GC27 Children’s access to justice and right to effective remedy

Guidance for consultations

This guidance is intended for any organization wishing to organize national or regional consultations to support the preparation of General Comment 27 of the Committee on the Rights of the Child on children’s access to justice and right to an effective remedy. The consultations are expected to take place until December 2024, using draft zero of the General Comment as a reference. Draft zero will be made available in the course of August/September 2024.

* The consultation framework suggested below includes (1) a set of general questions and (2) a set of questions to be addressed, as far as possible and relevant, for each avenue/mechanism that is available to provide an effective remedy in the country/countries of the region.
* ‘Avenue/mechanism-specific’ questions can be answered for each kind of avenues/mechanisms listed below or, in the alternative, one consolidated answer comparing the situation in the different kinds of avenues/mechanisms that are relevant can be provided.
* Feel free to select some of the questions only and adapt the questions to the national/regional context. There is no expectation that you will necessarily answer all questions. This will depend on the nature of selected participants and the time allocated for the consultation.
* The questions below can be used in key informant interviews, national consultations, and regional consultation. In regional consultations, participants will be able to compare their country’s experiences.
* Key informants and participants in consultations will be professionals working in the different avenues/mechanisms; service providers; staff from the relevant ministries; civil society organizations, Academics, and any other relevant actor.
* A separate questionnaire is available for consultations with children.
* If questions below are considered too detailed for regional consultations, these regional discussions could more generally discuss **obstacles** to children accessing justice (legal, social/culturally, financial, practical); the groups most **discriminated** against; **good practices and recommendations**.
* Reports from the consultations should be shared in English, French and Spanish [in this form](https://docs.google.com/forms/d/e/1FAIpQLSfb8pLKzSGI9m9_5IcDSoAdhmFYVrAsZwrBB32UYdfIUfttxA/viewform).

**General questions**

**Legal and policy framework (please share key provisions)**

* Is the right of children to adequate, effective, prompt and appropriate remedies provided by law? Are some children excluded from this provision?
* Does the law provide for, or recognizes, non-judicial remedy mechanisms? Are these mechanisms directly accessible to children?
* Is the right for children to take legal action on their own behalf provided by law? through a parent or guardian? through a chosen or appointed legal representative?
* Is the right of children to be heard in all proceedings which affect them, if they so desire, in a manner adapted to their age, maturity and best interests provided by law, whether judicial or administrative proceedings, or any other type of remedy provided for by legislation?

**Budgeting**

* Are human and financial resources allocated to children’s access to justice sufficient? Is children’s access to justice considered in the national budget?
* Are children generally included in the overall national investments in access to justice and rule of law?

**Monitoring & oversight**

* Is data on children’s access to justice and effective remedies available and disaggregated? Please share.
* How does the State monitor children’s access to justice and right to remedy?
* Does the State provide effective oversight of informal justice systems where they exist?

**Services and programmes**

* Please describe the services and programmes providing information, advice and legal, social or paralegal assistance to children seeking a remedy (socio-legal defense centers, legal clinics, ‘barefoot lawyers’, community paralegal groups, etc.)
* Please describe child rights education programmes in the country, including in schools, and whether the teaching includes information on the right to remedy.

**Questions per avenue/mechanism**

You can either answer the following questions for each kind of avenues/mechanisms listed below or, in the alternative, provide one consolidated answer comparing the situation in the different kinds of avenues that are relevant:

1. Grievances mechanisms within the governmental administration/ministries
2. National Human Rights Institutions/Ombudspersons/ICRI & similar
3. Judiciary system: administrative matters
4. Judiciary system: civil matters
5. Judiciary system: criminal matters
6. Alternative dispute resolution such as mediation or arbitration
7. Informal, customary system
8. Other relevant dispute resolution mechanisms

For each avenue/mechanism [with the same box as below for each avenue/mechanism]:

|  |  |
| --- | --- |
| **Type of cases**   * What is the type of cases considered by this avenue/mechanism? |  |
| **Normative base – Pls share key legal provisions and policies**   * Is the right for children to (1) initiate and (2) participate in these proceedings established by law or other norms? * May children initiate and/or participate on their own behalf or only through an adult (or both)? Do they need parental consent? * Standing: Is there an age limit to (1) initiate and (2) participate, and if so, what is the age? |  |
| **Representation**   * If the child cannot personally bring the matter to the attention of this body or procedure, who can do this on behalf of the child? * If children cannot be heard in person, who can represent the views or interests of child (e.g., a relative, guardian, teacher, child protection official)? * Is the child entitled to a lawyer? * Does the person or agency representing the child have an obligation to consult the child concerned and take the child’s views into account? |  |
| **Acceptability and trust**   * Is it considered culturally and socially acceptable for children to resort to this avenue? * Does resorting to this avenue involve the possibility of a negative impact on the child (such as reprisals or exclusion)? * Is this avenue generally trusted by the population? |  |
| **Procedural safeguards/child sensitive measures**   * Are procedures adapted to children? (see examples of such measures below) * Are the professionals involved trained or specialized in children’s rights? Is training sufficient/adequate? * Is free legal aid and representation available and accessible for all children, including in their own name, without discrimination? |  |
| **Information and support**   * Is the information on this avenue/mechanism child-friendly, translated in the various national languages and made available in all areas of the countries, including remote areas and closed facilities? * What type of support is available (legal, social, paralegal, support person, other) and is it available to all children? * What is the quality of such support and is it adapted to children? * How are children informed of the outcome of the procedure? |  |
| **Remedies & reparations**   * What are the remedies available to children? * Are the remedies generally effective when it comes to children? [definition of ‘effective’ to be added]. * What are the reparations available to children? |  |
| **Outreach & non-discrimination**   * Does the avenue/mechanism and associated services take into account the particular vulnerability of certain children and tailor their outreach and responses accordingly? (e.g., helplines, the use of mobile teams/home visits, flexible hours, gender-sensitive staff assignment, language/translation resources, and accessibility for children with disabilities). * Are any groups of children left out or discriminated against in this mechanism? * What are the costs involved in accessing this avenue, and other barriers not already mentioned (e.g., geographical location) |  |

**Examples of child-friendly measures, as per the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, and the Council of Europe Guidelines on Child-friendly Justice.** These principles are considered relevant to children’s access to justice in general, even if some measures listed may be specific to criminal proceedings:

* Children’s cases are prioritized, and deadlines and restricted timelines applied
* Direct contact between the child and the alleged perpetrator is prevented before, during and after hearings (e.g. with live video links, screens to shield the child from the defendant, excluding the defendant from the courtroom during child testimony (while still being able to hear) or allowing children in civil proceedings to be heard at home, or in school or any other appropriate setting)
* Procedures to set forth the child’s right to a best interests’ determination at all stages of the proceedings are adequately followed
* Children are accompanied by a trained support person during the entire justice process
* Children receive social, psychological, medical and other support as needed
* Children are not questioned more than twice, and video recordings are admissible as evidence in criminal and civil courts (video recordings should be standard practice in criminal proceedings but can be optional in civil proceedings)
* Cross-examination of children in criminal settings is regulated
* Vulnerable children, including children with disability and children from minority groups, are provided with the necessary accommodations, translators, interpreters, communication aids and support to allow them to participate in justice processes on an equal footing