

**Vilnius University Faculty of Law**  
**Department of International law and Human Rights**

**Master's Thesis**

**Child Friendly Justice under the European Convention of Human Rights.**

**Vaikams draugiškas teisingumas pagal Žmogaus teisių ir pagrindinių laisvių apsaugos konvenciją**

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### **Abstract and key words.**

Child friendly justice is a generally accepted concept that has gained recognition by most international and regional instruments that seeks to ensure that signatories and member states endeavor to implement the concept in their states. Though it is a globally accepted concept to ensure children are protected in the justice system it is faced with challenges that makes the applicability of the concept a difficult one. This study seeks to investigate the concept and standards of child friendly justice and to compare these standards amongst two zones, the Council of Europe and Africa.

Vaikams palankus teisingumas yra visuotinai priimta koncepcija, pripažinta daugeliu tarptautinių ir regioninių dokumentų, kuriais siekiama užtikrinti, kad pasirašiusios šalys ir valstybės narės stengtųsi šią koncepciją įgyvendinti savo valstybėse. Nors tai yra visuotinai priimta koncepcija, skirta užtikrinti, kad vaikai būtų apsaugoti teisingumo sistemoje, tačiau susiduriama su iššūkiais, dėl kurių sunku taikyti šią koncepciją. Šiuo tyrimu siekiama iširti vaikams palankaus teisingumo sampratą ir standartus bei palyginti šiuos standartus tarp dviejų zonų – Europos Tarybos ir Afrikos.

Keywords: Child, friendly, justice, principles, standards, best interest, participation, dignity, torture.

Raktiniai žodžiai: Vaikas, draugiškumas, teisingumas, principai, standartai, interesas, dalyvavimas, orumas, kankinimai.

## **List of Abbreviations.**

UN : United Nations

ECHR: European Convention on Human Rights

CRC: Convention on the Rights of the Child

ECtHR: European Court of Human Rights

ECRI: The European Commission against Racism and Intolerance

CPT: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ECPIAPPD: The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

UNCRC: The United Nations Convention on the Rights of the Child

ACRWC: The African Charter on the Rights and Welfare of the Child

CPC: Criminal Procedure Code

ACHPR: African Commission on Human and People' Rights

ACERWC: The African Committee of Experts on the Rights and Welfare of the Child

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## **INTRODUCTION.**

The Council of Europe 1949 which is made up of 47 countries aim to help member countries improve in the way they protect human rights through agreements, conventions and guidelines, member states in order to protect human rights sign up to them. Amongst them is the European Convention of Human Rights that was created in 1950. In protecting children's rights, the Council of Europe has many conventions, agreements and guidelines put in place to address specific vulnerability of children example is the child-friendly guidelines that was adopted in 2010 by the Council. These guidelines are meant to serve as a practical tool for member states to use to adapt their justice and administrative systems to address the specific rights and needs of children in their jurisdiction, so children wherever they are found attain justice as per the guideline principles.

To be able to know who falls under the term of children to be able to benefit from child-friendly justice, the term children must be defined. In Article 1 of the United Nation Convention on the Rights of the Child (UNCRC) (CRC) and as well article 1(1) of the European Convention on the Exercise of Children's Rights define a child as every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier or later. Children may come in contact with the law in areas like divorce or adoption or in may be involved in immigration issues or can as well come in contact with the law as victims, witnesses or offenders which make it necessary for their rights to be protected in any of the situations mentioned above within the justice system. Because the justice system can be intimidating for children, child-friendly justice is essential to cater for the special vulnerability of children.

Child-friendly justice is justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs of the child, respecting the right to due process, respecting the right to participate in and to understand the proceedings, respecting the right to private and family life and respecting the right to integrity and dignity. (Council of Europe, Avenue de l'Europe F-67075 Strasbourg Cedex, France. [https://www.coe.int/en/web/children/child-friendly-justice#%2212440309%22:\[0\]](https://www.coe.int/en/web/children/child-friendly-justice#%2212440309%22:[0])).

The fundamental principles of Child-friendly justice as enshrined in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice include Participation; best interest of the child; protection from discrimination; dignity and rule of law.

### **Research objective.**

This research seeks to investigate the standard of child-friendly justice under the ECHR and challenges of its application. The research seeks to analyze;

1. Explore the concept of child-friendly justice; assess the origin, guiding principles and legal framework for child friendly justice under the ECHR. This is to elaborate on the importance of the concept of child friendly justice.
2. Investigate the standard of the application of Child friendly justice under the Council of Europe using case law to show how effective the application has been and examine the limitations and challenges in applying the principles of child friendly justice which could bring possible recommendations and proposals to help the concept a practical reality.
3. Evaluate standards of child friendly justice in Africa and comparing it to the standards under the Council of Europe.

### **Research Questions.**

This research aims to answer 4 pertinent questions in order to fully investigate the standard of child-friendly justice in the Council of Europe especially in refugee and migrant cases.

1. What is the concept, principles and legal framework of child-friendly justice under the council of Europe as a whole?
2. What are the standards of child friendly justice under the ECHR in refugee cases? What are the possible difficulties in applying child-friendly justice?
3. What are the similarities or differences between Standards in Cameroon to that under the Council of Europe?



## **Methodology.**

This research will make use of doctrinal sources of information from court judgments and legal provisions, academic journals and policy documents to be able to analyze the concept of child-friendly justice and current theories and elaborate on the topic.

Use will be made of empirical sources from interviews and websites to further investigate the reality of child-friendly justice system under the ECHR.

After a thorough investigation and analysis of both the concept and its applications, the research will make proposal and recommendations from the analysis drawn.

## **Structure of the thesis.**

This thesis aims to investigate the concept and standard of child-friendly justice under the ECHR and Cameroon and to compare both standards. Chapter 1 will address the emergence and origin of the concept of child-friendly justice and highlight the aims of the guidelines on the child friendly-justice and their legal value.

Chapter 2 will examine the standard of child-friendly justice under the ECHR and related jurisprudence in migration and refugee situations and will address the challenges, limitations in the application of child-friendly justice under the ECHR.

Chapter 3 will examine the concept of child friendly justice in Africa (Cameroon) and compare the standard of child-friendly justice under the ECHR to that of Cameroon.

## **The Scope of Study.**

This research is limited to the ECHR approach to child-justice. However we will have investigate the concept in Africa (Cameroon) and compare the standards under the Council of Europe to that of Cameroon.

## **Originality.**

There exists countless books and academic research on the concept or notion of child friendly justice, however this research centers on the applicability of the child friendly justice, looking at the standards that have been established the ECtHR's decisions in its cases which have become

case law and also the limitations in applying this important concept across the Council of Europe comparing with the standards of applicable in Africa (Cameroon).

### **Literature review.**

The concept of child-friendly justice which is crucial for the global protection of children has emerged under the European human rights system. The concept developed by the Council of Europe adds a new dimension to the development of children's legal status under international human rights law. It has attracted lots of authors who have shared insights on what the concept of child friendly justice is about, raising awareness in their work to help protect the child in issues related to the justice system.

Ton Liefwaard one of my favorite authors whose book was greatly used as a research source for the most part of this work and has a YouTube channel where he shared lots of other informations that are educative to comprehend what the notion of child justice is. Ton Liefwaard in his work "child friendly justice protection and participation of children in the justice system" examines detailing in his work what the notion and concept of child friendly justice is, stressing more on the importance of child participation in achieving child friendly justice, emphasizing on the necessity of adapting legal processes and procedures to protect children who come in contact with the justice system. Liefwaard identified three elements that ought to be taken into account in making access to justice child-friendly or "child-sensitive": (1) child-friendly information; (2) child participation in proceedings; and (3) child-friendly remedies. He went further in his work to examine the implementation or application of child friendly justice based on the United Nations Convention on the Rights of the Child CRC in Europe. Ton Liefarrd went further and in details examined the unclear and inconclusive and limited aspect of the guidelines on child-friendly justice, stressing on the weak and dependent approach the guidelines can be interacting with legally binding instruments, such as the proposed EU Directive and the case law of the ECtHR and domestic courts.

The second author by name Stephanie Rap wrote a research paper in 2016 on "children are capable of making their own choices in the asylum procedure." Stephanie in her works investigated the extent to which the principles of child justice are being implemented in practical scenarios like asylum cases. She conducted a research in the role of children in judicial which

showed that children and adolescents are not properly heard in the Dutch asylum procedure in its current form. She was of the opinion that even though The Convention on the Rights of the Child states that children (and adolescents) have the right to be heard and to express their views on all important decisions affecting them, children are however not properly heard in the Dutch asylum procedure. Stephanie in her work pointed out the importance of providing children with useful and better information in a manner that they understand and age appropriate. Dealing with children in the justice system, their views and best interest must be considered at any time during legal proceedings. Stephanie Rap emphasizes that it is does not suffice for legal instruments such as treaties, conventions to contain these laws that protect the children but should endeavour to monitor the extent to which the laws are implemented practically.

The third author A Limante in his work “Child-Friendly Legal Aid and Individual Assessment of Children in Conflict with the Law: Building the Basis for Effective Participation” in 2022 focused on the importance of the right to effective participation of children in conflict with the law in criminal proceedings. He emphasized that qualitatively identifying the needs of the every child and establishing a relationship of trust with a specifically trained legal aid lawyer is critical in raising the child’s status to that of an active participant in the proceedings and ensuring that the best interests of the child are observed. Similar to the previous author Stephanie Rap, Limante is also curious if children’s rights of participation as enshrined in international instruments and national laws of European countries are actually implemented practically, he aimed to demonstrate that additional efforts should be put into place such that effective participation of children in legal proceedings will not be jeopardized. In his work he analyzed the extent to which legal aid and the instrument of individual assessment contribute to ensuring child’s participatory rights. Limante agreed with the first author Liefwaard on the three elements vital for access to child-friendly justice being; child-friendly information; child participation in proceedings; and child-friendly remedies, adding that quality legal aid might help to respond more better to the three elements thereby strengthening effective participation.

It is clear that there is a link to all the three authors’ work, first the emphasis on the notion and need for a child friend-justice then practical applicability of the legal framework in situations like asylum cases and then the necessary aids such as legal trained aid and psychologist present

during legal proceedings can be a great move towards active participation of children faced with the justice system.

## **Chapter 1:**

### **The origin and emergence of the concept of child-friendly justice.**

With the coming of the UN Convention on the Rights of the Child (CRC), juvenile justice was crucial to children's rights and it gained more popularity globally and changed the legal status of Children internationally. Children's rights have become part of law and institutional reform in many of the 196 countries that member state to the CRC. One concept that has emerged as part of this institutional reform is the concept of child-friendly justice. Child-friendly justice has as its main focus, the effective participation of children in justice systems (Child-friendly Justice and Procedural Safeguards for Children in Criminal proceedings: New Momentum for Children in Conflict with the law? November 2020 Bergen Journal of Criminal Law & Criminal Justice 8(1):17.) As already stated, the concept of child-friendly justice has gained significance in the European juvenile system and it is being used to articulate the extent to which children's rights are protected in judicial and other decision-making processes. Just like every concept, the concept has its flaws and gaps however it is still an important concept as it is necessary to make justice systems more accessible and understandable for children, including the (juvenile) criminal justice system.

#### **1.1 Concept of child friendly justice:**

It has been established that the justice system is an adult world that has its complexity which children cannot understand. They come in contact with this justice system in different ways; in adoption or divorce, as offenders or victims or in circumstances of nationality or immigration issues. Thus it is necessary for the justice system to adjust to their specific needs.

The concept of child-friendly justice has emerged under the European human rights system but is rooted in international children's rights, in particular in the child's right to be heard and participate in judicial matters that concerns them. (Child-friendly Justice: Protection of Children in the Justice System by Ton Liefwaard 2016 p 907-909 accessed on <https://www.templelawreview.org/lawreview/assets/uploads/2016/08/Liefwaard-88-Temp.-L.->

[Rev.-905.pdf](#).) Child-friendly justice embraces the idea that courts can be a powerful tool to positively shape children's lives and at the same time recognizes the reality that contact with the legal system is all too often more a source of additional trauma than a remedy for children. The concept of child-friendly justice asks us to appreciate and minimize the challenges that children face at each step in each aspect of a legal proceeding, building confidence in the view of the justice system as a solution to children's legal issues rather than another of an already long list of problems. (Child-friendly Justice and Children's Rights CRIN (Child's Rights Information Network) intro ([https://childhub.org/sites/default/files/library/attachments/1266\\_Child-Friendly\\_Justice\\_and\\_Children\\_s\\_Rights\\_original.pdf](https://childhub.org/sites/default/files/library/attachments/1266_Child-Friendly_Justice_and_Children_s_Rights_original.pdf).)

Child-friendly justice should be distinguished from other concepts such as access to justice (which can be understood as referring to the ability to obtain a just and timely remedy for violations of children rights) whereas the former is an approach to ensure full application of international norms and standards for all children who come into contact with justice and related systems as victims, witnesses and alleged offenders or for other reasons where judicial, state administrative or non-state adjudicatory intervention is needed (U.N. Secretary-General, Guidance Note: UN Approach to Justice For Children 1 (2008), [http://www.unicef.org/protection/RoL\\_Guidance\\_Note\\_UN\\_Approach\\_Justice\\_for\\_Children\\_FINAL.pdf](http://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf)). Child-friendly justice shows resemblance to a child-sensitive approach, defined as an approach that balances a child's right to protection and that takes into account a child's individual needs and views ( the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime Economic and Social Council Res. 2005/20, art. 9(d) July 22, 2005). Child-friendly justice is justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs of the child, respecting the right to due process, respecting the right to participate in and to understand the proceedings, respecting the right to private and family life, respecting the right to integrity and dignity.

## **1.2 Origins of child friendly justice:**

The concept of child friendly justice has been greatly influenced by the international children's rights provided for by the UN Convention on the Rights of the Child (CRC). As it evolves, it has as well gained recognition under the European Convention on Human Rights (ECHR).

-The Council of Europe; The Council of Europe is the main body that has helped the development of child justice in Europe. It has several guidelines and conventions that relate to specific aspects of children's lives. In 2010, its Committee of Ministers developed child-friendly guidelines. These guidelines are aimed to protect children's rights when they are involved in justice proceedings. The Council of Europe adopted guidelines on child-friendly justice to serve as a practical tool for member states in adapting their judicial and non-judicial systems to the specific rights, interests and needs of children. (Guidelines of The Committee of Ministers of The Council of Europe on Child-Friendly Justice 2010).

-The European Convention of Human Rights (ECHR); As an international human rights treaty, it gives people; adults, children and young people a set of rights and freedoms. The ECHR is relevant to child-friendly justice as it extends protection to children as well. It protects children vis a vis their relation with adults and accords the same human rights and freedom as adults. There are specific provisions in the convention that addresses specific needs of children in the justice. Prohibition of torture, discrimination, rights to fair trial, right to private life amongst others are the protection that ensures child friendly justice.

-The European Union (EU): The EU has ensured the protection of children in justice system across its member states, implementing frameworks like the Directive 2016/800/EU on Procedural safeguards for children suspected or accused in criminal proceedings, promote the Council of Europe guidelines on child-friendly justice. It also helps as a driving force that monitors the application and the progress in implementing child friendly justice across member states.

-The European Court of Human Rights (ECtHR); The ECtHR serves as a source of guidance and enforcement for member states in judicial proceedings that relate to children. It helps in interpretation of the provisions in the European Convention of Human Rights in the context of children's protection and monitoring the compliance of member states to its judgments. Its judgments in cases have form precedents that have helped shaped national legislatures that align with child friendly justice.

Child-friendly justice aims to make justice systems more focused on children's rights, more sensitive to children's interests, and more responsive to children's participation in decision making that involves them. Child-friendly justice empowers children to enforce their rights and encourages government, court, and law enforcement officials to develop policies that address children's specific needs in the justice system.

### **1.3 Content of the guidelines on child friendly justice:**

The Council of Europe guidelines on child-friendly justice intends to enhance children's access to as well as related to their treatment in justice system in member states. These guidelines set out basic rules for European states to follow when adapting their justice systems to the specific needs of children. They apply to all circumstances in which children are in contact with the justice system and ensure that all rights of children are fully respected. They serve as a practical guide for member states to implement international standards on child friendly justice in all proceedings that involves children. (The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice 1, 13, 2010).

The Guidelines distinguish five categories of fundamental principles; participation, best interest of children, treatment with dignity, nondiscrimination and the right to access to courts, right to a fair trial. The key focus of child-friendly justice lies in enabling children to participate in formal and informal proceedings in order to guarantee the respect and the effective implementation of all children's rights at the highest attainable level (Commission on the Rights of the Child, General Comment No. 10: Children's Rights in Juvenile Justice, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007)). The Guidelines elaborate upon child-friendly justice before, during, and after judicial proceedings, the importance of adequate information and advice, protection of private and family life, safety, and training of professionals and the deprivation of liberty as a measure of last resort and for the shortest appropriate period of time as general elements of child-friendly justice.

**A) Participation;** The principle of participation is to the effect that children have the right to speak their mind and give their views in all matters that affect them. This is one of the guiding principles of the United Nations Convention on the Rights of the Child, the right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This

includes giving due weight to the children's views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.P.17,50<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9>). While this does not mean that their opinion will always be adhered to, the guidelines require that their opinions be taken into account seriously subject to their age, maturity and the circumstances of each case be taken into consideration. In two cases before the European court of Human Rights (ECtHR) *Sahin v. Germany* application no. 30943/96, 2003 ([file:///C:/Users/User/Downloads/SAHIN%20v.%20GERMANY%20\(1\).pdf](file:///C:/Users/User/Downloads/SAHIN%20v.%20GERMANY%20(1).pdf)) and *Hokkanen v. Finland* application no. 19823/92, 1994, the court held respectively that “it would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned” (European Court of Human Rights (Grand Chamber), judgment of 8 July 2003, *Sahin v. Germany*, No. 30943/96, paragraph 73) and in the later case that a 12 year old girl is “sufficiently mature for her views to be taken into account and that access therefore should not be accorded against her wishes” (European Court of Human Rights (Chamber), judgment of 23 September 1994, *Hokkanen v. Finland*, No. 19823/92, paragraph 61). Participation ensures that children should be included in the discussions prior to any decision which affects them.

**B) Best interests of the child;** The child's best interests should be a primary consideration in all cases involving children. Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them. (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice p.18, 53). The assessment of the situation needs to be done accurately; their views and opinions should be given due weight; all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times; a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child. This assessment becomes even more difficult when these interests need to be balanced with the interests of other involved parties, such as other children, parents, victims. The best interests of the child must always be considered in combination with other children's rights, for



example, the right to be heard, the right to be protected from violence, the right not to be separated from parents. In any case, the rights of all children need to be respected, including the rights of those children who breach the law. (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice p 18, 53)

**C) Dignity;** Respecting dignity is a basic component of human rights in general, that has been included in many existing legal instruments. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected. Children should be treated with care, sensitivity, fairness and respect throughout any procedure with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with the justice system and regardless of their legal status and capacity in any procedure or case (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. 18-19 and p55).

**D) Protection from discrimination;** Article 2 of the United Nations Convention on the Rights of the Child elaborates on the prohibition of discrimination. The rights of children shall be secured without discrimination on any grounds such as sex, race, colour or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parents, association with a national minority, property, birth, sexual orientation, gender identity or other status. The European Commission against Racism and Intolerance (ECRI) main purpose is to combat racism and discrimination, taking into consideration that all human beings belong to the same species. ECRI seeks to ensure that persons who belong to another race are not excluded from the protection provided for by the legislation. Another important factor of discrimination in the area of children's rights is age and capacity. Very young children or children without full capacity to pursue their rights are also bearers of rights. For these children, alternative systems of representation need to be developed in order to avoid discrimination. Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children as well as children in residential institutions. (The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. P 55-56).

**E) Rule of Law;** The rule of law establishes that everyone has a duty as well as enforceable rights. The principle of rule of law applies irrespective of age so that member states are expected to respect and support fundamental rights for all, including children. Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, independent legal assistance, effective access to a lawyer, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimized or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings. Children should have the right to access appropriate independent and effective complaints mechanisms. (The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice p 19 and 56).

#### **1.4 Legal framework of the guidelines on child friendly-justice under the ECHR:**

The ECHR which came into force in 1953, is a regional instrument drafted by the Council of Europe as a response to the atrocities of the Second World War. Its scope is not comprehensive and it is defined largely by civil and political rights, such as the freedom from torture and the rights to life, fair trial and liberty (Protecting children's rights under the ECHR: the role of positive obligations 2010 by DR Ursula Kilkelly Faculty of Law, University College Cork. P. 247.) The ECHR has specific provisions that address specific vulnerability of children and also guarantee child friendly justice; article 3,6,8 and 14 provides unique protection to children. Article 3 recognizes the right to freedom from torture, and inhuman and degrading treatment or punishment. This article ensures that member states guarantee that children are not subject to harsh or inhumane treatment during legal proceedings. Article 3 is an absolute prohibition with no exceptions. Article 3 has played a key role in protecting children from physical punishment and abuse, including at the hands of their parents. In *A v. UK* application no. 35373/97, 2002 (Protecting Children's rights under the ECHR: The Role of Positive Obligations. DR Ursula Kilkelly 2010p 245 - 261) which concerned the caning of a nine year old boy by his stepfather. His injuries were considered to be sufficiently serious to merit the initiation of criminal proceedings against the boy's stepfather, who was acquitted on the defence that the punishment amounted to "moderate and reasonable chastisement". The boy complained that the legal framework in place in England and Wales failed to provide him with effective protection from inhuman and degrading treatment contrary to the Convention. The ECtHR set

out the positive obligations under Article 3 of the Convention by reading it together with the duty under Article 1 of the ECHR, the Court ruled that the Article 1 obligation requires states “to take measures designed to ensure that individuals within their jurisdiction are not subjected to treatment prescribed by Article 3, including such treatment administered by private individuals”. Moreover, the Court noted that “children and other vulnerable individuals are entitled to protection in the form of effective deterrence against such serious breaches of personal integrity”. Applying this approach, the Court held that the UK had infringed Article 3 because its law did not adequately protect a child against the infliction by a parent of suffering that reached the threshold of Article 3. The law and its application in this case did not provide the boy with effective protection from ill-treatment.

Article 6 ensures the right to fair trial, the child’s right to participate effectively in proceedings that concerns them, while adapting legal procedures to ensure that children adequately understand and participate in the proceedings.

Article 8 guarantees the right to respect for private and family life. In the first paragraph, the right is established, while the permitted limitations are explained in paragraph 2. Article 8 is the most used provision in proceedings that involves children such as adoption, child abduction, alternative care, custody and access, guardianship and identity issues and promotes a child-centered approach to the legal recognition of family relationships. In *Marckx v Belgium* application 6833/74, 1979 (Marckx v Belgium (1979–80) 3 EHRR 230), (Protecting Children’s rights under the ECHR: The Role of Positive Obligations. DR Ursula Kilkelly 2010p 248 – 250) in which case, under The Belgian law an unmarried mother had to take certain steps to have her bond with her daughter legally recognized. In the court’s judgment, the Court established that the tie between mother and daughter in this case amounted to family life within the meaning of Article 8, the Court noted that “the object of the Article is essentially that of protecting the individual against arbitrary interference by the public authorities”. Respect for family life, in the Court’s view, implies: “the existence in domestic law of legal safeguards that render possible as from the moment of birth the child’s integration in his family” a law that “fails to satisfy this requirement” violates Article 8(1).

Article 14 in general prohibits any form of discrimination in the enjoyment of the rights and duties established in the ECHR. This goes without much effort to elaborate that children shall not

be discriminated upon whether by race or gender, background or circumstance they shall all be treated equally in the justice system.

The ECHR has gone a long way to ensure that member states put in place monitoring bodies that ensure that these rights are implemented in member states and the ECtHR jurisprudence has also guided courts in making decisions in proceedings that involve children.

## **Chapter 2:**

### **The ECHR standards of Child friendly justice and related jurisprudence in refugee and migrant situations.**

The European Convention on Human Rights which is of general applicability contains a number of provisions that are relevant to child justice. Article 3 provides for the prohibition on torture and cruel, inhuman or degrading treatment while article 5 provides for the right to liberty and security and article 6 deals with the right to a fair trial, article 8 which is important as well makes provisions for the protection of family life. All these articles have particular relevance for children in contact with the justice system. The European Court of Human Rights has developed a substantial body of jurisprudence relating to child friendly standards. The jurisprudence of the ECtHR has been particularly useful in providing clarity on the requirements for compliance with the ECHR in child justice in the context of detention, and in relation to the procedural rights of children.

The ECHR's standards for child-friendly justice aim to identify practical solutions to existing legal and practice loopholes. These standards are to serve as practical tools for member states in adapting their judicial and administrative systems to the specific rights, interests and needs of children. The member states are under a positive obligation to ensure that these standards are widely disseminated among all authorities involved in children's rights in the justice system. The Standards should apply to all children involved in criminal, civil, or administrative law considering their vulnerability in the earliest stages of justice proceedings. A child in a detention center as a refugee or migrant needs protection against ill treatment by the local authorities and against treatment that prevents his right to a fair trial. Member states should recognize the special need of children and understand that they require greater protection than adults. The Guidelines'

recognition of children's particular vulnerability builds on preceding international and European standards, including Article 40 of the CRC, and case law of the ECtHR.

## **2. 1ECHR Standards of Child friendly justice in refugee and migrant situations;**

The guidelines of child-friendly justice provide detailed guidance with regard to judicial proceedings stressing on the importance of recognizing the right of children to legal counsel and representation, the right of avoiding undue delay and the right of conducting proceedings in a child-friendly environment with age appropriate procedures and with the use of child-friendly language. The guidelines emphasize the importance of child-friendly justice standards for protection and effective child participation in proceedings. The state must invest in providing specialized legal assistance and adequate information to enable a child's effective participation in proceedings. Member states need to take specific actions to make sure the standards are adopted in their laws and that national authorities dealing with children in asylum cases are familiar with these standards to ensure children's rights are protected.

### **2.1.1 Access to child friendly justice;**

Children, as rights holders, should have the right to access remedies to effectively exercise their rights or address violations of their rights. Domestic law should ensure that children with adequate understanding of their rights to have easy access court for legal advice and protection when necessary. Access to child friendly justice is a fundamental right that is crucial for the protection and promotion of all civil, cultural, economic, political and social rights. It means challenging violations of children's rights and making sure that the law and justice systems work for children. Children's access to justice is crucial for equity and to ensure that all children have opportunities to reach their full potential as people in the society. Migrant children are particularly vulnerable having left their usual abode and find themselves in asylum and immigration proceedings. Asylum and immigration proceedings that involve children should be designed to adapt to children's needs taking into consideration their age and level of maturity. Any obstacles to access to court, such as the cost of the proceedings or the lack of legal counsel, should be removed. Accessing child-friendly justice is crucial, what is of equal importance as well is child-friendly remedies or outcomes. Children should have access to administrative and judicial remedies against decisions affecting them or their legal guardian/parent and also

ensuring all decisions are taken in their best interests. The ECtHR in its own way to emphasize access to child-friendly justice include children among the persons able to lodge an application before it, their age cannot be an obstacle to this. (Leskoviku and Prece “Access to Justice for Children: An Evolving Concept” (2015) 6 (3) Mediterranean Journal of Social Sciences.)

### **2.1.2 Access to legal representation;**

If children are to have access to justice which is genuinely child friendly, member states should facilitate access to a legal aid or other institution or entity which according to national law is responsible for defending children’s rights, and be represented in their own name where there is, or could be, a conflict of interest between the child and the parents or other involved parties. The legal aid representing children should be free, trained in and knowledgeable on children’s rights and related issues, receive ongoing and in depth training and be capable of communicating with children at their level of understanding. The legal aid should provide the child with all necessary information and explanations concerning the possible consequences of the child’s views and/or opinions. In all adequate representation and the right to be represented independently from the parents should be guaranteed.

There are two groups of migrant children; Unaccompanied children; that’s children separated from their parents and accompanied children. For accompanied children mostly their parents file for asylum for themselves and their underage children and for other children who do not have the capacity to file for themselves. While the other group of children who arrive unaccompanied and for the young ones who do not have the legal capacity to file for asylum because of their age need legal representation until they are about 18 years of age. The CRC committee recommends that all children be it accompanied or unaccompanied children should be appointed legal representative and the representation should be free at all stages in the proceedings and with whom they can communicate freely. (Joint General Comment No 4 (2017) of the committee on the protection of the Rights of All Migrant Workers and members of their families and no. 23 (2017) of the Committee of the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017). The CRC Committee argues that the child being questioned must have access to a legal or other appropriate representative, and must be able to request the presence of his/her parent(s) during questioning

for accompanied children.(Article 40 of the CRC).

Article 25(1) (a) Directive 2013/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection provides the obligation for state parties to ensure that unaccompanied minors are appointed a representative who can assist and ensure the best interests of the child during the proceedings and to ensure the child is fully informed and understand the what the whole process is about and the possible consequences.

The Guidelines on child friendly justice are more concrete when it comes to access to a lawyer or legal representation. This has been stimulated not only by landmark case law of the ECtHR but also by the continuous recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that underscore that legal representation is important. The Guidelines confirm the international recognition of children's right to protection given their particular vulnerability and give member states concrete guidance on how to materialize this in practice.

### **2.1.3 Access to age appropriate legal procedures;**

Asylum proceedings for children should be child-sensitive and age-appropriate, giving children the right to express their views on all aspects of the asylum and immigration proceedings for example the giving them the opportunity to present the reasons that lead to the asylum application. It is more likely that during proceedings, some information provided by children may not be entirely accurate or real due to the difficulties in communication, for this reason, different child-friendly methods that are not intimidating should be used during the interview of refugee and migrant children for example making use of role-playing, drawing, images, singing to elicit their feelings, needs and wishes. (Rap Stephanie "Access to Justice and Child-friendly justice for refugee and Migrant Children: International and European Legal Perspectives". [https://www.europedeslibertes.eu/article/access-to-justice-and-child-friendly-justice-for-refugee-and-migrant-children-international-and-european-legal-perspectives/.](https://www.europedeslibertes.eu/article/access-to-justice-and-child-friendly-justice-for-refugee-and-migrant-children-international-and-european-legal-perspectives/))

The European Court of Human Rights (EctHR) on its own has developed procedural safeguards based on Article 3 (ECHR) which highlights the prohibition of torture read together with Article 13 emphasize the necessity to conduct an individualized assessment of each child. The EctHR has recognized children's right to be heard through article 8 ECHR (the right to

respect for family life). In *M and M v. Croatia* application no. 10161/13, 3<sup>rd</sup> September 2015([https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-156522%22%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-156522%22%7D)) that concerned a custody dispute, the ECtHR expressed the importance for children to sufficiently and effectively participate in decision making process.

#### **2.1.4 Access to information and advice;**

From their first point in contact with the justice system or other competent authorities for example the police, immigration, educational, social or health care services as well as throughout that process, refugee and migrant children should be promptly and adequately informed of their rights, the procedures involved, the appropriate and possible consequences and the availability of services such as health, psychological, social, interpretation as well as translation. The information and advice should be provided to children in a manner considering their age and maturity, as well as in a language they can understand and which is gender and culture sensitive. Information as well should include the procedure which will take place, what the role of the child will be, how the questioning will be carried out, what the expected timing will be, the importance and impact of any given testimony, the consequences of a certain act. Children need to understand what is happening, how things could or would move forward, what options they have and what the consequences of these options are. As stated in the Guidelines children should be provided with all necessary information on how effectively to use the right to be heard. Providing information regarding the possible consequences of the child's stand and the expression of his views is also relevant for his participation in the asylum proceedings. (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice P. 20-21)

#### **2.1.5 Protection of private and family life;**

The privacy and personal data of children in asylum cases should be protected in accordance with national law, meaning that no information or personal data should be made available or published, particularly in the media, which could reveal the child's identity, including images, audios or videos detailed descriptions of the child or the child's family, names or addresses. Professionals working with and for children should abide by the strict rules of confidentiality, except where there is a risk of harm to the child. (The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice p.22). The Council of Europe Convention for



the Protection of Individuals with regard to Automatic Processing of Personal Data (ECPIAPPD) (ETS No. 10 8) lists the set of commonly accepted standards concerning in particular the collection and processing of data and data quality. As in the case of the ECHR, Article 6 provides for special safeguards when it comes to sensitive data, such as personal data related to criminal convictions.

### **2.1.6 Training of professionals;**

All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them. Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability. (The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice p.23).

Training in communication skills, in using child-friendly language and developing knowledge on child psychology, is necessary for all professionals working with children (police, lawyers, judges, mediators, social workers and other experts).

### **2.1.7 Deprivation of liberty;**

First and foremost, any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time. The deprivation of liberty of unaccompanied minors and separated children should never be motivated or based solely on the absence of residence status. In cases where detainment is necessary especially in transit centers children should, as a rule, be held separately from adults and in premises suited to their needs. When children are detained with adults, this should be for exceptional reasons and based solely on the best interests of the child. The issue of whether or not to detain children with adults is not a new one. In some cases, such as those involving infants, it can be in their best interests not to be separated from a detained parent, or in the case of children of immigration detainees who should not be separated from their family. (The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice p.24)

Practical measures for detention of children are suggested in many Council of Europe instruments, for example, Recommendation CM/Rec (2008)11 on the European Rules for

juvenile offenders subject to sanctions or measures, or the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards (CPT/inf/E (2002) 1, Rev 2009 on [www.cpt.coe.int/en/docsstandards.htm](http://www.cpt.coe.int/en/docsstandards.htm)). Competent authorities should ensure respect and actively support the fulfillment of the rights of the child as set out in the ECHR especially article 3.

These standards are considered necessary because of a child's particular vulnerability in the earliest stages of asylum proceedings. A child faced with migrant or refugee situations need protection against ill treatment by the authorities concerned and against treatment that trumps his right to justice. Member states should recognize that children require greater protection than adults and should be sensitive to the special needs of children who may be under a physical or mental disability or have communication difficulties or who are either accompanied or unaccompanied in migrant situations.

The Guidelines on child friendly justice recognizes children's particular vulnerability and is built on preceding international and European standards, including Article 40 of the CRC, the 1985 Beijing Rules, and case law of the ECtHR.

## **2.2 An overview of ECtHR case law standards.**

The European Court of Human Rights has developed a significant body of case law on the right of children to effective participation in legal proceedings; this case law makes it clear that a range of procedural adaptations are required to ensure that children's rights are adequately protected in the justice system, and highlight the need to ensure that these safeguards are in place from the earliest possible stage of the child's contact with the justice system

The ECtHR has played a vital role in promoting the guidelines for child friendly justice in refugee situations by ensuring the standards of child friendly justice are observed by national authorities in asylum or migrant cases. Below are cases that show how effective the ECtHR took upon itself to establish the standards necessary in each case.

-In *Rahimi V Greece* application 8687/08, 2011 (<https://hudoc.echr.coe.int/eng?i=001-104366>) the complainant was a 15 years old who arrived in Greece from Afghanistan as an unaccompanied minor. He was arrested and sent to a detention camp for refugees pending

deportation. Detained he was offered no information on the possibility to seek asylum and his legal rights in a language that he could understand, the minor was not appointed a legal guardian or offered any other assistance. (Rap Stephanie “Access to Justice and Child-friendly justice for refugee and Migrant Children: International and European Legal Perspectives”. <https://www.europedeslibertes.eu/article/access-to-justice-and-child-friendly-justice-for-refugee-and-migrant-children-international-and-european-legal-perspectives/>). There are key points to note in this case; the minor was unaccompanied, he was detained with no information provided, no legal aid provided and no available remedies provided. The standard of effective participation through providing a legal representative and access to information, age appropriate legal procedures and deprivation of liberty was not observed in this case.

There was a breach of article 5 (1, 2 and 4) of the ECHR neither was the minor provided any information of available remedies which was a breach of article 13 of the ECHR. The ECtHR in its judgment found there had been a violation of the prohibition of torture or inhumane or degrading treatment as well as the right to liberty and effective remedy. The violation of the right to liberty and security in Article 5 of the ECHR stemmed from the detention with no consideration of the particular circumstance of the minor being unaccompanied. The authorities failed to take into consideration the best interest of the minor, whether detaining him was the appropriate or last resort available resorting to unlawful detention which infringed his right to liberty.

The court also referred to the vulnerable position in which the minor was found taking into consideration that the detention center was in a poor state which was against human dignity and also the right to seek review of unlawful detention before the court as the minor was not provided legal assistance or translation while being detained.

The standard of child friendly justice was not implemented by the local authorities in this case as the best interest of the child was not employed. The ECtHR setting the standards ruled against the authorities in Greece for infringements of the right to liberty, right to be informed under article 13 of the available remedies and the violation of the prohibition of torture or inhumane or degrading treatment. The ECtHR has called on member states to apply the principle of child-friendly justice at all stages of the proceedings that involves minors no matter whether they are accompanied or unaccompanied.

-In *Abdullahi Elmi and Aweys Abubakar v. Malta* (application no. 25794/13 and 28151/13 ([https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-168780%22%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-168780%22%7D)}) the first applicant Abdullahi Elmi entered Malta on the 16<sup>th</sup> of August 2012, during his information session, he was not giving any interpreter as he could not speak English, he was later presented with 2 documents in English containing a return decision and a removal order, the return decision stated that he was a prohibited immigrant by virtue of the Article 5 of the immigration Act (Chapter 217 of the Laws of Malta) as he was in Malta without a means of subsistence and therefore would be a liability to the government. The Removal Order was based on the consideration that the applicant's request for a period of voluntary departure had been rejected. The two documents further informed him of the right to appeal against the Decision and Order before the Immigration Appeals Board within three working days. (Rap Stephanie "Access to Justice and Child-friendly justice for refugee and Migrant Children: International and European Legal Perspectives". <https://www.europedeslibertes.eu/article/access-to-justice-and-child-friendly-justice-for-refugee-and-migrant-children-international-and-european-legal-perspectives/>)

Important key points to be noted here is that the contents of the decision was in English and the applicant does not understand English and no interpreter was given to him, therefore he did not understand the content of the documents.

Secondly, he was detained in a warehouse at Safi Barracks and then was later moved to Block B in 2013. The conditions of his detention was described by him to be very difficult as he was detained with adult men of other nationalities, lacked basic necessities and lacked information as it was difficult for him to communicate with the outside world and had many obstacles in receiving basic services.

For Aweys Abubakar had to go through age assessment test as it was difficult to determine if he was a minor just like Abdullahi Elmi but in Awey's case he spent 6 months in the detention camp before he was informed verbally that he was a minor and would be released, however until the date of the lodging of the application, that is almost eight months after his arrival in Malta, Mr Cabdulaahi Aweys Abubakar had not received a written decision informing him of the outcome of the age assessment procedure, and was still in detention.

The conditions of detention was similar to those of Abdullahi Elmi adding to that Aweys Abubakar had stomach pains in the first two weeks he arrived but there was no doctor available nor an ambulance called. And also noted that he had a hospital appointment in October 2012 but was not taken to the hospital and it was later rescheduled to March 2013. (Rap Stephanie “Access to Justice and Child-friendly justice for refugee and Migrant Children: International and European Legal Perspectives”. <https://www.europedeslibertes.eu/article/access-to-justice-and-child-friendly-justice-for-refugee-and-migrant-children-international-and-european-legal-perspectives/>).

The court held for both cases that there was a violation of article 3, article 5 (1) and article 5 (4) of the ECHR Convention and held that the respondent state is to pay the applicants within three months from the date on which the judgment becomes final in accordance with Article 44 (2) of the Convention 12000 Euros plus any chargeable tax for non-pecuniary damage and 4000 Euros plus any chargeable tax in respect to costs and expenses to the applicants.

The above judgment shows the willingness of the ECtHR’s willingness to protect minors from the violation by member state of their basic rights. Age assessment is necessary to determine how the applicant will be addressed or to know what rights would apply, but this should be done and the applicant aware both verbally and in written form before detention. And if detention was necessary because there are some difficulties ascertaining the correct results for the investigations, these applicants should not be detained alongside other adults whose age has already been determined. Detention should not be a means to violate their basic rights but to be a means to assist any individual found in conditions not lawfully defined. The court’s decision in this case is justified as both applicants experienced a significant violation to their rights especially under article 3 of the Convention as well. (Rap Stephanie “Access to Justice and Child-friendly justice for refugee and Migrant Children: International and European Legal Perspectives”. <https://www.europedeslibertes.eu/article/access-to-justice-and-child-friendly-justice-for-refugee-and-migrant-children-international-and-european-legal-perspectives/> )

-In *Popov V. France* 19<sup>th</sup> January 2012, application no. 3947/07 ( <https://www.asylumlawdatabase.eu/en/content/ecthr-popov-v-france-application-nos-3947207-and-3947407>). In this case the applicants were a married couple from Kazakhstan who arrive France in 2002 and their young children who were born in France. Their application for asylum

and residence permit was rejected and they were arrested at their home and taken into police custody with their children aged 5 months and 3 years at the time. They were detained in the Rouen-Oissel administrative detention centre. The conditions for the detention as explained by the courts was not suitable for children as there were iron-frame beds for adults which were dangerous for children, there were no play areas or activities for children. The fact that the children were detained for two weeks in an adult environment with a strong police presence and with no activities to keep them occupied was ill-suited to their age. The two children found themselves in a situation of vulnerability by their detention which was bound to cause the stress and distress and have serious psychological repercussions. The court found a violation of article 3, article 5 (1 and 4) in respect to the administrative detention of children and a violation of article 8 in respect of the administrative detention of the whole family. The court ordered the payment of 10.000 euro jointly in respect of non-pecuniary damage to the applicants.

Two key points to note in this case is the duration of the detainment and the condition of detainment. The two weeks detention period was long enough to cause significant damage to their psychology coupled with the condition of the detention. As we have established before, it is a debate for if children should be separated from their parents or not and that the best interest of the child should be considered at all times, in this case, a 5 months old cannot be separated from their parents, however but being detained with other adults was not suitable for the children with police presence and no activities to keep the children engaged does not meet the standard established above.

-In *Muskhadzhiyeva and others v. Belgium* (application no. 41442/07) 2010 ([https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-1144%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-1144%22]})) the applicants were a mother and her four children who left Grozny in Chechnya and arrived in Belgium on October 2006. They applied for asylum in Belgium however their application was rejected and they were held in a particular place to be handed over to polish authorities, the applicants were placed in a closed transit centre. They applied for their release but the court of first instance ruled that their detention was lawful, they appealed but the court of appeal upheld the order and in January 2007 they were put on board a plane to Warsaw. Violation to article 3 was founded in respect to the four children who were aged seven months, three and a half years, five and seven years old. The Belgian authorities were under a positive obligation to protect the children under article 3 which

they failed at. The children had been held over a month in a closed transit centre which was ill-equipped to receive children. A psychological examination was carried out on the children and there was a cause of concern for their mental health as they showed symptoms that their mental state was deteriorating. The courts found that the conditions in which the children were held in the transit centre constituted a violation of article 3 of the convention.

State parties need to ensure that children seeking for refugee status be it accompanied or unaccompanied minors receive appropriate protection and humanitarian assistance in view of their age and the duration of detention. The best interest of the child needs to be observed at every stage of the proceedings.

-In *R.M. and others v. France* 2016 application no. 33201/11 ([https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22002-11273%22%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22002-11273%22%7D)) the applicants were families with underage children from Russia, Armenia and Romania placed in the Toulouse-Comebarrieu and Metz-Queuleu administrative detention centers. There was a violation of article 3 on account of the children's young age, the duration of their administrative detention and the fact that the premises were not adapted for children as seen above in the cases of *Muskhadzhiyeva and others v. Belgium* and also in *Popov v. France*. The Toulouse-Comebarrieu had been constructed next to the airport runway therefore exposed to strong noise pollution which made the children exposed to excessive levels of noise pollution during play time. It followed that the duration of detention was of paramount importance as well. The court in this case unanimously held there was a violation of the applicant's children's rights under article 3 of the Convention.

-In *Darboe and Camara v. Italy* application 5797/17, 21 July 2022, In June 2016, the applicants in this case, a Gambian national and a Guinean national respectively, arrived in Italy on makeshift vessels, and claimed asylum as alleged unaccompanied minors. The case concerned their placement in an adult migrant centre and the age-assessment procedure that ensued. It was held that there had been a violation of Article 8 (right to respect for private life) of the Convention, in respect of the first applicant, owing to shortcomings in procedural guarantees afforded to him as a minor migrant. As a result, he had not been able to file an asylum request and had been placed in an overcrowded adult reception centre for more than four months. The Court referred to the EU Directives which had been implemented in Italy, as well as to the

Resolution of the Council of the European Union of 26 June 1997 and the Council of Europe's Parliamentary Assembly Resolution 1810 (2011). Those texts clearly recognized the primary importance of the best interests of the child and of the principle of presumption of minority in respect of unaccompanied migrant children, who required special protection and should be assigned a guardian and be assisted during the asylum proceedings. In this case, the Court also held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention with regard to the length and conditions of the first applicant's stay in the adult reception centre, and a violation of Article 13 (right to an effective remedy) of the Convention taken in conjunction with Articles 3 and 8.

-In *M.H and others v. Croatia* 2021 application nos. 15670/18 and 43115/18 (<https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22002-13480%22%5D%7D>) the applicants were an Afghan family of fourteen who left their home country in 2016 to Croatia through Serbia. The first applicant and her six children were taken back to the border by police officers and ordered to go back to Serbia by following train tracks. One of the children MAD.H was hit by a passing train and killed.

On 21<sup>st</sup> march 2018, the Croatian Police caught the applicants crossing the Serbian-Croatian border and issued a decision placing them and the applicant children in a transit immigration centre in Tovamik. The applicants complained unsuccessfully of their placement and conditions in the Centre up to the Constitutional Court. The applicants also submitted applications for international protection which were rejected, the decisions being served on them on 30 March 2018, and against which they appealed unsuccessfully.

The court's held in this case that there was a violation of article 2 affirming that the state authorities had failed to conduct an effective investigation leading into MAD.H's death and a violation of article 3 as per the physical environment of the detention centre looked like a prison as the level of police surveillance was high, for a protracted period of detention with no activities structuring the children's time, such an environment would necessarily have harmful consequences for children.

From the judgment of the above cases we can see that the standard upheld by the ECtHR which can be found lacking in all cases. The best interest of the child which is like a principal standard



that embodies all other standards, if the best interest of the child is upheld, there will be no lengthy detainment in harsh conditions or unhealthy conditions which would lead to a violation of article 3, there will be progress in active participation of children in their proceedings to see that they are legally represented and a translator is offered to them where necessary to ensure they are fully aware of the entire process and the consequences. The best interest of the child to me is the primary principle to child friendly justice which can ensure the protection of other rights of children in migrant situation.

From my investigations carried out on the study of these cases, the ECtHR made use of a remedy based approach which is providing remedy for a violation of right suffered by children in migrant situations establishing standards to be followed. There should be efforts to show that the authorities and member states ensure that there are not recurring cases of children's right violations in migration cases. The effective protection would be for member states to incorporate these guidelines or standards in their laws especially migration laws and for effective bodies but in place to ensure the guidelines are implemented from the moment the children enter into a foreign country and measures taken against authorities immediately there happens to be a violation. Children should not have to suffer adverse conditions leading to psychological issues before a remedy situation is proposed by the courts.

There has been a significant increase in applications for asylum in member states, Germany having the highest number of applicants these 2023 up to 243835 applications, France coming in second with a total of 156445 applications, then Austria coming in third with a total of 108755, Italy 84,290. Lithuania is amongst the countries with least number of asylum applications up to 1,025 applications (<https://www.consilium.europa.eu/en/infographics/asylum-applications-eu/>). These numbers of applications include children applicants whether accompanied or unaccompanied minors leading me to investigate which member state has the best standard of migration policies that ensures and protects the rights of children in migration cases. Germany being the foremost destination for asylum seekers therefore has the most suitable standard of migration policies in 2023.

## **2.3 Limitations in the application of child-justice under the ECHR.**

First and foremost, the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice are not in themselves legally binding, they are only principles that set standards to guide member states to guarantee the protection of children's rights to justice in proceedings that involve them. And can only be incorporated in specific legislations by member states to gain a legal binding effect. Besides this there are other challenges or limitations that impede effective implantation of child friendly justice amongst member states listed below;

**2.3.1 Variability in implementation across member states;** The Council of Europe provides guidelines for child friendly justice and the standards for implementation are to serve as practical tools for member states in adapting their judicial and non-judicial systems to the specific rights, interests and needs of children. The degree of implementation can vary between member states leading to inconsistencies in the application of these standards. Implementing a uniform standard of child friendly justice across member states may be challenging due to variations in cultural differences as well as legal traditions that may be inconsistent with child friendly practices.

**2.3.2 Child participation;** Even though child participation is one of the fundamental principles of child friendly justice, in reality the actual involvement of children in proceedings that concerns them are limited. For example from my investigations the participation of refugee children in judicial or administrative procedure does not aim at making a decision that truly involve the voice and opinion of the child, the objective of the procedure is to ascertain the truth and making a credibility assessment of the child's story and asylum motives. The goal of asylum interviews for example is not to provide the child with an opportunity to be heard or express their views rather it is to determine whether the child is in need of refugee protection. This defeats the implementation of meaningful participation or the right to be heard as opposed to the objectives of asylum procedures. Therefore meaningful participation as a principle of child friendly justice is difficult to realize in the context of asylum proceedings.

**2.3.3 Legal complexity;** The complexity of the justice system makes it rather difficult for children to get access and participate effectively. The justice mechanisms may not be adjusted to children, they may neither be child friendly as the justice system can be intimidating or stigmatizing and children may not have the trust and confidence that their input or contributions

will be taken seriously or addressed in a fair manner, they may not fully understand the complex legal concepts as well. For example interviews for assessing a child's story for ascertaining their refugee status can be intimidating.

Also children who may have been subject to abuse may be suffering from trauma which may hinder or impact their ability to effectively participate for example children in detention centers or transit centers who may have been placed in an adult environment may have been subjected to abuse which may cause a traumatic impact in their full understanding of the justice mechanism and as well hinder their effective participation.

**2.3.4 Resource constraints;** legal professionals dealing with children may lack sufficient training on child friendly justice principles. Not all legal professionals may be specialized in children-related matters and this may result in them not fully understanding or prioritizing the unique needs of children. The availability and quality of legal representatives may as well vary widely and sometimes the children may not have access to competent legal representation. Also, legal documents make use of technical language and legal jargon which may be confusing for children and the lack of interpreters and language barriers may hinder children's ability to fully understand the justice process and for them to express themselves. For example in Asylum procedures in general are for foreigners whose refugee status is under assessment, these group of foreigners children inclusive may not speak the same language as the country they are seeking refugee status for. Language barrier may hinder effective participation of children in the justice system.

In a nutshell, elements of child-friendly justice has been incorporated in different legislations of member states to adequately protect the unique vulnerability of children, though it has not been a uniform process per se, the council of Europe still calls for member states to make efforts in incorporating the standards set forth by the ECtHR case law in their national laws. Though it is a gradual process there has been a lot of improvements lately especially in asylum proceedings in countries like Germany who though seeks to ascertain the truth, makes sure minor's vulnerability are protected especially in detention centers unlike France.

### **Chapter 3: Child friendly justice in Africa (Cameroon) and the Comparison to the standards under ECHR.**

Children's needs in justice system around the globe have been long established by international law whether the children are found in categories of witnesses or victims. In Africa the Convention on the rights of the child, the Regional African Charter on the Rights and Welfare of the child have played a general role in protecting the rights of children in justice systems in Africa. Let's look briefly of some of the international laws that have helped shaped child friendly justice in Africa.

The United Nations Convention on the Rights of the Child (UNCRC); The UNCRC is an instrument of great importance in the protection and guarantee of children's rights. In its article 3 it guarantees the best interest of the child should be of primary consideration in all aspects of actions that involves children be it in the court of law or in private or public welfare institutions or in any relations to administrative or legislative authorities. Furthermore in its article 12, it stated that the child shall be given the opportunity to be heard in any proceedings that involve them and their participation is either directly or through a legal representative. In its article 37, it specifically addresses the freedom from cruel inhuman and degrading treatment. The UNCRC has been ratified by many African countries, Cameroon not left out. Cameroon signed the UNCRC on the 25<sup>th</sup> of September 1990 and ratified it on the 11<sup>th</sup> of January 1993.

The African Charter on the Rights and Welfare of the Child (ACRWC); this instrument covers a wide range of children's rights and specifies in its article 4 for the best interest of the child to be the primary concern in legal matters that involves children and also in its article 17 makes emphasis for administration of juvenile justice. The protection of children against torture and inhumane treatment is emphasized in its article 16, it also has article 24 pertaining to the protection of children found in migration or refugee situation. The ACRWC is an important instrument for the protection of children's rights and has set standards therein for child friendly justice in Africa as a whole. As important as this instrument is, Cameroon is a member and it was signed by Cameroon on the 16<sup>th</sup> of September 1992 and ratified on the 5<sup>th</sup> of September 1997.

### **3.1 Fundamental principles of Child-friendly Justice in Africa (Cameroon).**

Similarly to the development in the promotion of child friendly justice by the Committee of Ministers of the Council of Europe which guarantees the effective implementation of children's rights in justice systems, Africa has embraced child friendly justice principles and most countries have entertained reforms in their national laws to reflect the principles of child friendly justice to provide justice that is easily accessible, age appropriate and adapted to focus on the needs of children.

**3.1.1 Participation;** It has been established by the guidelines provided for by the Committee of Ministers of the Council of Europe that children must be informed of their rights and given access to justice, they also need to be consulted in proceedings that affects them, giving them the opportunity to give their views bearing in mind the age, maturity and assisting them in communicating their views. The right of a child to participate has been recognized by many African countries, Cameroon inclusive and they have as well made legal provisions in their national laws for this. The only constraint faced by different African countries is the aspect of determining at what age is the child sufficient or considered matured to participate. Other countries however have participation subject to age maturity and understanding, meaning if the child is unable to understand the process they will have to participate through a legal representative who will defend their interest. Contrary to this other African countries have allowed children who can be able to form their own views to participate in decisions affecting them. In Cameroon, there is no specific national law that provides for child participation in the justice system that involves them however, Cameroon has signed and ratified the CRC and as per article 45 of the Cameroon constitution, all duly ratified treaties and international conventions take precedence over national laws meaning that the provisions of the CRC have been incorporated into the national laws of Cameroon by ratification. Thus article 12 of the CRC which provides for the right to be heard as fundamental for child's participation is applicable in Cameroon.

**3.1.2 Best Interest of the Child;** the best interest of the child should be the primary consideration in all matters that concerns or involves them in the justice system. Their views and opinions should be considered or given due weight. It is left for the judicial authorities to assess if the decision taken is for the best interest of the child or not. Is the decision morally,

psychologically, physically or financially in the best interest of the child should be highly considered. The notion of best interest of the child has been incorporated in most African legislatures and the beauty of it is the uniformity in recognizing that children's best interest should be a determining factor in the justice system that involves them. The best interest of the child is one of the four pillars or the underlying principles of all rights in the CRC article 3 specifically provides that in all actions concerning children, be it public or private social welfare institutions, courts or administrative or legislative bodies, the best interest of the child shall be paramount consideration. As already mentioned above, Cameroon is a signatory to the CRC and thus the provision of article 3 is applicable in Cameroon.

**3.1.3 Dignity;** this principle is to the effect that children should be treated with care, sensitivity, respect throughout legal processes or proceedings that involves them taking into consideration their well being, particular needs and to respect their physical and psychological integrity. Their dignity should be guaranteed at all time no matter the reason they are in contact with the judicial or administrative proceedings, regardless of their legal capacity or status. They should not be subjected to torture or any form of inhumane or degrading treatment or punishment. Africa is no exception as African countries have also emphasized on the dignity of children in most African legislations. The Preamble of the Constitution of Cameroon 1972 amended in 2008 provides for the right to physical and moral integrity and to humane treatment and that under no circumstances shall any person be subjected to torture to cruel, inhumane or degrading treatment. The term any person is of general application and children are not excluded from the term "any person". Furthermore it is interesting to note that Cameroon is a signatory to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on the 10<sup>th</sup> of December 1984. This convention entered into force in Cameroon on the 26<sup>th</sup> of June 1987 which means Cameroon has taken upon itself to ensure that the right to dignity is enjoyed by everyone, children as well enjoy their rights to dignity.

**3.1.4 Discrimination;** children shall not be discriminated on any ground or basis. Protection is given to all children and more specific protection should be provided to vulnerable children. Children faced with the justice system should not be denied their rights on grounds such as disability or being a refugee or on basis of gender, race or religion. The Preamble of the

Constitution of Cameroon specifically provides that human beings without distinction of race, religion, belief, possess inalienable and sacred rights and it also provided for the equality of all citizens before the law. Also it is interesting to note that Cameroon legislation grants refugees the same rights as national/citizens and as well prohibited from discrimination based on race, gender, religion and nationality. This is comforting to know that children are not left out from enjoying this right.

**3.1.5 Rule of Law;** the rule of law should also be applicable to children as to adults for example principles of legality, proportionality, presumption of innocence, the right to fair trial and legal advice and also the right to appeal should be guaranteed for children. In effect it means children should be able to access appropriate effective complaints mechanisms. African countries have recognized the need to incorporate these aspects into their laws for example in Cameroon we have Law no. 2005 of 27<sup>th</sup> July 2005 on Criminal Procedure Code (CPC) which provides for the presumption of innocence in its section 8 and the preamble of the 1972 Constitution of Cameroon provides the law shall ensure the right of every person to a fair hearing before the courts. These provisions are of general application meaning they apply to everyone including children.

### **3.2 African (Cameroonian) standards of child-friendly justice.**

As provided above the main conventions that are applicable in Africa and Cameroon especially with regards to child-friendly justice is CRC and the ACRWC. Efforts have been made in African countries to harmonize their laws with the provisions of the CRC and the ACRWC by virtue of ratification. These efforts have been greatly commended as this will ensure the African dream for a harmonized standard of child friendly justice with international standards and the full realization of the rights of children. The standards mentioned below though not harmonized across the African globe it is worth mentioning.

**3.2.1 Information and advice;** children involved in the justice system and throughout their proceedings should be provided all information and advice about the process and the consequences of every action taken during that process. They should be informed of their rights taking into consideration their age and understanding, they should also be informed of the whole process and procedures, what they are to do or the role they are to play and also what the expected consequence or outcome of the process is. Children should also be able to have access

to measures or services for example medical or legal services available. All information and advice necessary for their best interest should be provided in a manner that is age appropriate taking into consideration their maturity, understanding and gender or culture sensitive. Cameroon however, does not have a specific law that provides for the right to access to information for children in justice system. The only law to access to information is Law no. 66/CF/13 of 21 December 1966 of the Federal Assembly which has gone through several reforms. To the best of my knowledge there has not been any documented case law to prove the courts upheld the standard of right to information with regards children. This right to information begins from the first point of contact the children have with the public authorities which in this case will be an officer of the law. Usually the officers of the law lack the knowledge and training to deal with children and not always give the appropriate information in the manner they children will understand. The CRC and the ACRWC provisions are applicable in Cameroon by virtue of ratification but in practice the standard provided for the access of information is not applicable per se at least not in entirety as the state meets a lot of constraints in its application such as lack of professionals in the field of children, poverty and lack of available services.

**3.2.2 Access to legal representation and fair trial;** the African Commission on Human and People' Rights (ACHPR) in its general principles provides that everyone (children inclusive) shall be entitled to a fair and public hearing and also by a legally constituted competent, independent and impartial judicial body, it also provides that state parties shall ensure that effective procedures and mechanisms essential for effective and equal access to lawyers are provided for everyone including children. (African Commission on Human and People's Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa [http://hrlibrary.umn.edu/research/ZIM%20Principles\\_AND\\_G.pdf](http://hrlibrary.umn.edu/research/ZIM%20Principles_AND_G.pdf) ). Cameroon is a member of the African Union and ratified the ACHPR in June 20<sup>th</sup> 1989 and thus the provisions of the ACHPR are applicable in Cameroon by virtue of ratification. In Cameroon legal representation in cases where the child cannot provide theirs, they will be offered a public attorney or representation and this representation is free as they are being provided by the government of the state. Cameroon as a bilingual state as well makes use of translators when necessary to assist children.



**3.2.3 Prohibition and Prevention of torture, cruel, inhumane or degrading treatment or punishment in Africa;** the ACHPR in its guidelines for measures for the prohibition and prevention of torture, cruel, inhuman or degrading treatment or punishment criminalizes torture, provides that member states should ensure that torture is a criminal offence in national legal systems meaning that, in any event where a person is a victim of torture during proceedings, the perpetrators of the act will be liable for a criminal offence. This ensures that children as well as everyone are protected in the justice system they find their selves in and any violation to the right to be protected from torture will be sanctioned as a criminal offence. Torture under these guidelines is an extraditable offence meaning even if the perpetrators in any case flee to another member state will not evade justice as they can be extradited. As stated above Cameroon has ratified the ACHPR and thus incorporated the provisions in its national laws, Cameroon in its preamble of the 1972 Constitution provides that under no circumstances shall any person be subjected to torture to cruel, inhumane or degrading treatment. Torture is punishable under Cameroon law, section 277-3 of the Cameroon Penal Code (CPC) punishes whoever subjects another to torture or cruel or inhumane treatment and according to that section, torture is not justifiable and no exceptional circumstance is tolerated.

**3.2.4 Safety;** Children should be protected from harm in all judicial or administrative proceedings. Professionals or legal aid working with children should be well trained to ensure that they are skilled to assist or work with children. Children should be protected from all forms of harm especially from secondary victimization especially where the child appears as a witness and in all other cases. Special measures should be put in place in situations where the perpetrator is a guardian or parent or family member. In Africa (Cameroon) it is well understood that children should never be subject to secondary abuse by the system thus child-friendly procedures is essential during interview or police interrogation to ensure the safety of children throughout the justice proceedings. Where the perpetrator is a guardian or family member or parent, removal of the child from the custody or home of the perpetrator is most likely to be done for fear of endangering or putting the child at risk. We do have social welfare associations in Cameroon who are trained and skilled in dealing with children and in event where the child is at risk at home, they step in to remove the child and keep the child safe during the entire judicial process.

**3.2.5 Training of professionals;** Training of professionals is very necessary to ensure that they are skilled enough to respond to particular needs of children of different age groups, gender and culture as this is a key component of an effective child-friendly system. Professionals having direct contact with children should be skilled enough to be able to communicate with children irrespective of their age and to be able to communicate specially to children with particular vulnerability. However noting that some African countries have poor resources and facilities, the aspect of well trained professionals ready, capable and skilled to respond to children's individual and collective needs in both administrative and judicial proceedings nevertheless provide good services to children in the justice system. Cameroon may not have the necessary facilities to train personells professionally in this aspect however majority of its skilled professionals have gained this professional training abroad and implement the skills back at home Cameroon by applying to jobs that require such professionalism therefore embracing the notion of child-friendly justice system in Cameroon.

**3.2.6 Detention;** detention of children should be a measure of last resort and for the shortest appropriate period of time. In case of detention, children should be separated from adults, in any situation that they are put together with adults should be for the best interest of the child for example in transit detention centers while their status is being determined it can be for the best interest of the child if they are put with their mother in the same camp as this will lessen the tension and stress of the kids as they see a familiar face. Children should be detained in premises that suits their needs and in conditions taking into consideration their age. The CRC in its article 13(b) states that 'no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention and imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'. Member states signed to the CRC have the provisions incorporated in their laws but the key issue is most African countries do not have reliable data for the number of children detained in their country and for how long the detention lasted. By virtue of the international agreements and treaties signed and ratified by Cameroon, Cameroon is under a positive obligation to perform and promote treatment standards for children found in situations that detention is the last resort. However Cameroon is faced with so many constraints in performing their positive obligation in applying the international standards of detention. First is the structure and condition of detention centers which are not suitable for children. The facilities

are not big enough neither is the condition the best for children looking at the Borstal Institute in one of its towns called Buea, the facility is very small to accommodate an increasing number of children and the condition of the facility needs to undergo a lot of significant reconstruction and improvement. The government of Cameroon does not have the adequate resources to finance the acquisition necessary for the treatment of standards accorded for child detention to meet international standards.

It is important to note that for the time being there is no documented case law on asylum cases in Cameroon as of now and this is because as a developing country as well as other African Countries, Africans on the contrary travel out of Africa to seek asylum in Europe and the Americas. A Nigerian is welcomed to stay as long as they want in their neighbouring country Cameroon and likewise Cameroon is welcomed to stay in Nigeria as long as they want not because the migration laws are not applicable in each of those countries but because most usual that not Nigerians and Cameroonians travel to the other by means of sea route or by land and it will be extremely difficult to tell a difference between each other as both countries have similar culture and can easily blend into each other and stay indefinitely in the country without being detected as a foreigner. In Cameroon especially there are lots of Nigerians who do business in the markets of Cameroon who entered the country illegally but because of cross border relations, they are actually free to stay in the country indefinitely. I remember going to school as a kid with lots of Nigerian kids and we all had similar rights in school and there was no distinction between Nigerian kids and Cameroonian kids. The bulk of asylum cases exist outside of Africa, Africans find it better seeking asylum in developed countries where they can be better protected and their human rights established for a better future in these countries.

In the case of *TFA (a minor) v. Cameroon*, Communication no 006/Com/002/2015 Decision No;001/2018 a case where the rights of the child was violated, the state of Cameroon was alleged to have violated the African Charter on the Rights and Welfare of the child, the United Nations Convention on the Rights of the Child as well as the African Charter on Human and Peoples' Rights for failure to adequately investigate the rape of the child or to permit an appeal on the case. In this case, a 10 year old child known as TFA alleged to have been raped in April 2012 in Bamenda a tow in Cameroon by a prominent and influential business man (ACERWC Institute for Human Rights and Development in Africa and Finders Group Initiative on behalf of TFA v. Cameroon, Communication No. 006/Com/002/2015 P.6 & 8). The minor with her family filed a

complaint with the local authorities then, however the local authorities did not do proper investigation in this case nor detained the suspect even though there was medical report that shows the victim was raped and she identified the accused to be the perpetrator. The case brought to the local court was dismissed for lack of evidence and they were not given the opportunity to appeal the decision of the local court. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in this case held that there was a violation to article 1, 3, and 16 of the ACHPR. Article 1 in that the state failed to protect the child from sexual abuse as the judge's decision to close the case was not reasonable. Article 3 for the state's lack of due diligence violated the non-discrimination provision of the Charter and article 16 for the states violation of the obligation to protect the child against abuse and torture. The judge in this case did not provide the opportunity for the child's views to be heard, neither did the child effectively participate in the hearing nor was the overall decision to close the case in the best interest of the child. The ACERWC was supposed to as well establish the violation of article 3, article 12 of the CRC and also article 4 of the ACRWC. The right to participate in the proceeding was violated by the mere closing of the case by the local court. (<https://ijrcenter.org/2018/09/19/african-child-rights-committee-decides-first-complaint-involving-sexual-violence/> ).

This case shows the difficulties in implement child friendly justice in Africa as a whole as there are differences in the interpretation of the standards. Most often these provisions exist in myth and it is in rare cases we have them applied physically and usually because the rich can easily manipulate the outcome of the whole proceedings in favour of themselves which seem to be the case in *TFA v. Cameroon* as the perpetrator was a prominent business man it was easy for him to sway justice to his favour and have the case closed on unreasonable grounds. This is one of the constraints in Africa to the application of child friendly justice as corruption in most African states destroys the notion of justice. It is common to hear in Africa justice is for the rich while the poor suffer and have their rights violated for lack of means to ensure justice. The huge gap between the rich and the poor in Cameroon hinders child-friendly justice in Cameroon, the partiality of some judges in the justice system of Cameroon and the lack of resources in Cameroon hinders the application of child-friendly justice in Cameroon.

### **3.3 Comparison between child friendly standards under The Council of Europe (ECHR) and Africa (Cameroon).**

It is globally accepted that children represent a vulnerable group that needs their rights and respected and for national laws drafted to attend to the special needs of children in the justice system. There has been an increasing effort from states to incorporate child friendly standards into their laws to ensure that children are not left out in protecting their human rights. Though some states are still faced with some constraints in applying the standards and guidelines to child friendly justice, efforts have been put in place by the ECtHR to implement this standards case by case. Similarly it's the common embrace to the notion of child-friendly justice while they differ in their application and constraints.

**3.3.1 Similarities;** Both regions have embraced child friendly justice and have made efforts in incorporating these standards into law so that they can have a binding force. The standards are similar as both have recognized the best interest of the child should be upheld at every stage of the proceedings. They have also recognized that children should as well participate in proceedings that affect them and share their views. Both are very much committed to fight against discrimination in any form against children in justice system and have ensure that legal representation be provided to children who come in contact with the law as well as ensure that the procedures are child sensitive to ensure the child is able to fit it and understand what the procedures are.

-Best interest of the Child; As we have seen in the study, the best interest of the child should be the primary concern throughout the proceedings, starting from the first point in contact the child has with the public authority. This standard is crucial to both the Council of Europe and in African Countries as they both have frameworks to ensure that this standard should be the primary consideration during judicial or non judicial proceedings that involves children. The best interest of the child as seen in the study is one of the principles of the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice while the best interest of the child is one of the four pillars or the underlying principles of all rights in the CRC article 3 specifically provides that in all actions concerning children, the best interest of the child shall be paramount consideration. Most African countries are signatories to the CRC and Cameroon is not left out and by virtue of ratification, article 3 is incorporated in the national

law of Cameroon. Both have taken measures to ensure that children's best interest should be the primary consideration in matters that concerns them.

- Participation; Both have taken measures to ensure that children effectively participate in proceedings that involve them such that children can give their views and in a child friendly manner that is age appropriate. The right to access courts and fair trial has been emphasized by both to ensure that children are accorded the same rights as adults but in a manner that considers their age and maturity. The right to access information as well has been emphasized by both encouraging effective participation as both ensure that children are informed of their rights what the procedure is, what the outcome is, as well as the role they are to perform. Effective participation in both is essentially to provide the child of what he needs while making sure they understand the procedure and making use of child-friendly measures to ensure their views are heard in the justice system.

- Discrimination; both ensure that children in the justice system do not suffer discrimination on any basis and by ensuring that special consideration is given to children with vulnerability. Both have taken measures to ensure every child receives treatment regardless of their race, gender or culture. Both have ensured that the justice system respond to the specific needs of all children in a fair and equal manner.

-legal representation; both recognize that children need assistance and the legal assistance should be skilled and have knowledge of the needs of children. Both ensure that this legal assistance is free and assists the children in effectively participate taking their specific needs, age and maturity into consideration.

**3.3.2 Differences;** The council of Europe standards are different in the legal frameworks put in place and are also different in the application and interpretation of these standards as well as the differences in the availability of resources and the difference in the judicial system as a whole.

- Legal framework; the legal framework used in the Council of Europe with regards child friendly justice is the ECHR and the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice to ensure and promote the protection of children's rights within its member states. The Council of Europe as well has the ECtHR to establish the standards of child-friendly justice through its case law. Meanwhile, the African union adopted the ACRWC

as the key legal framework to ensure the protection of children in Africa. And as mentioned in this study, some African countries like Cameroon have also signed the CRC which has been incorporated in their laws to address the rights of children.

- Application and interpretation; the application of the standards of child friendly justice under the council of Europe differs from the application in Africa (Cameroon). The council of Europe makes use of the ECtHR to apply the standards and established case law of the ECtHR sets the standards for application. Meanwhile in Africa we have the African Court on Human and People's Rights (ACtHPR) whose main role is to interpret the ACHPR and which typically only receives complaints and does not engage in monitoring or promoting human right activities.

Also in interpreting child-friendly justice in the African continent, African countries (Cameroon inclusive) lay emphasis on cultural or traditional practices as we do have customary laws as a source of our law. Meaning that in interpreting some standards of child friendly justice some cultural beliefs may be taken into consideration make the standard of interpreting different from that under the council of Europe. The interpretation as well in the African Continent may be affected by socio economic conditions faced by children in the Continent. For example children with low income may have limited access to qualified legal assistance impacting the fairness of the legal proceedings. Taking an example of the case of *TFA v. Cameroon* mentioned above where the fairness of the legal proceeding was impacted by the fact that the perpetrator was a prominent business man who could use his influence to get the partial judges in the case to close the case unreasonably is one of the challenges that affects the smooth interpretation of child-friendly justice in Africa. Meanwhile under the Council of Europe due to the principle of equality the interpretation of child-friendly justice is equal to everyone no matter their background.

-Availability of Resources; The Council of Europe has available resources to guarantee child-friendly justice unlike in African Countries. The Council of Europe has the available resources for the access of skilled and professional legal representatives who are trained with the knowledge of the specific needs of children as well as trained impartial judges to interpret and apply the law as it is. In case of detention, facilities have been developed over time to ensure the standard required for children in refugee or migrant situation as well unlike the Borstal

Institute we have in Cameroon for detention of minors which has been over crowded and unsuitable to cater for the needs of children. Besides this Africa being a developing Continent lacks the availability in getting trained and skilled legal assistance necessary to assist children as well as the partiality of judges in Cameroon especially affects the implementation of child-friendly justice to the most extent.



## **CONCLUSION.**

1. Child friendly justice as we have seen in this study is a generally accepted concept under the Council of Europe whose main goal is to make the justice system in which children find themselves in more accessible and understandable for them. It is a general concept that should be applicable whether the children are in the category of victims or witnesses or offenders or complainants, this concept should be applicable irrespective of the category they represent in the justice system. The concept is of great importance as it seeks to minimize the challenges children face in getting the justice they need. It is a widely recognize concept that can be traced from international legal instruments and regional as well as national agreements. The council of Europe guidelines on child-friendly justice has been very instrumental in creating awareness of the need to enhance children's access to justice. Its fundamental principles of participation, best interest of the child, dignity, non-discrimination and rule of law have been formidable in establishing standards of effective participation of children in legal or administrative proceedings and the full implementation of children's rights. As we have seen the ECHR has specific provisions that have stemmed from the principles of the guideline of child friendly justice provided for by the Council of Europe which are article 3, 6, 8 and 14 elaborated in the study. The vulnerability of children in the justice system has been especially catered for in the whole concept of child-friendly justice.

2. The guidelines to child-friendly justice as provided by the Council of Europe provide guidance to member states to ensure that children are protected in the justice system. The standards of child-friendly justice which includes access to legal aid, age appropriate procedures, professionally trained workers, dignity, and detention are all necessary to ensure children get the justice they deserve. While the access to legal aid, trained professionals and age appropriate procedures are necessary to ensure children effectively participate in legal proceedings, the standards of the procedure should ensure that the dignity of children are preserved and in event of detention which should be the last resort should be in the best interest of the child and should be for the shortest period of time in conditions that are appropriate for the interest of the child taking into consideration their age, maturity and their unique needs. As beautiful has the notion sounds, it is met with some limitations that prevents the application of the concept in a harmonized manner throughout member states. Most times the approach of the system may be to

ascertain the truth of the situation rather than to ensure the best interest of the child, especially asylum interviews whose main purpose is to ascertain the truth may be a challenge to smooth child-friendly justice. Also legal assistance provided to assist children may not be as trained or skilled with the knowledge of children's specific needs and this makes the concept quite unattainable.

3. A globally accepted concept for the protection of the child in respect of their status has been interpreted and applied in various regions in different ways. The concept of child-friendly justice is not a new concept to both the member states of the Council of Europe neither is it a new concept for African countries like Cameroon. The standards to child-friendly justice have been incorporated in laws in member states of the Council of Europe as well as in African Countries, however they share some differences in the legal frameworks, interpretation and application and the availability of resources. While member states under the Council of Europe are more advanced than African Countries, they tend to apply the entirety of the concept unlike African Countries like Cameroon who are still developing and lack the necessary resources to guarantee justice they as well consider customary practices in their interpretation of the concept.

4. Child-friendly justice in my honest opinion though a generally accepted concept means different things to different people. The standards have been established but yet the national courts do not completely apply the concept as it is instead of what ought to be. Measures should be taken to institute monitoring bodies whose goal is to monitor the application of child-friendly justice across member states and to ensure the uniform applicability of the concept such that a child in country x and a child in country z in different circumstances should have their rights guaranteed in those different circumstances. Not that child A's rights are guaranteed because they are in Country X and child B's rights are violated in country z. Today the huge application of asylum seekers in Germany is as a result of this, as migrants believe Germany guarantees their rights and effectively protects them much more than other countries like Poland.

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## **SUMMARY.**

### **Child-Friendly Justice under the European Convention of Human Rights.**

**Mireille Blanche Ma-Agbor Ntui**

This study reveals the concept of child friendly justice under the Council of Europe focusing on the standards necessary for the application of child-friendly principles across member states. It aims to investigate the application of child friendly justice both under the Council of Europe and comparing the standards to those applicable in African Countries like Cameroon. It provides in its first chapter the origin of the concept of child friendly justice and the fundamental principles provided by the Council of Europe to show that the concept is not a new concept and it is of general application. It uncovers the standards that have been established by the ECtHR which ensures that member states implement these standards in their everyday contact with children in justice system. Even though these standards set the pace for the quality of justice needed by children in member states, it is faced with some challenges that make the applicability of the concept difficult to attain. The study investigates the concept as well in other areas like Cameroon to see if the concept has an international base and this was established as the study uncovered the similarities between the standards applicable in the Council of Europe member states to that of African Countries like Cameroon. Though a generally accepted concept to ensure that children are given the protection they need in justice system, the concept is not effectively applied amongst member states of the council of Europe as well as in African Countries like Cameroon.

Šis tyrimas atskleidžia vaikams palankaus teisingumo sampratą pagal Europos Tarybą, sutelkiant dėmesį į standartus, būtinus vaikams palankių principų taikymui visose valstybėse narėse. Juo siekiama iširti vaikams palankaus teisingumo taikymą Europos Taryboje ir lyginant standartus su tais, kurie taikomi Afrikos šalyse, pavyzdžiui, Kamerūne. Jo pirmame skyriuje pateikiama vaikams palankaus teisingumo sampratos kilmė ir pagrindiniai Europos Tarybos pateikti principai, rodantys, kad ši sąvoka nėra nauja ir yra visuotinai taikoma. Jame atskleidžiami EŽTT nustatyti standartai, užtikrinantys, kad valstybės narės įgyvendintų šiuos standartus kasdiniuose bendravimuose su vaikais teisingumo sistemoje. Nors šie standartai nustato teisingumo kokybės, reikalingo vaikams valstybėse narėse, tempą, susiduriama su tam tikrais iššūkiais, dėl kurių sunku įgyvendinti šią koncepciją. Tyrime nagrinėjama koncepcija ir kitose srityse, pvz.,

Kamerūnas, siekiant išsiaiškinti, ar koncepcija turi tarptautinį pagrindą, ir tai buvo nustatyta, nes tyrimas atskleidė Europos Tarybos valstybėse narėse taikomų standartų panašumus su Afrikos šalimis, pavyzdžiui, Kamerūnu. Nors visuotinai priimta koncepcija, kuria siekiama užtikrinti, kad vaikams būtų suteikta reikiama apsauga teisingumo sistemoje, ši koncepcija nėra veiksmingai taikoma Europos Tarybos valstybėse narėse, taip pat Afrikos šalyse, pavyzdžiui, Kamerūne.