JUSTICE SYSTEM RESPONSES TO CHILD VICTIMS AND WITNESSES IN EUROPE AND CENTRAL ASIA

Summary of key achievements, challenges and recommendations

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INTRODUCTION TO JUSTICE
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INTRODUCTION

An effective justice system response to child victims and witnesses involved in proceedings is integral to children’s access to justice. It guarantees that children have an effective remedy when they are victim or witness to a crime, thus halting the violation, providing redress and paving the way for recovery. Effective responses also ensure that children do not experience re-traumatization and that their rights are respected when in contact with the law. Justice system responses to child victims and witnesses are therefore of fundamental importance to strengthening sustainable development and the rule of law, as highlighted in Sustainable Development Goal 16, which addresses both protecting children from violence and equal access to justice for all. In its strategic plan for 2018–2021, UNICEF committed to supporting “capacity development programmes for justice and administrative bodies as well as civil registration systems,” with the objective of making “sure that child victims, witnesses or perpetrators seeking to access justice, and/or participating in criminal, civil and administrative justice processes, are treated in accordance with international standards.”

Although juvenile justice has received significant attention across the Europe and Central Asia region (ECAR), yielding many positive outcomes, the situation of children in contact with the law because they are victims or witnesses of a crime has obtained far less programmatic support. Yet available data suggests that their number is significant and possibly increasing – the full picture is not known due to under-reporting and under-registration. Over the last decade several countries in ECAR have engaged in initiatives to bring their justice systems in line with international and regional standards in this area.

Recent attention to the rights of child victims and witnesses in criminal proceedings, both internationally and nationally, was influenced mainly by two considerations. First, it responds to the need to gather solid evidence to facilitate the conviction of perpetrators of crimes. Child-friendly proceedings are seen as a means of obtaining quality testimony from children, which is often pivotal to prosecutors and judges as the most critical piece of evidence in a trial – especially in cases of child abuse. Second, this new attention responds to pressure from child rights advocates seeking to establish procedures that guarantee respect for children’s rights and ensure that their best interests are given primary consideration in criminal proceedings.

The study takes stock of these developments and aims to:

- Explore main trends and changes in the region in justice system response to child victims and witnesses of crime in light of international and regional standards;
- Document promising practices that could inform UNICEF’s programmatic work and advocacy;
- Identify outstanding challenges;
- Extract lessons and issue recommendations for UNICEF and its partners’ work in this area.

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INTERNATIONAL AND REGIONAL STANDARDS

The development of an international and European legal framework for crimes committed against children has been interwoven with the adoption of standards dedicated to protecting children’s procedural rights when they are in contact with the law, regardless of the crime involved. These standards provide detailed guidance for handling child victims and witnesses during judicial proceedings.

Key international and European standards

- EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2011)
- Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)

MAIN ACHIEVEMENTS AND CHALLENGES ACROSS ECAR

Significant progress has been made over the past five to ten years in this area, through a variety of legal and institutional reforms that paved the way for important changes in daily practices tied to children's participation in criminal proceedings. UNICEF’s strong engagement in the field of juvenile justice allowed the organization to play a key role in achieving justice for child victims and witnesses and build on existing partnerships.

UNICEF’s played a key role in promoting legislative reforms that address the needs and rights of child victims and witnesses, in line with international standards. Studies supported by UNICEF analysing the legislative framework have in several instances served as the basis for legal reform. However, efforts are still uneven; a number of countries still need to bring their legal systems...
into compliance with international standards. Moreover, the fact that changes are quite recent means that implementation on the ground is often incomplete.

**Justice system responses to child victims and witnesses tend to focus on the provision of testimony** and the importance of avoiding re-traumatization for children. As a result, interventions have largely concentrated on the development of child-friendly hearing rooms and procedures, appointment of non-legal court experts and training of staff interacting with children in relation to their testimony. The establishment of child-friendly hearing rooms represents a tangible step towards child-friendly justice that mainly requires material contributions. The conditions under which a child gives testimony are a critical dimension of child-friendly justice for victims and witnesses. They are also of particular interest to the justice system because they facilitate the collection of quality evidence.

**Significant discrepancies can be seen across ECAR countries in child victims and witnesses' access to child-sensitive justice.** While promising practices signal positive developments, a key question is whether they represent an initiative carried out in just a few areas (a capital city or another major city) or are applied at scale across the country, allowing all children to benefit.

**A major area of intervention for UNICEF and its partners has been the provision of training for staff** who interact with child victims and witnesses in the justice system. Multiple training formats and curricula have been developed across the region. Practical training was found to be particularly useful. Multidisciplinary training programmes were also highly appreciated, although they tend to be conducted on a smaller scale due to the difficulty of identifying national actors that can support them over the long run.

**Attention to specific groups and gender approaches remains too limited.** Equal access for children with disabilities is insufficiently taken into account. Possible discriminatory practices against children from minority groups have not received specific attention, although they are sometimes tackled in training programmes. Gender-sensitive approaches may be applied to adult women in contact with the law, but overlooked in relation to children.

**Interventions to support children beyond judicial proceedings remain scarce.** Children's access to information on proceedings after they testify is limited, as are opportunities for children to be heard outside the courtroom or prosecutors’ office. Access to a lawyer or legal advice would be critical in this respect, but is rarely offered – even when law calls for free legal aid – since children or guardians must file a formal request but may be unaware of this requirement.

**Links with the social sector are insufficient.** Except in the limited instances where a formal and effective coordination mechanism has been established with adequate geographic coverage (e.g., child support centres), justice system responses remain largely isolated from social sector responses. The main interaction occurs when a child protection agency serves as the legal representative, in lieu of parents, during the child’s testimony. But this does not imply that the two sectors will interact beyond what is required for legal representation. A holistic approach to promoting recovery for child victims and witnesses requires a continuum of interventions – before, during and after judicial proceedings.
WAY FORWARD AND RECOMMENDATIONS

Need for a solid legal framework

A solid, comprehensive legal framework that ensures child-sensitive criminal proceedings is essential. While in other fields of child rights and child protection legislation is important, but practice is the primary concern, in criminal law the law is fundamental and determines the approach taken by legal professionals. The latter will not take any step that is not fully spelled out by legislation, as they fear it could invalidate proceedings or compromise the right to a fair trial. Law reform is thus a critical step toward achieving significant changes in justice system approaches to child victims and witnesses. Experience has shown that even when legislative reforms were not immediately well-received by professionals and changes in practices proceeded slowly, amending laws has achieved significant improvements in the treatment of child victims and witnesses by the justice system.

Thus it is critical for UNICEF to focus its advocacy efforts on law reform, as a first step, to ensure that legal gaps are addressed. Of particular concern in ECAR are the age limits defining who can benefit from certain child-friendly measures during criminal proceedings, which may exclude older adolescents, as well as the acceptance of audio-video recordings of children's testimony as valid evidence. In several countries legal gap analyses have provided a strong basis for UNICEF engagement and for rallying other actors around the need for law reform.

Value of child-sensitive proceedings

Special proceedings for child victims and witnesses can significantly increase the quality of their testimony, thanks to child-friendly rooms, video recording and the presence of psychologists, thus facilitating the conviction and sentencing of perpetrators and reducing the need for additional hearings. Limiting secondary victimization for child victims and witnesses requires avoiding multiple interviews about the event to the maximum extent possible. The child’s initial interview is of paramount importance for collecting evidence about what happened, as the quality of the child’s statement often declines afterwards. A high-quality first interview will increase the quality of evidence collected overall, as well as reduce the need for subsequent interviews that can be traumatic for the child. The practical value of child-sensitive approaches is a powerful argument for convincing otherwise reluctant judicial professionals to implement such measures. UNICEF can play a valuable role by continuing to invest in adapting the settings and approaches used by courts and prosecutors’ offices to interview children.

The acceptability of video-recorded testimony as evidence in criminal trials should be explicitly described in laws to avoid any possible questioning of its value (by defence lawyers in particular), as well as to prevent situations in which prosecutors and judges anticipate future challenges and thus require the child to provide testimony on multiple occasions.

The status of interviewers is another important component of child-friendly hearings. The use of non-legal court experts, such as psychologists or pedagogues, to interview children has proven critical to ensuring quality testimony, as long as their role is well defined in legislation. Beyond the hearing room and equipment, the quality of testimony largely depends on trust between the child and the interviewer and the latter’s ability to adequately pose questions for forensic purposes. While judges and prosecutors may express initial reluctance to working with these actors, the value of their
contribution in practice often overcomes this reluctance. When interviewers benefit from recognized status, bolstered by training and certification, it enhances the effectiveness of their contribution and the sustainability of their engagement.

Harmonizing equipment and practices across a given country is essential to ensuring consistency in the quality of justice system responses and guaranteeing all children’s access to justice under similar conditions, regardless of their situation.

However, child-sensitive hearings also require that attention be paid to individual children’s needs. Gender-sensitive approaches and specific measures for other groups, such as children with disabilities, are still critically lacking in ECAR and deserve additional efforts, especially given UNICEF’s focus on equity.

**Giving official status to non-judicial professionals involved in proceedings**

Non-judicial professionals, including psychologists, teachers and social workers, may be directly involved in criminal proceedings, either by accompanying or interviewing the child. It is important to make sure that their status is fully recognized in legislation, with an adequate level of detail. This will help to: ensure their acceptance by other justice professionals as integral to the proceedings, precisely define their role and how they are meant to intervene, and specify the competencies and other requirements for the position. It can also address possible conflicts of interests.

UNICEF could contribute by making sure that such recognition is accompanied by guidance tools, capacity-building initiatives and relevant steps to make the role attractive. This could help to limit the frequent shortages of qualified personnel encountered across the region.

**Capacity-building of judicial and non-legal personnel**

Training needs to be very practical. Practitioners particularly value concrete guidance on how to interact with children and practical tools, such as dolls or personality tests. The consistency and overall coherence of approaches, which can easily become fragmented, is an ongoing challenge. Thus relying on national institutional actors (e.g., justice academies) for sustainable and coherent capacity building could be an effective strategy. These actors are usually open to collaborating with NGOs working in various fields and rely on their expertise. Fostering such partnerships could help institutionalize capacity building for professionals working with children in legal proceedings over the long term, and support recognition of the specific skills needed to work in this area.

Multidisciplinary trainings are also of tremendous value and pave the way for cross-sectoral coordination. National training institutes could be invited to open their doors to professionals other than judges and prosecutors, such as social workers, lawyers, teachers and other relevant professionals dealing with child victims and witnesses. Lawyers also need to be fully included, possibly through partnerships with Bar Associations or other relevant institutions.

Systems for providing formal recognition to professionals who have engaged in capacity-building efforts are needed and should be a criterion for recruitment and career advancement.
Ensure adequate representation of children in proceedings

Children's representation in proceedings involves both legal representatives – parents or guardians – and access to a lawyer. Both dimensions require significant strengthening in ECAR countries. Guardianship authorities may not be comprised of professionals, depending on the country, making their competence in child protection uneven. Furthermore, their knowledge of judicial proceedings is often limited. Capacity-building efforts, including necessary reforms in the functioning of the child protection system, need to involve these authorities as vital defenders of children's rights and best interests when they are victims or witnesses in judicial proceedings.

Likewise, access to free, quality legal aid and legal counselling is spotty across the region, even when national legislation is favourable. This issue is integral to the due process of law and to children and their representatives’ ability to understand proceedings and defend their rights. Thus it is important to ensure that legislation provides access to free legal aid and requires that it be automatically proposed to the child. It is also important to create a pool of lawyers who have the relevant skills and willingness to legally represent child victims and witnesses in criminal proceedings.

Strengthen access to information for children

The right of child victims and witnesses to information about the proceedings they are involved in remains inadequately secured. This right concerns the proceedings themselves, but also their outcome. Rather than relying on individual initiatives, it is important to (a) develop protocols that define who is responsible for keeping the child informed during each step of the process and (b) issue user-friendly material for children and their parents or legal guardians.

Develop and implement protocols and standard operating procedures

The use of protocols makes it possible to define the objectives, actions and responsibilities of the various actors. Such protocols should be strengthened in each country to ensure that the treatment of and response to child victims or witnesses of crime is consistent. It is also important to consider how the protocol can be implemented and who is accountable for doing so.

Need for stronger links between justice and child protection systems

Judicial proceedings involving children as victims and witnesses of a crime are largely disconnected from social interventions. Lack of cooperation often means that the process is heavily focused on prosecuting the alleged offender for sentencing, but fails to sufficiently address the broader needs of the child involved – which are closely linked to the nature and circumstances of the crime, including the child’s relationship with the accused. The child’s experience should not be fragmented between judicial proceedings, on the one hand, and the many forms of support that may be needed, on the other. Child protection considerations need to be effectively included as part of the proceedings, not as an optional add-on. Children may require shelter, health care, psychosocial support and protective measures. Providing such assistance involves a high level of cooperation between the justice system and child protection services. The Barnahus model and its variations provide such a link, and thus represent an interesting model for ensuring that child victims and witnesses in criminal proceedings benefit from the support they need to overcome any possible trauma. Cooperation is often best
achieved at the local level, since decentralization frequently puts local authorities in charge of child protection. Adequate links between the two systems, however, implies that a solid child protection system be in place to support children and their families.

**Reinforcing gender approaches in justice system responses to child victims and witnesses**

There is a need to address the insufficiency of gender approaches in justice system responses with respect to children. This requires very practical guidance on the concrete steps to be adopted to ensure that the justice system takes into account the gender dimension of the crime, the trauma experienced, the way testimony is communicated and the impact of social norms on child victims and witnesses and justice system professionals. Gender dimensions need to be addressed using a child rights approach, and not limited to adult women. In addition, it would be valuable to develop a conceptual and practical framework for addressing the experience of child victims and witnesses in the context of domestic violence that takes into consideration their situation as individuals, independent of that of their mother.

**Ensuring access to justice for child victims and witnesses from marginalized groups**

The accessibility of the justice system is a key, but under-addressed, issue. A first step would require significantly improving the collection of data on children from marginalized groups, including children with disabilities and children from minority ethnic groups or who do not speak the official language (for which data is currently virtually non-existent). A second step would be to ensure that protocols, guidance documents, capacity-building efforts and other steps to make proceedings child-sensitive fully integrate the accessibility dimension for children who face specific access and communication obstacles.

**Continue to enhance data collection and evidence-based policy making**

Data collection on child victims and witnesses and the justice system response remains insufficient and demands specific efforts to improve its quality and breadth, as well as to ensure that data is being effectively used to inform interventions on individual cases and policy-making, as well as to support coordination.

**Role of ombudspersons and other independent human rights institutions**

An ombudsperson for children or a human rights institution has a mandate to monitor how children’s rights are implemented. Yet there are limitations to their influence in relation to justice system responses to child victims and witnesses. Ombudspersons cannot usually intervene in criminal proceedings (except as children’s advocates) or take on cases under justice system jurisdiction, because of the separation of powers and need to avoid possible conflicts of interpretation. Additionally, given their very limited resources, ombudspersons may focus on other areas where they are more likely to exert an influence. However, it is important to include children’s access to
Develop and implement protective measures

The need for protective measures for child victims and witnesses involved in criminal proceedings is often insufficiently assessed and implemented, which can put children at risk and potentially deter the reporting of crimes. There is a need to fully integrate this issue into justice system responses and highlight its importance.

Enhanced link between criminal and civil procedures

Criminal and the civil procedures are typically disconnected in relation to child victims and witnesses of crime. While the criminal procedure focuses on trying alleged perpetrators, the civil procedure concentrates on issues related to parental rights and their possible limitation, as well as the right to compensation. Protecting child victims and witnesses involves ensuring that civil proceedings also reflect principles of child-friendly justice, in particular by recognizing the best interests of the child as a primary consideration and setting up appropriate determination procedures. This is an area where UNICEF engagement is still incipient but is gaining more and more visibility.

Building on the link between juvenile justice and justice for child victims and witnesses

Support for juvenile justice has often represented a first step towards justice for children. Efforts focused on children in conflict with the law (such as preventing delinquency and promoting diversion), involve competencies and coordination among actors that may already in be place and could be used for child victims and witnesses. However in some places child victims and witnesses are perceived as potential future offenders. As a result, interventions to protect their rights and promote their rehabilitation tend to be seen as a mechanism to prevent future crime. Yet if communicated well and supported with adequate tools, building on juvenile justice settings and approaches could prove highly beneficial, particularly for advancing holistic approaches.

Overall approaches: Building on what exists and has been tested

It is easier to build on existing processes to advance child-sensitive approaches than to start from scratch. In addition to building on existing justice for children initiatives, identifying positive practices beyond the child rights field can be very valuable – as occurred in Bosnia and Herzegovina, where experts who assisted war crime victims began to work with child victims and witnesses.

A number of projects in ECAR started as pilot initiatives promoted by UNICEF or by other actors, and have subsequently been taken on by national governments. Piloting is instrumental to convincing national actors to invest in certain strategies. For UNICEF and other actors this suggests that it is worth investing in pilot initiatives to demonstrate the value of an approach and then advocate with the government for its institutionalization.
Suggestions for future research

Research is needed into a number of issues affecting child victims and witnesses in contact with the justice system. Lessons learned in the course of this study suggest a few key gaps to be filled.

- *Children’s views and experiences of proceedings*. Current approaches build on international standards and professionals’ views of how to help child victims and witnesses avoid re-traumatization and gather evidence. Yet limited country-level research has been carried out into children’s experiences of proceedings and how they could be made more child-sensitive. Such research could inform improvements and contribute to advocacy for their implementation. Research carried out by the EU Agency for Fundamental Rights has been instrumental in this respect, but only covers a few EU countries.

- *Intersection between social policy and the justice system* in relation to child victims and witnesses. Research has been conducted on social protection and juvenile justice, and on social protection and child protection issues such as violence, abuse and exploitation. Further research could build on and complement these efforts, emphasizing how social support can be implemented in the context of criminal proceedings for child victims and witnesses, including and beyond the Barnahus model.

- *Girl victims and witnesses and gender-sensitive approaches* in justice system responses. This would address a gap in the literature, which tends to focus on either children in general or adult women. The specific issues girls face could be fleshed out and the concrete steps required to address them identified.