

# Unlocking Children's Rights

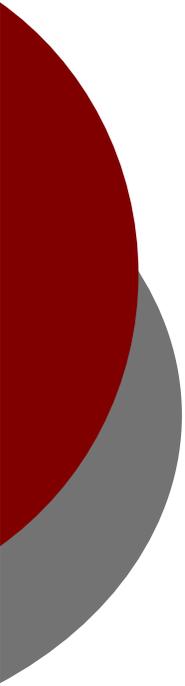
---

## Module 1: Introduction to International Child Rights

This project is co-funded by the Fundamental Rights and Citizenship Programme of the European Union



Additional funding has been provided by the Allan and Nesta Ferguson Charitable Trust

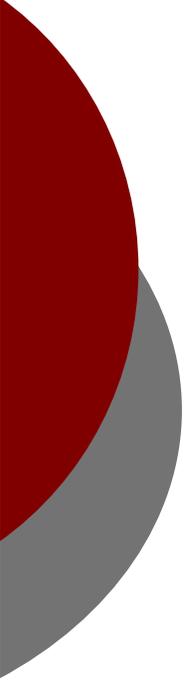


# Who is a child?

---

Every human being **under the age of 18** (unless majority is attained earlier)

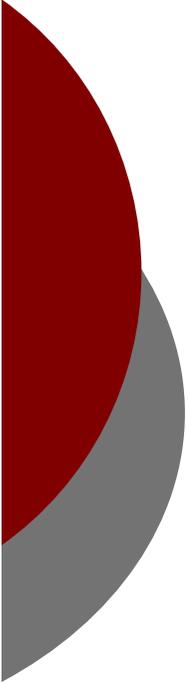
UN Convention on the Rights of the Child, Article 1



# What are child rights?

---

- They are freedoms, standards, entitlements that all children are automatically entitled to
- Children are **rights holders**
- States are **duty bearers**



# Children as rights holders

---

Is entitled to rights from...

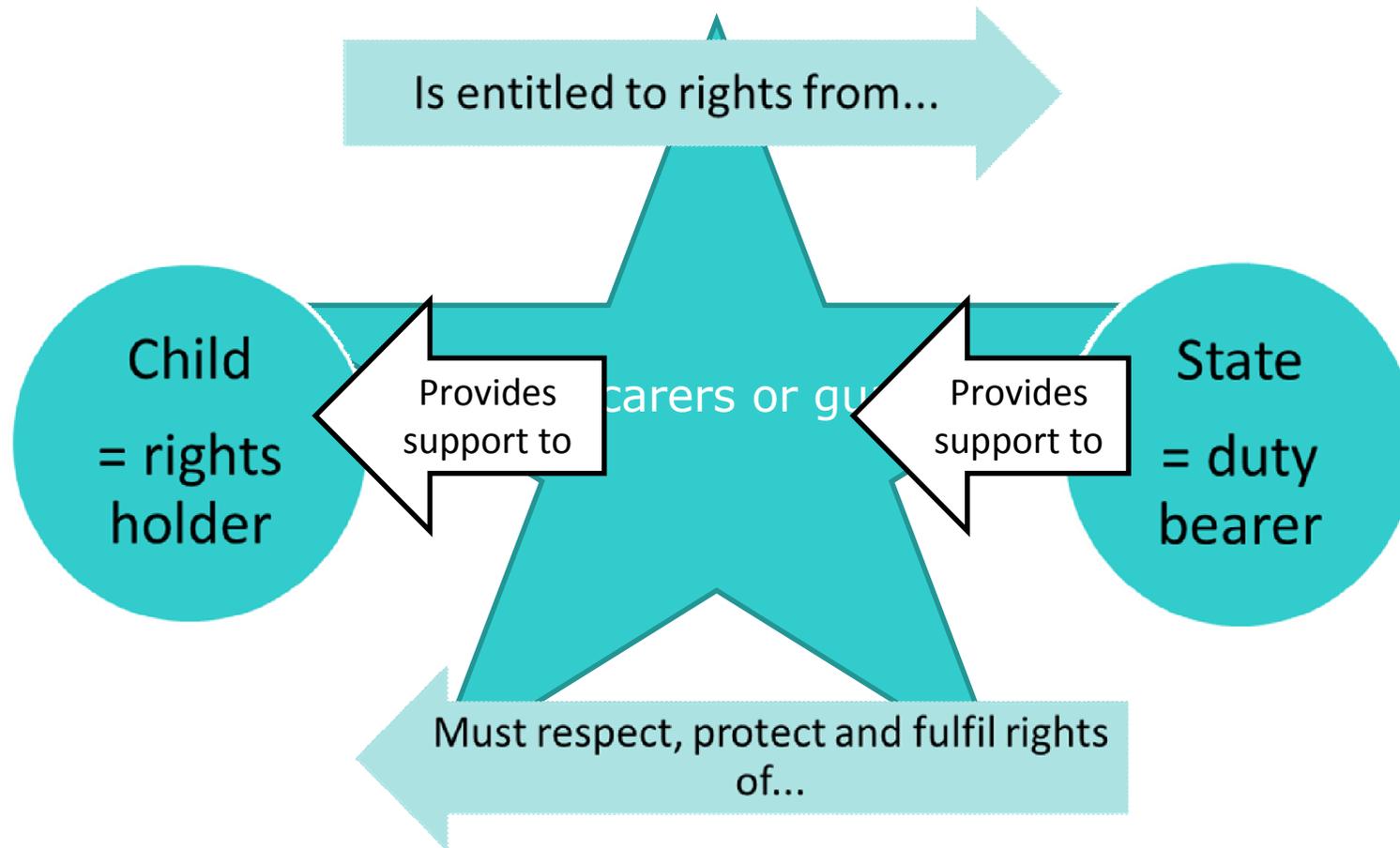
Child  
= rights  
holder

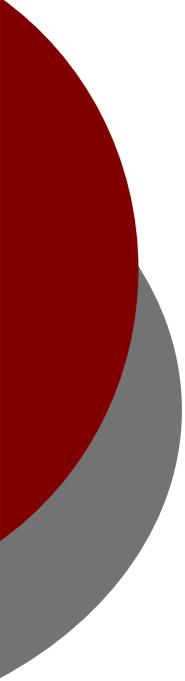
State  
= duty  
bearer

Must respect, protect and fulfil  
rights of...

# Where do parents, guardians and carers fit in?

---

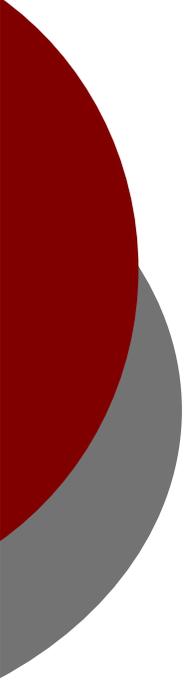




# Introduction to international child rights

---

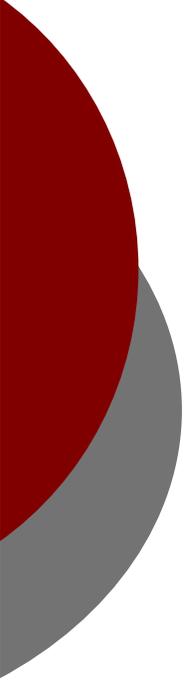
- General: International Bill of Rights
- Specific: Convention on the Rights of the Child
  - Broad range of rights
  - Most widely ratified human rights treaty
  - Implementation is monitored and guided by the Committee on the Rights of the Child
  - Note its three Optional Protocols



# Introduction to European child rights

---

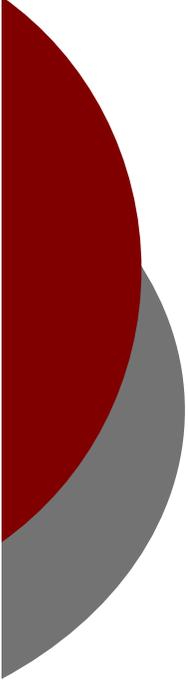
- General:
  - European Convention on Human Rights
  - Charter of Fundamental Rights of the European Union
  
- Specific:
  - Article 24 of the Charter of Fundamental Rights of the European Union
  - EU Guidelines for the Promotion and Protection of the Rights of the Child (2007)
  - Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010)



# The Convention on the Rights of the Child – the ‘3 Ps’

---

- **Protection:** The right to be protected against actions and behaviour.
- **Provision:** The right to access benefits, services, or activities.
- **Participation:** The right to engage in activities.



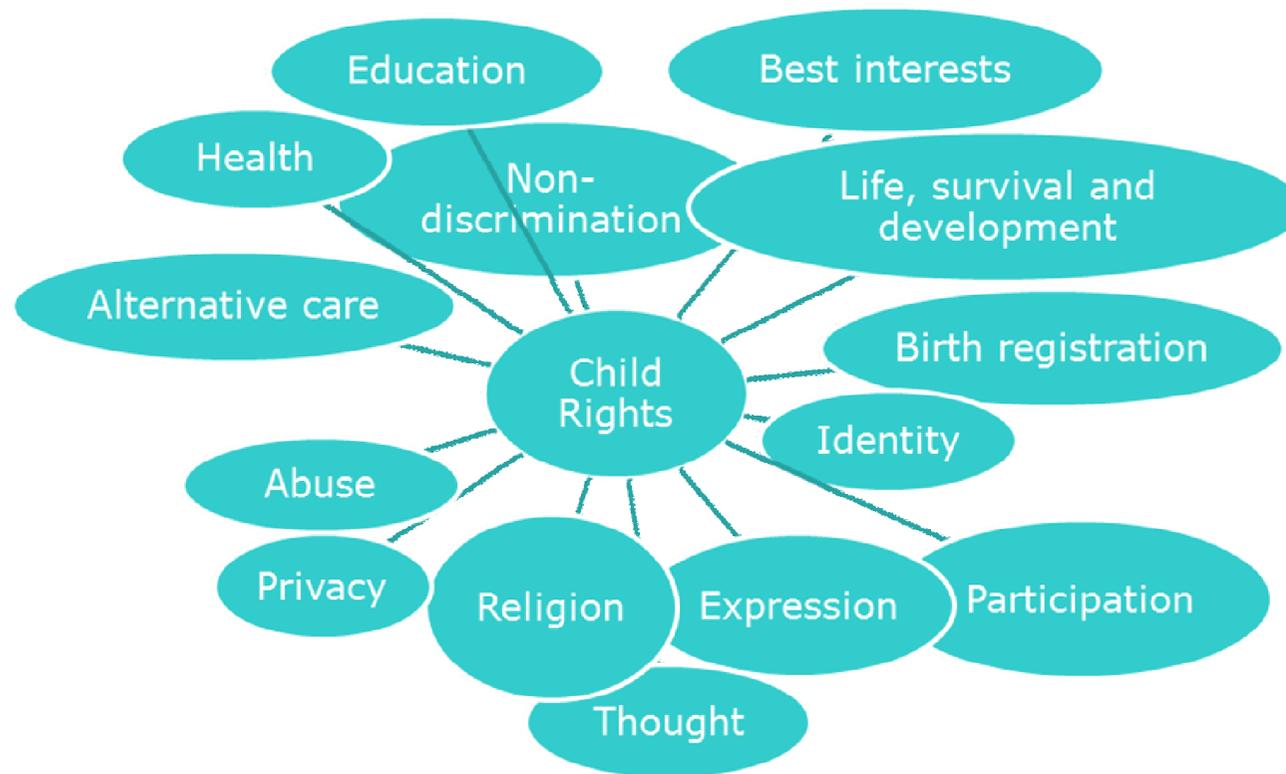
## Underpinning principles of the CRC

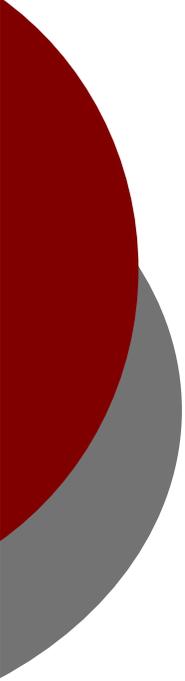
---

- The right to non-discrimination (Article 2)
- That the best interests of the child shall be a primary consideration in all matters affecting children (Article 3.1)
- The right to life, survival and development (Article 6)
- The right to be heard and listened to (Article 12)

# Other rights in the Convention on the Rights of the Child

---

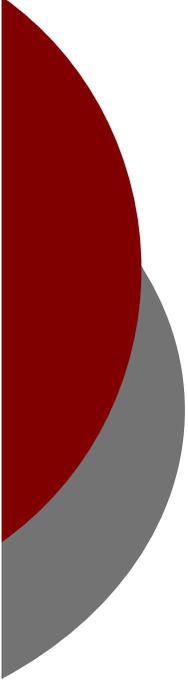




## Underpinning principles: crossover

---

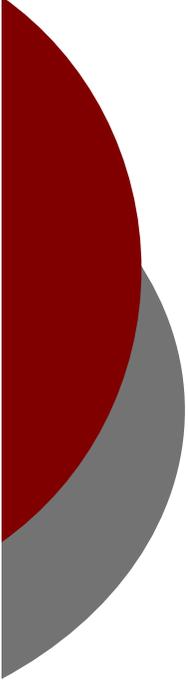
- Discrimination ⇒ Activity 1.2A
- The best interests of the child ⇒ Activity 1.2B
- Life, survival and development ⇒ Module 2 and Activity 1.2C
- Right to be heard and participate ⇒ Module 3 and Module 4. Activity 1.2D also provides a factsheet and summary information on this right.



# What is discrimination?

---

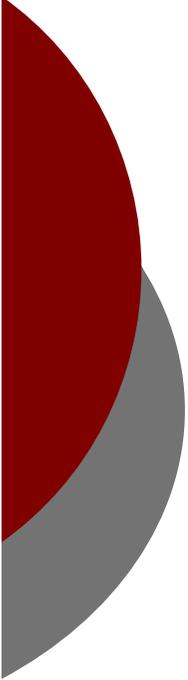
Have you ever observed or  
experienced discrimination?



# Principle of non-discrimination

---

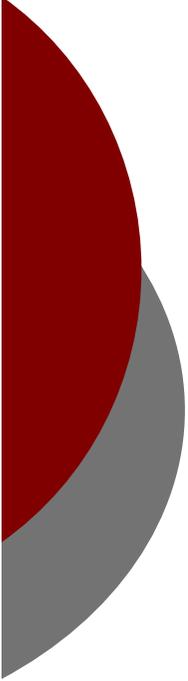
- Fundamental principle of international and regional human rights law
- Closely linked to the right to human **dignity**
- Particularly important when working with children
- Discrimination may occur on multiple grounds
- Discrimination can occur in the absence of an intention to discriminate or an awareness by the discriminator



## Legal framework – international instruments

---

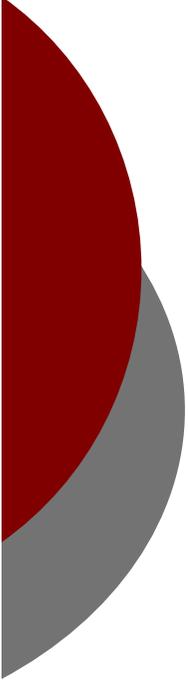
- **Universal Declaration of Human Rights (Article 2)**
- **UN Convention on the Rights of the Child (Article 2)**
  - Child is also protected from discrimination based on the status of his/her parents, legal guardians or family members
- **International Covenant on Civil and Political Rights (Article 2.1)**
- **International Covenant on Economic, Social and Cultural Rights (Article 2.2)**
- **International Convention on the Elimination of All Forms of Racial Discrimination**



# Legal Framework – European instruments

---

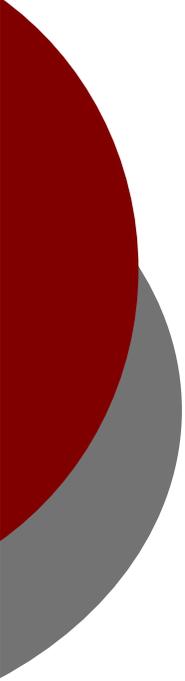
- **European Convention on Human Rights (Article 14, and Protocol 12)**
- **The EU Charter of Fundamental Rights (Article 21)**
- **The EU Race Equality Directive (2000/43/EC)**
  - Currently only applies to race/ethnicity



## Prohibited conduct: direct discrimination

---

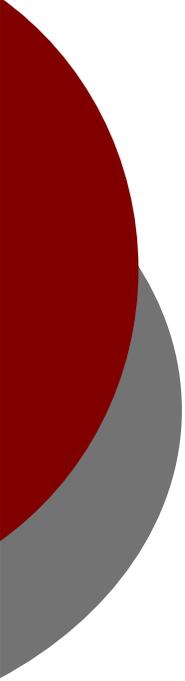
**DIRECT DISCRIMINATION** - occurs when a person is treated less favourably on the basis on a protected characteristic (for example, ethnicity, sex, religion, political opinion, sexual orientation, social origin, or other status)



## Prohibited conduct: indirect discrimination

---

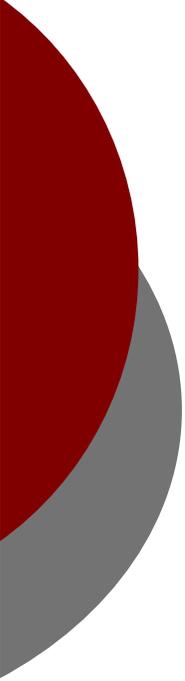
**INDIRECT DISCRIMINATION** – occurs when a law, policy or practice applies to everyone but places an individual or group with (a) protective characteristic(s) at a particular disadvantage



## Prohibited conduct: harassment

---

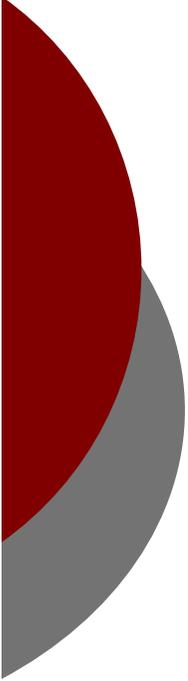
**HARASSMENT** – occurs when unwanted conduct relating to a protected characteristic (e.g. sex) takes place with the **purpose** or **effect** of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment



## Prohibited conduct: victimisation

---

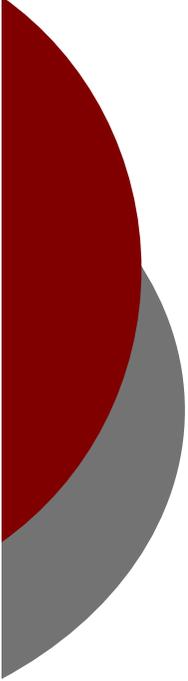
Occurs when a person suffers **adverse treatment** for complaining about discrimination or for helping someone who has been the victim of discrimination



# Justification

---

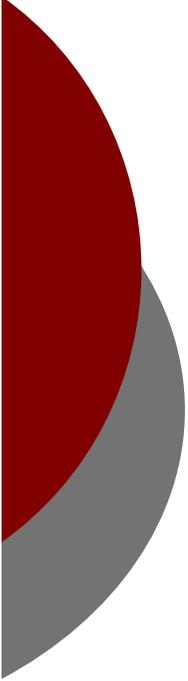
- **Direct discrimination:** There is no justification for racial/ethnic discrimination – it is always wrong
- **Direct (except race, ethnicity)/Indirect discrimination:** may be justified if it can be shown that the difference in treatment pursues a **legitimate aim** and the means of achieving that aim are **proportionate**



# What is proportionate means of achieving a legitimate aim?

---

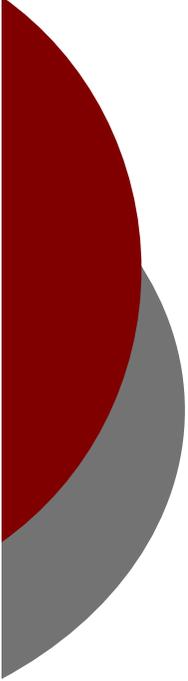
- **Legitimate aim:** criterion or practice must be legal and represent a real objective consideration
- **Proportionate:** means ‘appropriate and necessary’
- For example: religious education; girls or boys only schools



# Remedies

---

- Access to judicial, administrative, and conciliation procedures
- Conciliation procedures: are not substitutes for judicial procedures but additional avenues of redress
- Judicial procedures can be civil and criminal



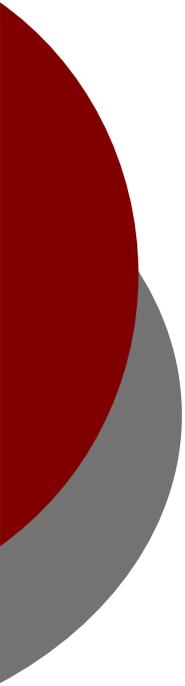
# Sanctions

---

Must be:

- Effective
- Proportionate
- Dissuasive

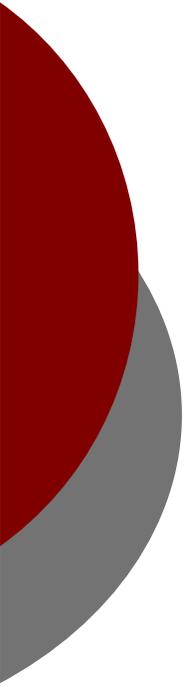
**May** include payment of compensation to the victim



# The Best Interests of the Child

---

- Article 3.1 Convention on the Rights of the Child:
  - *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*
- General Comment No. 14, UN Committee on the Rights of the Child

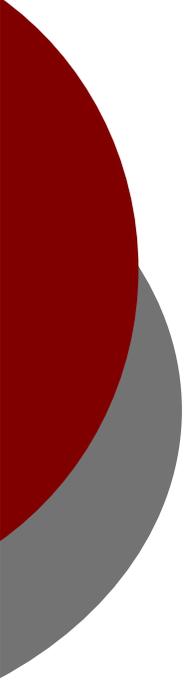


## Best Interests of the Child: constituent parts

---

*“In all actions concerning children...”*

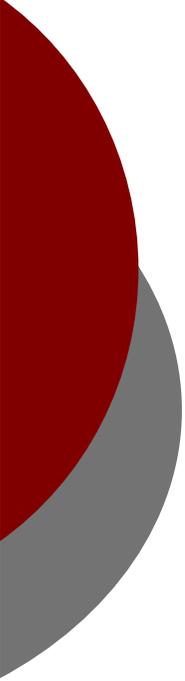
- Interpreted broadly
- Refers to all decisions and actions that **directly** or **indirectly** affect a child, groups of children or children generally



## Constituent parts: “*Best interests....*”

---

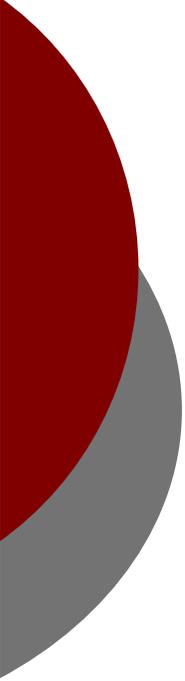
- Flexible and adaptable concept
- Defined on a case-by-case basis according to the specific situation of the child/children concerned
- Assessment is necessary, to take into account:
  - The child’s views;
  - The child’s identity;
  - Preservation of the family environment and preserving relationships;
  - Care, safety and protection of the child;
  - Situation of vulnerability;
  - The child’s right to health and education.



## Constituent parts: “*A primary consideration....*”

---

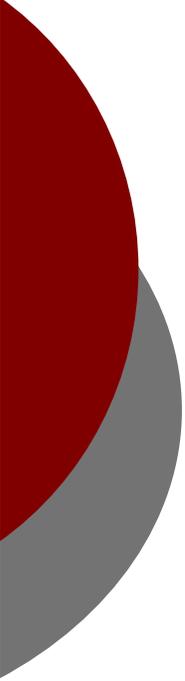
- “Best interests” play a strong role and are given high priority
- Note: child’s best interests are “*the paramount consideration*” in adoption issues (Art 21)



## Best interests of the child: example

---

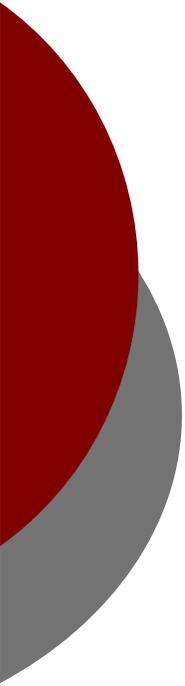
- The parents of a young boy are separating in an acrimonious divorce.
- There is a dispute over which parent the boy should live with.
- His advocate/ guardian ad litem seeks his views, while the social worker conducts an assessment of his best interests to guide the court to make a decision that takes his best interests as a primary consideration.



## Best interests checklist

---

- Talking to the child
- Hearing from those who know the child
- What do **you** think?
- Explaining the decision to the child



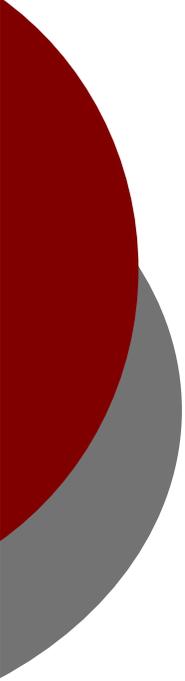
## Right to life, survival and development

---

“1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”

UN Convention on the Rights of the Child, Article 6

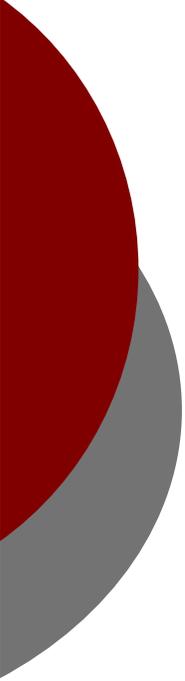


# Right to life, survival and development

---

## What does it mean?

- Interpreted broadly
  - Includes the child's holistic development (physical, mental, spiritual, moral, psychological and social)
  
- State obligation to:
  - Actively support a child to live and develop (enabling provisions)
  - Prevent, prohibit and punish actions detrimental to this right

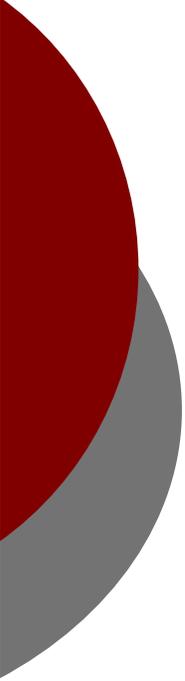


# Right to life, survival and development

---

## Examples

- Prohibition of life sentences without the possibility of release
- Deprivation of liberty used only as a measure of last resort and for the shortest appropriate period of time
- Implementation of extra-curricula activities and programmes for institutionalised children



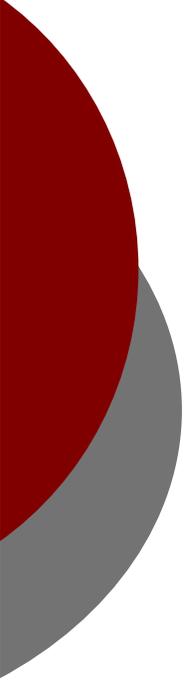
## Right to participation and to be heard

---

“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.”

UN Convention on the Rights of the Child, Article 12

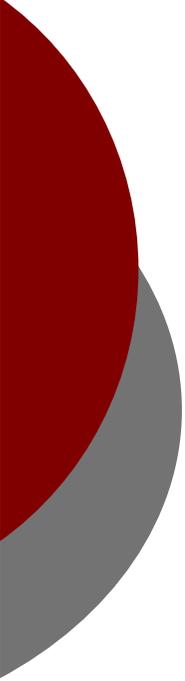


# Right to participation and to be heard

---

## What does it mean?

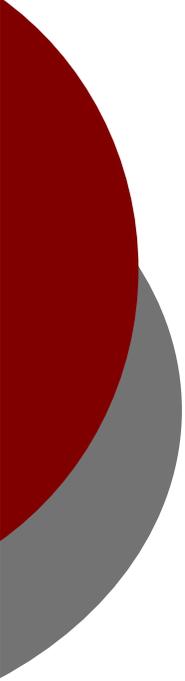
- Right to be heard and listened to
- Applies to all decisions/ matters affecting the child/ children
- Participatory and inclusionary process
- Made meaningful through aids, support and opportunities to participate
- The qualifying language should not be used to deny the child this right



# Right to participate and to be heard: Example I

---

- A child is accused of an offence
- He is provided with support to participate meaningfully in a hearing relating to a diversion programme
- He is able to articulate his remorse, but also to explain a little about why he acted in the way that he did
- He completes a community-based diversion programme in which he addresses these root causes, after which he does not reoffend



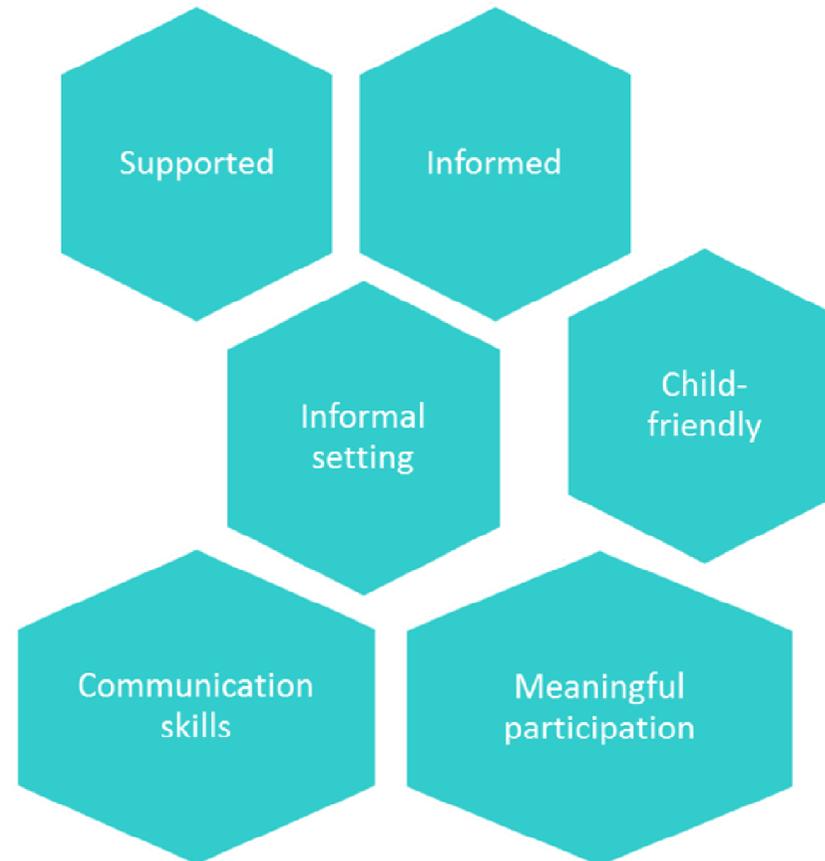
# Right to participate and to be heard – Example II

---

- A child is the victim of a sexual assault.
- A doctor supports the child to explain what happened and makes a child protection referral.
- A social worker and police officer work together to facilitate a police interview; the child is able to explain what happened in terms and ways with which she is comfortable.
- She attends the trial as a witness and testifies via video-link.
- All court officials speak to her in sensitive language.
- A conviction is secured. The girl is 5 years old.

# Key words – the right to participate and be heard

---



# Circles of influence

---

