Introduction to the Five Advocacy Briefs on Child Justice & Child Friendly Justice

UNICEF Regional Office for Europe and Central Asia

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Development of these advocacy briefs was initiated and coordinated by Phenny Kakama, ECARO’s child protection specialist.
1. Why child justice advocacy briefs?

The five advocacy briefs covering the rights of children in conflict with the law aim to support full respect for, and implementation of, the principles and standards on child justice as enshrined in the United Nations Convention on the Rights of the Child (CRC) and corresponding international and regional standards.⁷ Noting that despite the many efforts to establish child justice systems in compliance with the CRC, it is nevertheless clear that many governments still have a long way to go in achieving full compliance, in particular the prevention of children at risk of coming in conflict with the law (Advocacy Brief 1/5); the development and expanding implementation of diversion measures (Advocacy Brief 2/5); the establishment of child friendly procedural rights (Introduction & Advocacy Brief 3/5); the development and expanding implementation of alternatives to detention (Advocacy Brief 4/5); and ensuring the use of deprivation of liberty only as a measure of last resort and for the shortest appropriate period of time (Advocacy Brief 5/5). These advocacy briefs can be used in engagement on child justice reforms with a range of governmental and non-governmental stakeholders. For example, with:

- Governmental decision makers to inform and influence policy legislative, programme and budgetary decisions.
- Non-governmental organisations that are active in providing prevention, diversion programmes and rehabilitative services.
- The private sector, donors and media to raise awareness about the rights of children, funding priorities, and drawing attention to the importance of strengthening family-based and community-based prevention and support systems and building a fair and equitable justice system for all children in contact with the law.

⁷ The key international instruments for the administration of child justice are the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR). Alongside these treaties, there are four main supporting child justice instruments covering children in conflict with the law: these are the UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (‘Riyadh Guidelines’); the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (‘Beijing Rules’); the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (‘Havana Rules’); and the Guidelines for Action on Children in the Criminal Justice System, 1997 (‘Vienna Guidelines’). Guidance on interpreting these guidelines and rules has recently been updated by the Committee on the Rights of the Child (Committee on the Rights of the Child, General Comment No.24 (2019) on Children’s Rights in the Child Justice System, CRC/C/GC/24, 18 September 2019). See also section 5 References.
2. What do we mean by ‘a comprehensive child justice system’?

The CRC, in Articles 37 and 40, requires States parties to **develop and implement a comprehensive child justice system**. These specific provisions are further expanded by the Committee on the Rights of the Child General Comment No.24 on children's rights in the child justice system (2019). Achieving a comprehensive child justice system while at the same time reducing the number of children coming into conflict with the law and in detention, requires the availability of diversion measures and alternatives to pre-trial and post-trial detention, as well as fair trial proceedings. In addition, it will be necessary for a child justice system to be child-friendly (see section 3), that reliable data on child justice is available and sufficient financial resources are mobilised and allocated across all the relevant sectors (see section 4 and diagram). **UNICEF has a mandate to support governments and other stakeholders** in the implementation of the CRC, including in the area of child justice. The **COVID-19 pandemic** generated enormous pressure on rule-of-law systems worldwide, with specific challenges for children. Despite these challenges, some reasons for optimism have also emerged. Globally, since the start of the pandemic more than 45,000 children were released from detention in at least 84 countries, as a COVID-19 measure against infection, magnifying the existing evidence about the value of diversion and non-custodial measures, and the ineffectiveness of detention.²

3. What do we mean by ‘child-friendly justice’?

3.1. Child-friendly justice

Child-friendly justice, also called ‘child-sensitive justice’, can be described as justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, bearing in mind the fundamental principles 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**.³ Child-friendly justice also implies child-friendly language at all stages of the process; child-friendly layouts in interviewing spaces and courts; support by appropriate adults; removal of intimidating legal clothing and adaptation of proceedings, including accommodation for children with disabilities; children from ethnic/religious minorities; and other very vulnerable children.⁴

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3 Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, 2010 (sections 3, 4 & 5).
4 Paragraph 47 of General Comment No.24, 2019.
3.2. Separate justice system for children

The way children are treated by national justice systems is integral to the achievement of the rule of law and its related aims. Ensuring that all children have access to specialized and efficient justice systems is a prerequisite for the rule of law, and the best interests of the child should be the primary consideration. In the 1980s and 1990s, this recognition led to increased attention to the treatment of children in conflict with the law and the development of international norms and standards for what was called, at that time, ‘juvenile justice’. More recently, the plight of child victims and witnesses of crime has also been addressed. The United Nations Common Approach to Justice for Children (2008) states that: “the goal of the justice for children approach is to ensure that children…are better served and protected by justice systems… It specifically aims at ensuring full application of international norms and standards for all children who come into contact with justice systems as victims, witnesses and alleged offenders; or for other reasons where judicial intervention is needed, for example regarding their care, custody or protection.” These five advocacy briefs cover only the justice system for children in conflict with the law, previously known as ‘juvenile justice system’ and since 2019 called ‘child justice system’.

The Committee on the Rights of the Child strongly promotes a separate justice system for children in compliance with the CRC. “Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate child justice system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.” Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of justice systems in line with the principles formulated in article 40(1) of the CRC. A separate child justice system also requires child-specific institutional structures, such as specialised units within the police, the judiciary, the court system and the prosecutor’s office, as well as specialised defenders or other representatives who provide legal or other appropriate assistance to the child. Specialised services such as probation, counselling or supervision should be established together with specialised facilities, for example day treatment centres and, where necessary, small-scale facilities for residential care and treatment of children referred by the child justice system. Effective inter-agency coordination of the activities of all these specialised units, services and facilities should be continuously promoted. The child justice system should apply to all children above the minimum age of criminal responsibility but below the age of 18 years at the time of

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7 Article 40(3) of the Convention on the Rights of the Child (1989); Paragraphs 2 and 3 of General Comment No.24, 2019.
8 Article 40(1) of the CRC: “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.”
9 Paragraphs 105 to 110 of General Comment No.24, 2019.
the commission of the offence. The Committee on the Rights of the Child, however, recommends extending the application of the child justice system to children who were below the age of 18 years at the time of the commission of the offence but who turn 18 years during the trial or sentencing process as well as to persons aged 18 years and older whether as a general rule or by way of exception.\textsuperscript{10}

### 3.3. Guiding child justice principles

The following guiding principles apply to all stages of the child justice process and in all cases of children in conflict with the law and are also referred to as ‘guiding child justice principles’:\textsuperscript{11}

- **Non-discrimination:** A child in conflict with the law shall be treated without discrimination of any kind, irrespective of the child’s, or his or her parents’ or legal guardian’s, race, colour, gender, language, religion, political or other opinions, national, ethnic or social origin or descent, property, disability, medical situation, birth or other status. The Committee on the Rights of the Child requires that all necessary measures are taken to ensure that children in conflict with the law are treated equally. Children who are likely to face discrimination include girls; children belonging to ethnic, religious or linguistic minorities; indigenous children; children living and working on the streets; children with disabilities; trafficked or migrant children; and children who are repeatedly in conflict with the law (so-called ‘recidivists’ or ‘reoffenders’). Children who are homeless, face social problems or are poor or whose parents are offenders or drug and alcohol misusers, and children with learning disabilities or mental health problems may also be treated more harshly by the child justice system. Such children are more likely to be prosecuted, to be held in pre-trial detention and to receive a custodial sentence. Safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress.

- **Best interests of the child:** The best interests of the child shall be the paramount consideration when any action is taken or any decision is made. The Committee on the Rights

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\textsuperscript{10} Paragraphs 29, 31 and 32 of General Comment No.24, 2019.


Sometimes, the right to life, survival and development (article 6 of the CRC) is also considered a guiding child justice principle. This right applies to children at all stages of their life and in all settings, including children who are in the child justice system. Article 37(a) of the CRC provides explicitly that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by children. Guaranteeing the right to harmonious development of children involved in the child justice system, particularly those who are deprived of liberty, is more challenging. ‘Harmonious development’ is a holistic concept, it is about children being provided with optimal conditions that will enable them to access all their rights during childhood. Children who are deprived of their liberty are often not provided with optimal conditions (see Advocacy Brief 5/5 ‘Deprivation of Liberty of Children in Conflict with the Law’).
of the Child explains that the best interests of the child are served when the child is dealt with by a child justice system that complies with the provisions of the CRC and international standards and norms in the area of child justice (see footnote 1). It seems, therefore, that the ‘best interests’ test requires the child justice system to take the least punitive measures possible and to promote the reintegration of children who have offended. The best interests principle applies to all decisions taken in the child justice system, i.e. from the child’s first contact with a law enforcement authority right through to sentencing and post-sentence services, including aftercare services for girls/boys who have been deprived of their liberty. In determining the child’s best interest, the decision-makers should consider the child’s personality, wishes, circumstances, family situation, the effect that a measure/sentence is likely to have on her/his development and well-being as well as any other relevant element.

- **Participation:** All children in conflict with the law have the right to participate in decisions affecting them, and in particular, to be given the opportunity to be heard in any judicial or administrative proceedings. They shall have the right to be heard either directly or through a legal [or other] representative [or appropriate body] and for their views to be taken into account in accordance with their age and maturity. All children who are capable of forming their own views, which will probably include all children over the age of criminal responsibility, have the right to express those views in all matters that affect them. Their views should be given due weight in accordance with the child’s age and maturity. In addition to this general right, they have the right to be heard directly or through a representative or an appropriate body in any judicial or administrative proceedings. It is up to each government to determine the mechanism by which a child may be heard. However, the Committee on the Rights of the Child recommends that, wherever possible, the child is given the right to be heard directly.

- **Dignity:** Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. Children in conflict with the law have to be treated in a manner consistent with their sense of dignity and worth, thus reinforcing their respect for the rights of others. “In other words, children’s encounters with the child justice system can be an educative experience if the adults whom they meet treat them with respect. It is essential for child justice officials to express respect for children if they want to be taken seriously by the latter when they try to teach them to respect their fellow citizens. Respect for others must be taught through example. This educative role applies not only to officials who work with children in conflict with the law, but to all justice officials with whom children are in contact.”

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14 Guidelines on Children in Contact with the Justice System, 2017.
3.4. General rights of children in conflict with the law

The following general components of child-friendly justice are qualified as general in the sense that they are relevant to all stages of the child justice proceedings and in all cases of children in conflict with the law, i.e. before, during and after judicial proceedings:15

- **Relevant information and advice:** From their first involvement with the child justice system and throughout the child justice process, children and their parents/caregivers should be promptly and adequately informed among other things, about their rights regarding child justice proceedings, system and procedures, charges, time and place of court proceedings and other relevant events, existing mechanisms for review of decisions, etc. The information and advice should be provided to children in a manner appropriate for their age and maturity, in a language which they can understand, and which is gender and culture sensitive. As a rule, both the child and parents/caregivers should directly receive the information. Providing information to the child’s parents/caregivers should not be considered an alternative to communicating the information to the child. Child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines established.

- **Environment, communications and the course of proceedings adapted to children:** Child-friendly justice implies, among other things, child-friendly language at all stages; child-friendly layouts in interviewing spaces and courts; support by appropriate adults; removal of intimidating legal attire; and adaptation of proceedings, including accommodation for children with disabilities and children from ethnic/religious minorities. In all proceedings, children in conflict with the law should be treated with respect for their age, special needs, maturity and level of understanding as well as any communication difficulties they may have. Cases involving children in conflict with the law should be dealt with in non-intimidating and child-sensitive ways in order to enable them to participate by reducing their distress and level of intimidation. For example, making the court environment child-friendly includes requiring judges not to wear their formal robes but to dress casually instead, having court staff sit at the same level as the child rather than on a raised bench or podium, allowing the child to sit next to her/his parent or other adult, etc. Before proceedings begin, girls/boys should be familiarised with the layout of the court or other facilities and the roles and identities of the professionals involved.

- **Being accompanied by parents:** In general, children have the right to be accompanied by their parents/caregivers at every moment of the proceedings, including questioning by the police or other investigating authorities, as well as court hearings. Efforts should be made to have both parents/caregivers present and involved in the proceedings. Parents/caregivers should remain present throughout the proceedings in order to provide general and psychological support to their children. If there are serious grounds to deny them the right to

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accompany their daughter/son, the child should be accompanied by another ‘appropriate adult’. Ideally, this should be a relative or a close family friend. In some countries, NGOs provide a pool of trained adults who are willing to fulfil this task. In the absence of such trained adults, a teacher or social worker is acceptable. When choosing the ‘appropriate adult’, the views and concerns of the child have to be taken into account (article 12 of the CRC). In some cases, it may be impossible to reach the child’s parents/caregivers and have them attend the proceedings, while in other cases the parents/caregivers simply do not want to be present. Sometimes it may not be in the best interests of the child to have her/his parents/caregivers present. Examples of exceptional situations that may justify denying parents/caregivers the right to accompany their child are: 16

- Where parents and child have been involved jointly in criminal activities
- Where the child has been a victim of her/his parents’ behaviour
- Where parents have a conflict of interest with their child
- Where there are concerns about the action that the parents may take against the child as a result of evidence given

**Keeping children under the care of parents/caregivers:** Decisions concerning children in conflict with the law should aim to keep them in their family environment. Where an out-of-home placement is necessary, return of the girl/boy to her/his home environment should be a key objective from the outset. These children should be enabled and encouraged to maintain regular contact with their parents, other family members and other significant persons, except where restrictions are required in their best interests. The involvement of parents/caregivers should be fostered, with a view to encouraging and helping them to exercise their parental responsibilities.

**Full respect of privacy:** Children in conflict with the law have the right to have their privacy fully respected during all stages of the proceedings. Child justice hearings should be conducted behind closed doors. No person may be present at a sitting of the child court unless her/his presence is necessary to the proceedings of the court, or the court has given permission for her/him to attend. Exceptions should be very limited and clearly stated in the law. If the verdict and/or sentence is pronounced in public at a court session, the identity of the girl/boy should not be revealed. The right to privacy also means that court files and records of children in conflict with the law are 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. Case-law reports relating to children in conflict with the law should be anonymous. In the view of the Committee on the Rights of the Child, there should be lifelong protection from publication regarding offences committed by children, including on social media, in order to avoid stigmatisation which is likely to have a negative impact on access to education, work, housing or safety. Furthermore, the Committee recommends introducing rules permitting the

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16 In these cases, the court nominates a ‘curator/guardian ad litem’ to guide the child as a parent throughout the trial and act on her/his behalf by law. The curator/guardian ad litem may be an appropriate/responsible adult, in the form of a relative, a family friend or a professional/staff member of the appropriate welfare agency.
removal of children’s criminal records when they reach the age of 18 years, automatically or, in exceptional cases, following independent review.  

- **Proportionality:** All measures taken in relation to a child in conflict with the law shall be in proportion to the circumstances and gravity of the offence and to the circumstances and educational, social and other needs of the child. The principle of proportionality implies that the response to children in conflict with the law is based not only on the objective gravity of the criminal offence, but also on the personal circumstances of the child.

- **Deprivation of liberty as a measure of last resort and for the shortest possible time:** Any form of deprivation of liberty of children in conflict with the law should be a measure of last resort and be for the shortest appropriate period of time. When deprivation of liberty is imposed, girls/boys should be held separately from adults. In all circumstances, detained girls/boys should be held in premises suited to their needs. Given the vulnerability of children deprived of their liberty, competent authorities should ensure respect and actively support the fulfilment of the rights of detained children and the promotion of their reintegration into society.

- **Multidisciplinary and interdisciplinary approaches:** To fully respect a child’s right to private and family life, close cooperation between professionals should be encouraged to obtain a comprehensive understanding of the child and an assessment of her/his legal, psychological, social, emotional, physical and cognitive situation. A common assessment framework should be established for professionals working with children in conflict with the law, such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators, in order to provide any necessary support to those taking decisions and to enable them to best serve children’s interests in any given case.

- **Specialisation, selection and training of professionals to meet the needs of children:** Continuous and systematic training of professionals in the child justice system is crucial. All professionals working with children in conflict with the law should receive interdisciplinary training on the rights and needs of girls/boys of different age groups and on proceedings that are adapted to them. Child justice professionals should be able to work in interdisciplinary teams and be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalised children in conflict with the law. Professionals in direct contact with children should also be trained in communicating with girls/boys of all ages and at all stages of development and in particular with vulnerable children.

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17 Since the COVID-pandemic, some judges initiated or intensified the practice of hearing children in their chambers. In some countries, for example in Uzbekistan, privacy is not respected in judges’ chambers because court staff and/or other professionals also have their desk in the same space and/or may walk in and out. Virtual child courts are another evolution since the COVID-related lockdowns and requirements for social distancing. Virtual courts allow children to remain in school pending their court hearings and help avoid the logistical and financial hardships that are often endured when traveling long distances to appear before court in person. Virtual child courts have been established in Albania, Bangladesh, India, Kenya and Nigeria.  

18 See also the Advocacy Brief on ‘Deprivation of Liberty of Children in Conflict with the Law’.
4. Other important considerations of a comprehensive child justice system

4.1. Data collection

Worldwide, an estimated 261,000 children are held in detention. Within the European and Central Asian region there are an estimated 18,100 children in detention.\(^{19}\) This data is likely to be an underestimate as many countries have developing administrative data systems and incomplete record-keeping. The most commonly reported reason for the absence of, or poor-quality data, is the lack of a centralised system for reporting disaggregated data on children in contact/conflict with the law.\(^{20}\)

High-quality and reliable information is necessary for all reporting and decision-making on issues involving children in contact with the justice system whether as offenders, victims, witnesses, or parties in court proceedings. However, availability of reliable data remains a challenge in many countries in the region. Data is needed to effectively monitor and evaluate the impact of child justice policies and procedures related to children. Administrative records and reporting offer government officials and institutions the tools to do so, keeping track of how children are being treated by the system and the circumstances pertaining to their individual situation. Without this important data, children may needlessly suffer in the child justice system.\(^{21}\)

The proposed minimum indicators on children in conflict with the law are presented in the overview on the previous page.\(^{22}\)

<table>
<thead>
<tr>
<th>No.</th>
<th>Indicator</th>
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<tbody>
<tr>
<td>1</td>
<td>Number of children detained by the police during the year</td>
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<tr>
<td>2</td>
<td>Number of criminal proceedings initiated against children during the year</td>
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<tr>
<td>3</td>
<td>Number of children in criminal proceedings with legal representation</td>
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<tr>
<td>4</td>
<td>Number of children provided with police informal diversion, such as a</td>
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<td></td>
<td>caution, warning, informal settlement</td>
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<tr>
<td>5</td>
<td>Number of children sentenced receiving a custodial sentence</td>
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<tr>
<td>6</td>
<td>Number of children sentenced with alternative measures</td>
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<tr>
<td>7</td>
<td>Number of children who enter pre-trial diversion</td>
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<tr>
<td>8</td>
<td>Number of children in pre-trial detention</td>
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<tr>
<td>9</td>
<td>Number of children in detention after sentencing during the year</td>
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<tr>
<td>10</td>
<td>Duration of detention: a) pre-sentence and b) post-sentence</td>
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<tr>
<td>11</td>
<td>Number of child deaths in detention during the year</td>
</tr>
<tr>
<td>12</td>
<td>Number of cases of crimes against children registered by the police</td>
</tr>
</tbody>
</table>

4.2. Budgeting of child justice reform

These advocacy briefs reiterate the fundamentals of child-friendly justice and how children who are at risk of coming in conflict with the law, and children already in conflict with the law, should be supported. To be effective, advocacy requires, among other things, to be accompanied by


\(^{21}\) https://data.unicef.org/resources/achieving-justice-for-children/

strong policies and programmes, such as robust legislative frameworks, well established and equipped child-friendly infrastructure, training for all relevant professionals, and measures to increase knowledge and awareness of the rights of children and their protection needs. It should be noted that effective interventions for children at risk, or in conflict with the law, cut across different sectors including social welfare, law enforcement, justice, health, education and social protection. The impact of these advocacy briefs and the advocacy they are intended to serve, will remain limited unless sufficient financial resources are mobilised and allocated across all relevant sectors for their dissemination and implementation. Resource mobilisation and sufficient budgetary allocations should be integral to all actions required to make the advocacy around the different dimensions covered by these advocacy briefs a reality.

5. References on child rights and child-friendly justice

**International legal instruments:**

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules/JDLs)
- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO 182), 1999.
- Committee on the Rights of the Child, General Comment No.12, The right of the child to be heard, 2009.
- Committee on the Rights of the Child, General Comment No.14, The right of the child to have his or her best interests taken as a primary consideration (art.3 para1), 2013.
- Committee on the Rights of the Child, General Comment No.19, Public budgeting for the realization of children’s rights (art.4), 2016.

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23 See also: Committee on the Rights of the Child, General Comment No.19, Public budgeting for the realization of children’s rights (art.4), 2016.