

3rd Forum on Human Rights, Democracy, and the Rule of law

"Equal access to justice for all: a necessary element of democracy, rule of law and human rights protection"

November 2020

Contribution on behalf of Defence for Children International (DCI)

Defence for Children International (DCI) welcomes the theme selected for the 3rd Forum on Human Rights, Democracy and the Rule of Law focusing on Equal access to justice for all as a key component to the full realisation of human rights for all. Although it has been found that children in particular are often those for whom access to justice is the most difficult facing numerous barriers for various reasons.

Addressing the specific topic of access to justice for children would be timely and pertinent, we would thus suggest to include this issue in the 3rd Forum during a panel or a discussion in order for the spotlight to be shown on how the international community can better ensure that children's right to justice is guaranteed whilst safeguarding a child's right to participate and be heard.

Children's rights are human rights and a crucial element to effectivity of these rights is the faculty for a child to be able to claim their rights, to seek redress or to complain about the violation of their rights¹.

In the experience of DCI as a grassroots organisation focusing on Justice for children as its overarching priority since the last 30 years, the following issues prevent children from having an equal access to justice.

- Children are confronted with a series of barriers in the process of accessing justice when they are victims of an offense or abuse. This ranges from the lack of adequate information on the applicable law in order to defend their rights, to the availability of adequate legal assistance to defend their rights, or to child-friendly environment and accessibility within a system that can be of difficult access even to adults.
- Specific child friendly measures are not put in place, children lack the appropriate care and guidance whilst they are confronted with the judicial system and their particular needs are not accounted for (i.e.: such as using child-friendly language, resources and settings).
- Disjointed approach meaning that children that have suffered an offense or abuse are at risk of being "revictimised" (i.e.: repeated interviews can be more traumatic than the abuse itself²), instead of providing a comprehensive and holistic vision of the support and wellbeing of children.
- Lack of understanding by judicial personnel on how exactly children differ from adults in terms of neuro-psychological development (i.e.: high propensity to act rashly and to not understand the seriousness and consequences of their actions) and the overuse of harmful practices towards children (i.e.: pretrial detention and deprivation of liberty in general as a punitive measure).

A wealth of international and regional standards and guidelines exist on access to justice for children, that supply a plethora of good practices and recommendations that can be implemented by States, also providing guidance for other stakeholders.

¹ Liefwaard, T. (2019) Access to justice for children: towards a specific research and implementation agenda. The International Journal of Child Rights 27:2 https://brill.com/view/journals/chil/27/2/article-p195_195.xml

² https://childhub.org/en/system/tdf/what_is_barnahus_and_how_it_works.pdf?file=1&type=node&id=27787

The fight against injustice, impunity, and the empowerment of children becoming actors for justice and defenders of their own rights, depends also on the ratification and implementation of other existing instruments. One crucial at the global level is the [3rd Optional Protocol to the UN Convention on the Rights of the Child \(CRC\) on a Communications Procedure](#) (OPIC) allowing for children (and other stakeholders) to submit complaints before the CRC in the case of an alleged violation by a State party to the OP, and also provides for an inquiry procedure for grave or systematic violation of child rights. Last year, the Committee on the Rights of the Child issued a very important tool [General Comment No. 24](#) (replacing General Comment No.10) on 'Children's rights in the justice system' to provide clarity on the setting of a minimum age of criminal responsibility and encourage the establishment and full implementation of alternative measures that can be applied at all stages of the process. During 2019 a new initiative and Action Plan on [Justice for Children, Justice for All](#) was launched. This innovative approach launched by an interagency group, of which DCI has been a founding member, aims at making a direct link with the Sustainable Development Goals (SDGs) and in particular targets SDG16+ and justice for children. Indeed, this is a complementary approach that can be very helpful on setting concrete indicators for States, identifying champions (path-finding countries) and walking the road to the 2030 objectives, including the one on eliminating any kind of violence exerted to children and promoting justice. At the regional level, the Arab League adopted a new manual on child friendly justice produced by DCI, which has the potential to build the capacities of the judiciary and law enforcement officers who are in contact with children in the justice system. Furthermore the newly launched UN Global Study on Children Deprived of Liberty, and in particular the first chapter on gives an invaluable overview of the situation of children detained in different setting around the world, including those who have had difficulties whilst being involved in the justice and many children who would want to complain about the violation of their rights and seek redress.

Objectives - This discussion would be the opportunity to overview some of the issues already highlighted that are preventing truly peaceful and just societies necessary to democracies where the rule of law is paramount. But this would also be the time to hear from a variety of stakeholders, including States (e.g. pathfinding countries), UN agencies and treaty bodies (e.g. Committee on the Rights of the Child), and academia, on what international/regional laws and standards recommend and what are the best practices that can be implemented and adapted to ensure that children have effective access to justice around the world, such as:

- Establish juvenile justice systems in compliance with the CRC.
- Promote diversion from the judicial system, restorative justice, alternatives to detention or other such measures.
- Realise that children benefit from justice systems when these are focused not only on resolution, but on prevention and protection.
- Contribute to the empowerment of children who are given the capacity to express themselves and defend their rights in a safe and protecting environment.
- Children should have active and meaningful roles in justice reform, particularly children who have been in contact with prevention and justice systems³.

Key NGOs involved in the drafting of tools like the Committee on the Rights of the Child *General comment No. 24 (2019) on children's rights in the child justice system* and children themselves will also take the floor to share their perspective about the issue⁴.

³ Davidson, J.; Elsley, S.; Giraldi, M.; Goudie, A.; Hope, K.; Lyth, A.; Van Keirsbilck, B. (June 2019): Justice for Children, Justice for All: The Challenge to Achieve SDG16+ A Challenge Paper. Scotland: CELCIS-Inspiring Children's Futures, University of Strathclyde
<https://www.justice.sdg16.plus/justiceforchildren>

⁴ In case physical presence of children is not possible, we also propose a short video on Justice for children prepared by a group of children in Morocco and expressing very well some of the issues at stake on Justice for children, from a children's perspective. This video (in Arabic with French and English subtitles) won the 1st prize of the [2019 Children's Rights Award](#) that DCI organised for the 30th anniversary of the Convention on the Rights of the Child and the 40th from the creation of DCI.