PART 2: BEST PRACTICES IN COMMUNICATING WITH CHILDREN IN LEGAL PROCEEDINGS

This session aims to:

- Inform participants on the basics on how to engage in dialogue with children and young people in legal proceedings in different areas of law
- Get a better understanding of how children may feel and react when they (need to) get involved in proceedings
- Give concrete examples and tips, including caveats
- Demonstrate some existing methods and protocols that can help the judiciary in implementing art. 12 in a child friendly way.

- General pointers on communicating with children in proceedings
- More specific information on how to relate to children in specific cases (civil, criminal, administrative law)
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How to work and communicate with children? Suggestions and caveats

As for adults alike, it is important to realise that your daily working place, e.g. a courtroom, can often be rather intimidating to children. It is therefore vital to be authentic, respectful and human. Keep an open and welcoming attitude and adapt your language to the age of the child as was said before. Explain as much as possible on what is happening, who will be there and why. Try to explain how the procedure will go, what the outcomes and consequences will be, what will happen with what the child has said.

Communicating with children in the context of proceedings will largely depend on the type of procedure and the status of the child: hearing a child in an adoption or custody case is a lot different than hearing a child, who was a victim of a crime or a child in the middle of an asylum procedure.

Do not be reluctant to ask advice/support from other professionals. Nor to admit to the child that you don't know all the answers (children often think grown-ups know everything).

Take time to connect with the child in the different phases of a hearing and round up every phase, bridging into the next:

- In the beginning: explain who you are, check if the child knows why he/she is there, how he/she feels about the hearing (this can be quite different depending whether the child wanted to be heard or not), make it clear that only the judge will take the decisions, after having heard all the parties involved or gathering all the evidence (that the decision will not solely depend on what the child will say)

- Start with 'simple' questions to get to know the child a bit better: who they are, what they like, hobbies, school, friends, what they do when they feel sad or upset…How does a 'typical' day look like (at home, in school, in the sports club…). It can also be interesting to check who brought them to court and what was said to them before the hearing.

- Then slowly, more pointed, but open ended question can be asked about the issue at stake. Questions about how the child relates to both parents, what the feelings are

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about the divorce. What happened when they left their country and whether the child understands what the reasons were.

- Near the end, it is good to add some 'free range' questions: Is there anything else you want to tell me? Do you think I forgot to ask something? What would your ideal situation be?...

In <u>civil</u> cases, Interviewing might be somehow less delicate (e.g. in a conflict with school) but it is still a child, whose interests are at stake. In family conflicts, feelings of loyalty and family dynamics can make such cases rather tricky as well.[1] It is never a good idea to put pressure on a child or to leave the deciding responsibility on their shoulders. Children should never feel as if they are pushed into making a choice. Instead of asking a child whether or not he/she likes to live with or visit dad/mom, it is better to ask about what the child does when he/she lives with either parent, what they like to do in their spare time, what they like about school. Having them make drawings can also help to get over their reluctance to speak.

In court proceedings in which the information of the child is vital (e.g. <u>criminal</u> cases) the way of interviewing the child will define whether or not the evidence will be useable, relevant, valid and helpful. In some cases it is necessary to involve specialists (psychologists, child psychiatrists, social workers…) to do the interviewing. Incorrect, inconsequent and/or invalid information in testimonials is more often related to the way in which a child was questioned than to the child's age or competence. Bad interviewing can minimise all the evidence's value.

The <u>NICDH</u> protocol (very strict scenario – research based) and similar protocols offer some very concrete tips in how to engage with children in court settings:

- Start with clearly defined and explained interview instructions. It makes it clear for the child that this (forensic) interview will not be the average talk, or that the interviewing person does not know it all (as children often think of adults). Explicitly telling the child that you don't know what happened has been proven to increase the accuracy, it decreases the child's inclination to start guessing (because he thinks he has to answer something), it increases the child's willingness to ask more clarification in the questioning and it increases the child's resistance to suggestions. Some instructions are e.g.: 'it is OK to say that you don't know', 'please ask me if you don't understand the question, if you don't know what I mean', 'you tell me what happened because I don't know'

- Start with building some rapport with the child, come down to the child's level and equalize the power balance. Explain how the interview will proceed

- Clearly explain what truth and lies are with some clear examples

- Use open ended questions.
  Yes/no questions don't lead to elaborated answers and give little detailed information. Avoid leading or suggestive questions.

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[1] See http://www.coe.int/t/dghl/standardsetting/childjustice/CJ-S-CH%20_2010_%2015%2028%2009%202010%20Child%20Friendly%20Version.pdf

- 'Wh' questions. (what, when, who….) without too much information. These questions lead to much more information, details and elaborated answers. (E;G. Lamb et. Al., 2000: The number of details among 8-9 y olds was about 8,5 with 'tell me' questions, compared to 4,5 with Yes/no questions)

- Keep the questions short and let the child talk

- Start with 'easy' questions or something the child can feel comfortable about (e.g. last birthday or Xmas – stories with a beginning, a middle and an end, to see whether the child has a notion of timeline)

- 'Tell me more' or 'what happened next' prompts. Continue on what the child has answered before. ('you said you like soccer. What is it that you like about soccer so much?') Keep using the words/names/places the child uses (not grandfather but 'Grandpa George')

- Go slow, leave time for the child to answer

- Ask for specific things, as concrete as possible ('Where did he touch you?' 'In the bedroom')

- Don't add your own views or ideas (is irrelevant for the case and takes the child's attention away)

- Be careful with pronouns or grammatically difficult constructions. (E.g. use names of persons instead of he/she.)

This may come across as very self-evident and rather easy, but this is often not so much the case in reality. What definitely needs to be **avoided** are:

- Too formal behaviour; the child must know he/she can trust the professional. 5even in wigs and gowns you can still act friendly)

- Never presume the child knows all about the situation or understands all legal terms. (For a child a 'prosecutor' may well be related to a velociraptor). Children also often think that the judge – or adults - knows everything

- Directly dive into the questioning

- Add pressure to the child

- Induce guilt feelings (E.g. by asking 'why didn't you call?' or 'Why were you out so late?')

- Add your opinion or view on the issue

- Suggestive or leading questioning ('When did she start beating you?')

- Yes/no questions (the child will not give elaborate answers)

- Tags like 'didn't he'

- Forced choice questions with 'or' (child feels obliged to make a choice among the given alternatives, risk for last item bias or choosing one of both while it doesn't comply with the facts)