were held, involving over 400 professionals and officials. The participants shared their experience and knowledge, which in turn informed the finalisation of the training tool and the Handbook.*

*The project's consultative methodology enabled a fruitful dialogue between different sectors and a comparison between the theory and practice of child participation in the juvenile penal justice system. The objective was to generate knowledge together, giving value to each experience and expertise. The key questions that guided the consultative process aimed to understand how the juvenile penal justice system can be informed by the spirit of the UN Convention on the Rights of the Child, how participation works in practice and how it can be guaranteed and made more effective.*

*The development of the Handbook TWELVE has thus been informed by a multi-step consultative process, national mapping studies and needs assessments as well as a broader literature review. The Handbook presents and discusses the main reflections, observations and recommendations that emerged from this process.<sup>6</sup>*

### BOX N°2

<sup>6</sup> In Belgium, 8 children participated in the consultations, 27 in Italy and 6 in Spain. Five training seminars were conducted in each of the six countries, i.e. including Bulgaria, Estonia and Greece. One of the main constraints encountered during the development of the project was that access to juvenile detention centres was in some cases denied by the competent authorities. In addition, professionals, officials and volunteers who participated in the project activities and informed the development of the Handbook do not constitute a representative sample. The Handbook does not attempt to present universally applicable results, but aims to provide a framework for practice, encourage its application and to promote further research in this field. Further information and materials of the project 'TWELVE', including national reports and the training tool are available at: <http://www.defenceforchildren.it/projects/118-twelve-promoting-the-implementation-of-article-12-of-the-crc-in-the-juvenile-justice-system.html>.

# HOW TO USE THIS HANDBOOK

## OBJECTIVES

The TWELVE Handbook pursues several objectives. The overall objective is to offer inspiration and guidance on how to make the participation of children in the juvenile penal justice system more effective and meaningful. In particular, the Handbook aims to:

- >> Contribute to the development of a common understanding of what child participation in the juvenile penal justice system can look like;
- >> Raise awareness of opportunities, enabling factors and resources for promoting the participation of children in the penal justice context;
- >> Sensitise professionals and officials to the benefits of child participation in the juvenile penal justice system and the important potential it holds for promoting sustainable rehabilitation and social inclusion;
- >> Identify challenges and obstacles to participation as well as ways to address and overcome them;
- >> Propose concrete measures and practical instruments to promote the participation of children serving a custodial or non-custodial sentence;
- >> Contribute to the harmonisation of the capacities and skills of professionals and officials working with and for children in the juvenile penal justice system throughout the European Union;
- >> Promote a practice of participation that is in line with international and European standards.

## STRUCTURE

The Handbook is composed of three main sections:

- >> **THE “WHAT”:** WHAT DOES PARTICIPATION MEAN IN PRACTICE AND WHAT IS THE ROLE OF PARTICIPATION IN THE JUVENILE PENAL JUSTICE SYSTEM?

For the discussion of the concept of participation in this Handbook, it is important to clarify which types and forms of participation are being addressed and how participation

can be defined. This was also one of the most frequent questions posed by the professionals and officials who were consulted for this project. This first section of the Handbook is dedicated to an analysis of Article 12 of the UN Convention on the Rights of the Child, which provides for the right of the child to be heard and to have his or her views taken into account. The section explores how this right relates to other articles of the Convention. Discussing Article 12 in the context of the holistic approach of the Convention, helps to enrich the understanding of participation as a child rights principle.<sup>7</sup>

## >> THE “**WHY**”: WHY IS IT IMPORTANT TO PROMOTE PARTICIPATION WITHIN THE JUVENILE PENAL JUSTICE SYSTEM?

This section explores the relevance of participation in the juvenile penal justice system. To this end, it presents, discusses and challenges misconceptions, prejudices and doubts that were raised in the consultations with professionals and officials who participated in the activities of TWELVE.

Within this section, particular attention is also devoted to the opportunities that meaningful participation can offer for the rehabilitation and social inclusion of children serving a custodial or non-custodial sentence. During the discussions with professionals and officials, the concept of participation revealed itself as a useful key to identify and address inconsistencies between the child-centred approach promoted by the UN Convention on the Rights of the Child and the day-to-day practice in the juvenile penal justice system.

Reflections about the principle of participation and what it means in practice, opened up previously unexplored strategies for the promotion of children’s rights, capacities and agency.<sup>8</sup> Participants in the TWELVE consultations were increasingly inclined to recognize the benefits and potentials of participation for rehabilitation.<sup>9</sup>

## >> THE “**HOW**”: HOW IS IT POSSIBLE TO IMPLEMENT THE PRINCIPLE OF PARTICIPATION WITHIN THE JUVENILE PENAL JUSTICE SYSTEM?

This section discusses common challenges, risks and obstacles to participation in the juvenile penal justice system alongside practical suggestions on how they can be mitigated or overcome. It is informed by a literature review as well as the critical reflections and recommendations that children, professionals and officials shared in the TWELVE consultations. Examples from practice through the needs assessments conducted in Belgium, Italy and Spain can be found in the TWELVE national reports.<sup>10</sup>

<sup>7</sup> This way of proceeding was inspired by the UN Committee on the Right of the Child, General Comment No. 12 The right of the child to be heard, CRC/C/GC/12, United Nations, 2009, p. 6. For an insight see Hodgkin R. and Newell P., Unicef, Implementation Handbook for the Convention on the Rights of the Child, Unicef, 2007, available at [http://www.unicef.org/publications/index\\_43110.html](http://www.unicef.org/publications/index_43110.html), [accessed on 17.02.2016].

<sup>8</sup> Here the reference goes to the “capability approach”. For an insight on this theory see A. Sen, Human rights and capabilities, *Journal of Human Development*, 6(2): 151–166, 2005; and M. Nussbaum, *Creating Capabilities The Human Development Approach*, 2011

<sup>9</sup> See *Defensa de Niñas y Niños – Internacional, DNI Costa Rica Las teorías o ideologías RE, Proyecto Regional Justicia Penal Juvenil*, 2012.

<sup>10</sup> The TWELVE national reports are available at: <http://www.defenceforchildren.it/risorse/publicazioni/134-twelve-rapporti-nazionali.html>

In its General Comment No. 12 on the right of the child to be heard, the UN Committee on the Rights of the Child defined some fundamental elements and requirements to achieve effective and meaningful child participation. These key elements provide the structure for the discussion of the challenges, recommendations and good practice examples in this final section.<sup>11</sup>

## TARGET GROUP

This Handbook is mainly targeted at key actors in the juvenile penal justice system, such as social workers, educators, directors of juvenile detention centres and facilities for alternative measures, penitentiary police officers, lawyers, judges, volunteers as well as civil society members. The delicate task of promoting the participation of children and youth, including children in conflict with the law, involves not only professionals and officials working with and for them, but essentially all community members:



*“...the education of young perpetrators comes at a second stage: what primarily counts is the capacity of the social community to find adequate responses for all.”<sup>12</sup>*

JUDGE  
TURIN JUVENILE COURT  
ITALY

This statement expresses an important precondition for participation, namely the responsibility of the social context to create an environment that enables children and youth to “be part” or to “take part”. For the juvenile penal justice system, this means that all the relevant actors have a fundamental role and responsibility to promote the participation of children, including with a view to support their rehabilitation and social inclusion.

The following professionals, officials and volunteers play a key role in promoting and enabling the participation of children in the juvenile penal justice context:

### >> JUDGES AND LAWYERS

should provide children in conflict with the law with all the legal information related to their situations, including legal reasoning, explaining and communicating the process and outcome of every judicial or administrative proceeding in course.

<sup>11</sup> Committee on the Rights of the Child, General Comment No.12 The right of the child to be heard, CRC/C/GC/12, United Nations, 2009, par. 19-39.

<sup>12</sup> L. Pepino, Dalla retribuzione alla riparazione, in *Dov'è l'uscita? le trasgressioni dei giovani: attori, vittime, sicurezza urbana: le politiche della città dentro e fuori il carcere minorile*, Atti del Convegno organizzato dalla città di Torino l'11-12-13 dicembre 1997, Neos edizioni, Torino 2001.

## >> EDUCATORS

are mainly responsible to understand and respond to the specific needs and interests of each child serving a custodial or non-custodial sentence, given their proximity and daily contact with them. Educators are trained to understand the individual background of a child and to ensure that the individual care plan is developed accordingly. Educators are closely and daily involved with the children, assessing and monitoring the child's needs and progress in terms of rehabilitation and social inclusion.

## >> PSYCHOLOGISTS, PSYCHIATRICALS AND DOCTORS

need to be present and accessible within juvenile detention centres or facilities for alternative measures. They provide support in critical situations of the child's life, including medical services, mental health care and psycho-social counselling.

## >> TEACHERS

create spaces for education, which can provide continuity to the child's experiences before and after serving a sentence. In education, children can genuinely express themselves, actively develop their knowledge, capacities and skills and plan projects for their future.

## >> CULTURAL MEDIATORS

play a fundamental bridging role between children who are non-nationals, have a migration or minority background, and the professionals within detention centres and facilities for alternative measures. The cultural mediator is more than an interpreter. He or she facilitates communication, offers the necessary interpretative key for understanding the culture or religion of a child. They help sensitize professionals to the specific needs of non-national children or children with a migration or minority background, and help children to understand the various judicial procedures and the internal rules of facilities for alternative measures and detention centres.

## >> DIRECTORS

of detention centres and facilities for alternative measures have a management, coordination and supervision role. They are well-placed to guarantee the harmonization of practices and coordinate the services and roles of all professionals working within the facilities. They are accountable for the respect of international and national standards regulating the juvenile penal justice sector and relevant safeguards for children serving a sentence. They should ensure multi-disciplinary cooperation as well as the involvement of the local community where the detention centre or the residential care facility is located, stimulating occasions of encounter between the children serving a sentence and the surrounding community, with a rehabilitation and (re-)integration perspective.

## >> PENITENTIARY POLICE OFFICERS

in juvenile detention centres, have a fundamental role, as they are often in close daily contact with the children. They have to balance their responsibility for security with the respect for the human rights and needs of the children, including the rights of the children to be heard and to develop their evolving capacities.

## >> SOCIAL WORKERS

can mobilise support services for the children serving custodial or non-custodial sentences, during and after the custodial or alternative measure. Social workers have an important role to involve the child's social context: family, friends, peers and associations that can offer important resources to support the child's rehabilitation and social inclusion. Social workers are also responsible for making risk assessments to protect children serving a sentence from harmful contacts, including with family members, peers or community members who are abusive or constitute a risk to lead the child into new illegal or criminal activities again after the detention/alternative measure sentence is served. In cooperation with the educator and other relevant professionals, social workers play an important role in developing the individual care plan in close consultation with the child and her or his family and social networks.

## >> THE COMMUNITY

in the place where the detention centre or facility for alternative measures is located has an important role for promoting the participation of the children serving a sentence. This could be achieved through programmes and initiatives that permit and encourage the collaboration of the juvenile penal justice context with external associations, NGOs and volunteers, accurately prepared and screened. They can play an important role to increase and diversify activities offered. In addition, contacts with community members, for instance through peer-to-peer education or other positive points of reference, can enhance the possibilities for successful rehabilitation and social inclusion.

It is important to guarantee **training and multi-disciplinary cooperation** of all the actors that work with and for children in the juvenile penal justice system. This requires clear procedures for cooperation as well as mandatory and regular training. Cooperation is essential for planning and implementing initiatives and activities to enhance the collective or individual participation of children serving a custodial or non-custodial sentence. It is equally important for individual case management and planning. When different professionals and officials hold joint case management meetings, they need to share information with due respect to matters of confidentiality and data protection.

# 1. ARTICLE 12: THE RIGHT OF THE CHILD TO BE HEARD

The right of the child to have her or his views heard and taken into account, as afforded under Article 12 of the UN Convention on the Rights of the Child (hereafter also the 'Convention' or CRC), has a powerful and fundamental significance that goes beyond the legal prescription in itself. As one of the general child rights principles, Article 12 can be taken as an entry point to the holistic and empowering approach promoted by the Convention: the recognition of children as rights holders. The Convention does not define or mention the 'right to participation' as such. However, Article 12 and other related articles of the Convention, are together interpreted as the 'participatory rights of children' as they mutually inform an understanding of children's agency as active members of society.

In order to understand the far-reaching meaning and implications of Article 12, it is useful to look at the entire system of human rights proclaimed by the Convention, which are all inter-related and indivisible, and create thus a close net of standards for the holistic promotion and protection of children's rights.<sup>13</sup> The Committee on the Rights of the Child underlines in its General Comment No. 12 on the right of the child to be heard, that the right to participation affects the enjoyment of all the other rights of the Convention and that these rights cannot be implemented without taking into consideration the child's views and opinions.<sup>14</sup> When listening to children in order to assess and understand their views, it is essential to pay attention also to the feelings, ideas and aspirations of the child and to understand his/her situation and unique story. Multi-disciplinary approaches are well-placed to take into account all the relevant aspects of a child's situation in a holistic way, such as the legal, psychological, social and physical aspects. This section provides an overview of the articles of the Convention that are primarily relevant for the participatory rights of children (see Figure 1 and the overview presented in the Annex 2). It discusses how they relate to each other and to Article 12 specifically. As a general principle, the right of the child to have his or her views heard and taken into account is closely intertwined with the other general principles of the Convention: the right to non-discrimination (Article 2); the best interests of the child as a primary consideration (Article 3); and the right to life, survival and development (Article 6).<sup>15</sup> These articles are cross-cutting and signifi-

<sup>13</sup> R. Steward, Child participation and independent human rights institutions for children in Europe, Unicef Innocenti Research Centre, 2009, available at [http://www.unicef-irc.org/publications/pdf/iwp\\_2009\\_23.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2009_23.pdf), [accessed on 17.02.2016]

<sup>14</sup> R. Steward, Child participation and independent human rights institutions for children in Europe, Unicef Innocenti Research Centre, 2009, available at [http://www.unicef-irc.org/publications/pdf/iwp\\_2009\\_23.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2009_23.pdf), [accessed on 17.02.2016]

<sup>15</sup> Committee on the Rights of the Child: General Comment No.5 General Measures of Implementation for the Convention on the Rights of the Child, CRC/GC/2003/5, 3 October 2003, par. 12



cant for the interpretation of each right under the Convention and for its holistic implementation. This section is structured according to the main elements of Article 12 and the analysis of their meaning developed by the Committee on the Rights of the Child in its General Comment No. 12 on the right of the child to be heard.<sup>16</sup>

>> “THE RIGHT TO EXPRESS HIS OR HER VIEWS FREELY”:<sup>17</sup>

Supporting children to enjoy freedom of expression means finding ways to enable and encourage children to be actively interested and to present their own views, without manipulations or subjections. Children may need support to become aware of their views, including psychological and affective assistance. Support can also be important to encourage children to exercise their right to express their views, for instance by providing information in a language they understand and child-sensitive procedures. It is important to guarantee that participation is a voluntary process. This implies first of all that the right of expression cannot be imposed: it is not an obligation but a choice. Furthermore, there is no freedom of expression without a plurality of different options to choose from. The right of the child to express his or her views freely relates closely to the right to freedom of expression (Article 13), the right to freedom of thought, conscience and religion (Article 14), and the right to freedom of association and peaceful assembly (Article 15).

>> “IN ALL MATTERS AFFECTING THE CHILD”:<sup>18</sup>

The wording of Article 12 does not allow exceptions: in all matters that have an impact on children’s lives, including “any judicial and administrative proceedings”, children must have the possibility to be heard. They shall express their views after having been informed about the relevant laws, facts, possible implications and consequences as well as the possibilities available to them. In order to safeguard the right to be heard in all matters in practice, access to information is fundamental. The communication with the child has to be child-sensitive and appropriate to the child’s individual situation. All the aspects of the child’s situation have to be explained to him/her in a language that the child understands. Access to information is important for the child to be aware of his or her rights and so that he/she can claim and exercise these rights. This part of Article 12 relates closely to the right of the child to seek, receive and impart information, as afforded under Articles 13 and 17.

>> “GIVING WEIGHT TO THE VIEWS OF THE CHILD”:<sup>19</sup>

In order to guarantee the right to be heard, professionals and officials need to listen to children trying to understand and interpret their needs, perspectives and expectations. Hearing the views of children and taking them into account does not imply that the outcome of the decision will necessarily coincide with the child’s view.

<sup>16</sup> See Committee on the Rights of the Child, General Comment No. 12 The right of the child to be heard, cit.19-39.

<sup>17</sup> Committee on the Rights of the Child, General Comment No.12 The right of the child to be heard, cit., par. 22-25.

<sup>18</sup> Committee on the Rights of the Child, General Comment No.12 The right of the child to be heard, cit., par. 26-27 and 32-34.

<sup>19</sup> Committee on the Rights of the Child, General Comment No.12 The right of the child to be heard, cit., par. 28-31.

In all formal decision-making contexts concerning a child, professionals or officials are responsible for the final decision. It is however important that the process of decision-making takes into account the informed perspective of the child. In order to ensure that decision-making processes are transparent, it is fundamental to document clearly how the child's views have been heard and how weight has been assigned to the child's views. It must be possible for the child or his or her representative to know and check the relevant assessment process, including all the interests involved, the views considered, the sources of information consulted and the balancing of different sources and views. This part of Article 12 relates closely to Article 3, which affords that the best interests of the child shall be a primary consideration in all actions concerning children. Hearing the views of children and giving weight to their views while balancing different interests and solutions is at the heart of all best interests' assessments and determinations.

>> "IN ACCORDANCE WITH THE AGE AND MATURITY OF THE CHILD":<sup>20</sup>

Attaching relevance to the age and maturity of a child whose views are being heard does not mean that the opinion expressed by an older child would deserve more attention than that of a younger child. Rather, it means that professionals and officials who are hearing the views of a child have to assess the capacity of children to form an autonomous view on the situation, no matter what their age and level of development is. This provision stresses that the style and methods of communication need to give due account to the individual personality and capacity of the child. In this context, the Committee on the Rights of the Child clarifies in its General Comment No. 12 that "the views of the child have to be assessed on a case-by-case examination" as each child has unrepeatable needs, experiences, social and cultural contexts. Stereotypes have to be overcome and any types of 'labels' or 'categories' should be considered secondary in order to make room to consider the individual needs and resources of the child.

In order to enable child-sensitive and meaningful communication, the professionals who are hearing the views of children need to have relevant capacities and skills. They have to adapt their language and methods of communication to the level of development of the child; to prepare the right setting and environment and to take time for hearing the child and making sure the child has understood all relevant information, the meaning and implications of the issues at stake.

This part of Article 12 relates closely to Article 5 on the evolving capacities of children. It has to be read also in relation to the right to non-discrimination afforded under Article 2 of the Convention. Article 2 stipulates that states have to prevent the discrimination of children, including the discrimination on the grounds of age or disability. Assessing the maturity and level of development of children can be challenging when a boy or girl is from a different cultural or national background or when development has been impaired by experiences of violence, trauma, chron-

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<sup>20</sup> Committee on the Rights of the Child, General Comment No.12 The right of the child to be heard, cit., par. 20-21.

ical diseases or disabilities. Considering the challenges of communicating effectively with children from different backgrounds and children with different capacities, the right of the child to be heard relates also to Article 22 on the rights of child asylum seekers, Article 23 on the rights of children with disabilities, and Article 30 on the rights of children belonging to a minority group.

>> “DIRECTLY, OR THROUGH A REPRESENTATIVE OR AN APPROPRIATE BODY”:<sup>21</sup>

In all judicial or administrative proceedings, the option of a direct hearing of the child is preferable. Children who are heard in judicial and administrative proceedings have a right to be assisted by a legal representative, i.e. a “person or organization appointed by the competent body in order to assist and represent a [...] child in procedures with a view to ensuring the best interests of the child and exercising legal capacity for the child where necessary”.<sup>22</sup> The types and forms of legal representation and legal assistance available to children in the juvenile justice context differ from country to country. It is important that the representative is qualified and has specialized professional experience of working with children. Legal representatives need to be trained to genuinely hear and represent a child’s views and to understand and represent the interests of the child, irrespective of the other parties’ interests.

This part of Article 12 relates specifically to the rights of children in juvenile justice, as afforded under Article 40, which affords children the right to legal assistance in the preparation and presentation of their defence.



FIGURE 1

*Child participation: Some of the key rights and articles under the UN Convention on the Rights of the Child*<sup>23</sup>

<sup>21</sup> Committee on the Rights of the Child, General Comment No.12 The right of the child to be heard, cit., par. 35-37.

<sup>22</sup> The definition is established under the Reception Condition Directive (2013/3/EU), Article 2 (j) and refers therefore to unaccompanied asylum seeking children.

<sup>23</sup> For a complete overview on key rights and articles under the UN Convention on the Rights of the Child, see Annex 2

## 2. THE ROLE OF PARTICIPATION FOR A CHILD RIGHTS-BASED APPROACH



### CHILD RIGHTS-BASED APPROACH:

*"An approach which furthers the realisation of the rights of all children as set out in the Convention on the Rights of the Child through programming, which develops the capacity of duty-bearers to meet their obligations to respect, protect and fulfil rights and the capacity of rights-holders to claim their rights, and which is guided at all times by the principles of the right to life, survival and development, non-discrimination, the best interests of the child and respect for the views of the child."*<sup>24</sup>

#### BOX N° 3

Participation is a complex and multifaceted concept, like a mosaic composed of many small and unique pieces. International standards, such as the UN Convention on the Rights of the Child provide the necessary corner stones and basic framework. The right of the child to be heard and to have his or her views taken into account, as afforded under Article 12 of the Convention, represents a centre piece but it is not the only one. The etymological origin of “participation”, which literally means “being part of something”, points to another important characteristic of the concept: it describes a dynamic process involving different parts and elements. According to the General Comment No. 12 of the Committee on the Rights of the Child, the concept of participation describes “ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes”.<sup>25</sup>

Participation can be seen as a dialogue between children and adults who exchange their views and opinions openly and in mutual respect. It is a logic of interaction where children and adults set each other in relation. Participation is a continuous engagement, a ‘work in progress’, an ecological process that sets in relation all the numerous elements affecting the child’s life and needs. Participation constitutes therefore at the same time an objective as well as the method used to achieve the objective. The consultative process carried out

<sup>24</sup> UNICEF Toolkit on Diversion and Alternatives to Detention, 2009, available at [www.unicef.org/tdad/glossary\(4\).doc](http://www.unicef.org/tdad/glossary(4).doc) [accessed on 17.02.2016]

<sup>25</sup> Another definition of participation was developed by Save the Children in 2005: “Participation is about having the opportunity to express a view, influencing decision-making and achieving change. Children’s participation is an informed and willing involvement of all children, including the most marginalised and those of different ages and abilities, in any matter concerning them either directly or indirectly. Children’s participation is a way of working and an essential principle that cuts across all programmes and takes place in all arenas – from homes to government, from local to international levels”. Save the Children, Practice Standards in Children’s Participation, London, 2005, available at <http://resourcecentre.savethechildren.se/sites/default/files/documents/3017.pdf>, [accessed on 17.02.2016].

within the project TWELVE promoted an understanding of childhood that is rooted in the UN Convention on the Rights of the Child and in an understanding of child participation as a human rights principle. The individual child with her/his unique voice and story is at the centre of this approach, as a rights holder.

An approach based on the participation of children promotes an understanding of children as protagonists and rights holders who are aware of their rights, who have a role in identifying their needs and claim their rights. This understanding of children recognizes the evolving capacities, resources, skills and agency of children and challenges discourses and practices that see children primarily as vulnerable, incapable and requiring protection (Box 4).



### THE LIMITED RECOGNITION OF CHILDREN AND CHILDHOOD

*Historically, children have often been considered unable to express or even to have a view. A frequent term used when speaking of children is 'innocent', with the original Latin meaning of "someone who is not guilty". The term has a connotation of children being pure and unexperienced.<sup>26</sup> When a child does not behave according to this role and gets in conflict with the law, a widespread assumption was that he or she needed to be 'corrected' and conducted again to the known and reassuring image of the 'good child'.*

*According to this logic, children's matters have traditionally been addressed through two types of approaches: the protection approach and the approach of discipline and punishment. The traditional protection approach perceived children as immature, capacity deficient 'minors' who are unable of self-expression, to take decisions or even to understand their needs. Children are perceived as dependent, passive and invisible and, in consequence, their views and needs are identified, presented and represented by adults. In light of the perceived vulnerability of children, the primary response in this approach is the provision of protection.<sup>27</sup>*

*On the other hand, children are, in certain circumstances, considered 'bad children' who have to be disciplined and require 'treatment'. This understanding is a basis for punitive measures and might cause professionals in the penitentiary field to treat children serving a sentence not as children first and foremost but as inmates. This double narrative might become particularly evident in the context of the juvenile penal justice system.*

*These two apparently opposite discourses lead however to similar conclusions: children are not perceived as subjects or rights holders.<sup>28</sup>*

#### BOX N°4

<sup>26</sup> V. Pupavac, Misanthropy without borders: The international children's rights regime, in *Disasters*, 2001, 25(2): 95-112; G. Petti, *Il male minore*, Ombre corte, 2004; F. Faccioli, *I soggetti deboli. I giovani e le donne nel sistema penale*, Milano, 1990.

<sup>27</sup> V. Pupavac, Misanthropy without borders: The international children's rights regime, in *Disasters*, 2001, 25(2): 95-112.

<sup>28</sup> R. Steward, *Child participation and independent human rights institutions for children in Europe*, Unicef Innocenti Research Centre, 2009, available at [http://www.unicef-irc.org/publications/pdf/iwp\\_2009\\_23.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2009_23.pdf), [accessed on 17.02.2016].

### 3. CHILDREN FIRST: THE KEY ROLE OF PARTICIPATION IN SHAPING THE AGENDA OF THE JUVENILE PENAL JUSTICE SYSTEM

The principle of participation can help to reflect on the juvenile penal justice system from a child rights-based perspective in line with the Convention and its empowering spirit. Effective and meaningful participation, as a core element of a child rights-based approach, holds an important potential to stress and reinforce the rehabilitative aim that has to inform all dimensions of the penal justice system (see Chapter 5). This is because the penal measure can only make sense when the child, through participation, actively acquires awareness about her/his behaviour and its legal and social implications. Thus, participation within the juvenile penal justice system can be seen as a process, involving the child, institutions, professionals and officials as well as the community. The process evolves with the child at the centre and encourages their rehabilitation and social inclusion.

During focus group discussions and training seminars, professionals, officials and volunteers working in the juvenile justice system were asked to give some keywords on what they considered important for the participation of children serving a custodial or non-custodial sentence (see Box 5).

These keywords convey the important message that participation can be made possible within the juvenile penal justice system. They suggest also that there are connections between the concept of participation and other human rights and needs of the child, such as life, information, perspectives for development, social contacts and human relations. As one of the general principles of the UN Convention on the Rights of the Child, the concept of participation is indeed closely related to all the other human rights of the child afforded under the Convention. It can therefore be considered an important key for interpreting and implementing the Convention and promoting the human rights of the child in a holistic way, including specifically for the penal justice context.



# INTERNATIONAL STANDARDS ON CHILD PARTICIPATION IN THE JUVENILE JUSTICE CONTEXT

The right of the child to be heard and other participatory rights are strongly promoted by numerous international standards.

This section provides an overview of non-binding international documents and their specific provisions relevant to the participatory rights of children in the field of juvenile justice:

>> ACCORDING TO THE **BEIJING RULES**:

RULE 14(2) *“the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding [...] shall allow the juvenile to participate therein and to express herself or himself freely.”*

THE BEIJING RULES,  
THE UN STANDARD MINIMUM  
RULES FOR THE ADMINISTRATION  
OF JUVENILE JUSTICE

1985

>> THE **RIYADH GUIDELINES** AFFIRM THAT:

PAR. 3 *“... young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control”()*

THE RIYADH GUIDELINES,  
THE UN GUIDELINES  
FOR THE PREVENTION OF JUVENILE  
DELINQUENCY

1990

PAR. 50 *“generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.”*

>> THE **HAVANA RULES** DECLARE THAT:

RULE 12(2) *“juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.”*

THE HAVANA RULES,  
THE UN RULES FOR THE  
PROTECTION OF JUVENILES  
DEPRIVED OF THEIR LIBERTY

1990

RULE 32 *“The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.”*



>> **THE TOKYO RULES** STRESS THE NECESSITY TO:

RULE 1.2  
THE TOKYO RULES,  
THE UN MINIMUM STANDARD  
RULES FOR NON-CUSTODIAL  
MEASURES  
1990

*“... promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.”*

>> **THE VIENNA GUIDELINES** MAKE EXPLICIT REFERENCE TO:

PAR. 11(A)  
THE VIENNA GUIDELINES,  
THE UN GUIDELINES  
FOR ACTION ON CHILDREN IN THE  
CRIMINAL JUSTICE SYSTEM  
1997

*“... establishing a child-oriented juvenile justice system that guarantees the rights of children, prevents the violation of the rights of children, promotes children’s sense of dignity and worth, and fully respects their age, stage of development and their right to participate meaningfully in, and contribute to society.”*

PAR. 11(B)  
*“The relevant contents of the above-mentioned instruments are made widely known to children in a language accessible to children.”*

>> ACCORDING TO THE **EUROPEAN RULES** FOR JUVENILE OFFENDERS SUBJECT TO SANCTIONS OR MEASURES AS WELL AS ALTERNATIVE MEASURES:

RULE 13(1)  
COUNCIL OF EUROPE: COMMITTEE OF  
MINISTERS, RECOMMENDATION CM/  
REC11 OF THE COMMITTEE OF MINISTERS  
TO MEMBER STATES ON THE EUROPEAN  
RULES FOR JUVENILE OFFENDERS SUBJECT  
TO SANCTIONS OR MEASURES  
2008

*“any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures”*

in addition

RULE 76(1)  
*“all interventions shall be designed to promote the development of juveniles, who shall be actively encouraged to participate in them.”*

>> **THE GUIDELINES OF THE COUNCIL OF EUROPE ON CHILD-FRIENDLY JUSTICE** IDENTIFY PARTICIPATION AS ONE OF THE FUNDAMENTAL PRINCIPLES FOR ACCESS TO JUSTICE, ESTABLISHING THAT:

CHAPTER III,  
FUNDAMENTAL PRINCIPLES  
SECTION A (1)  
COUNCIL OF EUROPE, GUIDELINES OF  
THE COMMITTEE OF MINISTERS ON  
CHILD-FRIENDLY JUSTICE  
2010

*“The right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children’s views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.”*

*Children should be considered and treated as full bearers of rights and should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views as well as the circumstances of the case.”*

in addition

*“Court sessions involving children should be adapted to the child’s pace and attention span: regular breaks should be planned and hearings should not last too long.*

*To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.”*

>> **REGARDING THE EUROPEAN UNION LAW:**

*“Children shall have the right to such protection and care as is necessary for their well-being.*

*They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.”<sup>29</sup>*

In addition, the right to effective participation is explicitly mentioned by the European Commission in the Proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings:

*“the fairness of proceedings and the right to a fair trial require a person’s ability to understand the minimum stakes of the procedure and have the ability to participate and effectively exercise his rights”.*

>> **THE BANGKOK RULES MAKE REFERENCE TO PARTICIPATION:**

*“the regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.”*

<sup>29</sup> See European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to the rights of the child, Luxembourg: Publications Office of the European Union, 2015, available at [http://www.echr.coe.int/Documents/Handbook\\_rights\\_child\\_ENG.pdf](http://www.echr.coe.int/Documents/Handbook_rights_child_ENG.pdf), precisating that “Even in the absence of child specific provisions, Member States must observe the EU Charter of Fundamental Rights when implementing the provisions of the aforementioned directives. Therefore, principles enshrined in Article 24, should be given due weight in cases where children are the subject of any of the provisions of the directives.” Meanwhile it is important to bear in mind that “Under EU law, the current legal framework for criminal justice proceedings does not include a binding instrument regarding the detention of children.” (p. 195)

>> **THE EUROPEAN COURT OF HUMAN RIGHTS STATED:**

in a judgement of 1999, with reference to Article 6 of the European Convention on Human Rights (Right to a fair trial):<sup>30</sup>

PAR. 61  
EUROPEAN COURT OF HUMAN  
RIGHT, T. V. THE UNITED KINGDOM  
[GC], No. 24724/94  
1999

*“There is on the other hand nothing in Article 6 to indicate that there can be any derogation, in cases involving children, from the principle that the trial process should provide for the effective participation of the accused, who must be able to follow the proceedings and to give instructions where necessary to his lawyer. In order for that principle to be respected in cases involving children, however, the conditions under which the trial is held (including the procedure followed) have to be such as will permit such participation, taking into account the age, level of maturity and intellectual and emotional capacity of the child concerned.”<sup>31</sup>*

In a more recent judgement of 2009, the Court reaffirmed the important value attached to the participation of the accused and elaborated on what constitutes effective participation:

PAR. 124  
EUROPEAN COURT OF HUMAN  
RIGHTS, GÜVEÇ V. TURKEY  
2009

*“Effective participation’ in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed (...). It also requires that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court.”<sup>32</sup>*

**30** Art. 6 of the European Convention of the Human Rights protects the right to a fair trial and reads as follows: “1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and the facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.

**31** European Court of Human Rights, T. v. the United Kingdom [GC], No. 24724/94, 16 December 1999. The case, mentioned in the Handbook on European law relating to the rights of the child, cit., p. 202, regards the murder of a two year old by two ten year olds. They were tried by an adult court, under the rigorous procedure – only partially modified – of a criminal trial.

**32** European Court of Human Right, Guveç v. Turkey, Güveç v. Turkey, No. 70337/01, 20 January 2009. The case concerns a child detained in an adult prison, without legal assistance, while the authorities were unable to provide him with adequate medical assistance for his psychological problems, and also to prevent his repeated suicide attempts. In the cited sentence, the Court makes reference also to the following: Timergaliyev v. Russia, No. 40631/02, § 51, 14 October 2008, and the cases cited therein.

## PARTICIPATION IN THE JUVENILE PENAL JUSTICE SYSTEM: WHAT DOES IT MEAN?



*“Sometimes, we feel they do not take something into consideration but in general they do.”*

CHILD SERVING A SENTENCE  
IN A DETENTION CENTRE  
SPAIN



*“I have to work and to take my time here seriously if I want to have another chance when I get out. I appreciate the work of the educational team, they are very supportive.”*

CHILD SERVING A SENTENCE  
IN A DETENTION CENTRE  
SPAIN

Opportunities for children to have their views heard and taken into account need to be available and accessible at all stages of the judicial proceedings, the pre-trial, trial and sentencing and post-sentencing. Box 6 provides an overview of key issues regarding the participation of children in criminal investigations and proceedings.



### CHILDREN'S PARTICIPATION IN CRIMINAL INVESTIGATIONS AND PROCEEDINGS

*The right of the child to be heard and to participate in criminal investigations and proceedings is expressly guaranteed by Article 40 of the UN Convention on the Rights of the Child.<sup>33</sup>*

*In its General Comment No. 10 on children's rights in juvenile justice, the UN Committee on the Rights of the Child refers explicitly to the participatory rights of children. It states that “a fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses,*

...

<sup>33</sup> Most of the rights and guarantees listed in Art. 40 (2) of the CRC, can also be found in the Art. 6 of the European Convention of Human Rights and Art. 14 of the International Covenant on Civil and Political Rights aimed at ensuring the right to a fair trial. However, ensuring a fair treatment and trial to children alleged or accused of having infringed the law, requires specific aspects to be taken into account, as highlighted by the Committee on the rights of the child, General Comment No. 10 Children's rights in juvenile justice, CRC/C/GC/10, United Nations, 2007, part. D “The guarantees for a fair trial” (par. 40-67).

*to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.<sup>34</sup> The participation of a child defendant during the criminal investigations and proceeding concerns specifically the following:<sup>35</sup>*

- >> Full and on-going information about the charge, the juvenile justice process and the possible measures that the court might order, in a language that the child can understand.<sup>36</sup>*
- >> Right to legal representation and assistance free of charge by a trained lawyer, concerning the elaboration and presentation of the defence and the child's preparation for hearings, to be conducted in adequate space and time.<sup>37</sup>*
- >> Child-sensitive support and communication appropriate to the child's age, maturity and level of development and understanding.*
- >> The supportive involvement of the child's legal guardian or parents in the proceedings, if this is in line with the child's best interests.<sup>38</sup>*
- >> Right to a prompt decision both at the pre-trial (police investigation, decision of the prosecutor) and trial stage (final adjudication) with the underlying legal reasoning being accurately and clearly documented.<sup>39</sup>*
- >> Protection from coerced admission of guilt, testimony or confession.<sup>40</sup>*
- >> Right to appeal decisions and measures to a higher, independent and impartial authority or competent judicial body.<sup>41</sup>*
- >> Right to privacy at all stages of proceedings, conducting court and other hearings of the child behind closed doors.<sup>42</sup>*
- >> Free assistance from an interpreter, if and as required.<sup>43</sup>*
- >> Follow-up support for child defendants, including social services and counselling.*

## BOX N° 6

**34** Committee on the rights of the child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 46

**35** Analysis, practices and guidelines to implement children participation during the pre-trial or post-trial phases are provided by the following documents and researches, amongst others: Council of Europe Guidelines on Child-friendly Justice, especially part IV, "Child-friendly justice before, during and after judicial proceedings", adopted by the Committee of Ministers on 17 November 2010, available at <https://wcd.coe.int/ViewDoc.jsp?id=1705197>; I. Weijers, Requirements for Communication in the Courtroom: a comparative perspective on the youth court in England/Wales and the Netherlands' 4(1) Youth Justice (2004) 22-31; U. Kilkelly, Youth Courts and Children's Rights: An Irish Perspective, in 8(1) Youth Justice (2008) 39-56. See also, Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, Brussels, 16 December 2015 available at <http://data.consilium.europa.eu/doc/document/ST-15272-2015-INIT/en/pdf>; European Commission, Directorate-General for Justice and Consumers, Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union, 2014. See also United Nations Office on Drugs and Crime, Justice in matters involving children in conflict with the law model law on juvenile justice and related commentary, United Nations, 2013, (in particular Chapter III – Pre-trial proceedings; Chapter IV – Trial); available at [https://www.unodc.org/documents/justice-and-prison-reform/Justice\\_Matters\\_Involving-Web\\_version.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf) [accessed on 17.02.2016].

**36** Art. 40 (2) (b) (ii) of the CRC; Committee on the rights of the child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 47-48.

**37** Art. 40 (2) (b) (ii) of the CRC; Committee on the rights of the child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 49-50.

**38** Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 53-54.

**39** Arts. 37 (d) and 40 (2) (b) (iii) of the UN Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 51-52.

**40** Art. 40 (2) (b) (iii) of the UN Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 56-57.

**41** Art. 40 (2) (b) (v) of the UN Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 60-61.

**42** Arts. 16 and 40 (2) (b) of the UN Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 64-67.

**43** Art. 40 (2) (vi) of the UN Convention on the Rights of the Child ; According to the Committee on the Rights of the Child General Comment No. 10 on children's rights in juvenile justice, cit., "It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation" (par. 67).

The Handbook TWELVE focuses on the post-trial phase as one of the most challenging and under-addressed contexts. While serving custodial or non-custodial measures, children participate in different ways:

>> PARTICIPATION IN THE **SELECTION OF AN APPROPRIATE MEASURE**,  
FAVOURING THE RESORT TO ALTERNATIVE MEASURES

>> PARTICIPATION WITHIN **THE DETENTION CENTRE OR FACILITY**  
FOR ALTERNATIVE MEASURES:

- Participation in the planning of the child's individual care plan, including consideration for care and education and longer-term perspectives for the child's rehabilitation and social inclusion after the sentence has been served, transition into adulthood and independent life
- Participation in the implementation of the child's individual care plan, including the right to be heard in periodic reviews of the progress made<sup>44</sup>
- Participation in social and cultural activities, such as theatre, play, music, arts and performance
- Sports and recreation
- Maintenance of contacts with the family, the legal guardian or other significant persons<sup>45</sup>
- Representation of the boys and girls serving a sentence vis-à-vis the management of detention centres or facilities for alternative measures

>> **PARTICIPATION IN THE SURROUNDING COMMUNITY**,  
IN ACCORDANCE WITH SECURITY RULES

- Access to media, including local newspapers, social media and safe internet use, for instance under the supervision of the educator
- Participation in cultural, educational and sports events and other relevant activities or training courses organized in the local community, including activities and events promoted by the cultural or religious community the child belongs to
- Membership in cultural, educational and sports associations
- Participation in voluntary work with external associations
- Apprenticeships with selected companies in the local community
- Organization of debates, workshops and events held within detention centres or facilities for alternative measures, accessible for the community

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<sup>44</sup> According to the UN Committee of the Right of the Child, General Comment No. 10 Children's rights in juvenile justice, cit., "Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result" (par. 45).

<sup>45</sup> See United Nations Office on Drugs and Crime, Justice in matters involving children in conflict with the law model law on juvenile justice and related commentary, United Nations, 2013, rule n. 69, available at [https://www.unodc.org/documents/justice-and-prison-reform/Justice\\_Matters\\_Involving-Web\\_version.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf) [accessed on 18.02.2016].

## 4. CHALLENGING DOUBTS AND MISCONCEPTIONS ABOUT CHILDREN'S PARTICIPATION IN THE JUVENILE PENAL JUSTICE SYSTEM



*"The Committee [on the Rights of the Child] notes that, in most societies around the world, implementation of the child's right to express her or his view on the wide range of issues that affect her or him, and to have those views duly taken into account, continues to be impeded by many long-standing practices and attitudes..."*

Committee on the Rights of the Child  
General Comment No. 12 The right of the child to be heard, cit, par.4

### BOX N° 7

During the consultations with professionals and officials in the juvenile justice system, a central question was often raised: is participation compatible with the limitation or deprivation of liberty that characterizes the penal sentence or the alternative measures imposed on the children? In other words, as noted by a director of a detention centre in Italy: *"After all, the participation within the juvenile penal system is a contradiction in itself, isn't it?"* This doubt is related to an evident circumstance: the penal justice system is based on a logic of constraint. How is it possible to combine the elements of coercion and security of the penal justice measures with the paradigm of participation that requires voluntariness and freedom of choice? This apparent contradiction becomes particularly evident within detention centres.

As opposed to imprisonment, alternative measures do not separate children from the community while serving the sentence. Even though their liberty to move is limited, children in alternative measures can more easily maintain contacts with different social contexts and, in consequence, build support networks and identify positive points of references. Alternative measures can therefore offer a range of opportunities for promoting the participation of children during and after serving the sentence. Where a range of alternative measures are available, children serving a non-custodial sentence can participate also in the selection of the most appropriate measures.

This section addresses misconceptions and doubts concerning the participation of children and youth particularly in the context of the juvenile penal justice system. These doubts were raised by the professionals, officials and volunteers who participated in the consultations of TWELVE. They will be challenged through a different narrative, namely the centrality of the child as a rights holder. Many of these doubts are rooted in misconceptions, cultural beliefs and attitudes about children in conflict with the law. According to the UN Committee on the Rights of the Child, mainstream cultural attitudes represent indeed one of the main obstacles to the consideration of children as rights-holders and to the implementation of Article 12.<sup>46</sup>

Engaging and systematically involving children in conflict with the law in every decision-making process affecting them does however not entail automatically an outcome of impunity. Instead, developing projects and services that are tailored to the specific situation and needs of the child may generate incentives and stimulation for a self-awareness path, supporting the child's development and empowerment in the process of rehabilitation and social inclusion.

>> "ARE CHILDREN ABLE TO PARTICIPATE?"



*"We adults know what is best for you, better than you!"*

LAWYER  
BELGIUM

According to this opinion, children are not capable of forming an autonomous view. They are seen as dependent and can therefore not have an informed opinion nor be able to express one. They have to be represented by an adult who decides on behalf of the child, without necessarily informing the child or consulting with the child. The attitude that children "cannot understand" allows the adult to make decisions without informing and involving the child, without listening to understand the child's opinion, and without supporting the child to express her or his opinion and giving due consideration to it.

In its General Comment No. 12 on the right of the child to be heard, the Committee on the Rights of the Child notes that children are able to form an opinion even at a very young age.<sup>47</sup> Depending on their age, capabilities and level of development, children may require adequate time and space as well as support or encouragement to form an opinion and to express it. In order to enable the formation and expression of an opinion, it is important to adapt the language and communication to the individual child. This could entail also to make room for non-verbal and unconventional methods of communication, such as "play, body language, facial expressions, and drawing and paintings."<sup>48</sup>

<sup>46</sup> See for instance: Committee on the Rights of the Child, General Comment No.12 The right of the child to be heard, cit., par. 4, 49, 76.

<sup>47</sup> G. Lansdown, The Evolving Capacities of the Child, Innocenti Research Centre, Unicef/Save the Children, Florence, 2005, available at <http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>, [accessed on 17.02.2016].

<sup>48</sup> UN Committee of the Right of the Child, General Comment No. 12, The right of the child to be heard, cit., p. 7



>> “DO YOUNG PERPETRATORS DESERVE PARTICIPATION?”



*“They are not children: they are just inmates.”*

PENITENTIARY POLICE OFFICER  
JUVENILE DETENTION CENTRE  
ITALY

This statement articulates the belief that children serving a custodial or non-custodial sentence are not primarily to be considered as children but as ‘offenders’ or ‘detainees’. They are perceived as persons who intentionally decided to place themselves ‘outside the society’s rules’. This perception of children serving a sentence reflects a ‘punitive culture’ that is not uncommon in the juvenile justice system.<sup>49</sup> This stereotype fails to consider the child as a person with a unique story and background. It can be misleading not to consider the contexts and conditions that have played a role in getting the child in conflict with the law, such as their socialization, growing up in particularly marginalized groups or precarious living situations with little perspectives for the future, or exposure to violence from an early age.<sup>50</sup> Enabling children’s participation in the juvenile penal justice system is however not a charity act for those children who ‘deserve’ it. It is a legal obligation under international and European standards and a sensible investment into the rehabilitation of children in conflict with the law as it essentially promotes their evolving capacities, social inclusion and development into adulthood and independent life (see Chapter 5).

>> “DOES THE PARTICIPATION OF ADOLESCENTS  
IN THE JUVENILE PENAL JUSTICE SYSTEM THREATEN SECURITY?”



*“The projects that are presented clash with the centre’s priority: to avoid problems within the structure. The main problem for the implementation of participation within juvenile detention centres is safety.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY

Security is often considered a priority in the penal justice system, including in juvenile detention centres. The social participation of children during detention might therefore be limited when perceived to pose potential security risks. Strict prohibition of social ac-

<sup>49</sup> T. Hammarberg, Children and juvenile justice: proposals for improvements, Strasbourg, 19 June 2009, available at <https://wcd.coe.int/ViewDoc.jsp?id=1460021> The author also highlights that “it is often argued that the seriousness of the crime and the need to protect public safety are overriding considerations. These are legitimate concerns. However, if progress is to be made with this approach, it is also vital to make the general public and politicians more aware of the problems often experienced by young offenders” (par. 5.2.) [accessed on 17.02.2016].

<sup>50</sup> N. Roy-M. Wong, Juvenile Justice. Modern Concepts of Working with Children in Conflict with the Law, Save the Children UK, 2004, p.11, available at [http://www.essex.ac.uk/armedcon/story\\_id/save\\_jj\\_modern\\_concepts.pdf](http://www.essex.ac.uk/armedcon/story_id/save_jj_modern_concepts.pdf). See also note 41 [accessed on 17.02.2016].

tivities is sometimes preferred over attempts to accommodate participatory initiatives. For the same reasons, the possibility to serve a non-custodial measure can be refused to a child who is considered ‘socially risky’. Inside detention centres, penitentiary police officers have a significant role to mitigate these risks and to balance the security demands with the participatory rights of children, especially when they succeed to engage with the children in a positive, constructive way. Meaningful participation of children in juvenile detention centres can even enhance security, giving sense to disciplinary measures and thus facilitating the role of the penitentiary police officers.

>> “DOES A HIGHER NUMBER OF ACTIVITIES, INCLUDING MANDATORY ACTIVITIES, HELP TO PROMOTE THE PARTICIPATION OF CHILDREN?”



*“Children’s participation in the activities is rarely 100% voluntary. Also because participating in the activities proposed by the centre may bring them a series of benefits vis-à-vis the social assistants. They often participate physically but not substantially, they are there because they are supposed to be there. It is a disrupted concept of participation.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY



*“In the centre, there is a long standing good practice of theatre laboratories. However, the motivations of the centre may respond to the will of showing a certain image of the centre and the management to the outside.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY



*“... it must be said that the music room with all the instruments, for example, is always closed and cannot be used by the children.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY

The participation of children serving a custodial or non-custodial sentence is not always authentic or effective and activities are sometimes imposed on them. Participatory initiatives can, in some cases, be instrumentalised to serve other interests than those of the

children. This is considered a tokenistic approach to participation.<sup>51</sup> The management of detention centres or facilities for alternative measures might promote participatory activities primarily with the interest to demonstrate good management and social engagement and to obtain societal or political recognition. An important purpose of participation is however its positive influence on the rehabilitation process. When the child's progress towards rehabilitation is being assessed, it is therefore important to consider not only the child's enrolment in activities, but also the type and quality of the child's participation and the impact on the child's rehabilitation and social inclusion.

>> "DOES THE PARTICIPATION OF CHILDREN IN THE JUVENILE DETENTION CONTEXT REQUIRE A LOT OF RESOURCES?"



*"In the centre, there is a long standing good practice of theatre laboratories. [...] it is an activity that began many years ago, successfully, and that involves both the children and external people who can participate as audience. This shows that if there is a will, things can be done: in this case theatre. [...] It is indeed a matter of will."*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY



*"We promote participation to the extent that the system allow us."*

PROFESSIONAL  
SPAIN

Most of the professionals and officials who participated in the TWELVE consultations noted that the financial resources, tools for promoting participation and staff in the juvenile penal justice system are limited and that this has implications for its correct and reliable functioning. The limited resources and staff concern particularly the juvenile detention centres and impede the realization of activities with and for the children and young persons. Experience shows, however, that the management and staff of juvenile detention centres who understand the importance of children's participation can make a significant difference, even with small gestures and few resources, finding innovative solutions. Where public funds are scarce, involving the community and civil society can help, for instance through programmes and initiatives that permit and encourage the involvement of external associations and volunteers, giving due consideration to security issues and the best interests of the children concerned.

<sup>51</sup> R.A. Hart, Children's participation: From tokenism to citizenship, Unicef, 1992. available at [http://www.unicef-irc.org/publications/pdf/childrens\\_participation.pdf](http://www.unicef-irc.org/publications/pdf/childrens_participation.pdf), [accessed on 17.02.2016]. According to this author the "tokenism attitude" refers to "instances in which children are apparently given a voice, but in fact have little or no choice about the fact or the style of communicating and little or no opportunity to formulate their own opinion" (p. 9).

## 5. THE CASE FOR CHILD PARTICIPATION IN THE JUVENILE PENAL JUSTICE SYSTEM: THE THREE “R’S”: **RECOGNITION, RESPONSIBILITY, REHABILITATION**

As discussed in Chapter 1, the right of the child to be heard (CRC Article 12) is closely related to the other human rights of the child afforded under the Convention, which are all inter-dependent and indivisible. The principle of participation is an important interpretative key of the UN Convention on the Rights of the Child and its holistic system of protection and promotion of children’s rights. It orients the interpretation and implementation of the Convention toward a genuine child-centred perspective.

In the context of the juvenile penal justice system, child participation can acquire a fundamental role. In particular, it can help giving a meaning to the sentence, the custodial or non-custodial measures ordered and the opportunities they present for the child’s longer-term development. Through participation, children can take the role of protagonists in their own rehabilitation and social inclusion. This process can help children to understand their responsibility for their own actions, to take responsibility and to be recognised and respected by others as community members.

It is important to underline that the effective and meaningful participation of children in the juvenile penal justice system is a bi-directional process. It requires a dynamic of reciprocity and mutual listening, understanding and respect. Effective participation is a shared experience requiring that the persons surrounding the child develop attitudes, awareness and capacity to actively involve children and get involved by them.

### **>> RECOGNITION**

Opportunities for participation allow children, professionals and officials in the juvenile justice field to interact and collaborate, demonstrating thereby respect for each other and gaining the recognition of the other. When professionals and officials enter into a dialogue with children and hear their views, they can better comprehend their perspectives, needs and concrete situations. They realize that children’s needs, aspirations and priorities might be different from those of adults. Meaningful child participation allows profession-

als and officials also to recognize and enhance the individual positive resources of children. On this basis, professionals and officials, together with the children, can design more child-sensitive measures within the juvenile penal justice system.

Opportunities for participation can also enable the child to better understand her or his evolving capacities, skills and potentials. Meaningful participation, and a trusted dialogue between professionals, officials and children, can therefore help the child to gain a better understanding and recognition of his or her personality, i.e. their own 'self'. It is essential to support children to emancipate themselves from stereotypes and deterministic views about their capabilities and perspectives for the future, which are often influenced by the social, cultural or national background of the child and his or her family. Through the interaction with adults and peers, children can learn new competences, can discover and become aware of and develop their talents.

This process of gaining recognition and respect is reciprocal: it generates dialogue and acceptance between the child in conflict with the law and the society or community. It allows identities to emerge, stories to come out, particular contexts that have accompanied the child's life to be understood. When forming and expressing their opinions and experimenting with listening and consideration by adults, children are encouraged to evaluate themselves and to (re-)acquire self-confidence and the trust and confidence of other people.

## >> RESPONSIBILITY

Opportunities for children to participate enable children to be protagonists of their own lives, even in the complex context of deprivation of liberty. Children who have the possibility to get engaged and exercise their participatory rights, have better chances to acquire a growing sense of responsibility. The child's sense of responsibility for her or his present life and future depends also on the extent to which the child identifies with her or his individual care and rehabilitation plan elaborated in the context of the juvenile penal justice system, and to which degree the child commits to this plan. In order to strengthen the child's commitment to the plan, it is essential that the child is part of the development and periodic review of this plan and that the child gets a sense that his or her views are heard and taken into account for the development and implementation of the plan.<sup>52</sup>

When children understand that they are recognized and trusted as active and capable community members, they will more likely appreciate that their actions have an impact on other people in the community.<sup>53</sup> When children experience that their views are taken seriously, they can develop their capacity to reflect upon themselves and to understand what they can or should do as community members.

While participation can support children in developing a sense of responsibility, the role of other actors involved in the juvenile penal justice system is equally important for this process. They include judges, lawyers, police officers, social workers, educators and the

<sup>52</sup> See G. De Leo, *Responsabilità, definizioni e applicazioni nel campo della giustizia minorile*, in *Giovani, responsabilità e giustizia*, G. Ponti (a cura di), Milano, 1985, where the authors highlight that also very young children are able to participate in and contribute to the community and society (p. 57).

<sup>53</sup> See M. Cowden, *Capacity, claim and children's rights*, in *Contemporary Political Theory*, 2012, 11, 4, p. 362-380.

child's family members. At a broader level, policy makers and the civil society also play a role, including the media. These actors are important for the child's rehabilitation and social inclusion as they can contribute significantly to preventing the child from getting in conflict with the law again. As noted by the Committee on the Rights of the Child in the General Comment No. 10 on children's rights in juvenile justice, "... a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings."<sup>54</sup>

## >> REHABILITATION

Participation processes play a fundamental role for the rehabilitation and social inclusion of children who are serving a custodial or non-custodial sentence. They can give the penal measures a sense by supporting the child to voluntarily abandon the criminogenic context and to (re-)create positive ties and relations between the child and the society. The meaning of rehabilitation and social inclusion is to enable and encourage children and young persons to become active members of the community, to contribute with their own resources and skills, and to assume a constructive role in society. This can be achieved due to the reciprocal nature of the rehabilitation process that creates a feeling of belonging and enables children to feel accepted by the community, which they are 'part of'.

Professionals and officials in the juvenile penal justice system provide important support to the child's rehabilitation and social inclusion. Their commitment to (re-)create social support networks, points of reference and positive relationships around the child is essential from the time the child starts serving a custodial or non-custodial sentence until the rehabilitation and social inclusion of the child has been fully achieved.

Furthermore, existing research has evidenced that children from contexts of social marginalization and exclusion, who have limited chances to benefit from social protection services, are overrepresented in the juvenile penal justice system.<sup>55</sup> Children in conflict with the law have often previously experienced social and cultural isolation, poor living conditions and limited social welfare services. As the UN Committee on the Rights of the Child noted, there is a risk that the juvenile penal justice system presents itself as part and reinforcement of a circuit of structural or de facto discrimination.<sup>56</sup> Patterns of de facto discrimination are, to some extent, created by inconsistent policy planning and implementation.<sup>57</sup>

Within juvenile detention centres, the risk of marginalisation and exclusion of certain groups of children is as real as within communities. Some of the children and professionals

<sup>54</sup> Committee on the Rights of the Child, General Comment No. 10, 2007, Children' rights in juvenile justice, cit., par. 17.

<sup>55</sup> See, among the others, the Joint Report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system, 27 June 2012, A/HRC/21/25, at [http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/A-HRC-21\\_25\\_EN.pdf](http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/A-HRC-21_25_EN.pdf) that affirms that "There are additional groups of children, often overrepresented in the criminal justice system, who should not be there, and for whom appropriate care and protection services should be provided. These include children with mental health problems, children with substance abuse problems, children in need of care and protection and unaccompanied children. By removing such children from the criminal justice system the potential to reduce violence against them is clearly increased" (par. 16).

<sup>56</sup> The expression "de facto discrimination" is here intended as the "social condition of minority group". See L. Re, Structural discrimination and color-blindness in United States and European prison systems, in Jura Gentium, 2007, available at: <http://www.juragentium.org/forum/race/en/re.htm>.

<sup>57</sup> Committee on the Rights of the Child, General Comment No. 10, 2007, Children's rights in juvenile justice, cit., par. 6.

who participated in the TWELVE consultations noted that the interests of children belonging to special social groups are rarely addressed in an adequate way within the juvenile justice system. A minority or immigration background and gender issues, for instance, are not always given due consideration to ensure that the specific needs and rights of each individual child are being addressed.<sup>58</sup>

A focus group discussion conducted with professionals in an Italian detention centre revealed that some children perceive the detention centre a better place compared to where they had lived before. Especially children who had previously experienced violence in the family or community expressed this view. Some children had experienced systematic exclusion from opportunities and rights, which led to feelings of social isolation. That is why, as a psychologist of the same institution noted “sometimes, children would like to keep staying here, in jail”. This statement expresses a paradoxical situation: the child loses her or his liberty and yet perceives the detention centre as a safer place, compared to the ‘outside’. This happens because the child has no positive and supportive reference points in the community and the community does not succeed to ensure the social inclusion, safety and development of children, in particular the marginalized and excluded groups, and is unable to offer viable perspectives for children.<sup>59</sup>

These observations lead to a wider reflection about the role of the community, which can enable children and young people to become a part of it, irrespective of their national, social, cultural or religious backgrounds or status. Sensitizing communities to the importance of participation can help activating the protective and empowering function of the society, and to guarantee children and young persons care and attention as well as concrete perspectives for their futures. All of this is essential in supporting the rehabilitation process of children who have been in conflict with the law.

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<sup>58</sup> See the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice adopted by the General Assembly in 2014, A/RES/68/189, available at [http://www.unodc.org/pdf/criminal\\_justice/Model\\_Strategies\\_violence\\_children.pdf](http://www.unodc.org/pdf/criminal_justice/Model_Strategies_violence_children.pdf), [accessed on 17.02.2016].

<sup>59</sup> Comments made by the participants in a TWELVE Consultation, Italy, 2015. See also: R. Rosolini, *Minori immigrati in istituto penale. Proposte educative ispirate al principio dell'ibridazione culturale*, in *Minori e Giustizia*, 3-4, 2002, p. 150.

## 6. PARTICIPATION IN PRACTICE: PATHS FOR MEANINGFUL CHILD PARTICIPATION

This section provides guidance on how to promote and enable the participation of children serving a custodial or non-custodial sentence in practice, in a way that is meaningful and effective. The section follows the structure of the guidance developed by the Committee on the Rights of the Child in its General Comment No. 12 on the right of the child to be heard. The General Comment describes the key considerations required for hearing children and other contexts of child participation (see Box 8).<sup>60</sup>

The following practical indications are based on examples and recommendations shared by the professionals and officials who participated in the TWELVE project. They do not aspire to be universal or exhaustive. Their implementation depends on the national juvenile penal justice system, the specific context in a detention centre or facility for alternative measures and the situations and needs of the children concerned. The guidance presented in this section might inform the development of more detailed and context-specific tools.



### KEY CONSIDERATIONS FOR EFFECTIVE AND MEANINGFUL CHILD PARTICIPATION <sup>61</sup>

*In its General Comment No. 12 on the right of the child to be heard, the Committee on the Rights of the Child recommended that child participation shall meet the following requirements in order to be effective and meaningful. It shall be:*

- |                                       |                                      |                       |
|---------------------------------------|--------------------------------------|-----------------------|
| A. <i>Transparent and Informative</i> | B. <i>Voluntary</i>                  | C. <i>Respectful</i>  |
| D. <i>Relevant</i>                    | E. <i>Child-Friendly</i>             | F. <i>Inclusive</i>   |
| G. <i>Supported by Training</i>       | H. <i>Safe and Sensitive to Risk</i> | I. <i>Accountable</i> |

#### BOX N° 8

<sup>60</sup> See Committee on the Rights of the Child, General Comment No.12 The right of the child to be heard, CRC/C/GC/12, United Nations, 2009, par. 134, lett a - i.

<sup>61</sup> See note 57.



## KEY CONSIDERATIONS FOR THE EFFECTIVE AND MEANINGFUL PARTICIPATION OF CHILDREN SERVING A CUSTODIAL OR NON-CUSTODIAL SENTENCE

### >> A. PARTICIPATION SHALL BE **TRANSPARENT AND INFORMATIVE**

providing children information about the process and purpose of participation, in a language they understand, with due consideration to the diversity of children, gender issues and other individual needs:

Participation in any judicial or administrative proceeding can only be meaningful and effective when the child is informed about the procedure, is aware of its purpose and understands the process and consequences of her or his participation. To this purpose, it is important to enable the child to seek, receive and impart information, to use a vocabulary which children are familiar with and a language easy to understand and to give due consideration to the socio-cultural background of the child. All steps of the procedure and of relevant decision making processes need to be transparent, enabling the child and his or her legal representative to understand and review the steps taken, to demand clarification on legal reasoning where applicable. Transparency is also a precondition for the child to request that a decision be revised or to appeal. Technical language and terminology, complex procedures and formalities prescribed by criminal and penitentiary law make it often difficult for children to fully understand the meaning of their legal situations, which might reduce their possibilities to participate effectively.



*“In his [a boy placed in a detention centre] experience, various judicial representatives have been neither efficient nor pleasant with him. First of all, the judge did not take the letter he wrote into consideration. Also, two different lawyers were involved, and the first one did not even seem interested in his case [...]. He was then assigned a new lawyer, who was much more efficient and friendly. He hears from the new lawyer every week and the lawyer makes sure that he is well informed and updated, and that he knows of future possibilities.”*

CHILD PLACED  
IN A DETENTION CENTRE  
BELGIUM

- ✓ It is important to provide the child with **all relevant information concerning his or her legal situation** and discuss with the child all the possible actions that can be undertaken, as for instance the possibility to convert the custodial sentence into a non-custodial one. To this end, it is also important to give the child the tools for understanding **the juvenile justice system and relevant legislation**, for instance through the use of easy to read books and illustrated information material.

- ✓ Upon arrival at the juvenile detention centre or the facility for alternative measures, the child should be given **a copy of the rules** governing the institution, with information about their rights and obligations. Translations or interpretation assistance should be available for children who do not master the local language. The child has to have the opportunity to ask questions about these rules and to seek clarifications and explanations.
- ✓ Transparency requires also that **all relevant processes concerning the child**, as for instance a hearing or a consultation with the child on his or her individual care plan, **is documented**. Decision-making processes need to document how the child has been informed, how the child's views have been heard and taken into account and how they have been balanced against other views and interests. The child needs to be able to access this documentation, directly or through a representative.

>> **B. PARTICIPATION SHALL BE VOLUNTARY**

with the free and meaningful involvement of children:

The opportunity for children and young people serving a custodial or a non-custodial sentence to participate in different types of activities is important for their personal development and rehabilitation.

Activities can be mandatory or voluntary and include vocational training, sports and recreation, arts, performance and cultural courses. Some activities are mandatory as they are considered indispensable for the health, development and well-being and for the child's rehabilitation. It is important to ensure that these benefits are real and effective, and consulting with the children concerned is an important tool to verify this. Voluntary participation could be jeopardized, however, when children fear that expressing their views will have negative implications, for instance when expressing a dissenting view.



*“Within PYPs (Public Youth Protection Institution), the activities planned by the educational project [the individual care plan] such as courses, sports, etc., are mandatory and when a child refuses to participate, that is most often taken as a reason for a sanction. Making participation mandatory is, in our opinion, against the very principle of participation, which should have a voluntary basis.”*

TWELVE NATIONAL REPORT  
BELGIUM



*“I would like them to listen to us more when we propose ideas, e.g. do sports outside and not inside the building when it is hot.”*

CHILD  
IN A DETENTION CENTRE  
BELGIUM

- ✓ Professionals and officials in the juvenile penal justice system should **assess children’s ‘good conduct’ and their progress toward rehabilitation and social integration on a holistic and individual basis**. To this purpose each child’s decisions and behaviour should be assessed from a perspective that takes into account the individual situation, views and needs of the child. Generalised conclusions should be avoided, as for instance in cases where children are not getting involved in the activities within the detention centre or the facility for alternative measures, this should not be automatically evaluated in a negative way but should be investigated to understand the child’s motivations.
- ✓ Detention centres and facilities for alternative measures should offer **a good balance of activities** for children, ensuring their participation while also leaving them a certain margin of choice when it comes to leisure time, sports and recreation and vocational or other training or work. The views of the children should be heard and taken into account when deciding about the choice of activities available to them.

>> **C. PARTICIPATION SHALL BE RESPECTFUL**  
giving due weight to the views of the child:

According to Article 40 of the UN Convention on the Rights of the Child, the child recognized as having infringed the penal law has the right to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth. The treatment of the child shall reinforce the child’s respect for the human rights and fundamental freedoms of others. It shall take into account the child’s age and the overarching objective to promote the child’s reintegration process.<sup>62</sup>

Consultations with children are useful to assess their views about the activities offered and to better understand the impact that these activities have in practice. Listening to the ideas and suggestions of children will help to design activities that are targeted at their needs and interests and increase the immediate and longer-term positive outcomes for the children. The consultations carried out in the framework of the project TWELVE revealed that children serving a custodial or non-custodial sentence often feel that their opinions are not heard or considered, and sometimes not even asked for.

<sup>62</sup> Art. 40 (1) of the UN Convention on the Rights of the Child, 1989, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [accessed on 17.02.2016].



*“I feel that my activities and the rules are imposed on me, and I do not have a say. A rap workshop had been organized based on the youngsters’ requests but it was cancelled because too much bad language was being used.”*

CHILD  
DETENTION CENTRE  
BELGIUM



*“The rap workshop we asked for was cancelled because of too many insults. This is ridiculous because we have a lot of repressed hate, and it would help us to express it.”*

CHILD  
DETENTION CENTRE  
BELGIUM



*“There is a time for an Assembly every week; I feel that we cannot propose our own agenda.”*

CHILD  
DETENTION CENTRE  
SPAIN

- ✓ Children’s right to participate should be guaranteed through the development of **tools and processes of co-participative decision making** where children’s views are sought, heard and taken into consideration. In particular, children serving a custodial or non-custodial sentence should be enabled to participate in planning activities, including in reviewing the rules of detention centres or facilities where alternative measures are served.
- ✓ Staff and management of juvenile detention centres or facilities for alternative measures should guarantee the child’s right to be heard organising **periodical meetings and consultations**. **Children’s freedom of expression** should be guaranteed and encouraged through creative methods such as theatre or recreational activities, in an open and trusted environment, to ensure that the services and activities offered to them are meaningful, appropriate and relevant to their individual situations and needs.
- ✓ Children serving a sentence in a detention centre or facility for alternative measures could be encouraged and supported to develop their own **newspaper or other media format**, at the local level or nationally, as a forum to express their views, engage in dis-

cussions and report about matters that interest and concern them and their surrounding communities, with due consideration to their best interests and security concerns.

- ✓ Within detention centres and facilities for alternative measures, **children's ideas and proposals should be given due weight, supported and implemented** when not interfering with security reasons, for example providing children with their favourite music or allowing them to be involved in the preparation and cooking of food, with relevant administrative licences needed.
- ✓ It is important to **discuss important decisions with children**, explaining who took the decision, on which grounds, under which rule and on what basis. Professionals should ensure that each child understands the reasons underlying the rules. Discussions of important decisions enable an exchange of views and this, in turn, increases the awareness about the child's understanding and specific needs to be taken into account. It can provide the basis for innovative and creative solutions.
- ✓ During meetings and consultations between staff and children serving a sentence, when issues at stake are particularly sensitive or conflictual, it could be useful to involve **an external and independent mediator**.
- ✓ **Anonymous methods**, such as questionnaires or confidential consultations by external or independent bodies, should be applied **regularly to assess the quality** and usefulness of **activities** and services provided. These methods can be developed together with the children in order to enhance the degree and quality of their participation.
- ✓ Children serving custodial or non-custodial sentences have to **be periodically heard to assess the progress with the implementation of her or his individual care plan**. The results from this consultation shall inform any adjustments that may be needed to the plan and its implementation. The views of the child shall be heard and discussed in a multi-disciplinary group of professionals and officials involved in the case, including the social worker and educator, lawyer, judge of surveillance and penitentiary police officer, in respect of data protection and confidentiality rules.

## >> D. PARTICIPATION SHALL BE **RELEVANT**

having a significance and a concrete value for the child's present and future:

Penal measures and the way they are served should be specifically tailored to the evolving capacities and to the social, economic and cultural context of the individual child. Children serving a sentence should be actively involved in the definition of their individual care plans. Ad-hoc spaces and measures should be provided to support children in developing their skills and abilities, helping them to build their path toward their rehabilitation and social inclusion within the community. However, the consultations in the countries that participated in TWELVE revealed that activities planned for children and young persons in the juvenile penal justice system often seem to be disconnected from children's authen-

tic interests and needs and from the social life in communities. Juvenile detention centres and facilities for alternative measures are often set up as closed centres that operate in isolation from communities. The isolation can inhibit contact and communication between the children and young people in the centres and the surrounding communities, complicating children's social reintegration.



*“In practice children perceive that they are considered only on the basis of their condition and the offence committed. They see themselves through the eyes of others and face self-limiting and self-esteem problems.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY



*“With regard to the juvenile detention centre, there is a wall created between the ‘inside’ and the ‘outside’. There is a problem of communication and of participation from the inside to the outside and from the outside to the inside. It is very difficult that the outside takes part in the things happening inside. Civil society has no idea of what is really happening inside the centre due to the rules, but also because it is much simpler and convenient to reduce participation to the minimum.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY

- ✓ Children serving a custodial or non-custodial sentence should be allowed to **attend mainstream public schools** and to **continue their previous education**, in accordance with the best interests of the child and relevant security considerations.<sup>63</sup>
- ✓ Children who are serving a custodial or non-custodial sentence can benefit from opportunities to **engage in voluntary social work, when adequately trained and prepared**. This experience could be important for several reasons. First, it could help the child to keep a connection with the communities surrounding the detention centre or facility for alternative measure. Engaging in social work can allow the child to enrich her/his life experience. Secondly, it can help the child to develop relevant social skills and job-skills and a network that could be useful after the release. Thirdly, it is important to foster the child's self-confidence, to give the child a sense of his or her skills and

<sup>63</sup> For example, in The Netherlands night-time detention facilities allow young people to attend school as usual during the day. See T. Hammarberg, Children and juvenile justice: proposals for improvements, Strasbourg, 2009, available at [https://wcd.coe.int/ViewDoc.jsp?id=1460021#P67\\_5249](https://wcd.coe.int/ViewDoc.jsp?id=1460021#P67_5249) [accessed on 18.02.2016].

what she/he is able to do, with an immediate emotional reward.<sup>64</sup>

- ✓ When adequately trained, children should be given also the possibility to **perform remunerated work** within the detention centre, the residential care facility or in the surrounding communities in order to encourage and facilitate their social reintegration. The working experience a) gives children the possibility to put into practice their skills; b) gives children an economic reward; c) enriches their curriculum; d) can be continued also after the release, supporting their social reintegration and representing an important crime deterrent.<sup>65</sup>
- ✓ The juvenile justice system should be strongly oriented toward a **restorative justice approach**, which is more open to participation. This approach should inform also the post-trial phase.



### ACCORDING TO THE UNITED NATIONS OFFICE ON DRUGS AND CRIME:

*“A restorative process is any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”<sup>66</sup>*

*“Restorative justice objectives:*

- *Restore community order and peace and repair damaged relationships*
- *Denounce criminal behaviour as unacceptable and reaffirm community values*
- *Support victims, give them a voice, enable their participation and address their needs*
- *Encourage all concerned parties to take responsibility, particularly the offenders*
- *Identify restorative, forward looking outcomes*
- *Prevent recidivism by encouraging change in individual offenders and facilitating their reintegration into the community”<sup>67</sup>*

UNODC  
Handbook on Restorative Justice Programme  
New York, 2006

BOX N° 9

<sup>64</sup> For experiences of community volunteering as alternative measure, see T. Hammarberg, Children and juvenile justice: proposals for improvements, Strasbourg, 2009, available at [https://wcd.coe.int/ViewDoc.jsp?id=1460021#P67\\_5249](https://wcd.coe.int/ViewDoc.jsp?id=1460021#P67_5249), par. 5.4

<sup>65</sup> See United Nations Office on Drugs and Crime, Justice in matters involving children in conflict with the law model law on juvenile justice and related commentary, United Nations, 2013, Article 66 – Work opportunities, available at [https://www.unodc.org/documents/justice-and-prison-reform/Justice\\_Matters\\_Involving-Web\\_version.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf) [accessed on 17.02.2016].

<sup>66</sup> United Nation Office on Drugs and Crime, Handbook on Restorative Justice Programme, New York, 2006, p. 6, available at [https://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf) [accessed on 18.02.2016]

<sup>67</sup> United Nation Office on Drugs and Crime, Handbook on Restorative Justice Programme, New York, 2006, p. 10, available at [https://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf) [accessed on 18.02.2016]

- ✓ In detention centres and facilities for alternative measures, it is important to develop **individual care plans** in close cooperation with the child, the responsible social worker and educator, and in close involvement with the family and guardian or legal representative, where applicable. These plans shall be developed with a holistic, rights-based perspective and oriented at the social reintegration and development of the child.
- ✓ Measures need to be taken to **involve the child's social context and the surrounding community** in activities of detention centres or facilities for alternative measures. The child's family members, peers, private and public associations, volunteer organizations and other relevant persons of the child's social support network can significantly support the child's rehabilitation and social integration.<sup>68</sup> Their involvement requires a careful risk and resilience assessment to ensure that the supportive resources of the social network are mobilised while any risks are identified and mitigated, including risks of abuse. Their involvement is important also beyond the sentence term, to ensure continuous support to the child's development into adulthood and independent life also after the release.
- ✓ Detention centres and facilities for alternative measures should **not** be established in **an isolated place** or otherwise in isolation from the community. They should enable contacts with the family, peers and other social actors that can help and support the child during the stay in the detention centre or facility for alternative measures as well as after release.
- ✓ When choosing the detention centre or facility for alternative measures, or when a child is transferred to another centre or facility, it is important not to remove the child from a **familiar context** that could be helpful for her/his future reintegration.<sup>69</sup>
- ✓ **Counselling** shall be provided to the child to prepare him or her **for the time of the release** and thereafter, including through the support of peers who have succeeded in the transition and have succeeded to integrate into the community.<sup>70</sup>

>> **E. PARTICIPATION SHALL BE CHILD-FRIENDLY,**  
 adapted to the real needs and the rights of the child and focused on her/his best interests.<sup>71</sup>

The measures adopted in juvenile detention centres or facilities for alternative measures have to ensure that the human rights of the child serving a sentence are being fully respected and safeguarded. Measures should be oriented at the needs of the children serving

<sup>68</sup> Council of Europe, Recommendation CM/Rec(2008)11 of the Committee of Ministers to Member States on the European Rules for Juvenile Offenders Subject to Sanctions or Measures, 5 November 2008, arts. 83 and 104.5.

<sup>69</sup> See the Recommendation of the Committee of Ministers, CM/Rec (2008)11, on the European Rules for juvenile offenders subject to sanctions or measures, cit., par. 58.

<sup>70</sup> See Hammarberg T., Children and juvenile justice: proposals for improvements, Strasbourg, 2009, available at [https://wcd.coe.int/ViewDoc.jsp?id=1460021#P67\\_5249](https://wcd.coe.int/ViewDoc.jsp?id=1460021#P67_5249) [accessed on 18.02.2016]

<sup>71</sup> Council of Europe, Guidelines on Child-friendly Justice, adopted by the Committee of Ministers on 17 November 2010, available at <https://wcd.coe.int/ViewDoc.jsp?id=1705197> [accessed on 12.02.2016], define the "Child-friendly justice" as the "justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity" (II Definition, c.).



a sentence, with due consideration to the best interests of each individual child. In practice, there are challenges in ensuring that measures and conditions are child-friendly and rights-based, as was evidenced by the consultations in the countries that participated in TWELVE. An issue that was raised repeatedly is that of solitary confinement, which is ordered as a disciplinary measure in some detention centres. Solitary confinement is in stark contradiction to the participatory rights of children and their human rights and needs, which are all relevant for the longer-term development and rehabilitation (see Box 10).



### PROHIBITION OF SOLITARY CONFINEMENT OF CHILDREN

*The United Nations Special Rapporteur on Torture has defined solitary confinement as “any regime where an inmate is held in isolation from others (except guards) for at least twenty-two hours a day” and has called upon Governments to prohibit this practice.<sup>72</sup>*

*According to the United Nations Special Rapporteur on Torture, solitary confinement of youth constitutes cruel, inhumane and degrading treatment and in some cases, torture.*

*The United Nations Committee on the Rights of the Child has furthermore recommended that solitary confinement should not be used against children.<sup>73</sup>*

*The Council of Europe Commentary to the European Rules for juvenile offenders subject to sanctions or measures states that: “Any violation of human dignity is to be prohibited. [...] solitary confinement, depriving juveniles of social contacts are examples of what should be avoided.”<sup>74</sup>*

BOX N°10



*“Here children can be isolated for 15 days. [...] Here isolation is the practice.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY

<sup>72</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 77, U.N. Doc. A/66/268 (August 5, 2011) (by Juan Mendez), available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> [accessed on 18.02.2016].

<sup>73</sup> Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, cit., par. 89

<sup>74</sup> Commentary to the European Rules for juvenile offenders subject to sanctions or measures, Council of Europe, 2008, rule 7, CM(2008)128 addendum 1, [http://www.coe.int/t/dghl/standardsetting/prisons/Commentary\\_Rec\\_2008\\_11E.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/Commentary_Rec_2008_11E.pdf) [accessed on 18.02.2016].



*“During his second stay here, O. [...] often had problems with the tutors, leading to a strict punishment, such as an 18-day period of isolation in his room. Within the framework of this measure, which one may qualify as punitive, not educational, the youth was forced to sit in his room alone from 7 am to 9 pm without a mattress or anything to keep himself occupied during the first few days, not even a book. The tutors were supposed to check up on the youngster every two hours, but all they did was briefly glance into the room through the door, without even speaking to O. [...] According to the psychologist, the abuse of power of the tutors is the result of a lack of tools and training within the framework of conflict transformation. Unable to respond to a young ‘rebel’s’ conduct, tutors tend to choose the easiest option, which is to lock up the person, cease to talk to him and stop him from enjoying his rights.”*

PSYCHOLOGIST  
PUBLIC YOUTH PROTECTION  
INSTITUTION BELGIUM



*“We would like that our bathroom could be provided with a door....”*

CHILD  
JUVENILE DETENTION CENTRE  
ITALY



*“I really would like to have a normal door  
(not a security door in iron with the grate) at least in the dormitory rooms.”*

CHILD  
JUVENILE DETENTION CENTRE  
ITALY

✓ **A separated system of justice**, with specialist courts or court chambers, specific procedures and institutions appositely dedicated to children and young persons in conflict with the law should be in place.<sup>75</sup>

<sup>75</sup> Council of Europe, Guidelines on Child-friendly Justice, cit., 2010, Luxembourg, 2012, par. 63 “As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor’s office”. It is highlighted here, although some Council of Europe member states believe that children can be detained with adults in certain cases (it would facilitate visits from parents, for example), Art. 37 of the Convention on the rights of the child clearly states that “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so” (lett. c).

- ✓ The **hearings** of a case should be held by the same judge and should be **adapted to the child's age and capacity to remain focused**.<sup>76</sup>
- ✓ All professionals of reference should dedicate **more room to the dialogue** with the child in conflict with the law, talking with her/him in apposite and adequate spaces.
- ✓ It is important to **create separated rooms** in detention centres and facilities for alternative measures, dedicated to the dialogue between the child and visitors, including legal professionals. This room should guarantee privacy, an adequate environment for the child and a physical distance from spaces that appear overwhelming and inhibiting.
- ✓ Adequate **consideration** should be given **to the children's needs for affection** in detention centres and facilities for alternative measures, for instance giving children the possibility to visit their home, allowing the presence of pets, always with due consideration to the best interests of the child as well as safety and security concerns.
- ✓ **The privacy of children and young persons who are serving a custodial or non-custodial sentence** should be respected and protected, with due consideration to necessary security considerations, as for instance the guarantee of privacy in the bathrooms while also ensuring that bathroom use is safe for each child.
- ✓ Within detention centres and facilities for alternative measures, **adequate spaces for outdoor and indoor activities** should be guaranteed in order to help children to enhance their social and relational skills and to alleviate tensions.
- ✓ **Appropriate spaces** should be guaranteed **for girls serving a custodial or non-custodial sentence who are young mothers**, giving them the opportunity to access playgrounds and other facilities relevant for their children, under the supervision of the educator or other appropriate staff.<sup>77</sup>

## >> F. PARTICIPATION SHALL BE **INCLUSIVE**

considering the socio-cultural dimensions and all forms of exclusion, marginalisation and discrimination that can affect the child, including contexts of structural discrimination.<sup>78</sup>

Measures in the juvenile penal justice system have to be guided by the principle of non-discrimination, as afforded under Article 2 of the UN Convention on the Rights of the Child. The right to non-discrimination has also been strongly enshrined into international, Eu-

<sup>76</sup> Council of Europe, Guidelines on Child-friendly Justice, cit., 2010, par. 66-67.

<sup>77</sup> See the Bangkok Rules, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 2010, Part III Pregnant women, breastfeeding mothers and mothers with children in prison (rules 48-52) available at [http://www.penalreform.org/wp-content/uploads/2013/06/United\\_Nations\\_Rules\\_for\\_the\\_Treatment\\_of\\_Women\\_Prisoners\\_and\\_Non-custodial\\_Measures\\_for\\_Women\\_Offenders\\_the\\_Bangkok\\_Rules.pdf](http://www.penalreform.org/wp-content/uploads/2013/06/United_Nations_Rules_for_the_Treatment_of_Women_Prisoners_and_Non-custodial_Measures_for_Women_Offenders_the_Bangkok_Rules.pdf) [accessed on 18.02.2016].

<sup>78</sup> This section particularly addresses children that come from vulnerable contexts. In particular, the Committee on the Rights of the Child, General Comment No.7 Implementing child rights in early childhood, CRC/C/GC/7, United Nations, 2005, affirms that "young children are especially vulnerable to the harm caused by unreliable, inconsistent relationship with parents and caregivers, or growing up in extreme poverty and deprivation, or being surrounded by conflict and violence or displaced from their homes as refugees, or any number of other adversities prejudicial to their well-being." (par. 36)

European and national laws. Ensuring non-discrimination in practice, does however not imply that all children are treated the same. In some cases, special consideration to the child's individual situation and background is required and calls for positive, affirmative action to prevent discrimination, marginalisation or exclusion and to promote social inclusion. In the juvenile penal justice context, the national, social and cultural background of the child and her or his family, religion, language, gender and gender identity, and belonging to a minority group, could be of relevance and need to be taken into consideration while the child serves a sentence and in the rehabilitation phase.



*“Children are not involved in activities that allow them to build up something outside or to integrate after leaving the centre; or activities that aim to enable them to have a better life than the one they had before arriving at the centre. A set of activities that are appropriate or seem to be appropriate are available only during their stay in the centre.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY



*“I was offered the chance to lead a cultural activity under the guidance of a teacher in order to highlight the culture of the country of origin of the locked-up youth. They present their country and their culture to other young people.”*

CHILD  
JUVENILE DETENTION CENTRE  
BELGIUM

- ✓ The active involvement of qualified **cultural mediators** can be important to facilitate the communication between professionals and officials and children from different national, cultural or minority backgrounds. Cultural mediators can facilitate meaningful dialogue, help to avoid misunderstandings and prevent thereby that children from different backgrounds are marginalised, excluded or stigmatised.
- ✓ It is important to give children opportunities **to practice their religion**, providing adequate spaces, making it possible for the child to observe special diets for religious reasons and helping them to be in contact with the local community of the same national, language, cultural or religious origin.
- ✓ There is a need to develop **alternative measures that do not exclude children from different backgrounds or exacerbate their marginalisation** on economic, social or

cultural grounds. In some cases, for instance, non-national children or children with an immigration or minority background cannot enjoy the alternative measures provided by national law, due to their lack of family support and social support networks.

- ✓ Detention centres and facilities for alternative measures have to be well **equipped for providing assistance to children with physical or mental disabilities.**<sup>79</sup>
- ✓ **Intercultural workshops** should be promoted in a creative and appealing way within detention centres and facilities for alternative measures in order to encourage and allow children and young persons to express their different cultural and national identities and share their experiences and beliefs, possibly involving the external community, too.
- ✓ In detention centres and facilities for alternative measures, the active involvement of professionals, officials and volunteers with a diversity of national, cultural, religious or other backgrounds should be encouraged, such as cultural mediators or other **professionals and volunteers with an immigration or minority background.**

## >> G. PARTICIPATION SHALL BE **SUPPORTED BY TRAINING**

mandatory, permanent and on-the-job, facilitating multi-disciplinary and inter-agency cooperation:

Training is fundamental to sensitise professionals and officials in the juvenile penal justice system to child rights, including the participatory rights of children. The qualifications of professionals and officials are usually specific to their mandates, such as security, education, legal representation or social services. While these mandates are all essential for the juvenile penal justice context, each addresses only specific aspects of the child's situation and needs. In order to achieve a more holistic understanding of the child's situation and needs, all of these actors have to communicate and work together. Promoting multi-disciplinary and inter-agency cooperation in the juvenile penal justice system is important to integrate the expertise of different professionals and officials and to enable more coordinated services and support for the children concerned. Multi-disciplinary and inter-agency cooperation can also facilitate the participation of the child by ensuring that her or his views are heard and taken into account by all relevant actors. Supporting the child's longer-term development and rehabilitation requires also a good cooperation between staff employed within detention centres or facilities for alternative measures and service providers working in the children's home community.

Professionals and officials working with and for children in the juvenile penal justice system need to have access to training, including professional and academic training and on-the-job training. National and international standards concerning children and juvenile justice are important elements to be addressed in standard curricula and continued professional devel-

<sup>79</sup> See Mental Disability Advocacy Center, Access to Justice for Children with Mental Disabilities International Standards and Findings from Ten EU Member States, 2015, available at [http://www.mdac.org/sites/mdac.info/files/access\\_to\\_justice\\_children\\_ws2\\_standards\\_and\\_findings\\_english.pdf](http://www.mdac.org/sites/mdac.info/files/access_to_justice_children_ws2_standards_and_findings_english.pdf) that affirms that "across Europe, children with mental disabilities [...] are disproportionately represented as defendants in juvenile justice systems" (p. 7). [accessed on 18.02.2016]

opment training. Issues of child-sensitive communication, tools and methods to support the participation of children should be on the agenda. In addition, special training is needed to foster an understanding of the benefits of multi-disciplinary and inter-agency cooperation for professionals/officials and the child, and how to achieve it in practice.



*“We work with parents in the detention centre but we know there is a need of working with them outside the centre. We are a centre that implements the judicial measures and community work corresponds to another division of the juvenile justice system.”*

PROFESSIONAL  
JUVENILE DETENTION CENTRE  
SPAIN

- ✓ The creation of **multi-disciplinary teams and inter-agency approaches** has to be encouraged, including by relevant training.<sup>80</sup>
- ✓ It is important to organize **regular meetings** between all relevant professionals and officials, and with the involvement of the child, in order to guarantee effective cooperation and information sharing, accurately observing issues of confidentiality and data protection.<sup>81</sup>
- ✓ It is important to increase occasions of **meetings**, especially **between the penitentiary police officers and the educators**, in order to share experiences, to establish common practices and educative directives in promoting the participation of children within detention centres.
- ✓ There is an urgent need of **mandatory, ongoing and specialized training** for educators, social workers, penitentiary police officers, lawyers, judges as well as staff and management of detention centres and facilities for alternative measures in order to enhance their knowledge, tools and methodologies toward a more direct contact with children and young people in the centres/facilities. Training should promote measures and treatment that are child-sensitive, prevent infringements against children’s rights or abuse, and encourage adequate reporting and follow-up in cases of abuse. Training should also sensitise professionals and officials to understand and address the complex situations and needs of the children and young persons in a more holistic way, including the use of participatory approaches to support rehabilitation and social inclusion.

<sup>80</sup> See European Union Agency for Fundamental Rights, Child-friendly justice, Perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States, Publications Office of the European Union, 2015, available at <https://wcd.coe.int/ViewDoc.jsp?id=1705197> [accessed on 17.02.2016], pp. 97 and 109; see also Council of Europe, Guidelines on Child-friendly Justice, cit., 2010, Section IV A, 4 and 5.

<sup>81</sup> See Arts. 16 and 40 (2) (b) of the CRC; See Committee on the Rights of the Child, General Comment No. 10 Children’s rights in juvenile justice, cit., par. 66 that states: “The right to privacy (art. 16) requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in the identification of the child confidential in all their external contacts. Furthermore, the right to privacy also means that the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case”. (par. 66)

>> **H. PARTICIPATION SHALL BE SAFE AND SENSITIVE TO RISK**

able to monitor the adherence to children's rights, to provide effective mechanisms of complaint and ad-hoc measures for children in a vulnerable situation or who are at risk of discrimination, violence or abuse:

Many children serving custodial and non-custodial sentences come from contexts characterised by high rates of crime, violence and abuse. Crime prevention measures are not always in place, or are not effective, so that the children often grow up in highly risky environments with limited perspectives for their future. Violent behaviour is sometimes perpetuated within detention centres and facilities for alternative measures.<sup>82</sup>

All professionals and officials consulted in the context of TWELVE ascertained that places where children and young persons serve custodial or non-custodial sentences are generally safe. There is a broad based consensus on the importance of safety for rehabilitation. They noted however also that there is room for improvement in conflict mediation and de-escalation programmes. Such programmes should be developed and rolled out by an independent body targeted at the children and young persons themselves and the relations between them and the staff.



*“The encounter with the police was not pleasant. Some policemen went to find me at home for having committed two different crimes, although I only claimed to have committed one of the two. I was sent off to the Saint-Gilles prison for six days although I was and still am underage.”*

CHILD  
DETENTION CENTRE  
BELGIUM

- ✓ Particular **attention should be given to non-national children** serving a custodial or non-custodial sentence, with particular regard to their legal situation, preventing that an unregulated or undocumented stay<sup>83</sup> could impede their possibilities to receive support services for social re-integration after their release.
- ✓ **Monitoring and inspection** of the state of implementation of children's rights should be ensured and effectively implemented in the juvenile justice field, including by inspectors of governmental and non-governmental institutions and organizations and independent bodies, within detention centres, facilities for alternative measures and communities.<sup>84</sup>

<sup>82</sup> See the Report on the United Nations Study on Violence Against Children presented to the General Assembly in August 2006 (United Nations General Assembly, Rights of the child: Note by the Secretary-General (2006), U.N. Doc. A/61/299), par. 53-63.

<sup>83</sup> According to Article 3(2) of the Directive of the European Parliament and the Council 2008/115/EC of December 16, 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals, “illegal stay” means “the presence in the territory of a Member State of a third-country national who does not fulfil, or no longer fulfils, the conditions of entry as set out in Article 5 of the Schengen Borders Code, or other conditions for entry, stay or residence in that Member State”.

<sup>84</sup> See also Council of Europe, Recommendation CM/Rec(2008)11 of the Committee of Ministers to Member States on the European Rules for Juvenile Offenders Subject to Sanctions or Measures, 5 November 2008, art. 125-126.4

- ✓ **Child-sensitive reporting and complaints mechanisms, including confidential and independent mechanisms**, should be available and easily accessible for children within detention centres and facilities for alternative measures. Children have to be informed about the existing reporting and complaints mechanisms and be encouraged to use them.<sup>85</sup> Such reporting and complaints mechanisms should also be accessible for professionals, officials and volunteers working in the juvenile penal justice system and shall ensure confidential reporting and offer mediation. The accessibility and effectiveness of reporting and complaints mechanisms needs to be monitored and periodically evaluated, including with a view to ensure that reports and complaints made by children are duly followed-up and that each child receives feedback on how this is done.
- ✓ Social service providers have to “**ensure that parents/caregivers are provided adequate support and training** to fulfil their responsibilities”.<sup>86</sup> The involvement of parents in social service provision for the child or parental visits have to be carefully assessed or supervised wherever there are doubts that it might not be in the best interests of the child.
- ✓ **Unaccompanied child migrants<sup>87</sup> in conflict with the law are entitled to special safeguards**, such as the representation by a guardian and/or legal representative. Special services might be required also with regard to their education and care while serving a sentence. Interpretation and cultural mediation might be required to ensure they are effectively heard and represented in all phases of the juvenile justice process. Volunteers and other civil society members or organisations can play an important role in promoting the participation of these children, including members of the diaspora group representing their national or cultural background, with due consideration to safety and the best interests of the child.

## >> I. PARTICIPATION SHALL BE **ACCOUNTABLE**

based on a uniform, stable and coherent system, able to ensure continuity and stability to the child:

Accountability is an important precondition for creating a protected environment and a trust base where children feel confident to express their views. Accountability implies that children, professionals and officials in the juvenile penal justice context operate according to a common set of rules and rely that actions, measures and behaviour are guided by these rules. Where this is not the case, mechanisms need to be available and accessible to hold the institution, or individual professionals, accountable for their actions. Consultations with professionals and children serving a custodial or non-custodial sentence in

<sup>85</sup> The complaint mechanisms are “procedures/processes for requests and/or complaints made by children deprived from their liberty regarding the conditions, treatment and care provided in this context”, in M. Braun, P. Rosset, *Children Rights Behind Bars. Human rights of children deprived of liberty: improving monitoring mechanisms*, Defence for children International, 2015, available at <http://www.childrensrightrbehindbars.eu/images/Childrens-Rights-Behind-Bars-A-European-Overview.pdf>

<sup>86</sup> Committee on the Rights of the Child, General Comment No. 7 Implementing child rights in early childhood, cit., par. 36 (lett. i).

<sup>87</sup> According to the UN Committee of the Right of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, part. III Definition, ““Unaccompanied children” (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so” (par. 7). “Separated children” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members” (par. 8).



the context of the project TWELVE revealed that some children think that professionals and officials exercise a certain discretion in the way they enforce rules. The measures and practice depend significantly on the responsible staff, such as judges, social workers, educators or directors of detention centres or facilities for alternative measures.<sup>88</sup> Children who have made experiences with decisions or measures that appeared arbitrary to them, might not be able to gain trust and confidence in the juvenile penal justice system, which in turn, could have negative implications on their motivation to participate and collaborate in their own rehabilitation and social inclusion.



*“Power over children remains in the hands of the penitentiary police at night. And of course they establish contact with children during the evening and night that give place to dynamics that are not included in the educational project of the child. This could raise contradictions that may question the legitimacy, seriousness and commitment towards the educational and care plan.”*

VOLUNTEER  
JUVENILE DETENTION CENTRE  
ITALY



*“...we should give responses, which are certain and quick. Also the certainty of the penalty is important: the children should understand very well that there is a consequence to their behaviour. If the justice procedures and decisions are too slow, the measure loses its scope for the child.”*

EDUCATOR  
JUVENILE DETENTION CENTRE  
ITALY

- ✓ **The practice of prison transfers should be avoided** or highly limited, in order to guarantee the stability of the child’s context and relations and the continuity of the individual care plan.
- ✓ **The degree of sentences has to be reliable and assessable**, irrespective of the judge or the Juvenile Court where the sentence is made. The enforcement of sentences should respect general principles of **reliability and non-discrimination** in all detention centres and facilities for alternative measures in a certain country.

88 G. Scardaccone (edited by), Il minore autore e vittima di reato. Competenze professionali, principi di tutela e nuovi spazi operative, Roma, 2011.

- ✓ In order to harmonize practices and procedures, it is important to ensure regular **meetings between authorities and personnel in charge of detention centres and facilities for alternative measures**, at the regional and national levels, developing professional networks, sharing experience and encouraging them to take good practices to scale.
- ✓ It would be useful to establish a set of **shared and harmonized key-rules to be followed** by all staff to promote children's participation within each detention centre and facility for alternative measures. These rules have to comprise paramount principles as well as detailed tools and methods of implementation. The supervision of the enforcement of the internal rules has to be ensured through periodical internal and independent review, monitoring and evaluation, using common national standards.
- ✓ **Research** should analyse **the juvenile penal justice system** and how it operates in practice, with particular consideration to juvenile detention centres and facilities for alternative measures. It should aim at gathering data and verifying the compliance with national law and with the UN Convention on the Rights of the Child and other relevant international and European standards. Research and evaluation should generate an evidence base of good practice examples of how to promote child participation effectively in support of children's rehabilitation and social inclusion. Research findings should guide a reform process based on evidence, knowledge and experience.
- ✓ Audits of juvenile detention centres or facilities for alternative measures, as well as monitoring and evaluation, can contribute to enhance accountability, especially when they involve consultations with the children and with relevant professionals and officials, and **ensure that findings are taken into account for reform processes**.

# AFTERWORD

**Pippo Costella**

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Defence for Children International - Italy

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”. These words are opening the 1948 Universal Declaration of Human Rights.

The “recognition of the inherent dignity” of a child necessarily requires an understanding of every person’s story, which is always different. Knowing and understanding the unique story of each individual and relating to it is also an unavoidable prerequisite to enable participation.

Children are rights holders, even if they committed crime. It is important to recognize that, in many instances, the conditions that led a child to break the law are closely related to the child’s story, including the chances that the child has previously had to enjoy her/his human rights while growing up. Consideration for the child’s background, context and story is important when trying to reconstruct together with the child a possible and sustainable sense of what could be just or unjust.

The measures imposed on children in the juvenile penal justice system, custodial or non-custodial, should always aim at providing the child with the possibility to belong and to be part of the “human family” mentioned in the 1948 Declaration. The possibilities for participation and the very objective of rehabilitation should be considered in relation with this sense of belonging. Every professional and official working in the juvenile justice field is an important component of enabling it.

“Freedom, justice and peace”, with their multifaceted meanings, represent the aim of any measure imposed on a child. From this perspective, they should be promoted in and through all measures of the justice system, in the working methods and the child’s relations with public institutions and their representatives.

The work developed in the context of the project TWELVE, which is presented in this handbook, started from very basic questions: What does participation mean? How is the concept of participation relevant for children who are in trouble with the law? Does the right to participation apply also to children and young persons who are subjected to coercive measures? What does participation have to do with the rehabilitative aim of the juvenile justice system? What do we need to change in order to enable participation? How we can be part of this change?

Throughout the initiative, we tried to stimulate reflections and debate to generate ideas and to solicit the recommendations from professionals, officials and volunteers working with different mandates within the juvenile justice systems in 6 European countries. We conceived the facilitation we provided in this process as our contribution to responding to these difficult questions. The aspiration was for these wide consultations to reach beyond the countries directly involved in the project.

As we proceeded with the implementation of the project, we recognized more and more the fundamental role that participation has in rediscovering juvenile justice systems and connecting (or re-connecting) them with the spirit, the principles and the provisions of the UN Convention on the Rights of the Child. The overall impression shared by the professionals and officials who participated in the numerous consultations of TWELVE was that this process of reflection makes a lot of sense.

Although we are far from having exhausted the responses to the substantial questions raised in TWELVE, we hope that the experience with the consultations and this handbook will contribute to increase the child friendliness of juvenile justice systems and their overall consistency with a human rights logic and purpose. In fact, after this journey, we are convinced that the notion of participation is central to qualifying the juvenile justice systems further as well as the mandates of all actors working with and for children in conflict with the law.

We warmly thank the authors of this important publication together with all the individuals, professionals and children who contributed with their genuine and precious participation.

# ANNEX 1

## GLOSSARY

### ALTERNATIVE MEASURES

(also ‘alternatives to detention’ or ‘non-custodial measures’): Alternative measures have been defined by Unicef as “measures that may be imposed on children who are being formally processed through the criminal justice system, at both pre-trial and sentencing stages, that do not involve deprivation of liberty.”<sup>89</sup>

### CHILD

“Every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>90</sup>

### CHILDREN IN CONFLICT WITH THE LAW

“Anyone under 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence.”<sup>91</sup>

### COMPLAINTS MECHANISM

“Any system that allows a child (in conflict with the law) to bring any aspect of the treatment that the child has received, including violations of his or her rights, to the attention of the authority responsible for the place of detention, or any other official body established for such purpose. Such mechanisms could include ombudspersons and autonomous, statutory community-based prison monitoring groups.”<sup>92</sup>

### FACILITIES FOR ALTERNATIVE MEASURES

For the purpose of this Handbook, ‘facilities for alternative measures’ refers to all public or private structures where children serve the specific alternative measures ordered by judicial sentences. They include communities, day centres and residential care facilities.

### INDIVIDUAL CARE PLAN

An individual care plan outlines a project tai-

lored to the specific situation and needs of a child serving a custodial or non-custodial sentence. It aims to plan for and promote her/his care, education and rehabilitation. The plan outlines the objectives to reach, specific activities and measures as well as methods of verification.

### JUVENILE PENAL JUSTICE SYSTEM

UNICEF has defined the juvenile penal justice system as the “Legislation, norms, standards, guidelines, policies, procedures, mechanisms, provisions, institutions and bodies, specifically applicable to children in conflict with the law who are over the age of criminal responsibility. These aspects may or may not be framed within a separate system for children.”<sup>93</sup>

### CHILDREN SERVING A CUSTODIAL OR NON-CUSTODIAL SENTENCE

A child who is over the age of criminal responsibility and has been recognized as having infringed the criminal law and has been sentenced by a court of law to serve a custodial measure in a detention centre or a non-custodial measure in a facility for alternative measures.<sup>94</sup>

### YOUTH/YOUNG PERSON

The United Nations define ‘youth’ as persons between the ages of 15 and 24 years old. (General Assembly A/36/215 and resolution 36/28, 1981). For the purpose of this Handbook, the term ‘youth’ or ‘young person’ is used alongside the term ‘child’ considering the statistical age of children serving a custodial or non-custodial sentence and the fact that in some European countries, the juvenile penal justice systems apply to young adults over 18 years of age.<sup>95</sup>

<sup>89</sup> Unicef, Toolkit on Diversion and Alternatives to Detention, 2010, available at [http://www.unicef.org/tdad/index\\_56038.html](http://www.unicef.org/tdad/index_56038.html) [accessed on 18.02.2016].

<sup>90</sup> Article 1 of the UN Convention on the Rights of the Child

<sup>91</sup> Child Protection Information Sheet, Children in Conflict with the Law, 2006 available at [http://www.unicef.org/chinese/protection/files/Conflict\\_with\\_the\\_Law.pdf](http://www.unicef.org/chinese/protection/files/Conflict_with_the_Law.pdf) [accessed on 18.02.2016].

<sup>92</sup> UNICEF Toolkit on Diversion and Alternatives to Detention 2010 available at [www.unicef.org/tdad/glossary\(4\).doc](http://www.unicef.org/tdad/glossary(4).doc) [accessed on 18.02.2016].

<sup>93</sup> UNICEF Toolkit on Diversion and Alternatives to Detention 2010 available at [www.unicef.org/tdad/glossary\(4\).doc](http://www.unicef.org/tdad/glossary(4).doc) [accessed on 18.02.2016].

<sup>94</sup> The UN Committee on the Rights of the Child recommends to set the minimum age of criminal responsibility at 12, or preferably higher, General Comment No. 10 on Children’s rights in juvenile justice, CRC/C/GC/07, 25 April 2007. In June 2014, the Parliamentary Assembly of the Council of Europe adopted a resolution on childfriendly juvenile justice, setting the minimum age of criminal responsibility at 14 years old (PACE, Child-friendly juvenile justice: from rhetoric to reality, 2014, par. 6.2, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21090&lang=en>).

<sup>95</sup> See Italy, where the Law n. 117, 11.08.2014 extended the competence of the separate juvenile penal justice system, now including young perpetrators who have committed the crime as minors that remain under the charge of Italian juvenile justice offices until 25 years of age.

# ANNEX 2

## THE PARTICIPATORY RIGHTS OF CHILDREN: THE RIGHT OF THE CHILD TO BE HEARD IN THE CONTEXT OF OTHER RIGHTS AFFORDED UNDER THE UN CONVENTION ON THE RIGHTS OF THE CHILD

### ART. 2 THE RIGHT TO NON-DISCRIMINATION

1. *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
2. *States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

The child has the right to be protected from any form of discrimination and exercise all the rights enshrined under the Convention, including the right of participation on an equal basis with all other children.

### ART. 3 THE BEST INTERESTS OF THE CHILD

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
2. *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
3. *States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

The best interests of the child is one of the paramount consideration that has to guide all the decisions concerning the child. The view of the child is particularly important in order to define and assess the concrete “best interests” of the child in a specific situation. Articles 3 and 12 are complementary. As highlighted by the Committee on the Rights of the Child in its General Comment No. 12: “there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives”.<sup>96</sup>

### ART. 5 EVOLVING CAPACITIES OF THE CHILD

*States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*

The child has the right to be guided and directed by parents, legal guardians, and members of the extended family or community. This guidance has to be calibrated with regard to the capacities of the child, which are continuously evolving. In particular, this means that the interventions of guidance need to be adapted and reduced gradually as the child's capacities to assess and manage situations increase.

### ART. 13 (1) THE CHILD'S RIGHT TO FREEDOM OF EXPRESSION

*The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in*

<sup>96</sup> Committee on the Rights of the Child, General Comment No. 12 The right of the child to be heard, cit., par. 74.

*writing or in print, in the form of art, or through any other media of the child's choice.*

The child has the right to express his or her views freely. The right to express and exchange opinions and to seek, receive and impart information is critical in order to guarantee the child the right to participate and to make participation meaningful.

**ART. 14 (1) THE CHILD'S RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**

*States Parties shall respect the right of the child to freedom of thought, conscience and religion.*

The child has the right to freedom of thought, conscience and religion. In order to enable children to participate, it is important to recognize, respect and encourage the agency of the child in all types of decisions and options when he/she receives guidance from adults.

**ART. 15 (1) THE CHILD'S RIGHT TO FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY**

*States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*

The child has the right to freedom of association. The right of the child to meet others in public and to associate is functional to the implementation of the right to participation. In particular, the solidarity, the debate and the peer-to-peer education is important to achieve awareness of rights and to seek creative ways of exercising them.

**ART. 17 THE CHILD'S ACCESS TO APPROPRIATE INFORMATION**

*States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.*

The child has the right to access information from diverse sources and in a language that she/he understands. This is an essential prerequisite in order to enable children to form their opinions freely and to contribute to informed decision-making.

**ART. 22 THE RIGHTS OF CHILD ASYLUM SEEKERS**

1. *States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is*

*considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

2. *For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.*

Asylum seeking children have the right to receive all the measures and services appropriate to their vulnerable situation, including the right to be assisted by a guardian or adviser free of charge, to receive support for family tracing, and to receive all the relevant information about their entitlements and the asylum process, in a language they can understand<sup>97</sup>.

**ART. 23 (1) THE RIGHTS OF CHILDREN WITH DISABILITIES**

*States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.*

Children with disabilities have the right to be enabled to express their views and to be heard through specific measures tailored to their needs that favour their social participation and integration. As highlighted by the Committee on the Rights of the Child, General Comment N° 9, The rights of children with disabilities, "Engaging children in such a process not only ensures that the policies are targeted to their needs and desires, but also functions as a valuable tool for inclusion since it ensures that the decision-making process is a participatory one".<sup>98</sup>

<sup>97</sup> Committee on the Rights of the Child, General Comment No. 12 The right of the child to be heard, cit., par. 123-124.

<sup>98</sup> Committee on the Rights of the Child, General Comment No. 9 The rights of children with disabilities, CRC/C/GC/9, 2007, par. 32-33.

**ART. 30 THE RIGHTS OF CHILDREN  
BELONGING TO A MINORITY GROUP**

*In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.*

The child has the right to socialise with others to enjoy and practice his/her culture, religion and language. The possibility to exercise participation depends also on the awareness of the own identity. Children have the right to know, construct and fuel their own identity. Religion, language and culture are essential parts of it.

**ART. 31 THE CHILD'S RIGHT TO LEISURE,  
PLAY AND CULTURE**

1. *States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*
2. *States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity."*

The child has the right to leisure, play and to participate in cultural activities. Recreational as well as cultural and artistic activities play an important role in facilitating children's expression and participation. The value of creativity and exploratory learning was noted also by the Committee on the Rights of the Child in its General Comment No. 7: "Through play, children both enjoy and challenge their current capacities, whether they are playing alone or with others."<sup>99</sup> Article 31 recognizes also that it is important for children to have time to rest and relax. Children have their own, individual times, attitudes and preferences in this regard.

**ART. 37D TORTURE, DEGRADING TREATMENT AND  
DEPRIVATION OF LIBERTY**

*Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to*

*challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

The child deprived of her/his liberty has the right to prompt legal advice, legal assistance and other appropriate assistance. During the deprivation of liberty, legal assistance and representation and qualified advice are important to enable children to fully understand their situations, including any remedies available to them to challenge the deprivation of liberty and to ensure their rights are fully safeguarded during deprivation of liberty.

**ART. 40 ADMINISTRATION OF JUVENILE JUSTICE**

1. *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*
2. *To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*
  - (a) *No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;*
  - (b) *Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*
    - (i) *To be presumed innocent until proven guilty according to law;*
    - (ii) *To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*
    - (iii) *To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*

<sup>99</sup> Committee on the Rights of the Child, General Comment No.7 Implementing child rights in early childhood, CRC/C/GC/7, United Nations, 2005, par. 34



- (iv) *Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*
  - (v) *If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*
  - (vi) *To have the free assistance of an interpreter if the child cannot understand or speak the language used;*
  - (vii) *To have his or her privacy fully respected at all stages of the proceedings.*
3. *States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*
- (a) *The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;*
  - (b) *Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*
4. *A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.*

A child accused of or recognized as having infringed the penal law has the right to enjoy procedural and other safeguards during criminal investigations and proceedings. They include the respect for her or his dignity, human rights and fundamental freedoms, the right to competent and specialized legal assistance and representation, as well as interpretation and cultural mediation if and as applicable.

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