



## Fact Sheet #9

# The right of the child to be heard in the juvenile justice system

### Article 12 CRC

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.

Article 12 of the Convention on the Rights of the Child enshrines the right of every child to be heard and taken seriously in all proceedings and decisions concerning him or her. The Committee on the Rights of the Child gives great importance to this article and considers it as one of the traditional four basic principles of the Convention<sup>1</sup>.

If the importance of this right is undisputed today, its interpretation and especially its implementation are often problematic. This can be explained by the fact that behind Article 12 there are educational principles and a specific way to consider the role and place of children in society. Hearing the child and seriously considering and engaging his/her views requires specific attitudes, skills and knowledge. States must create the conditions for real child participation and invite (but not oblige) children to be part of this process.

To guide States in interpreting Article 12 and ensuring that this right is applied in the child's best interests, the Committee issued in 2009 its **General Comment No. 12 on The right of the child to be heard**<sup>2</sup>. Considering the links between Article 12 and other articles and principles of the Convention, the General Comment contains recommendations on the right to be heard in different settings and in different procedures. It also insists on the importance of hearing groups of children, and not just individual children.

### THE RIGHT OF THE CHILD TO BE HEARD IN THE JUVENILE JUSTICE SYSTEM

As stated in Article 12.2., children shall be provided the opportunity to be heard in any judicial and administrative proceedings. Juvenile justice systems must therefore ensure that the voices of children in conflict with the law are heard and given weight throughout the whole process, should the child in question wish to participate.

Specific provisions regarding the right of the child to be heard in juvenile justice can be found in a number of international norms and standards regarding the treatment of juvenile offenders or victim and witnesses of crimes. All the relevant provisions have been included in the CRC's General Comments on children's rights in juvenile justice and/or on the right of the child to be heard:

- General Comment No. 10 on Children's rights in juvenile justice (2007), paragraphs No. 46-48.
- General Comment No. 12 on The right of the child to be heard (2009), paragraphs No. 57-64.
- General Comment No. 11 on Indigenous children and their rights under the convention (2009), paragraph No. 76.

1 The other three are the right to non-discrimination, the right to life and development and the principle of devotion to the best interests of the child.

2 UN Reference : CRC/C/GC/12



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### The right of the child to be heard in the juvenile justice system (continued)

The “Council of Europe Guidelines on Child Friendly Justice” (to be released in 2010) will contain more detailed provisions on how best to hear the child (both offender and victim/witness) in all stages of the judicial process.

#### WHAT DO GENERAL COMMENTS 10, 11 AND 12 RECOMMEND?

##### *The child offender :*

- Should express his/her views freely throughout every stage of the process of juvenile justice (GC10; GC12).
- Should be informed and comprehend the charges, and possible consequences and penalties in a language he/she understands and that is adapted to his/her age (GC10; GC11; GC12).
- Proceedings should be conducted in an atmosphere of understanding, allowing the child to participate and express him/herself freely (GC10; GC12).
- In case of diversion, including mediation, a child must have the opportunity to give free and voluntary consent and obtain free legal and other advice to determining the appropriateness and desirability of the diversion proposed (GC12).
- The court and other hearings of a child in conflict with the law should be conducted behind closed doors (GC12).

##### *The child victim and witness:*

- Every effort must be made to ensure that a child victim and/or witness is consulted on the relevant matters with regard to involvement in the case under scrutiny and enabled to express freely, and in his or her own manner, views and concerns regarding his or her involvement in the judicial process (GC12).
- Has the right to be informed about issues such as availability of health, psychological and social services, the role of a child victim and/or witness, the ways in which « questioning » is conducted, existing support mechanisms in place for the child when submitting a complaint and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibility of receiving reparation, and the provisions for appeal (GC12).

#### Good Practice: Child-Friendly Investigation Studios (Philippines)

Child-Friendly Investigation Studios, where forensic interviews of child victims and witnesses can be conducted by specially trained multidisciplinary teams, were established in the Philippines with UNICEF support. The interviews, which are videotaped, are allowed under the Rule on Examination of a Child Witness issued by the Philippine Supreme Court, and are presented in court as evidence in lieu of the testimony of the child on the witness stand. This protects the child from being re-traumatized during the criminal proceedings against the perpetrator, consistent with the UN Guidelines on Justice in Matters Involving Child Witnesses and Victims of Crimes.