



Lessons Learned:

Access to Justice for Babies and Young Children Across
12 Jurisdictions

What Can Scotland Learn as It Works to Improve Access to Justice at Home?

authored by the University of Edinburgh Human Rights Clinic (2024-25)

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Glossary of Key Terms and Acronyms

KEY TERMS

TERM	MEANING
Access to justice	The realisation of rights through accessible legal and institutional processes. It includes not only legal representation or courtroom access, but also the ability of individuals to have their rights recognised, voiced, and protected through fair procedures, supportive policies, and responsive institutions. ¹
Babies and young children	Children from birth to eight years of age. This group encompasses babies, infants, toddlers, and early primary school-aged children. ²
<i>Amicus curiae</i>	A person or organisation that is not a party to a lawsuit but offers information, expertise, or insight that has a bearing on the issues in the case. ³
Amparo Action	A legal remedy filed on behalf of individuals or a group whose constitutional rights are allegedly being violated. Unlike an individual amparo, a collective amparo addresses harms that affect a defined group collectively. ⁴
Guardian <i>ad litem</i>	An individual who represents the child where they are a defendant to, or intervener in legal proceedings.
Next friend	An individual who represents a child's interests in legal proceedings that they initiate on behalf of the child.

¹ For more information see the Council of Europe's definition of 'child-friendly justice' in '[Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#)' (17 November 2010) 31.

² For more information on defining early childhood, see the Committee on the Rights of the Child, *General Comment No.7 (2015) on implementing child rights in early education*, UN Doc CRC/C/GC/7 (20 September 2019).

³ For more information on the role of Amicus Curiae in Argentina see Centro de Estudios Legales y Sociales (CELS), '[Informe sobre el Instituto del "Amicus Curiae"](#)'

⁴ For more information on the history and proceedings of the amparo action, with particular attention in Latin America, see Allan R. Brewer-Carías, 'Constitutional Protection of Human Rights in Latin America: A Comparative Study of Amparo Proceedings' (2009).

ACRONYMS

ACRONYM	MEANING
CRIN	Child Rights International Network
CWC	Child Welfare Committees
DCPU	District Child Protection Units
ECCE	Early Childhood Care and Education
ICDS	Integrated Child Development Services
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2015
NCPCR	National Commission for Protection of Child Rights
PIL	Public Interest Litigation
POCSO	Protection of Children from Sexual Offences Act, 2012
SAA	Specialised Adoption Agencies
SCPCR	State Commission for Protection of Child Rights
SIR	Social Investigation Report
SWO	Social Welfare Officer
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund

Executive Summary

Purpose of the Report

This report was commissioned by Together (Scottish Alliance for Children's Rights) as part of its ongoing efforts to ensure that children's rights are meaningfully realised in Scotland. It follows the work of Together's "[Tiny Rights Detectives](#)" project, which explored how the youngest children experience and understand their rights. That investigation highlighted serious gaps in access to justice for babies and young children, sparking the need for a deeper exploration of international practices. A key learning from this work is that babies and young children are largely invisible when it comes to access to justice mechanisms. Despite being rights-holders from birth under the UNCRC, their needs are often excluded from mainstream justice discussions, making this invisibility a central finding of the report.

Together requested that the research team build on these initial findings by examining how other jurisdictions around the world are working to operationalise the rights of babies and young children, particularly in legal and justice systems. The aim is to identify barriers, enablers, and promising practice that can inform Scottish law, policy, and practice, ensuring that even the youngest members of society are seen, heard, and protected.

This includes recognising the interwoven nature of babies' rights and the rights of their parents or carer, whose ability to advocate and interpret on their behalf directly influences access to justice. The report also highlights how geographical inconsistencies, such as disparities between urban and rural settings, or between well-resourced and under-resourced regions, can impact the effectiveness of rights implementation. The central conclusion of the report is that meaningful access to justice for babies and young children requires legal, policy and practical measures that are not only well-designed individually but are integrated and mutually reinforcing. One element should not come at the expense of another; they must work in concert to ensure a comprehensive and effective system.

This report was voluntarily prepared by a team of postgraduate students from the University of Edinburgh's Human Rights Clinic, who are in the final stages of completing their LLM in Human Rights or International Law. The students collaborated with Together to contribute practical, rights-based analysis to inform Scotland's commitment to advancing access to justice for babies and young children.

Reason for Research

Children's rights have become increasingly globalised, with the adoption of the UN Convention on the Rights of the Child (UNCRC) of all member states of the UN, save for the United States of America, and growing international attention to participation, protection, and development. Now that children's rights have become more widely mainstreamed, the next step is to move beyond generalised approaches and focus more deliberately on the specific needs of particularly 'at risk' groups, such as babies and young children, whose developmental realities call for more nuanced, responsive, and age-appropriate approaches.

Justice systems tend to prioritise verbal expression, legal capacity and age-based thresholds when operationalising children's access to justice. Despite being rights-holders from birth under the UNCRC, babies and young children's needs and rights often remain invisible in law, policy and practice due to persistent assumptions that they lack the cognitive or communicative ability to participate meaningfully in justice processes. This results in a dynamic where participation is often passive, mediated entirely through adults, rather than active, despite babies' rights being inherently their own. Their access to justice is therefore heavily dependent on adult interpretation and advocacy, making them particularly vulnerable to systemic exclusion from decisions that profoundly affect their lives.

This research was undertaken to identify the aforementioned gaps in recognition, representation and operationalisation. It also investigates how the dependency relationship between babies and carers can either enhance or undermine participation depending on the

surrounding legal, social and cultural context. Ultimately, this report identifies and analyses the best practices regarding the rights of babies and young children across various jurisdictions, which Scotland could consider implementing to advance access to justice within their jurisdiction.

Understanding of “Access to Justice”

For the purpose of this report, “access to justice” is interpreted broadly as the operationalisation of rights. It includes not just legal representation or courtroom access, but also the ability of babies and young children to have their rights recognised, voiced, and safeguarded through accessible procedures, policy measures, and institutional support systems.

Methodology

This research was entirely desk-based, drawing on publicly available legal, policy, and academic sources. The research team did not engage directly with babies, young children or families and therefore the findings are based on secondary analysis rather than lived experience.

The research employed a targeted, non-exhaustive review of practices across several jurisdictions. The selection of jurisdictions was largely based on the clinic members home jurisdictions⁵, while also ensuring both high and low performing countries were well represented pursuant to the Child Rights International Network’s (CRIN) ‘Access to Justice for Children Global Ranking’.⁶

⁵ This selection included both states that have incorporated and not incorporated the UNCRC. Clinic members chose to not only focus on countries that had incorporated the UNCRC due to the fact that strong access to justice relies on more than legal frameworks.

⁶ Child Rights International Network, [‘Access to Justice for Children Global Ranking’](#) (Accessed 1 March 2025).

The jurisdictions included are as follows:

- Argentina
- Australia
- Belgium (Flanders)
- Colombia
- Hong Kong
- India
- Iraq
- Italy
- Kenya
- The Netherlands
- South Africa
- United States of America

This report was unable to do an in-depth review of the Scottish system and context. In researching these jurisdictions, clinic members focused on legal frameworks, policy implementation, and relevant jurisprudence. It is important to note that this focused largely on innovative concepts and theoretical frameworks rather than the implementation or impact of these, as this was out with the scope of the report. It is also important to note that the identification of best practices is inherently shaped by each country's legal and political context. Nevertheless, many of the findings, while context-specific, offer adaptable insights that can be translated into the Scottish context to support the development of more inclusive and effective systems for babies and young children. The research team acknowledges that many of these insights are already being promoted for the Scottish context, but this research aims to bring together these insights from other systems seeking the same goals.

Findings

Common Gaps

- Lack of targeted frameworks or policies for babies and young children, leading to risks of overlooking particular vulnerabilities in different contexts (e.g. Iraq).
- Insufficient access to practical tools for professionals engaging with babies and young children, such as training, guidelines and checklists, despite ongoing demand (e.g., Belgium, Colombia, Hong Kong, Iraq, Kenya, The Netherlands).
- Practical challenges in determining and incorporating the “voice” and best interests of babies and young children like age thresholds and assumptions regarding capacity (e.g., Australia, Belgium, Italy, The Netherlands).
- Discrepancy between legal commitments and actual practice, often exacerbated by attitudinal barriers (e.g., Italy).
- Over-reliance on operationalisation through court-based mechanisms risks excluding broader rights concerns (e.g., Australia, India).
- Many jurisdictions lack provisions enabling children to initiate proceedings independently, limiting their opportunities to access justice (e.g., Belgium, Hong Kong, Iraq).

Best Practices

- Integrated “one-stop shop” models with access to multiple services such as health, education and leisure (e.g., Argentina, Belgium, Hong Kong, Kenya, The Netherlands).
- Localised, culturally sensitive approaches that recognise regional inequalities and enhance accessibility to services in remote/impoverished areas (e.g., Australia, Colombia, Kenya, South Africa).
- Using existing children’s rights frameworks in cases involving babies and young children allows NGOs and advocates to strengthen protections for this age group through strategic use of current laws and policies (e.g., Argentina, Australia, Belgium, Italy, South Africa, The Netherlands).

- Development of practical tools, such as checklists, interview guidelines and general training, help enhancing participation of babies and young children (e.g., Argentina, Belgium, Italy, Kenya, The Netherlands, United States of America).
- Mainstreaming the consideration of children's rights through systematic impact assessments and institutional policies (e.g., Belgium, Italy, Kenya, The Netherlands).
- Use of legal representatives and youth advocates helps amplifying the voices and interests of babies and young children in legal procedures (e.g., Argentina, Australia, Belgium, Italy, South Africa, The Netherlands).
- Creation of specific legal frameworks for vulnerable groups providing additional protection (e.g., Native children, displaced children, orphans, Roma, disabled children, Aboriginal and Torres Strait Islander Children) (e.g., Australia, Kenya, South Africa, United States of America).
- Shifting from age-based restrictions to individual capacity assessments implements the UNCRC concept of “evolving capacities of child”, countering negative assumptions on babies' and young children's capacity (e.g., Argentina, South Africa).
- The use of child-friendly courts and collaboration with social workers and experts in the field helps promoting child welfare and consideration for their best interests (e.g., Argentina, Italy, Kenya, South Africa, The Netherlands)
- Civil society plays a critical role in advocacy and implementation, including through the establishment of helplines (e.g., Argentina, Australia, Belgium, Italy, The Netherlands).

Highlighted Case Studies

South Africa – Strong domestic law: Implementation of the rights of babies and young children into the constitution (Section 28)

Section 28 contains a number of children's rights, many especially important for babies and young children, namely, the right to a name, nationality, access to basic nutrition and healthcare.

The section also contains two important provisions on how to approach the topic. The first is that there are no age restrictions for participation. Instead, when a child is involved, an assessment based on their maturity and development should be individually made to assess the level of potential participation. The second is that the best interests of the child should always be considered. The strength of this being a constitutional right is that in any matter impacting a child, whether policy or law, must consider the child's best interests. This is especially relevant for babies and young children who often have less of an ability to advocate for themselves.

Australia – Connected Beginnings Program (Articles 24, 28 and 30 UNCRC: Right to Health, Education and Enjoyment of Indigenous Culture)

This federal government program supports Aboriginal and Torres Strait Islander children from birth to school age to ensure they feel safe, healthy and ready to thrive at school. The program has been established in each state and territory, is led by Aboriginal and Torres Strait Islander peoples and has supported over 24,800 children at over 50 sites across Australia.

See also: Aboriginal and Torres Strait Islander Child Placement Principle (Article 30 of UNCRC: Right of Enjoyment of Indigenous Culture)

Considering the history of forced removal and cultural assimilation of Aboriginal and Torres Strait Islander children, the ATSICPP recognises Aboriginal and Torres Strait Islander families and communities have the knowledge and experience to make the best decisions about

their babies, children and young people. Therefore, if an Aboriginal or Torres Strait Islander child is removed from their family, for whatever reason, all effort must be made to rehome the child with an Aboriginal or Torres Strait Islander family or community. Developed in 1984, the ATSICPP has been adopted into policy in all states and territories. Other examples of Aboriginal and Torres Strait Islander children's access to enjoying their culture are Federal Cultural Support Plans, Closing the Gap Policy, Aboriginal Case Management Policy and recommendations from the Family is Culture report.

Belgium - ZiKo checklist

Self-assessment tool for wellbeing and engagement of children in care developed for childcare workers focused on wellbeing and participation of children between the ages of 0 and 3.

Step 1: 10 minute observation of every child (on two different days). Child care worker then gives a subjective score for wellbeing and participation of the child in question

Step 2: using the form that includes examples, inviting reflection on why a high/low wellbeing score was given to the child in question.

Examples of reasons for a low score:

- An inadequate supply of material (no suitable infrastructure, few or worn-out play materials, hardly any activities on offer, ...)
- Too little room for initiative (predominantly imposed activities, little flexibility in the course of the day, rules and agreements, little input from children, ...)

Step 3: identify where and how improvements can be made using statements in the form. Care workers have to state if they agree or disagree with every statement. The statements are categorised per part of the day (arrival / play time / eating / rest / goodbye). They are then invited to write down how they can improve where necessary.

Examples of statements:

- Each child can always choose what to play with during playtime. You also let babies choose from a box or a basket with different items.
- You invite the child to extend its hands - only then do you pick the child up.

*Argentina - Local Rights Protection Councils and Child Development Centres (CDCs)/
‘One Stop Shops’*

- Community-based hubs for the promotion and protection of children’s rights that integrate social, legal, health, and educational services. These centres aim to operationalise the rights of children, including those aged 0–4, through localised, multidisciplinary support.
- Local Rights Diagnosis and Engagement: Local Rights Protection Councils assess the condition of children in their municipality, identifying systemic and individual rights concerns through collaboration with civil society, families, and government bodies. These councils offer early legal and non-legal interventions and can refer families to relevant services.
- Individualised Care through Child Development Centres: CDCs provide comprehensive care for children under four, guided by principles of early stimulation, equal treatment, non-discrimination, and family involvement. Each child receives individualised support that considers their developmental stage and cultural context. Examples of services offered:

- Early learning and play-based development activities
- Access to nutrition, healthcare, and psychological support
- Family inclusion in decision-making and educational programming
- Coordination with local schools and health services
- Ongoing Monitoring and Integration: Children’s participation is encouraged through age-appropriate methods such as symbolic representation (e.g. photos, drawings, gestures) and caregiver input. Councils and CDCs work together to ensure each child’s best interests are central to care planning, and where necessary, legal or

administrative interventions are pursued through the Public Prosecutor or child representatives.

Lessons Learned for Scotland

The best practices identified through this research can assist in progressing Scotland's efforts to fully realise the rights of babies and young children. While Scotland has already taken important steps through the incorporation of the UNCRC, the Children's Hearings System, Bairns' Hoose, and the GIRFEC strategy, the following lessons offer further ways to embed age-appropriate, rights-based approaches for the youngest children:

- Develop specific legal and policy frameworks that explicitly recognise and respond to the unique needs of babies and young children.
- Invest in practical, age-appropriate tools and provide training for professionals to meaningfully engage with babies and young children.
- Remove legal and attitudinal barriers that prevent babies and young children from being seen as rights-holders capable of participation.
- Broaden access to justice beyond courtrooms, ensuring informal, administrative, and community-based pathways are also rights-respecting and accessible.
- Continue to review and reform systems to ensure Scotland avoids the pitfalls seen in underperforming jurisdictions, such as delayed legal change, weak enforcement, or failure to prioritise the rights of babies and young children from the earliest stages of life.
- Promote cross-sectoral collaboration among legal, health, education, and social services to identify and respond to early risks and rights violations.
- Support strategic litigation and civil society advocacy to mainstream and enforce the rights of babies and young children within broader children's rights frameworks.

Key Takeaways – By Jurisdiction

Argentina

In Scotland, significant progress has already been made in implementing child rights, including the development of child-sensitive systems. These efforts mirror some of the positive practices observed in Argentina, such as specialised interview rooms, participation guidelines, and the integration of child-focused legal representation mechanisms. However, like in Argentina, there is room for further development, particularly in the inclusion of very young children in judicial processes and the expansion of legal resources for them. For example, Scotland could strengthen its approach to child-centred legal representation by incorporating the model of youth lawyers and public guardians, similar to Argentina's PatrocinAR and Abogado del Niño systems.

Scotland could also benefit from considering how Argentina's community-focused models, like Local Rights Protection Councils and Child Development Centres, foster a more holistic approach to children's rights by engaging local communities and considering social contexts. While these practices show a commitment to children's rights, the focus in Scotland could expand to incorporate the rights of babies and toddlers, ensuring that these youngest members of society are given the protection and representation they need from the earliest stages of life. By further integrating such practices and addressing the gaps in early childhood representation and support, Scotland can enhance its own commitment to operationalising children's rights in a more inclusive and comprehensive manner.

Australia

Australia offers several practical approaches that Scotland could look to in enhancing babies' and young children's access to justice. The Connected Beginnings program, which supports Aboriginal and Torres Strait Islander children from birth to school age through integrated, community-led services, is a compelling model for place-based, culturally grounded early years support, complementing Scotland's own commitments under

the Getting it Right for Every Child (GIRFEC) framework. Additionally, Australia's specialist Children's Courts, legal aid services for children, and the role of independent children's lawyers in family law matters provide a clear structure for child-centred legal processes, which could inform the continued development of Scotland's own child justice and family law systems.

Belgium (Flanders)

Scotland is already taking important steps to operationalise children's rights, through initiatives such as the Midlothian Sure Start Centre—similar to Flanders' "Houses of the Child"—which has the potential to evolve into a fully integrated, hub for child-centred services. The use of Child Rights and Wellbeing Impact Assessments (CRWIAs) also demonstrates Scotland's efforts to mainstream children's rights in policymaking, similar to Flanders' JoKER approach. However, there are areas where Scotland can still learn from the Flemish experience. The systematic use of youth lawyers and confidants in Flanders could strengthen Scotland's children's hearings system, where currently there is no automatic provision for child lawyers. Additionally, the approach to babies' mental health and early intervention, as seen in the "Early and Near" programme, could be adapted to strengthen Scotland's support for the youngest children in their crucial first 1000 days. Finally, the emphasis on strategic litigation as a tool for mainstreaming children's rights highlights the potential for advocacy groups (or prosecutors) in Scotland to use legal mechanisms to better enforce and mainstream children's rights, ensuring that babies and young children's needs are not overlooked.

Colombia

Scotland, while operating within a different legal and social context, can still draw key lessons from Colombia's experience. First, it can further develop cross-sector collaboration, particularly through enhancing its Getting it Right for Every Child (GIRFEC) strategy, to ensure that early signs of risk are identified and addressed. Scotland could also expand legal

advocacy services specifically for the 0–5 age group, ensuring babies and young children have a legal voice in decisions affecting them. Additionally, mobile outreach models could be explored to reach remote or disadvantaged communities with early legal intervention and support. Lastly, Scotland should prioritise early years explicitly in child justice policy, ensuring that the unique vulnerabilities of pre-verbal children are central to all protective efforts within the justice system.

Hong Kong

There are several lessons that Scotland can learn from the strengths and drawbacks of the frameworks governing the rights of babies and young children in Hong Kong. Firstly, it would be beneficial to ensure sufficient training for all professionals that come into contact with young children, to ensure that their views and needs are taken into account, dealt with and represented in a sensitive and accurate way. In line with this, it is also pertinent to implement child-specific provisions. Scotland could also follow in Hong Kong's footsteps and pass legislation on mandatory reporting of child abuse to better safeguard the health and wellbeing of babies and early years children. At the same time, it could learn from Hong Kong's shortcomings in terms of tackling discrimination and encouraging equity of outcomes for all children and implement programmes to ensure that no child is left behind.

India

India's child rights architecture is normatively strong but operationally inconsistent. While progress has been made, particularly in constitutional and legislative domains, babies continue to be marginalised in both legal design and administrative execution. Recognising babies and young children as rights-holders not merely as recipients of protection, which is crucial to ensuring that the country's youngest citizens enjoy the full spectrum of their human rights.

Iraq

Despite ratifying the UNCRC, Iraq has not integrated a significant number of its key provisions into domestic legal practice, especially concerning babies and young children. In a 2016 CRIN report, Iraq's system was ranked 175 out of 197 states, indicating one of the poorest access to justice mechanisms for children globally, and little has improved since.⁷ Positive initiatives such as the establishment of National and Sub-National Childhood Care Units within the past year mark a significant step forward in focus on child welfare and access to justice.⁸ However, a draft child protection law has remained pending and under consideration for over a decade and is yet to be adopted.⁹ Iraq's gaps in access to justice for babies and young children offer cautionary lessons for Scotland. The absence of child-centred mechanisms, delays in legislative reforms and a lack of enforcement mechanisms in Iraq show the importance of maintaining a rigidly implemented, timely and responsive child justice system that prioritises the protection of children in their early years.

Italy

Italy has made some strides in recognising the rights of babies and young children within its legal system, particularly through its ratification of the UNCRC and the development of specialised institutions and procedures. Positive initiatives, such as multidisciplinary collaboration and the active role of organisations like Save the Children Italy, demonstrate growing awareness and commitment to child-friendly justice. While Italy has a formal specialised justice system for children, it also relies on a network of policies, non-exclusive legal mechanisms, and dedicated actors to facilitate access and participation, including various forms of mediation, social services, and the crucial work of NGOs and local community initiatives. One important initiative includes mandatory training on children's

⁷ CRIN, '[Rights, Remedies and Representation](#)' (January 2016) p43.

⁸ UNICEF, '[Government of Iraq launches National and Sub-National Childhood Care Units to strengthen child protection services](#)' ([UNICEF.org](#), 13 July 2024) (accessed 1 May 2025).

⁹ United Nations Convention on the Rights of the Child (UNCRC), '[List of issues in relation to the combined fifth and sixth periodic reports of Iraq](#)', UN Doc. CRC/C/IRQ/Q/5-5 (10 October 2024) p1.

rights for Italian professionals such as judges and social workers. Specialised training on the human rights of babies and young children could enhance this initiative further.

Fragmented institutional responsibilities, inconsistent application of child participation rights, inadequate resources, strong differences throughout the 20 regions, and systemic delays continue to hinder meaningful access to justice, especially for marginalised groups. Moreover, while there are laws and safeguards that refer to children, and even some that mention children under 12, there is still very little, if anything, specifically addressing access to justice for babies and very young children, especially in the legal framework and formal context.

Kenya

A national-level strategic and systematic policy focused on justice for children helps concentrate efforts to strengthen procedural frameworks for access to justice. The practices of other countries, such as Kenya, can offer valuable inspiration for updating and enhancing Scotland's approach. The strategic areas highlighted here offer a snapshot of lessons that can be learned. However, a critical takeaway is the lack of explicit reference to babies and young children in Kenya's plan. To best support access to justice for this age group, specific and intentional reference in procedural frameworks and improvement strategies is important.

The Netherlands

The Netherlands demonstrates robust child and family support systems, including integrated services and increasing legal recognition of child participation. However, the rights and voices of babies and young children (particularly under 8) are still under-recognised in both legal and policy frameworks. While early intervention programmes like "Promising Start" provide strong foundations for child development in the first 1,000 days, legal participation mechanisms and complaints procedures often exclude young children. Regional disparities and professional uncertainty further limit consistent engagement of

younger children. Explicit recognition of the rights of babies and young children in constitutional, legal, and procedural contexts remains limited. Key suggestions include:

- Integrated Early Years Hubs: Scotland could adopt the Dutch model of child and family centres (IKCs), tailored to babies and toddlers, to streamline care and support during the earliest, most formative years.
- First 1,000 Days Focus: Dutch programmes like “Promising Start” centre policy around babies’ development from pregnancy onward. Scotland should build comparable early-years-centred frameworks with targeted support for vulnerable families.
- Empowering Infant Voices: Dutch NGOs like Defence for Children offer indirect representation for young children. Scotland could strengthen independent advocacy for babies and toddlers, particularly in care, protection, and migration contexts.

South Africa

The legal infrastructure is present in South Africa, but systematic difficulties impact implementation. Scotland should ensure all legislation protects access to justice for babies and young children and continue to assess how inequalities impact its implementation. There is added strength to the incorporation of child rights into the constitutional framework. The best interests of the child is already a key principle in Scottish child law, but the importance of integrating this concept should not be forgotten. There is no age presumption in South African law which can be applied to diverge from the Scottish assumption of competence at the age of 12. Even without the ability to communicate, babies and young children in South Africa cannot be spoken for in their name, only on their behalf, meaning they retain autonomy and can be represented separate from their guardians; their best interests are also protected under law, without any requirement for them to advocate for themselves. Babies and young children can also be represented separately from their parents if it is in their best interests, giving all ages of children greater autonomy. Creating accessible outreach points is vital for the fulfilment of a baby or young child's rights,

including support for parents. Scotland, like South Africa, should continue to focus on accessibility for children who may be in lower-income or more rural areas.

United States of America

The U.S.'s legal framework with regards to the UNCRC does not offer much inspiration for Scotland. However, some procedural frameworks may be worthy of consideration: creating a centralised database of support services, such as guidelines on children's rights and directories for making claims, enables parents and caregivers to support access to justice for babies and young children. Potential concerns for this type of resource arise where a lack of internet access may limit access to these resources when they are distributed online. Furthermore, creating specific guidance for how the judicial system should engage with babies and young children is a useful element of a procedural framework that supports access to justice for this age group. The practical implementation of this guidance can be supported by programmes like Model Courts, to ensure it truly supports access to justice for this age group. Finally, strong legislation on children's cultural rights, focused on particularly vulnerable groups, can support access to these rights for all ages, including babies and young children. In the Scottish context, this type of legislation would be significantly bolstered by UNCRC incorporation.

Individual Country Reports

Argentina

Best Practices

- *Creation of specialised interview rooms with trained professionals and child-appropriate methods.*
- *Participation guidelines emphasise flexibility, non-verbal communication, and developmentally appropriate language.*
- *Institutionalisation of youth lawyers and legal sponsorship programmes.*
- *Amicus curiae participation by NGOs for defending children's rights in court proceedings.*
- *Progressive autonomy and capacity-based rights assertion.*
- *Community-centred models: Local Rights Protection Councils and Child Development Centres connect children's rights to their social realities.*

Introduction

Argentina distributes responsibilities between the national government and its 23 provinces and the Autonomous City of Buenos Aires. The administration of justice, including family courts and the implementation of child protection mechanisms, is carried out at the provincial level, which leads to regional disparities in practice. When it comes to incorporation of the UNCRC, this has had constitutional status since 1994, as per Article 75(22) of the Argentine Constitution.¹⁰ The UNCRC, being incorporated into the Constitution, is directly enforceable and widely used in Courts all over the country.

¹⁰ [Convención sobre los Derechos de Niños, Niñas y Adolescentes](#) (16 October 2020) (accessed 19 May 2025).

Relevant Legal Frameworks

The legal frameworks in Argentina related to the rights of children aim to ensure the protection of their rights, particularly in legal and judicial contexts. These laws outline the importance of children's participation in decisions affecting them, affirming their status as rights-holders and emphasising the primacy of their best interests. However, while these frameworks provide important safeguards, certain gaps persist, particularly for the youngest children, which can affect the consistency and effectiveness of their protection. The following legal instruments are key to understanding the landscape of children's rights in Argentina:

1. *Law 26.061 on the Comprehensive Protection of the Rights of Girls, Boys, and Adolescents*¹¹ establishes that all children are rights-holders (Article 2) and emphasises that the best interests of the child must be a primary consideration in all decisions affecting them (Article 3). The law guarantees the right of children to be heard and their opinions to be meaningfully considered. In situations where the rights and interests of children conflict with those of others, children's rights must take precedence. Article 27 of Law 26.061 guarantees procedural rights such as legal representation, the right to appeal, and participation in judicial or administrative proceedings.
2. *Civil and Commercial Code (Law 26.994)*¹² specifies that children exercise their rights through legal representatives but also recognises their progressive autonomy, stating that the more psychophysically developed, and capable a child is, the less parental representation is required (Article 26). It affirms the right of children to be heard, with their opinions considered in accordance with their maturity and age.

¹¹ [Ley 26.061: Ley de protección integral de los derechos de las niñas, niños y adolescentes](#) (2005).

¹² [Ley 26.994: Código Civil y Comercial de la Nación](#) (2014).

3. *General Principles of Family and Criminal Law for Children (Law 13.634)*:¹³ Article 3 asserts that children involved in criminal proceedings have the right to be heard at any stage, to present petitions, and to express their opinions. These views must be taken into account, with consideration given to the child's psychological and physical development.
4. *Local Councils for the Promotion and Protection of Rights (Decree 300/05)*:¹⁴ This Decree mandates the creation of Local Councils for the Promotion and Protection of Rights in every municipality of Buenos Aires Province (Article 15). These councils are composed of civil society groups, human rights organisations, representatives of children and families, and other actors. They are responsible for diagnosing the local situation of children and adolescents, assessing access to services, and promoting children's rights. The duties of Local Human Rights Protection Services include ensuring that children are heard at every stage of a legal process, guaranteeing their and their family's participation, and ensuring that they receive support and guidance from a technical team (Article 18). These services are also encouraged to pursue non-judicial alternatives to resolve family disputes.
5. *American Convention on Human Rights (Article 8)* affirms that children's participation in legal processes must be tailored to their specific circumstances to ensure both their best interests and meaningful involvement in decisions that affect them.¹⁵

This legal framework can be used to inform and support practices that recognise even babies and young children as rights-holders and therefore has the potential to enhance the operationalisation of their rights by ensuring their voices and best interests are

¹³ [Ley 13.634: Principios Generales del Fuero de Familia y del Fuero Penal del Niño](#), Provincia de Buenos Aires (2007).

¹⁴ [Decree 300/05](#), Provincia de Buenos Aires (2005).

¹⁵ Organization of American States. (1969). [American Convention on Human Rights \(Pact of San José, Costa Rica\)](#). Adopted November 22, 1969, entered into force July 18, 1978.

systematically included in relevant processes. However, notable gaps remain in legal clarity and procedural consistency for children under the age of three, which limits the framework's effectiveness for this age group.

Challenging Violations of Children's Rights

In the case of babies or young children, a parent or guardian must initiate legal action on the child's behalf. If no parent or guardian is available, a judge-appointed advocate from the Public Ministry may file a lawsuit to challenge children's rights violations.¹⁶ A significant gap exists in that children, particularly babies and young children, cannot independently initiate legal action themselves.

Relevant Jurisprudence

The UNCRC has been cited extensively in court decisions throughout Argentina, most prominently by the National Supreme Court.¹⁷

Family Law

In custody and parental separation cases, Argentine courts consistently apply the principle of the best interests of the child. In case number 344:2669, a judge directly interviewed a three-year-old child to help determine appropriate custodial arrangements.¹⁸ However, courts have emphasised that the child's voice, while important, does not automatically dictate the outcome.

¹⁶ Child Rights International Network (CRIN), [Access to Justice in Argentina](#).

¹⁷ See inter alia National Supreme Court "G., P. C. c. H., S. M. s/reintegro de hijo" 22/08/2012; National Supreme Court "M., G. c. P., C. A. s/recurso de hecho deducido por la defensora oficial de M. S. M." 26/06/2012; National Supreme Court "N.N. O U., V. s/protección y guarda de personas" 12/06/2012; National Supreme Court "Q. C., S. Y. c. Gobierno de la Ciudad de Buenos Aires s/amparo" 24/04/2012; National Supreme Court "F., A. L. s/medida autosatisfactiva" 13/03/2012; National Supreme Court "B., S. M. c. P., V. A." 19/05/2010; National Supreme Court "Gladys Elizabeth Rivero" 09/06/2009; National Supreme Court "M. D. H. c. M. B. M. F." 29/04/2008; National Supreme Court "D., N. F." 18/12/2007; National Supreme Court "M., M. M. de L. y otro" 04/09/2007.

¹⁸ Corte Suprema de Justicia de la Nación, '[Interés Superior del Niño. Protección de los derechos de las niñas, niños y adolescentes](#)' (2024).

Sexual Abuse

National guidelines stress the need for child-sensitive, once-only interviews, yet implementation remains uneven. In the case G, G E. sexual abuse aggravated by cohabitation and kinship (CSJ 931/2022/RH1), a child aged between 4 and 11 was summoned to court 41 times over the course of proceedings.¹⁹ The case highlights how procedural excess can lead to re-victimisation and emotional harm, undermining the child's right to be heard in a safe and respectful manner.

ESC Rights

In the area of ESC rights, collective litigation has been used to advocate for the rights of very young children. Cases are mostly brought by organisations such as *La Defensoría de los Derechos de las Niñas, Niños y Adolescentes*. In one case, a collective amparo action was filed against the National Executive Branch on behalf of children aged 4 to 5 days to 4 years who lack access to adequate care infrastructure in their communities.²⁰

Inter-American Court Binding Decisions

Inter-American Court Decisions require judicial authority must justify decision not to consider a child's opinion.²¹

While jurisprudence in Argentina increasingly affirms the rights of children, it rarely addresses how these rights apply to babies and very young children in practice. This age group remains largely invisible in legal reasoning, despite being deeply affected by decisions around care, protection, and participation. Recognising their unique developmental needs

¹⁹ Corte Suprema de Justicia de la Nación (CSJN), G., G. E. s/ abuso sexual agravado por la convivencia y el parentesco, Case 19837/14 (2023)
https://www.pensamientopenal.com.ar/system/files/FALLO%20CSJ%20000931_2022_RH001.pdf.

²⁰ *Defensoría de los Derechos de las Niñas, Niños y Adolescentes v. Ministerio de Economía de la Nación*, Exp. N° 20374/2024, (27 November 2024).

²¹ *Inter-American Court of Human Rights, Case of Atala Riffo and daughters v. Chile*, Judgment, Series C No. 239 (24 February 2012).

is essential for translating these legal advances into meaningful rights realisation from the earliest stages of life.

Practical Implementation and Policy

Complaint Mechanisms

“Neighbourhood justice” mobile offices operate in Buenos Aires, bringing legal assistance directly to communities.²² These mobile units aim to promote the rights of children and adolescents, as well as assist individuals who require support in exercising their legal capacity, ensuring that access to justice is not limited by geographic or socio-economic barriers.

Interview Guidelines and Participation Protocols

Argentina’s interview guidelines and participation protocols for children emphasise the importance of age-appropriate, non-verbal communication methods, especially for young or pre-verbal children, such as play, drawings, facial expressions, and body language. Interviews should be conducted using developmentally appropriate tools, including toys and art materials, and carried out in a manner that is trauma-informed, informal, and uses clear, simple language to minimise stress.²³ Children must also be provided with adequate information about the situation they are participating in, including the purpose of their involvement, the possible outcomes, and how their input may influence decisions.²⁴ Importantly, these protocols stress the need to avoid demanding excessive precision.²⁵

²² Ministerio Público Titular, [Herramienta para la Construcción de una Justicia con Perspectiva de Niños y Adolescencia](#).

²³ Ibero-American Judicial Summit. [Brasilia Rules on Access to Justice for Vulnerable Persons](#). XIV Ibero-American Judicial Summit, 2008.

²⁴ Ministerio de Salud y Desarrollo Social, [Protocolo de procedimientos para la aplicación de medidas de protección de derechos de niñas, niños y adolescentes](#).

²⁵ Ibero-American Judicial Summit. [Brasilia Rules on Access to Justice for Vulnerable Persons](#). XIV Ibero-American Judicial Summit, 2008.

Argentina has developed Specialised Interview Rooms (SEEs)²⁶ to facilitate the collection of testimonial statements from children involved in judicial proceedings. These spaces are designed to provide a safe, child-sensitive environment, with interviews conducted by professional teams of psychologists trained in forensic investigation techniques and skilled in adapting their language to suit the child's cognitive development, ranging from ages 3 to 18. SEEs are set up with separate rooms on different floors to prevent encounters between the child and the accused. Additional supportive measures, such as the presence of therapy animals, are also used to help reduce anxiety. However, there are gaps in the uneven distribution and accessibility of interview rooms and specialised personnel, which can hinder the effectiveness and reach of these measures.

Child Development Centres

Law 26.233 mandates the establishment of Child Development Centres (CDCs) as comprehensive care spaces for children up to four years old.²⁷ These centres aim to promote and protect children's rights by fostering supportive environments within both family and community settings. CDCs operate under the supervision of the Secretariat of Children, Adolescents, and Family of the Ministry of Social Development. The guiding principles of these centres include a comprehensive and individualised approach to each child, early stimulation to support full development, equal treatment, and active integration with families and local stakeholders. Emphasis is placed on respect for cultural and territorial diversity, social inclusion, and the promotion of non-discrimination. Additionally, Article 8 allows CDCs to collaborate with educational and health services, coordinating cultural and developmental activities necessary for children's well-being.

Representation and Legal Aid

²⁶ Ministerio Público Titular, '[Herramienta para la Construcción de una Justicia con Perspectiva de Niños y Adolescencia.](#)'

²⁷ [Ley 26.233: Centros de Desarrollo Infantil. Promoción y regulación](#) (2007).

Argentina has developed several mechanisms to ensure legal representation and advocacy for children. One such initiative is *PatrocinAR*, a national legal sponsorship programme that provides specialised legal representation for children and adolescents who are victims of sexual abuse.²⁸ In addition, non-governmental organisations can participate in judicial proceedings concerning children's rights as Friends of the Court (*Amicus Curiae*). Through this role, they offer legal perspectives on matters of collective significance, as outlined in Article 43 of the Constitution.

Another key figure is the *Asesor de Menores* (Child Advocate or Public Guardian), a state-appointed representative from the *Ministerio Público* (Public Prosecutor's Office) who automatically intervenes in any case involving children's rights. This appointment applies to both judicial and administrative proceedings. The *Asesor de Menores* primarily plays a protective and supervisory role, complementing parental representation when necessary. They have the authority to initiate or intervene in proceedings and to monitor the actions of other parties involved.

Finally, the *Abogado del Niño* (Youth Lawyer or Child's Lawyer) is a professional lawyer selected to represent the child's specific interests and voice in legal proceedings. This right is available to any child or adolescent with sufficient maturity to express their will, regardless of a fixed minimum age. The *Abogado del Niño* offers an avenue for personal legal representation that is independent of the child's parents or guardians. However, access to youth lawyers remains uneven across provinces, and there is limited public awareness of their role. A study conducted in Mendoza revealed both low familiarity with this legal resource and reluctance to use it, underscoring persistent challenges in ensuring equitable access to child-centred legal representation.²⁹

²⁸ Amnistía Internacional Argentina. [Informe al Comité de Derechos del Niño de las Naciones Unidas: 98º Grupo de Trabajo Pre-sesional](#) (2024).

²⁹ López, Romina, y Maricel López. ['¿Qué sabemos de la figura del abogado del niño, niña o adolescente'](#) (Microjuris, 2023).

While Argentina has developed a range of child-sensitive practices and mechanisms to support children's participation and protection, these efforts tend to concentrate on school-aged children and adolescents. A significant portion of policy and legal infrastructure is directed toward addressing cases of sexual abuse, which, while crucial, reflects a limited scope in how children's rights are operationalised. Babies and toddlers, especially those under the age of three, are rarely considered in the design of interview protocols, legal representation, or service delivery. As a result, their rights risk being addressed inconsistently or left to discretionary practices. To ensure meaningful inclusion, implementation strategies must more deliberately reflect the specific developmental needs and communication capacities of this youngest age group.

Key Takeaways

In Scotland, significant progress has already been made in implementing child rights, including the development of child-sensitive systems. These efforts mirror some of the positive practices observed in Argentina, such as specialised interview rooms, participation guidelines, and the integration of child-focused legal representation mechanisms. However, like in Argentina, there is room for further development, particularly in the inclusion of very young children in judicial processes and the expansion of legal resources for them and their families. For example, Scotland could strengthen its approach to child-centred legal representation by incorporating the model of youth lawyers and public guardians, similar to Argentina's PatrocinAR and Abogado del Niño systems.

Scotland could also benefit from considering how Argentina's community-focused models, like Local Rights Protection Councils and Child Development Centres, foster a more holistic approach to children's rights by engaging local communities and considering social contexts. While these practices show a commitment to children's rights, the focus in Scotland could expand to incorporate the rights of babies and toddlers, ensuring that these

youngest members of society are given the protection and representation they need from the earliest stages of life. By further integrating such practices and addressing the gaps in early childhood representation and support, Scotland can enhance its own commitment to operationalising children's rights in a more inclusive and comprehensive manner.

Australia

Best Practices

- *Dedicated National Children's Commissioner*
- *Universal access to primary education & healthcare*
- *Accessible support services for disabled children (such as National Disability Insurance Scheme)*
- *Mandated trauma and culture training for early childhood educators*
- *Ongoing reform to law and policy affecting Aboriginal and Torres Strait islander children*

Introduction

Australia ratified the UNCRC in 1990, however as a dualist legal system classifying domestic and international law as separate, ratification did not result in automatic incorporation. Under the Australian Constitution, the federal and state governments share responsibility for different areas of law. Immigration and family law, for example, are dealt with under federal law while child protection and criminal law are state based.³⁰

While Australia has made commitments to upholding children's rights, the rights and specific needs of babies and young children are often incorporated under broader discussions of children's rights more generally. As a result, targeted attention to their unique vulnerabilities and experiences remains limited. There has been some meaningful progress in recognising and responding to the rights of young children, particularly through reforms in child protection and early childhood education,³¹ however there is still a long way to go to

³⁰ [Commonwealth of Australia Constitution Act 1900, s 51.](#)

³¹ See for example Sarah Wiss, '[Developments to strengthen systems for child protection across Australia](#)' (2017) Child Family Community Australia in the Australian Institute of Family Studies.

ensure children's complete access to justice and realisation of their rights.³² This report will highlight some of the more progressive or positive developments in Australia's approach to recognising children's access to justice, particularly for babies and young children.

Recognition of UNCRC Rights in Australian Case Law

Re Tracey [2011] NSWCA 43³³ - Article 7 of UNCRC (Right to be cared for by parents)

New South Wales Court of Appeal found trial Judge erred in failing to consider obligations under UNCRC in deporting a mother of a baby to Cambodia following a drug-related offence conviction, which would have left the baby in the state care. The Court specifically referred to Articles 3, 5, 7, 8 and 9 and concentrated on the child's right to be cared for by their parent.

Burgess & Anor v Director of Housing [2014] VSC 648³⁴ - Article 27 of UNCRC (Right to adequate standard of living)

Victorian Supreme Court found eviction of mother and her four-year-old son from public housing breached the Victorian Charter of Human Rights and Responsibilities.³⁵ While no direct mention of the UNCRC, the key provisions of the Charter mirror UNCRC provisions, specifically the child's right to protection of their best interests and adequate standard of living.³⁶

³² See Antonia Canosa, Anne Graham and Cathrine Simmons, '[Progressing children's rights and participation: Utilising rights-informed resources to guide policy practice](#)' (2022) *Australian Journal of Social Issues* 57, 600.

³³ *Re Tracey* [2011] NSW 43 [79].

³⁴ *Burgess & Anor v Director of Housing* [2014] VSC 658 [243] – [244].

³⁵ *Victorian Charter of Human Rights and Responsibilities Act* 2006.

³⁶ *Ibid* S17(2) and UNCRC Art 3.

Judd & Judd [2017] FamCA 785³⁷ - Article 19 of UNCRC (Right to be protected from harm)

The Family Court of Australia made parenting orders for the care of a two-year-old child in which the parents had a history of illicit substance abuse. The Court referenced Article 19 of the UNCRC in its obligation to protect the child from all forms of violence or neglect while in the parents' care.

While the UNCRC is not directly incorporated into Australian federal or state law, case law has set a precedent of the UNCRC as an interpretive aid in absence of inconsistent statutory provision.³⁸

Specific Legal Assistance Measures for Children

- *Specialised Children's Court in each state and territory*
- *Specially trained independent children's lawyer in family law proceedings*
- *Legal Aid Youth Law Services for advice and ongoing representation*
- *Child Sexual Offence Evidence Program (NSW)*
- *Federal Mandatory Reporting in for suspected abuse or neglect*
- *24/7 Kids Helpline*

Policies & Programs for Aboriginal and Torres Strait Islander Children

*Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)*³⁹ – Article 30 of UNCRC (Right of enjoyment of Indigenous culture)

In light of the history of forced removal and cultural assimilation of Aboriginal and Torres Strait Islander children, the ATSICPP recognises Aboriginal and Torres Strait Islander families and communities have the knowledge and experience to make the best decisions about their babies, children and young people. Therefore, if an

³⁷ *Judd & Judd* [2017] FamCA 785 [72].

³⁸ See *Georgina Dimopoulos*, 'The right time for rights? Judicial engagement with the UN Convention on the Rights of the Child in Part VII proceedings' (2023) *Australian Journal of Family Law*, 36.

³⁹ Secretariat of National Aboriginal and Islander Child Care, 'Aboriginal and Torres Strait Islander Child Placement Principle' available at <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/> (accessed 5 May 2025).

Aboriginal or Torres Strait Islander child is removed from their family, for whatever reason, all effort must be made to rehome the child with an Aboriginal or Torres Strait Islander family or community. Developed in 1984, the ATSICPP has been adopted into policy in all states and territories. Other examples of Aboriginal and Torres Strait Islander children's access to enjoying their culture are Federal Cultural Support Plans, Closing the Gap Policy, Aboriginal Case Management Policy and recommendations from the Family is Culture report.

*Connected Beginnings Program*⁴⁰ – Article 24, 28 and 30 of UNCRC (Right to health services, education and enjoyment of Indigenous culture)

This federal government program supports Aboriginal and Torres Strait Islander children from birth to school age to ensure they feel safe, healthy and ready to thrive at school. The program has been established in each state and territory, is led by Aboriginal and Torres Strait Islander peoples and has supported over 24,800 children at over 50 sites across Australia.

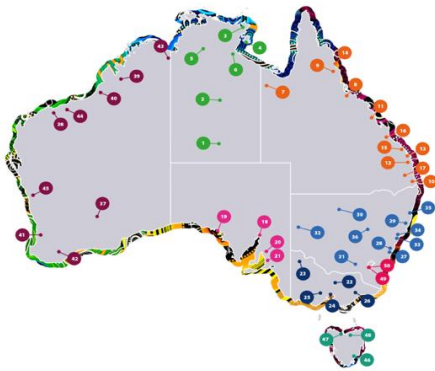


Image: Map of Connected Beginnings sites across Australia as of May 2025. Map provided by Australian Government, Department of Education.

⁴⁰ Australian Government Department of Education, 'Connected Beginnings' available at <https://www.education.gov.au/early-childhood/providers/extra-support/community-child-care-fund/connected-beginnings> (accessed 4 May 2025).

Key Takeaways

Australia offers several practical approaches that Scotland could look to in enhancing babies' and young children's access to justice. The Connected Beginnings program, which supports Aboriginal and Torres Strait Islander children from birth to school age through integrated, community-led services, is a compelling model for place-based, culturally grounded early years support, complementing Scotland's own commitments under the Getting it Right for Every Child (GIRFEC) framework. Additionally, Australia's specialist Children's Courts, legal aid services for children, and the role of independent children's lawyers in family law matters provide a clear structure for child-centred legal processes, which could inform the continued development of Scotland's own child justice and family law systems.

Belgium (Flanders)

Best Practices

- *Existence of Integrated and Accessible Support Services.*
- *Development of Innovative Tools to Enhance Infant Participation*
- *Growing Recognition for the Specific Needs of Babies and Young Children in Policy Frameworks*
- *Youth Lawyers Strengthening the Child's Voice in Justice System.*
- *Strategic litigation helps Mainstreaming and Enforcing Children's Rights*

Introduction

This section examines access to justice and the operationalisation of children's rights for babies and young children in Belgium, with a particular focus on Flanders where appropriate. As a federal state, Belgium divides responsibilities between federal and regional levels. Matters such as Constitutional Law, Family Law, and Judicial Law fall under federal jurisdiction and are overseen by the Ministry of Justice. In contrast, areas such as childcare and integrated youth services fall within the remit of the Flemish Community, under the responsibility of the department of "Growing Up" (*Agentschap Opgroei*).⁴¹

Before turning to these domestic legal and policy frameworks, it is important to consider the role of international law, particularly the UNCRC in the Belgian legal order. Belgium adheres to a monist tradition, which means that ratified international treaties become part of domestic law without the need for additional implementing legislation.⁴² Consequently, no further legislation is required to incorporate the UNCRC into Belgian law. That said, Belgium

⁴¹ Laura Lundy et al., *The UN Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries* (Queen's University Belfast and UNICEF UK, 2012), 36.

⁴² Wouter Vandenhole, "The Convention of the Rights of the Child in Belgian Case Law" in Ton Liefaard and Jaap E. Doek (eds.) *Litigating the Rights of the Child : the UN Convention on the rights of the child in domestic and international jurisprudence* (Springer 2014) 106.

has still chosen to embed certain principles of the Convention directly into its Constitution. Article 22bis guarantees an explicit integrity protection for children and incorporates several key principles of the UNCRC.⁴³ However, the monist approach and the constitutional inclusion of the UNCRC principles do not mean that the UNCRC or Article 22bis are directly invocable in courts. To be invoked, a provision must have direct effect.

The situation regarding art. 22bis of the Constitution is simple: it does not have the required direct effect.⁴⁴ The direct effect of UNCRC provisions, in contrast, is assessed on a case-by-case basis by domestic judges, evaluating each provision or even individual paragraphs.⁴⁵ This judicial discretion has led to inconsistent and sometimes conflicting case law across Belgian courts. In general, treaty articles that are clearly worded, such as Article 12, are often viewed as self-executing, while those that are more ambiguous are less likely to be directly applied in court.⁴⁶ However, there is still a reluctance to treat even clearly formulated articles of the UNCRC as self-executing, especially in the higher courts. Lower courts and tribunals tend to be more receptive, taking a more flexible stance on the direct applicability of UNCRC provisions.⁴⁷

The absence of direct effect, however, does not deprive a provision of any relevance. Even when a provision is not considered to have direct effect, it can still influence the Belgian legal system, playing an indirect role in judicial reasoning and helping to shape the interpretation of other legal norms.⁴⁸ With this in mind, the analysis now turns to the operationalisation

⁴³ *Ibid*, 107; these principles are: Best interest of the child (Article 3) Right to life survival and development (Article 6) Right to be heard (Article 12).

⁴⁴ Wouter Vandenhoele (2014), 108.

⁴⁵ *Ibid*.

⁴⁶ Laura Lundy et al. (2014), 37; Kasey McCall-Smith, [“To incorporate the CRC or not – is this really the question?”](#), (2019) 23(3)*The International Journal of Human Rights*, 431.

⁴⁷ Wouter Vandenhoele (2014), 107.

⁴⁸ Patrick Senaee & Sara Arnoeyts [“Tien jaar belgische rechtspraak inzake de Aanwending van het Ivrk”](#) In Paul Lemmens & Patrick Senaee (eds.), *De betekenis van de mensenrechten voor het personen- en familierecht* (Intersentia 2004) 106; Laura Lundy et. Al. (2012), 37; Wouter Vandenhoele (2014), 110.

and protection of babies and young children's rights in Belgium and Flanders, focusing on (1) legal frameworks, (2) jurisprudence and (3) practical implementation.

Relevant Legal Frameworks

Belgium's relevant legal frameworks for children mostly focus on safeguarding their rights within judicial proceedings and youth care systems, attempting to ensure their voices are heard and their interests are protected. Some of the most relevant findings are the following:

1. *Decree on the Legal Position of Minors in Integrated Youth Care*⁴⁹: This decree ensures children in Integrated Youth Care are given the opportunity to express their opinions in matters affecting them, considering their age and maturity. If the child is unable to express his or her opinion, appropriate measures must be taken to ascertain their opinion (Article 16). It also guarantees children the right to be supported by a “confidant” during youth care proceedings. This confidant must represent the child's interests (Article 24).
2. *Decree on Integrated Youth Care*⁵⁰: This decree (*inter alia*) empowers the juvenile judge to intervene in cases where a child is in a concerning situation. Each youth court case is consequently assigned a permanent social consultant who maps the child's situation and maintains regular contact with the family. These consultants conduct follow-ups and ensure ongoing attention to the child's development and safety.⁵¹ Yet, time pressures, staff shortages, and caseloads often limit the depth of engagement, especially with very young children.⁵²
3. *Judicial Code*⁵³: The Judicial Code provides a framework for children to participate in legal proceedings affecting them (Article 1004/1). It establishes that children have the right to be heard by a judge in matters that concern their welfare. Children older

⁴⁹ [Decree on the Legal Position of Minors in Integrated Youth Care](#) (Fl.), BS 7 May 2004.

⁵⁰ [Decree on Integrated Youth Care](#) (Fl.), BS 12 July 2013.

⁵¹ Agentschap Opgroeien (Fl.), *You and the juvenile court*, 7.

⁵² Eva Heirbaut & Wendy Eerdeken, [Participatie van infants in de jeugdhulp - Rapport Praktijkgericht Wetenschappelijk Onderzoek](#), September 2024.

⁵³ [Judicial Code](#) (Be.) BS 10 October 1967.

than 12 are invited automatically, while children under twelve can request to be heard. In principle, the judge cannot deny this request. Additionally, children are entitled to have a confidant present during hearings to support them, and the judge is required to ensure that the setting for the hearing is appropriate for a child.

4. *Legal Capacity of Minors to Bring Claims:* While children generally cannot bring legal claims on their own behalf, there are exceptions. If a child has sufficient maturity and understanding (capacity for discernment), they may be allowed to initiate claims in certain situations, such as in matters of personal importance or when their legal representatives fail to act in a timely or appropriate manner. These exceptions are not guaranteed and depend on the discretion of the judge.⁵⁴ An additional issue is that they do not offer a solution for the operationalisation of babies and young children's rights, as they do not have the required capacity.
5. *Role of the Public Prosecutor:* Public prosecutors play a vital role in bridging this gap. As protectors of public order and society's more vulnerable members (including children) they can initiate legal actions to protect the child's (including babies and young children's) rights and well-being.⁵⁵
6. *Constitutional Court:* Advocacy groups can bring cases to the Constitutional Court on behalf of children by challenging laws they consider unconstitutional. While the Court cannot assess compliance with the UNCRC directly, it often interprets constitutional provisions in light of the UNCRC.⁵⁶ This, combined with the role of advocacy groups, helps ensuring that new statutes are children's-rights-compliant.
7. *JoKER Impact Assessment:* art. 7 of the Flemish Youth Decree requires that a child and youth impact report (JoKER) be attached to every draft decree submitted to the Flemish Parliament if the proposed decision directly affects individuals under the age of 25.⁵⁷ The JoKER is a public document that must include: (1) an assessment of the

⁵⁴ Wouter Vandenhoele (2014), 108-109.

⁵⁵ *Ibid*; Frederik Swennen & Nicole Caluwé “[De \(vorderings\)rechten van het Openbaar Ministerie in burgerlijke zaken](#).” In CBR (ed.), *De procesbekwaamheid van minderjarigen* (Intersentia 2006) pp. 75–101.

⁵⁶ *Ibid*, 110.

⁵⁷ [Decree on Youth and Children's Rights Policy and Support for Youth Work](#) (Fl.), BS 23 November 2023.

decision's impact on children and young people; (2) a description of their situation without the proposed decision; and (3) possible alternatives, including measures to prevent, reduce or remedy any significant negative effects.

Together, these legal frameworks attempt to ensure that children in Belgium are adequately protected, focusing on their participation in legal matters, their right to be heard, and the protection of their interests within both the judicial and youth care systems. The legal frameworks addressing the realisation of children's rights more generally are limited, but the mandatory impact assessment and the role of the Public Prosecutor and advocacy groups are a first step in the right direction, as they help to mainstream children's rights analysis and enhance enforcement. However, specific legal provisions addressing the rights and needs of babies and young children remain notably absent.

Relevant Jurisprudence

Belgium is a civil law country, where legislation is the primary source of law and case law is only binding *inter partes* (i.e. it is only binding for the parties involved in the legal proceedings and it does not constitute binding precedent for other courts). Judicial decisions are also not systematically published, making it difficult to assess the full scope of how the UNCRC is applied. That said, Vandenhole has still managed to identify many relevant cases in the publicly available case law on migration law, family law, juvenile justice and social security.⁵⁸ In what follows, an overview will be given of the case law most relevant to this report. This section is therefore by no means exhaustive but nevertheless exemplifies *the potential of strategic litigation* in upholding babies and young children's rights protected by the UNCRC in certain areas of the law.

Migration Law

⁵⁸ For a more comprehensive account: Wouter Vandenhole (2014).

First, a substantial portion of UNCRC-related litigation concerned migration issues, particularly access to social assistance for children residing in the country without legal status.⁵⁹ Courts have frequently invoked the principles of non-discrimination (Article 2), the best interests of the child (Article 3), and the right to an adequate standard of living (Articles 26 and 27). Notably, the detention of children in adult reception centres has been found to violate both the UNCRC (Articles 3 and 37) and the European Convention on Human Rights (Articles 3 and 8), due to conditions deemed inadequate for children's development and well-being.⁶⁰

Affiliation and Parental Authority

Secondly, the UNCRC has proven relevant in cases concerning affiliation. Courts generally recognise the establishment of paternal affiliation as serving the best interests of the child.⁶¹ The Constitutional Court has stressed the obligation for judges to consider the best interest of the child in these cases, ensuring that children's views and interests are properly taken into account.⁶² In disputes over parental authority, such as alimony or contact arrangements, civil and juvenile courts have similarly relied on the UNCRC to safeguard the child's best interests.⁶³

Social Security

Lastly, the UNCRC has been used to reinforce constitutional arguments around equal treatment in child benefit cases. In one case, the Constitutional Court used the UNCRC—particularly Article 2, which prohibits discrimination based on the status of a child's parents and to reinforce its finding of unequal treatment in a differential benefits regime for unemployed parents.⁶⁴

⁵⁹ *Ibid*, 113; Constitutional Court 22 July 2003, [no. 106/2003](#).

⁶⁰ *Ibid*, 115.

⁶¹ *Ibid*, 115.

⁶² Constitutional Court 9 August 2012, [no. 103/2012](#); 23 May 2012, [no. 61/2012](#); 14 May 2003, [no. 66/2003](#), B.4.3–B8.

⁶³ Wouter Vandenhoe (2014), 116.

⁶⁴ Constitutional Court 30 October 2008, [no. 145/2008](#), B.7.2.

Despite the breadth of legal frameworks and emerging jurisprudence on children's rights in Belgium, neither systematically addresses the specific needs and rights of babies and young children. As a result, the realisation of their rights depends largely on policy frameworks and practical implementation strategies that consider babies and young children's unique developmental needs. These will be explored in the following section.

Practical Implementation and Policy

In Belgium and Flanders, various initiatives aim to operationalise the rights to participation and protection, with increasing attention to babies and young children. What follows is a (non-exhaustive) overview of how children's rights are being put into practice across sectors such as family law, youth care, and early childhood services.

Policy Innovations: Flanders' Department of "Growing Up"

Flemish policy has actively supported early childhood development through accessible, community-based services. The “Houses of the Child” (*huizen van het kind*) are local hubs that bring together health services, child protection, educational support, and leisure activities under one roof.⁶⁵ Participation is a core value: families, children, professionals, and volunteers are all encouraged to shape services.⁶⁶

The “Early and Near” (*vroeg en nabij*) programme emphasises early intervention during the “first 1000 days” of life. It coordinates prenatal and postnatal care, inclusive childcare, and family support.⁶⁷ The approach is local and integrated, aiming to support families in their own communities. Attention to Infant Mental Health (IMH) is also increasing, with a focus on developing quality practices tailored to babies and young children's developmental needs.⁶⁸

⁶⁵ Agentschap Opgroeien (Fl.), [Huizen van het Kind](#) (accessed on 19 May 2025).

⁶⁶ Agentschap Opgroeien (Fl.), [Participatie binnen de Huizen van het Kind](#) (accessed on 19 May 2025).

⁶⁷ Agentschap Opgroeien (Fl.), [Vroeg en Nabij](#) (accessed on 19 May 2025).

⁶⁸ Agentschap Opgroeien (Fl.), [Infant Mental Health](#); Agentschap Opgroeien (Fl.), [Databank kwaliteitsvolle praktijken](#) (accessed on 19 May 2025).

Lastly, practical tools are being developed to support practitioners in assessing babies and young children's needs. The ZiKo-checklist, for example, helps childcare providers assess babies' wellbeing through behavioural observation, ensuring quality standards in early years settings.⁶⁹

Integrated Youth Care: Participation Beyond Speech

In youth care, the concept of participation is evolving to include even very young children. However, implementation is uneven. A significant number of care professionals still consider age a legitimate barrier to participation, and some children report not feeling taken seriously.⁷⁰

The Erasmus+ Panda Study on *Engaging and Collaborating with Children younger than 12* highlights these tensions, noting that babies and young children are too often viewed as passive subjects rather than active participants. It stresses the need for a paradigm shift: moving from protection *instead of* participation to protection *through* participation.⁷¹ Encouraging examples include practitioners using symbolic gestures (like placing a photo or an empty chair to represent the baby or young child during meetings) and increasing reliance on IMH experts or child psychologists to bring babies and young children's perspectives into multidisciplinary discussions. Additionally, several tools and frameworks—both internationally and locally developed—are being used or adapted to support participatory practice including: Words and Pictures (from Signs of Safety)⁷², the LifeCity App⁷³, Newborn

⁶⁹ Agentschap Opgroeien (Fl.), [zelfevaluatie - instrument voor welbevinden en betrokkenheid van kinderen in de opvang - Handleiding](#) (accessed on 19 May 2025); Agentschap Opgroeien (Fl.), [zelfevaluatie - instrument voor welbevinden en betrokkenheid van kinderen in de opvang](#) (accessed on 19 May 2025).

⁷⁰ Steunpunt Mens en Samenleving (SAM), [Op naar een ondersteuningsaanbod participatief werken voor professionals in de jeugdhulp- Uitkomsten behoefteanalyse](#), 12 November 2019 (accessed on 19 May 2025).

⁷¹ Eva Heirbaut & Wendy Eerdeken (2024).

⁷² Andrew Turnell & Steve Edwards, "[Aspiring to Partnership. The Signs of Safety Approach to Child Protection.](#)" (1997) 6(3) *Child Abuse Review*, 179–190.

⁷³ Joke De Wilde, [LifeCity App](#), 2021 (accessed on 19 May 2025).

Behavioural Observation⁷⁴ Theraplay⁷⁵ and Family Seeing⁷⁶. In Flanders, tools such as the Participation Compass (*Participatiekompas*) have been developed to help professionals and organisations strengthen child participation.⁷⁷ The guide includes reflective prompts, communication strategies, and creative methods such as storyboxes, drawings, and books.

Despite these positive developments, care professionals continue to express the need for more practical tools and concrete methods to communicate with very young children in meaningful ways.⁷⁸ Additionally, the effective use of these tools largely depends on the initiative of individual care professionals and is not systematically implemented across childcare services.

Confidants and Youth Lawyers: Structural Advocacy for Children

In integrated youth care and the youth court system, children have the right to appoint a confidant—an independent adult who can represent their interests. When children are unable to designate someone themselves, the system assigns a qualified confidant on their behalf.⁷⁹ Specialised youth lawyers often take on this role, with a mandate to initiate mediation, communicate with care providers, and advocate for the child during decision-making processes. The pilot project in Ghent's Family Court, which assigned trained youth lawyers as confidential counsellors for children over six years old, demonstrates how systematically integrating youth lawyers into other types of proceedings can help strengthen procedural fairness for children and mainstream consideration of their interests.⁸⁰

⁷⁴ Kevin Nugent, Constance H. Keefer, Susan Minear, Lise C. Johnson & Yvette Blanchard, *Understanding Newborn Behavior & Early Relationships - The Newborn Behavioral Observations (NBO) System Handbook* (Brookes Publishing, 2007).

⁷⁵ Theraplay® Institute, *What is Theraplay®?* (accessed on 19 May 2025).

⁷⁶ Kevin Campbell & Elizabeth Wendel, *Family Seeing*.

⁷⁷ Martine Carmans & Reinhilde Pulinx, *Participatiekompas jeugdhulp*, <https://participatiekompas.jeugdhulp.be/index> (accessed on 19 May 2025).

⁷⁸ Eva Heirbaut & Wendy Eerdekens (2024).

⁷⁹ Art. 24, Decree on the Legal Position of Minors in Integrated Youth Care (Fl.).

⁸⁰ Kinderrechtencommissariaat (Be), *Pilootproject met vertrouwenspersoon voor kinderen in familierechtbank is waardevol*, 27 January 2025 (accessed on 19 May 2025).

Key Takeaways

Scotland is already taking important steps to operationalise children's rights, through initiatives such as the Midlothian Sure Start Centre—similar to Flanders' "Houses of the Child"—which has the potential to evolve into a fully integrated, hub for child-centred services. The use of Child Rights and Wellbeing Impact Assessments (CRWIAs) also demonstrates Scotland's efforts to mainstream children's rights in policymaking, similar to Flanders' JoKER approach. However, there are areas where Scotland can still learn from the Flemish experience. The systematic use of youth lawyers and confidants in Flanders could strengthen Scotland's children's hearings system, where currently there is no automatic provision for child lawyers (although some children in some contexts do have the right to be offered an "advocacy worker", but this is not a legally trained role). Additionally, the approach to babies' mental health and early intervention, as seen in the "Early and Near" programme, could be adapted to strengthen Scotland's support for the youngest children in their crucial first 1000 days. Finally, the emphasis on strategic litigation as a tool for mainstreaming children's rights highlights the potential for advocacy groups (or prosecutors) in Scotland to use legal mechanisms to better enforce and mainstream children's rights, ensuring that babies and young children's needs are not overlooked.

Colombia

Best Practices

- *The push for the appointment of guardians ad litem in all legal proceedings involving children under six, ensuring that even the youngest have dedicated legal representation.*
- *The country has also invested in mobile legal clinics, which bring legal aid to underserved rural areas, an approach that helps bridge geographic and economic barriers.*
- *The integration of child protection services with other sectors like health and education, allowing for coordinated, early interventions.*

Introduction

Access to justice is a fundamental human right that allows people to seek protection and redress for rights breaches. This right is especially important for babies and young children between the ages of 0 to 5 but it is at times very difficult to achieve. Although there has been strong legal frameworks and institutional initiatives, significant gaps in implementation, representation and access are still prominent particularly for vulnerable populations such as displaced, Indigenous or impoverished children.

Relevant Legal and Institutional Frameworks

Colombia has made major commitments to protecting children's rights. It is a signatory to the UNCRC and its national laws reflects this.⁸¹ Article 44 of the Colombian Constitution states that children's rights takes precedence over other rights establishing the principle of the best interests of the child into national law. Moreover, Law 1098 of 2006 (Código de Infancia y Adolescencia), provides a comprehensive framework for child protection which

⁸¹ CRIN, [Access to justice for children](#) Colombia

includes methods for legal representation, intervention in abuse cases and coordination between child welfare and justice institutions.⁸²

The Instituto Colombiano de Bienestar Familiar (ICBF) is the primary agency responsible for implementing child protection programs.⁸³ It works closely with other authorities such as the Ombudsman's Office (Defensoria del Pueblo), family commissioners and the judiciary to resolve violations of children's rights.⁸⁴ However, babies and young children are entirely reliant on adults to advocate on their behalf, making the role of these institutions vital.

Barriers to Justice for Babies and Young Children

Given this solid legal foundation in practice, access to justice for babies and young children face a number of structural and systemic barriers. Firstly, children within this age group cannot express their feelings or see help on their own which means that justice is dependent on proactive detection and adult intervention.⁸⁵ Additionally, in cases of abuse, neglect or abandonment, the child's fate is usually determined by whether caretakers, neighbours or professionals identify and report the warning signs.⁸⁶

Additionally, rural and underprivileged groups encounter considerable challenges. Many indigenous and afro Colombian children grow up in isolated locations with limited or no access to justice.⁸⁷ These conditions have been exacerbated by armed conflict and displacement. Children who are born into internally displaced families are at a higher risk of

⁸² Ibid.

⁸³ CRC, Combined sixth and seventh periodic reports of Colombia due in 2021 under article 44 of the Convention 25 August 2021.

⁸⁴ Clara Ines Rubiano and Suzanne Flannery Quinn, '[Colombian Early Childhood Education and the Quest for Social Justice](#)' in Handbook of International Perspectives on Early Childhood Education (2018) Routledge 41.

⁸⁵ Carlos del Castillo and others, '[Building a comprehensive child protection system in Colombia: the architecture, cost and gaps](#)' (2015) Global Affairs Canada UNICEF 1.

⁸⁶ Ibid.

⁸⁷ [Safeguarding Childhood](#) – Colombia 2024.

human rights violations and have fewer options for seeking restitution. In these cases, the justice system frequently lacks the reach and resources to respond effectively.⁸⁸

Furthermore, bureaucratic inefficiencies and underfunded institutions contribute to slow or insufficient response to reported violations.⁸⁹ Family courts are usually overwhelmed, and child protection professionals may lack training in early childhood development and trauma informed care, limiting their ability to act decisively in the best interests of babies and young children.⁹⁰

Efforts and Recommendations

In recent years, there have been efforts to close the justice gap for Colombian young children. Transitional mechanisms such as the Jurisdicción Especial para la Paz (JEP) have acknowledged the abuse of children during armed conflict and child rights organisations continue to advocate for better safeguards.⁹¹ Legal clinics and mobile justice units are increasing access to legal aid in rural areas, even though these efforts are still being restricted in scope.⁹²

Therefore, to improve access to justice for babies and young children, three critical initiatives are required. Colombia should first boost its investment in early legal representation such as appointing guardians ad litem in all instances involving children under the age of six.⁹³ Secondly, judges, police officers and social workers should receive training that focuses on developmental science and children's rights, ensuring that responses are age appropriate

⁸⁸ Ibid.

⁸⁹ Cristian Jovan Rojas Romero and others, 'De Cero a Siempre: [Reflections on the Colombian Early Childhood Policy from a Human Rights Perspective](#)' (2025) 14 Social Sciences 137.

⁹⁰ Jorge Cuartas, 'Physical punishment against the early childhood in Colombia: National and regional prevalence, sociodemographic gaps and ten year trends' (2018) 93 Children and Youth Services Review 428.

⁹¹ Tove Nyberg, 'Justice for children?: [A socio legal study on Colombia's responses to children associated with armed violence](#)' (2021) Department of Criminology Stockholm University 323.

⁹² Ibid.

⁹³ Salvador Herencia Carrasco, '[Transitional Justice and the situation of children in Colombia and Peru](#)' (2010) 16 Innocenti Working Paper UNICEF 1.

and trauma informed.⁹⁴ Lastly, legal systems must be connected with health, education and social services to provide a comprehensive safety net that proactively detects and addresses violations.⁹⁵

Key Takeaways

Scotland, while operating within a different legal and social context, can still draw key lessons from Colombia's experience. First, it can further develop cross-sector collaboration, particularly through enhancing its Getting it Right for Every Child (GIRFEC) strategy, to ensure that early signs of risk are identified and addressed. Scotland could also expand legal advocacy services specifically for the 0–5 age group, ensuring babies and young children have a legal voice in decisions affecting them. Additionally, mobile outreach models could be explored to reach remote or disadvantaged communities with early legal intervention and support. Lastly, Scotland should prioritise early years explicitly in child justice policy, ensuring that the unique vulnerabilities of pre-verbal children are central to all protective efforts within the justice system.

⁹⁴ ACAPS, '[Colombia child recruitment and use](#)' (2024) Thematic Report.

⁹⁵ Tove Nyberg, 'Justice for children?: [A socio legal study on Colombia's responses to children associated with armed violence](#)' (2021) Department of Criminology Stockholm University 323..

Hong Kong

Best Practices

- *Explicit references in domestic law to the best interests and views of the child.*
- *Protections for certain social rights, such as, inter alia, access to healthcare; free, universal and compulsory primary and secondary education; and protections against abuse.*

Introduction and Relevant Legal Context

This section explores access to justice and the operationalisation of children’s rights for babies and young children in Hong Kong.

Hong Kong is a semi-autonomous Special Administrative Region of China and has operated under a common law legal system distinct from that of the Mainland since sovereignty over the territory was transferred from the British to Beijing in 1997. In September 1994, the United Kingdom extended the territorial applicability of the UNCRC, to which it was party, to Hong Kong.⁹⁶ Beijing confirmed the continued applicability of the Convention to the city in April 2003.⁹⁷ It remains to be formally incorporated into domestic law, but there are numerous Ordinances, or laws, in place that are relevant to the protection of children and their rights.⁹⁸ The Hong Kong government also established a Commission on Children in June 2018, thus establishing an advisory body mandated to safeguard the wellbeing of children by developing and implementing policies pertaining to the advancement of children’s

⁹⁶ United Nations, “[11. Convention on the Rights of the Child. New York, 20 November 1989](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en)” (United Nations) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en> (accessed 1 May 2025).

⁹⁷ Ibid.

⁹⁸ See, *inter alia*, Guardianship of Minors Ordinance (Cap. 13). See s. 3. (hereafter GMO); Domestic & Cohabitation Relationships Violence Ordinance (Cap. 189). See s. 7A(3)(b). (hereafter DCRVO); Adoption Ordinance (Cap. 290). See s. 8. (hereafter AO); and Child Abduction and Custody Ordinance (Cap. 512). (hereafter CACO).

rights.⁹⁹ However, the city has yet to appoint a Children’s Commissioner mandated to protect and promote the rights and interests of babies and young children.

Law, Policy and Practical Implementation of Children’s Rights in Hong Kong

Although the Hong Kong Law Reform Commission published a Report on Child Custody and Access in 2005 with numerous recommendations on avenues for children to express their views and more robust protections for the rights of babies and young children, most of its suggestions remain unactioned.¹⁰⁰ Nonetheless, as aforementioned, there exist numerous mechanisms and Ordinances which at least partially protect these rights.

Right to be heard in court proceedings — Article 12, UNCRC

The Rules of the High Court state that children under the age of 18 are persons “under disability”.¹⁰¹ This means that they do not have standing to directly initiate, participate or intervene in either civil or criminal proceedings as a party, no matter their maturity or capacity.¹⁰² While this rule effectively constrains their access to justice and right to participation, they remain able to conduct proceedings through a next friend or guardian *ad litem*.¹⁰³ To mitigate this, direct communication between the child and the judge in any given proceeding can be requested by either party.¹⁰⁴ For this to be most effective, however, it is crucial for the judge and any other practitioners who come into contact with children over

⁹⁹ Commission on Children, “[About Us: Commission on Children](https://www.coc.gov.hk/en/welcome.html)” (Commission on Children) <<https://www.coc.gov.hk/en/welcome.html>> (accessed 1 May 2025).

¹⁰⁰ The Law Reform Commission of Hong Kong, “[Child Custody and Access](https://www.hkreform.gov.hk/en/publications/raccess.htm#:~:text=The%20main%20focus%20of%20the,their%20children%20after%20they%20divorce.>)” (2005) <<https://www.hkreform.gov.hk/en/publications/raccess.htm#:~:text=The%20main%20focus%20of%20the,their%20children%20after%20they%20divorce.>>>.

¹⁰¹ Rules of the High Court (Cap. 4A) s. 54, Order 80. See rule 1.

¹⁰² Scully-Johnson A, “[Baseline Study on the Implementation of UNCRC Article 12 in Hong Kong](http://v2.childrenrights.org.hk/v2/archive/04concerns/BaselineStudyImplementationArticle12HK.pdf)” (Hong Kong Committee on Children’s Rights 2020) <<http://v2.childrenrights.org.hk/v2/archive/04concerns/BaselineStudyImplementationArticle12HK.pdf>> See para. 150.

¹⁰³ Rules of the High Court (Cap. 4A) s. 54, Order 80. See rule 2. A next friend represents a child’s interests in proceedings that they initiate on behalf of the child, while a guardian *ad litem* represents the child where they are a defendant to or intervener in proceedings.

¹⁰⁴ Scully-Johnson A, “[Baseline Study on the Implementation of UNCRC Article 12 in Hong Kong](http://v2.childrenrights.org.hk/v2/archive/04concerns/BaselineStudyImplementationArticle12HK.pdf)” (Hong Kong Committee on Children’s Rights 2020) <<http://v2.childrenrights.org.hk/v2/archive/04concerns/BaselineStudyImplementationArticle12HK.pdf>> At para. 131.

the course of legal proceedings, such as lawyers, mediators, and social workers, to be trained to handle such interactions in a sensitive and age-appropriate manner.¹⁰⁵

The importance of “the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body” has also been emphasised in the Family Court.¹⁰⁶ The Guardianship of Minors Ordinance (Cap. 13),¹⁰⁷ the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189),¹⁰⁸ the Adoption Ordinance (Cap. 290)¹⁰⁹ and the Child Abduction and Custody Ordinance (Cap. 512)¹¹⁰ are some examples of family law Ordinances that regard the ‘best interests’ of the child as being of paramount importance. They also provide that the views of the child should be taken into account where it is practicable to do so, considering their age, understanding and circumstances of the case. In family law disputes, children also have the opportunity to express their views, primarily through Social Investigation Reports (SIR) conducted by Social Welfare Officers (SWOs);¹¹¹ however, this mechanism has been criticised due to the lack of standardised guidelines surrounding its implementation and insufficient training for participating SWOs.¹¹² This, coupled with the fact that there are no opportunities for the child(ren) to follow-up and check that the SWO has accurately interpreted and communicated their views, raises questions concerning the extent to which SIRs truly facilitate participation and ensure that children are being heard and represented in a meaningful way in legal contexts.¹¹³

¹⁰⁵ Ibid. See para. 136.

¹⁰⁶ R v N [2009] HKEC 2622

¹⁰⁷ Guardianship of Minors Ordinance (Cap. 13). See s. 3.

¹⁰⁸ Domestic & Cohabitation Relationships Violence Ordinance (Cap. 189). See s. 7A(3)(b).

¹⁰⁹ Adoption Ordinance (Cap. 290). See s. 8.

¹¹⁰ Child Abduction and Custody Ordinance (Cap. 512).

¹¹¹ Scully-Johnson A, “[Baseline Study on the Implementation of UNCRC Article 12 in Hong Kong](http://v2.childrenrights.org.hk/v2/archive/04concerns/BaselineStudyImplementationArticle12HK.pdf)” (Hong Kong Committee on Children’s Rights 2020) <<http://v2.childrenrights.org.hk/v2/archive/04concerns/BaselineStudyImplementationArticle12HK.pdf>> See para. 127.

¹¹² Ibid. See para 423.

¹¹³ Ibid.

It is equally important to note that protections for babies and young children under criminal law are more limited. For instance, the Protection of Children and Juveniles Ordinance (Cap. 213), which governs the assessment and detention of children in need of care or protection, does not reference the child's views.¹¹⁴ Similarly, the Department of Justice, responsible for criminal prosecutions, acknowledged that children occasionally partake in the criminal justice system as witnesses or defendants.¹¹⁵ However, there are no child-specific policies in place,¹¹⁶ demonstrating a lack of regard for the potential psychological impacts that such proceedings may cause for children, as well as their additional practical needs, such as child-friendly explanatory materials.

Other social and cultural rights

- Healthcare: The Hong Kong government provides a large range of public medical services. The Integrated Child Health and Development Programme carries out vaccinations and developmental checks for babies and early years children; primary school-aged children can take advantage of the School Dental Care Service; and both primary and secondary school-aged children are entitled to annual comprehensive health checks through the Student Health Service.¹¹⁷ (*Article 24, UNCRC*)
- Education: Primary and junior secondary education is free, universal and compulsory in Hong Kong. Senior secondary education is also free but is non-compulsory.¹¹⁸ (*Article 28, UNCRC*)

¹¹⁴ Protection of Children and Juveniles Ordinance (Cap. 213).

¹¹⁵ Scully-Johnson A, "[Baseline Study on the Implementation of UNCRC Article 12 in Hong Kong](http://v2.childrenrights.org.hk/v2/archive/04concerns/BaselineStudyImplementationArticle12HK.pdf)" (Hong Kong Committee on Children's Rights 2020) <http://v2.childrenrights.org.hk/v2/archive/04concerns/BaselineStudyImplementationArticle12HK.pdf> See para. 142.

¹¹⁶ Ibid.

¹¹⁷ The Government of the Hong Kong Special Administrative Region of the People's Republic of China, "[Child's Health](https://www.gov.hk/en/residents/health/healthadvice/healthcare/childshealth.htm)" (GovHK) <https://www.gov.hk/en/residents/health/healthadvice/healthcare/childshealth.htm> (accessed 1 May 2025).

¹¹⁸ Leung F and others, "[Hong Kong SAR](https://isc.bc.edu/timss2019/encyclopedia/pdf/Hong%20Kong%20SAR.pdf)" (TIMSS & PIRLS International Study Center at Boston College 2019) <https://isc.bc.edu/timss2019/encyclopedia/pdf/Hong%20Kong%20SAR.pdf>.

- Protection from violence: Due to come into effect in January 2026, the Mandatory Reporting of Child Abuse Ordinance (Cap. 650) imposes a legal obligation on certain professionals, including but not limited to medical practitioners, teachers, and social workers, to report suspected cases of child abuse and/or the risk of such.¹¹⁹ (*Article 19, UNCRC*)
- Provision of Integrated Family Services: To promote the development and well-being of babies and young children, the Hong Kong Family Welfare Society (HKFWS) provides child-centred, family-focused and community-based integrated family services, ranging from childcare, to financial assistance, to support for mental and psychological health.¹²⁰ While such services are accessible to all, priority is given to single parents and families that are low-income, of an ethnic minority background, and/or new to Hong Kong.¹²¹ (*Preamble and Articles 3, 6 and 18, UNCRC*)
- Participation in local governance: Modelled after similar successful initiatives such as the Youth Parliament in the United Kingdom (UK), Hong Kong's Children's Council provides an opportunity to ensure the representation of children's views in child-related policies.¹²² 70 Child Councilors serve one-year terms, where they promote awareness of the UNCRC and respect for UNCRC rights, and are given a public platform through a yearly Children's Council Meeting to voice their opinions and participate in decision-making on issues that pertain to them.¹²³ (*Article 12, UNCRC*)

¹¹⁹ Mandatory Reporting of Child Abuse Ordinance (Cap. 650).

¹²⁰ Hong Kong Family Welfare Society, "[Integrated Family Services](https://www.hkfws.org.hk/en/how-we-help/integrated-family-services/integrated-family-service-centre)" (*Hong Kong Family Welfare Society*) <https://www.hkfws.org.hk/en/how-we-help/integrated-family-services/integrated-family-service-centre> (accessed 1 May 2025).

¹²¹ Ibid.

¹²² Hong Kong Committee on Children's Rights, "[Achievements](http://v2.childrenrights.org.hk/v2/web/index.php?page=05achievements00&lang=en)" (*Hong Kong Committee on Children's Rights*) <<http://v2.childrenrights.org.hk/v2/web/index.php?page=05achievements00&lang=en>> (accessed 1 May 2025).

¹²³ Ibid.

Challenges in Upholding Children's Rights

In recent years, it has been observed that while protections for the rights of babies and young children do exist in Hong Kong, as explored above, more work is needed to combat discrimination against certain groups of children. Research suggests that children with disabilities, undocumented children of migrant workers, and refugee and asylum-seeking children are more likely to face barriers when accessing basic services such as education and healthcare.¹²⁴ For example, compared to their ethnically-Chinese counterparts, children from an ethnic minority background have reported experiencing differentiated treatment and a lack of equal opportunities to succeed throughout their schooling.¹²⁵ It is thus pertinent for the government and civil society actors to work together to formulate policies and implement programmes not only to ensure baseline protections for all children on paper, but also to promote equity of outcomes in practice.

Key Takeaways

There are several lessons that Scotland can learn from the strengths and drawbacks of the frameworks governing the rights of babies and young children in Hong Kong. Firstly, it would be beneficial to ensure sufficient training for all professionals that come into contact with children, to ensure that their views and needs are taken into account, dealt with and represented in a sensitive and accurate way. In line with this, it is also pertinent to implement child-specific provisions. Scotland should also follow in Hong Kong's footsteps and pass legislation on mandatory reporting of child abuse to better safeguard the health and wellbeing of babies and early years children. At the same time, it could learn from Hong

¹²⁴ Kapai P and others, "[A Comparative Study on Children's Rights Education: Implications for Policy Reform in Hong Kong](https://www.socsc.hku.hk/ssc_pdf/reports/youth/UNICEFPolicyBrief.pdf)" (The University of Hong Kong 2015) https://www.socsc.hku.hk/ssc_pdf/reports/youth/UNICEFPolicyBrief.pdf.

¹²⁵ Kapai P and Lalvani R, "[Dreams of Pakistani Children: In-Depth Conversations with 22 Girls and 3 Boys](https://wsrweb.hku.hk/_files/ugd/63a904_ebe5066555014f2586578ba8190b269b.pdf)" (Centre for Comparative and Public Law, The University of Hong Kong 2019) <https://wsrweb.hku.hk/_files/ugd/63a904_ebe5066555014f2586578ba8190b269b.pdf>.

Kong's shortcomings in terms of tackling discrimination and encouraging equity of outcomes for all children and implement programmes to ensure that no child is left behind.

India

Best Practices

- *Judicial Reliance on International Norms: Courts increasingly invoke the UNCRC and related instruments to bolster interpretations of domestic law.*
- *Strengthened Oversight Bodies: The NCPCR and some active SCPCRs have launched guidelines on child-friendly justice and school safety.*
- *Policy Attention to Early Childhood: ICDS and the ECCE Policy indicate a growing recognition of the importance of early years, even if their execution remains flawed.*

Introduction

This report examines India's efforts to realise the rights of children, with a special focus on babies, a group often subsumed within broader child protection narratives. Drawing upon constitutional, legislative, institutional, and judicial frameworks, the report identifies both structural strengths and operational gaps. It concludes that while India has made notable progress in constructing a normative architecture for children's rights, the rights and specific needs of babies remain inadequately addressed.¹²⁶

India ratified the UNCRC in 1992, thereby committing to uphold the principles of survival, development, protection, and participation for all individuals under the age of 18.¹²⁷ While the Indian Constitution and several child-specific laws reflect this commitment, implementation is hindered by systemic fragmentation, resource constraints, and insufficient child-centred planning—particularly for babies.

¹²⁶ Butterflies NGO, "[Situation of Children & Child Rights in India - Butterflies NGO - Child Rights, Street Children](https://butterfliesngo.org/resource/situation-of-children-child-rights-in-india/)" (Butterflies NGO - Child Rights, Street Children - Butterflies NGO - Child Rights, Street Children, February 4, 2022) <<https://butterfliesngo.org/resource/situation-of-children-child-rights-in-india/>>.

¹²⁷ [Convention on the Rights of the Child](#), adopted 20 November 1989, ratified by India on 11 December 1992.

This report analyses the operationalisation of children’s rights in India with a specific lens on babies. It evaluates legislative design, institutional mechanisms, judicial interpretations, and programmatic initiatives to assess how effectively India meets its obligations under international law.

Relevant Legal Framework

Constitutional Provisions

The Constitution of India recognises children as a vulnerable class warranting affirmative action:

- *Article 15(3)* empowers the State to make special provisions for children.
- *Article 21* (right to life) and *Article 21A* (right to education) guarantee fundamental rights critical for a child’s development.
- Directive Principles such as *Articles 39(e), 39(f), 45, and 47* mandate the State to ensure children’s health, education, and dignity.¹²⁸

However, none of these explicitly distinguish babies from older children, creating interpretative ambiguity in rights application for the youngest age group.

Key Child Protection Laws

1. *Juvenile Justice (Care and Protection of Children) Act, 2015*: This is India’s primary legislation on child welfare and protection. While it provides a comprehensive framework for children in need of care, it lacks baby-specific provisions, particularly regarding non-verbal communication, trauma, or early developmental needs.¹²⁹
2. *Protection of Children from Sexual Offences (POCSO) Act, 2012*: POCSO criminalises all forms of sexual violence against minors. Although babies fall within its ambit, procedural mechanisms are ill-equipped to respond to the unique challenges of non-verbal victims.¹³⁰

¹²⁸ [Constitution of India](#), Articles 15(3), 21, 21A, 39(e), 39(f), 45, 47.

¹²⁹ [Juvenile Justice \(Care and Protection of Children\) Act, 2015](#), ss 2, 27, 36–38.

¹³⁰ [Protection of Children from Sexual Offences Act, 2012](#).

3. *Right of Children to Free and Compulsory Education Act, 2009*: This Act mandates free education for children aged 6–14. While not directly applicable to babies, its operational linkages with Integrated Child Development Services (ICDS) underscore the need for early intervention in child development.¹³¹
4. *Commissions for Protection of Child Rights Act, 2005*: This Act establishes the *National Commission for Protection of Child Rights (NCPCR)* and its state counterparts. These bodies have wide mandates but limited enforcement authority and often lack babies and young children focused protocols.¹³²
5. *Mental Healthcare Act, 2017*: This legislation includes children in its ambit but fails to delineate age-specific approaches. Babies and young children are not considered distinct from older children, despite the developmental differences that significantly affect diagnosis and treatment.¹³³

India and the UNCRC

Although the UNCRC is not incorporated into a single domestic statute, its principles influence child-centric laws and judicial reasoning. References to the UNCRC in the preambles of both the JJ Act and POCSO Act reinforce its interpretive utility.¹³⁴ However, full domestic operationalisation, particularly Article 12 (right to be heard) and Article 6 (right to life, survival, and development) remains incomplete for the youngest children.

Judicial Contributions

Indian courts have expanded the interpretation of Article 21 to encompass children's dignity, health, and freedom from exploitation. In *Lakshmi Kant Pandey v. Union of India*, the

¹³¹ [Right of Children to Free and Compulsory Education Act, 2009](#); linked to ICDS via ECCE policy.

¹³² [Commissions for Protection of Child Rights Act, 2005](#), s 13.

¹³³ [Mental Healthcare Act, 2017](#), s 18

¹³⁴ Vemuri et al., "[Legal Architecture of Child Rights in India](#)," *Educational Administration: Theory and Practice*(2024).

Supreme Court prioritised the child's best interest in adoption.¹³⁵ However, jurisprudence on babies' participatory rights or psychological well-being remains sparse.

Practical Implementation and Policy

Oversight Institutions

1. *Child Welfare Committees (CWCs)*: These bodies adjudicate cases involving children in need of care and protection. However, members often lack training in developmental psychology or trauma-informed approaches which is critical for babies.
2. *District Child Protection Units (DCPUs)*: Responsible for on the ground implementation, these units are understaffed and underfunded, limiting their capacity to address the nuanced needs of babies.
3. *Specialised Adoption Agencies (SAAs)*: While mandated to care for abandoned or orphaned babies, procedural delays and inadequate mental health support can impede timely placement and integration.¹³⁶

Integrated Child Development Services (ICDS)

ICDS offers nutrition, immunisation, and health check-ups for children under six through Anganwadi centres. However, issues of uneven access, poor infrastructure, and undertrained workers reduce its efficacy, especially in rural and marginalised communities.¹³⁷

National ECCE Policy (2013)

This policy affirms the importance of early childhood education but remains non-binding. Without statutory force, its principles are implemented inconsistently across states.¹³⁸

¹³⁵ [Lakshmi Kant Pandey v. Union of India](#), AIR 1984 SC 469.

¹³⁶ Johnson C, "[Child Rights in India: Legal Frameworks and Implementation Challenges](#)," *IJLMH* (2023).

¹³⁷ Butterflies NGO Report (n 1)

¹³⁸ [National Early Childhood Care and Education \(ECCE\) Policy](#), Ministry of Women and Child Development (2013).

Mental Health and Non-Verbal Expression

There is no systemic inclusion of babies' mental health in public healthcare or legal systems. The lack of trained child psychologists, absence of behavioural screening protocols, and failure to interpret non-verbal distress signals leave significant rights unaddressed.¹³⁹

Challenges

Representational Gaps

Legal processes generally allow for guardians or PILs to represent children, but babies and young children remain invisible in participatory structures. Their preferences, emotions, or distress signals are neither interpreted nor formally incorporated into legal or welfare decisions.¹⁴⁰

Article 12 and Non-Verbal Participation

India has yet to adopt innovative participation methods such as symbolic or interpretive communication tools for non-verbal children. The result is a protectionist paradigm that denies babies agency, contrary to the spirit of the UNCRC.¹⁴¹

Regional Disparities and Fragmentation

Due to India's federal structure, implementation varies widely between states. Some states have invested in ECCE and child protection services, while others lag behind in resourcing and staffing institutions like CWCs and DCPUs. This inconsistency undermines the principle of equal rights for all children, regardless of geography.¹⁴²

¹³⁹ Srinivasan et al, "[A Comparative Review of UNCRC and Indian Legislation from the Child Mental Health Perspective](#)," *Indian Journal of Psychological Medicine* (2024).

¹⁴⁰ Child Rights International Network, "ACCESS TO JUSTICE FOR CHILDREN: INDIA" (2014) <https://archive.crin.org/sites/default/files/india_access_to_justice.pdf>.

¹⁴¹ Article 12, UNCRC; see also Vemuri et al. (2024).

¹⁴² Kuriakose Hannah, "[India's \(Non\)Compliance with Children's Rights in Conflict Zones](#)," *Michigan Journal of International Law Blog* (2025).

Recommendations for India that could provide Learning for Scotland

India's efforts to strengthen the rights of babies and very young children offer instructive insights that could inform policy thinking in Scotland. While the contexts differ, several proposed reforms in India could provoke reflection and adaptation in Scottish frameworks, especially in advancing early childhood rights in practice.

Legal and Policy Reform

- **India:** Amend the Juvenile Justice (Care and Protection of Children) Act to explicitly recognise baby-specific needs and participation methods. Codify key UNCRC principles through a comprehensive child rights framework.
- **Learning for Scotland:** Consider whether existing legislation (e.g. the Children (Scotland) Act 1995 and Children and Young People (Scotland) Act 2014) adequately reflects the rights and needs of infants, including their participation rights under Article 12 UNCRC.

Capacity Building

- **India:** Provide training for Child Welfare Committees (CWCs), District Child Protection Units (DCPUs), and judges in early childhood development and non-verbal communication. Require certification in trauma-informed care for professionals working with babies.
- **Learning for Scotland:** Explore whether similar capacity-building measures could benefit Scottish children's hearings and child protection systems, particularly in infant-specific communication and trauma-responsive care.

Infrastructure Strengthening

- **India:** Create baby- and toddler-friendly spaces in courts, child care institutions, and health facilities. Expand access to child-centred mental health professionals and early developmental screening.
- **Learning for Scotland:** Reflect on whether Scottish justice and care settings provide truly infant-friendly environments, and whether early intervention systems are equipped to identify and respond to infant mental health needs.

Participation Innovation

- **India:** Develop symbolic and interpretive participation methods to reflect babies' emotions and preferences. Involve caregivers and professionals in collaborative interpretation practices, in line with Article 12 UNCRC.
- **Learning for Scotland:** Assess how the participation rights of non-verbal children are currently operationalised in Scotland, and whether interpretive participation could be further developed.

Monitoring and Accountability

- **India:** Strengthen the enforcement powers of national and state child rights commissions. Establish child-specific audit systems for early years services.
- **Learning for Scotland:** Consider whether Scotland's existing oversight bodies effectively monitor infant rights and services, and whether more granular, infant-sensitive indicators are needed in audit and evaluation frameworks.

Key Takeaways

India's child rights framework offers valuable lessons for Scotland. Despite a strong normative foundation — anchored in its Constitution and a wide-ranging legislative landscape — India faces persistent challenges in translating rights into practice, particularly for babies and very young children. Operational inconsistencies, fragmented

implementation, and a limited recognition of babies as active rights-holders, rather than passive recipients of protection, continue to undermine progress. This underscores a critical learning point: even a robust legal architecture can fall short without age-sensitive operationalisation and a deliberate commitment to recognising infants' agency. For Scotland, where child rights are increasingly embedded in law and policy, India's experience offers a compelling reminder of the importance of implementation mechanisms that are tailored to the developmental realities of the youngest children.

Iraq

Best Practices

- *Ratification of the UNCRC and two of its Optional Protocols*
- *Constitutional right to litigation*
- *Some recognition of the ‘best interests’ of children*
- *National and Sub-National Childhood Care Units have recently been launched*

Introduction

This section examines access to justice and the operationalisation of children’s rights, with reference to babies and young children in Iraq.

Iraq ratified the UNCRC in 1994, albeit with a reservation to Article 14(1), concerning the right of the child to ‘freedom of thought, conscience and religion.’¹⁴³ Under Iraqi law, aligned with the UNCRC, a child is defined as anyone under the age of 18.¹⁴⁴ Whilst Iraq has signed the first two Optional Protocols to the UNCRC, it has yet to sign the third, which would establish a complaints mechanism for children whose rights have been violated.

Despite this, Iraq’s domestic legal system contains limited provisions relating to childhood in its entirety, let alone specific protections for babies and young children. The country’s long history of conflict, political instability and weak governance has significantly undermined the enforcement of children’s rights and has thus restricted children’s access to justice throughout its transition. Children’s access to justice, especially for babies and young children, remains a severely underdeveloped and under-researched subject within Iraq’s legal and institutional system, and there are few documents available publicly. There is also

¹⁴³ Institute for International Law and Human Rights, ‘[Legislative review of draft law on child protection](#)’ (May 2023) p5.

¹⁴⁴ Terre des hommes, ‘[Child-friendly legal aid standards and procedural guidelines in Iraq](#)’ (July 2023) p3.

no formal court reporting process in Iraq, which significantly restricts public access to judicial decisions and limits knowledge around how children's rights are addressed in practice. Therefore, there is considerable doubt whether Iraq is actively implementing a child-centred approach within its domestic law and policies.

Although Iraq has laws in place that reference children, such as the Juvenile Welfare Law and various family law provisions, none of these are explicitly accessible to the needs of babies and young children. The Constitution recognises that litigation is a guaranteed right for all, which means that children and their representatives can bring actions before national courts to challenge rights violations, but a child cannot do so alone under the age of 18.¹⁴⁵ The legal system lacks any institutional equivalent to a Children's Commissioner or ombudsman, and no official monitoring body exists to ensure the implementation of child rights protections or their participation in legal processes.¹⁴⁶

Barriers to Justice for Babies and Young Children

Barriers to justice for children in Iraq start as early as birth due to strict regulations around access to civil documentation. Under Iraq's Birth and Death Registration Law 1971, birth certificates are only issued to children born within wedlock, and under the Personal Status Law 1959, proof of paternity is required for the registration of the child.¹⁴⁷ As a result, children born out of wedlock or with unspecified or unknown fathers are denied legal identity and nationality and risk becoming stateless. As Human Rights Watch (HRW) reports, girls and women are required to provide proof of marriage to give birth in hospitals or to access maternal care, creating additional barriers for both mother and child.¹⁴⁸ This also affects the custody of the child, because although mothers are favoured to hold custody of children, this is not possible without such documentation, further complicating this amendment.¹⁴⁹

¹⁴⁵ Child Rights International Network (CRIN) and DLA Piper, '[Access to justice for children: Iraq](#)' (June 2015) p3.

¹⁴⁶ Ibid, pp17-18.

¹⁴⁷ Human Rights Watch (HRW), '[Iraq: Submission to the UN Committee on the Rights of the Child](#)' (HRW.org, 27 March 2024) (accessed 1 May 2025).

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

In the regions formally controlled by the violent extremist group Da'esh, the United Nations Children's Fund (UNICEF) estimates that up to 25% of children under the age of 5 lack birth certificates due to a lack of functional birth registration systems.¹⁵⁰ UNICEF adds that children without documentation are excluded from accessing most public services and social protection schemes, including education, health care, employment, food distribution, housing and social protection schemes.¹⁵¹ This is detrimental, as it means that children in such situations are not officially acknowledged by the state to hold any rights, rendering the protections of the UNCRC ineffective, thus reducing access to justice.

Research by CRIN¹⁵² and other organisations identifies the following barriers:

- Absence of legislative provisions for children to be heard and to express their own views, as outlined in Article 12 UNCRC
- Prevalent use of corporal punishment
- Lack of any formal complaint mechanism accessible to children
- Discrimination against minority children, including ethnic and religious groups who face attacks against them with impunity and is compounded by legislative and practical barriers to justice
- Absence of court reporting and transparency, making it difficult to publicly access information that allows an evaluation of children's rights or legal precedents¹⁵³

Children affected by displacement and poverty face even greater risks. Following years of armed conflict and political instability, hundreds of thousands of children have faced internal displacement, a high exposure to violence and limited access to basic services.¹⁵⁴ This leaves children of all ages without legal, psychological or medical support.¹⁵⁵ UNICEF has described child poverty in Iraq as 'multifaceted', with nearly 50% of children living in

¹⁵⁰ UNICEF, '[Child Protection: Iraq](#)' (UNICEF.org, n.d.) (accessed 1 May 2025).

¹⁵¹ Ibid.

¹⁵² Child Rights International Network (CRIN) and DLA Piper, '[Access to justice for children: Iraq](#)' (June 2015) pp17-18.

¹⁵³ Ibid.

¹⁵⁴ International Rescue Committee (IRC), '[Early Childhood Development IRC Iraq](#)' (February 2023) p1.

¹⁵⁵ UNICEF, '[Child Protection: Iraq](#)' (UNICEF.org, n.d.) (accessed 1 May 2025).

poverty, particularly in rural areas, and are unable to access adequate child protection.¹⁵⁶ An additional factor affecting children's access to justice in Iraq is that early childhood education (ECE) enrolment rate in 2023 was only 9%, showing the country's severe lack of access to critical early years education.¹⁵⁷

Key Takeaways

Despite ratifying the UNCRC, Iraq has not integrated a significant number of its key provisions into domestic legal practice, especially concerning babies and young children. Key issues include:

- *Children born outside of marriage face legal exclusion from civil documentation, effectively denying them a legal identity.*
- *Children are unable to independently access the justice system and must rely on adults, which disadvantages those without legal guardians or documentation.*
- *Iraq lacks a child-centred complaints mechanism, ombudsman or any specialised institution to protect children's rights.*
- *Displaced and minority children are particularly vulnerable due to barriers such as poverty, statelessness and systemic discrimination.*
- *Early-childhood development and legal protection of children is severely under-prioritised.*

In a 2016 CRIN report, Iraq's system was ranked 175 out of 197 states, indicating one of the poorest access to justice mechanisms for children globally, and little has improved since.¹⁵⁸ Positive initiatives such as the establishment of National and Sub-National Childhood Care Units within the past year mark a significant step forward in focus on child welfare and

¹⁵⁶ UNICEF, '[Country Office Annual Report 2023: Iraq](#)' (August 2023) p1

¹⁵⁷ Ibid p2.

¹⁵⁸ CRIN, '[Rights, Remedies and Representation](#)' (January 2016) p43.

access to justice.¹⁵⁹ However, a draft child protection law has remained pending and under consideration for over a decade and is yet to be adopted.¹⁶⁰ Iraq's gaps in access to justice for babies and young children offer cautionary lessons for Scotland. The absence of child-centred mechanisms, delays in legislative reforms and a lack of enforcement mechanisms in Iraq show the importance of maintaining a rigidly implemented, timely and responsive child justice system that prioritises the protection of children in their early years.

¹⁵⁹ UNICEF, '[Government of Iraq launches National and Sub-National Childhood Care Units to strengthen child protection services](#)' ([UNICEF.org](#), 13 July 2024) (accessed 1 May 2025).

¹⁶⁰ United Nations Convention on the Rights of the Child (UNCRC), '[List of issues in relation to the combined fifth and sixth periodic reports of Iraq](#)', UN Doc. CRC/C/IRQ/Q/5-5 (10 October 2024) p1.

Italy

Best practices

- *Incorporation of the UNCRC (however, regional differences)*
- *Application of the UNCRC right to be heard and best interests principle in family law cases*
- *Integrated child and family support through cross-sectoral initiatives (e.g. legal desks and legal assistance through NGOs, children and women houses)*
- *Specialised institutions and free legal assistance through children's lawyers*
- *Strong civil society support for child rights advocacy and legal empowerment (e.g. Save the children Italy regional projects, Telefono Azzurro)*
- *Right to testify in court with no age limit*
- *Strong protections for child victims of violence and exploitation.*
- *Judges' initiative to simplify legal language to make procedures more accessible to children.*

Introduction

This section examines access to justice and the implementation of children's rights for babies and young children in Italy. Italy is a decentralised republic where responsibilities are shared between national, regional, and local levels. While criminal and civil justice fall under national jurisdiction, regions and municipalities play an important role in delivering child-related services such as education, social welfare, and family support, which affect access to justice.

Italy ratified the UNCRC in 1991, incorporating it into domestic law through Law No. 176/1991. The UNCRC has influenced both legislation and policy, particularly through the best interests of the child principle under Article 3, and the right to be heard under Article

12. Italian courts also draw on Article 31 of the Constitution, which commits the Republic to protect children and support families, as well as Article 117, which requires legislation to comply with international obligations. However, the UNCRC is not always directly invoked in court, and references to the specific rights and needs of babies and very young children remain limited.

Italy has established a specialised juvenile justice system and developed various mechanisms such as diversion, restorative justice, and mediation. NGOs and local actors play a key role in ensuring child-friendly procedures and multidisciplinary collaboration. Nevertheless, while there are general legal guarantees for children, and some provisions for those under 12, there is a lack of focused attention on access to justice specifically for babies and young children.

The analysis that follows explores the legal and institutional framework, relevant jurisprudence and international standards, and the practical implementation of child rights in Italy.

Relevant Legal Framework

Criminal Code: Capacity to Testify (General Principle)

Article 196 of the Italian Code of Criminal Procedure establishes that every person has the capacity to testify. There are no explicit age limits for testifying in criminal and civil proceedings.¹⁶¹

Obligation to Be Heard: from Article 12 UNCRC to the Italian Civil Code

Italian law introduces specific requirements and obligations for *being heard* in proceedings concerning the child:

¹⁶¹ Italian Code of Criminal Procedure, R.D. 18 October 1930, n. 1398, last modified 22 April 2025, art. 196.

1. *Article 315 bis (3) of the Civil Code:*¹⁶² this is a core provision establishing the right (and obligation for the judge) for a child aged 12 or older, and even younger if capable of discernment, to be heard in all matters and procedures concerning them. This applies particularly to proceedings regarding family law. In case of children under the age of 12, capacity of discernment is understood as the child's ability to form their own views, understand events, elaborate concepts, and make autonomous decisions. It relates to understanding their affective and emotional needs and being able to represent them. To determine this capacity, Judges, experts, or auxiliaries assess this capacity, taking into account factors such as: age, basic cognitive abilities, emotional and affective development, analysis of the context and relational dynamics, ability to distinguish fantasy from reality, level of suggestibility, concentration, attention, and linguistic abilities, ability to distinguish their own emotions from others.¹⁶³
2. *Article 336 bis and 337 octies of the Civil Code:*¹⁶⁴ these articles specify *who* conducts the hearing (the presiding judge or delegated judge) in proceedings where decisions concerning the child must be made. It also allows the judge to use experts or other auxiliaries. Parents, lawyers, the special curator, and the public prosecutor may be allowed to participate if authorised by the judge, proposing questions beforehand. The child must be informed about the nature and effects of the hearing. The hearing of the child is considered a necessary step (*adempimento necessario*) in judicial procedures regarding them, especially concerning their custody. The omission of the hearing of young children aged at least 12, or younger if capable of discernment, without specific and reasoned justification, constitutes a violation and can lead to the nullity of the court's decision, which can be raised on appeal. The

¹⁶² Italian Civil Code, R.D. 16 March 1942, n. 262, last modified 28 March 2025, art. 315 bis (3).

¹⁶³ M. Malagoli Togliatti, P. Capri, P. Rossi, A. Lubrano Lavadera, M. Crescenzi, '[LINEE GUIDA PER L'ASCOLTO DEI MINORI NELLE SEPARAZIONI E NEI DIVORZI](#)'.

¹⁶⁴ Italian Civil Code, R.D. 16 March 1942, n. 262, last modified 28 March 2025, arts. 336 bis; 337 octies.

judge may decide *not* to hear the child if it is deemed against the child's best interest or "manifestly superfluous", but this decision must be explicitly motivated.¹⁶⁵

3. *Article 371, comma 1 of the Civil Code:*¹⁶⁶ in hearings regarding family law, when the location of upbringing of the child is to be determined, the tutelary judge must hear the opinion of a child aged 10 or older, or younger than 10 if capable of discernment directly impacted by the decision.

Relevant Legislation

Legislative Decrees

In the past 10 years, legislative Decrees have amended the Civil Code and introduced provisions to strengthen the role of children,¹⁶⁷ provided for alternative dispute resolution mechanisms, including in family matters, where children may be indirectly involved,¹⁶⁸ establishes special protections for child victims in criminal proceedings (protected hearings, legal assistance, and measures to prevent secondary victimisation),¹⁶⁹ introduced measures for enhancing restorative justice programs for children and young people, and amended the organisation of judicial offices, with Juvenile Courts (Tribunale per i minorenni) set to be replaced by the Court for Persons, Minors and Families (Tribunale per le persone, per i minorenni e per le famiglie) from October 2024.¹⁷⁰

Laws

Through the introduction of new laws, there have been improvement regarding the rights of children and their access to justice. For instance, for foreign children, the role of voluntary

[165 Il diritto all'ascolto delle persone di minore età in sede giurisdizionale. Indagine relativa alle modalità messe in atto sul territorio nazionale dai tribunali per i minorenni, tribunali ordinari e relative procure della Repubblica](#) (Autorità Garante per l'Infanzia e l'Adolescenza AGIA) April 2020.

¹⁶⁶ Italian Civil Code, R.D. 16 March 1942, n. 262, last modified 28 March 2025, art. 371(1).

¹⁶⁷ Legislative Decree No. 154 of 2013 on the Reform of parentage.

¹⁶⁸ Legislative Decree No. 28 of 2005 and Legislative Decree No. 150 of 2011 on Mediation and simplified proceedings.

¹⁶⁹ Legislative Decree No. 212 of 2015 on Implementation of Directive 2012/29/EU on victims of crime.

¹⁷⁰ Legislative Decree No. 150 of 2022 (Riforma Cartabia).

guardian has been introduced, as well as the reinforcement of the right to be heard, of the right to legal assistance and access to individualised procedures.¹⁷¹ Moreover, there have been improvements in the promotion of rights and opportunities for children and adolescents which have enabled positive achievements in renewing the culture of childhood in Italy, allowing many associations to implement projects and encouraged the creation and growth of local experiences.¹⁷² Further, the participation of children has been improved through special national funds allocated for interventions in favour of children and adolescents, carried out by local administrations.¹⁷³ However, despite the legal opportunity, the right to be heard is not yet consistently applied throughout the 20 regions of Italy. Furthermore, children's opinions are rarely taken seriously, even when they are listened to, both within the family, school, and judicial/administrative contexts.¹⁷⁴

Juvenile Criminal Procedure Code (Decree of the President of the Republic (DPR)) *488/1988*

This decree is the foundation of the Italian juvenile procedure code. The main guarantees that the DPR offers are the right to information through an accessible justice system that requires children to understand proceedings,¹⁷⁵ and the guarantee of individual assessments: in criminal proceedings, the public prosecutor and judge are required by the DPR to collect information on the child's personal, family, social, and environmental resources to inform decisions, with social services (USSM) playing a crucial role. Specialised lawyers may also create their own reports.¹⁷⁶

Testimonies, Hearings and Conduction of Interviews

¹⁷¹ Law No. 47 of 2017 on Protection of unaccompanied foreign minors.

¹⁷² Law No. 285/97 of 28 August 1997.

¹⁷³ Law No. 285/97 of 28 August 1997.

¹⁷⁴ A. Saulini, '[The Rights of Children in Italy. PERSPECTIVES IN THE THIRD SECTOR. Supplementary Report to the United Nations](#)', (Save the Children Italy) November 2001.

¹⁷⁵ The DPR 488/1988 however lacks specific provisions on comprehensive and accessible information. Practice varies, and many young people report not receiving adequate information or understanding what was happening. Good practices exist, but their widespread dissemination and mandatory application are needed.

¹⁷⁶ Decree of the President of the Republic 488/1988.

Article 33 of the Juvenile Criminal Procedure Code mandates that hearings are behind closed doors unless a child aged sixteen and older request otherwise (with court evaluation). The testimony of children is considered a legitimate source of evidence (fonte legittima di prova).¹⁷⁷ Convictions can be based on children's declarations, particularly if they are corroborated. Children can be heard directly by the judge (ascolto diretto) or indirectly through experts or auxiliaries (ascolto indiretto).¹⁷⁸ The government undertook to review relevant articles (Articles 392.1 bis Code of Criminal Procedure and 498.4 ter Code of Criminal Procedure) establish that evidence from child victims must be given on pain of invalidity, in the form of a protected hearing (e.g., using a mirrored glass system to avoid meeting the accused, ad hoc locations specific rooms). This is particularly for child victims/witnesses to protect them from distress.¹⁷⁹ Further, Article 609 decies of the Code of Criminal Procedure on the protection of Victims/Witnesses grants specific protections for child victims and witnesses, including emotional and psychological assistance for victims of certain crimes.¹⁸⁰

The *Carta di Noto* ¹⁸¹ is a protocol of conduct adopted in Italy that provides guidelines for the protection of children who are victims of abuse and sexual exploitation in judicial proceedings. It was drafted by experts (judges, psychologists, lawyers, law enforcement officials) and promoted by *Telefono Azzurro* in collaboration with other institutional bodies. It ensures that children involved in legal proceedings (as victims or witnesses) are protected from further trauma during the investigation and trial phases, while respecting their rights and psychological needs. The *Carta* is not a law, but it is recognised as a best practice and

¹⁷⁷ Cass. Sez.III, 8/04/1958.

¹⁷⁸ [Il diritto all'ascolto delle persone di minore età in sede giurisdizionale. Indagine relativa alle modalità messe in atto sul territorio nazionale dai tribunali per i minorenni, tribunali ordinari e relative procure della Repubblica](#) (Autorità Garante per l'Infanzia e l'Adolescenza AGIA) April 2020.

¹⁷⁹ [Access to Justice for Children: Italy](#) (Child Rights International Network (CRIN) January 2014.

¹⁸⁰ Italian Code of Criminal Procedure, R.D. 18 October 1930, n. 1398, last modified 22 April 2025, art. 609 decies.

¹⁸¹ [\[?\]](#), 14 October 2017., 14 October 2017.

is often adopted by Italian public prosecutors' offices to properly handle cases involving children who are victims of violence or abuse.¹⁸²

Relevant Jurisprudence

Italy operates under a civil law system, and cases regarding children, especially under the age of 16, are not systematically published. However, as the UNCRC is directly applicable in Italy, children's access to justice is influenced by the recognition of children's rights as outlined in the Convention.

The Italian Supreme Court (Cassazione Civile) has issued rulings relevant to listening to children in judicial proceedings and has confirmed that the hearing of the child is a necessary step in procedures concerning custody, and a key element in evaluating their interest.¹⁸³ In multiple cases,¹⁸⁴ the Court has discussed the concept of listening to children as an essential step to ensure the respect of their right to be heard and of the respect of their best interests,¹⁸⁵ with the possibility of annulment of decisions in case the children's opinions were not considered.

While the evaluation of the best interest and the application of the right to be heard are becoming more prominent and are indeed recognised in the legal framework, there are however numerous gaps in their application in Courts. They are not consistently applied throughout Italy children's opinions are rarely taken seriously, approaches are still adult-centred, children do not receive adequate information to exercise these rights, the application of such rights too often depends on the judge's discretion, and discrimination of foreign children and Roma undermine the exercise of such rights.¹⁸⁶

¹⁸² [Carta di Noto IV, 'Linee guida per l'esame del minore'](#), 14 October 2017.

¹⁸³ [Cass. Civ sez I, 26/03/2015, n. 6129.](#)

¹⁸⁴ [Cass. Civ. sez. I, 16/02/2018, n. 3913](#), [Cass. Civ. Sez. I, 17/04/2019, n. 10076.](#)

¹⁸⁵ [Cass. Civ., sez. I, 29/08/2024, n. 23320](#); [Cass. Civ., sez. I, 14/08/2023, n. 24626](#); [Cass. Civ., sez. I, 21/01/2023, n. 2881](#); [Cass. Civ., sezioni Unite Civili, 30/12/2022, n. 38162](#); [Cass. Civ., sez. I, 13/02/2020, n. 3643](#); [Cass. Civ., sez. I, 22/12/2016, n. 26767.](#)

¹⁸⁶ [Saulini, A., 'The Rights of Children in Italy. PERSPECTIVES IN THE THIRD SECTOR. Supplementary Report to the United Nations'](#), (Save the Children Italy) November 2001; [Just Closer: La Giustizia A Misura Di Minorenne: La Voce Dei Ragazzi E Delle Ragazze In Italia](#) (Defence for Children International Italia).

Practical Implementation and Policy

Initiatives to Guarantee Access to Justice (Formal and Non-Exclusive)

Specialised justice system

Italy has established specialised institutions and professionals dedicated to children within the justice system. This includes Child Prosecution Offices, Child Courts, replaced by the Court for Persons, Minors and Families from October 2024, aiming for specialised judges, Child Legal Aid, and Child Social Work Services. Specialised professionals include child prosecutors, judges, lawyers/paralegals, and social workers.¹⁸⁷

Legal assistance and fair trial guarantees

Italian legislation provides guarantees for children involved in proceedings, including the right to free legal assistance at all stages of criminal proceedings. Children, like adults, are guaranteed principles of due process, such as the right to a fair trial and the right to legal assistance. The system is moving towards ensuring that a guardian or appropriate adult can be informed when informing parents is contrary to the child's best interests, following an EU infringement procedure.¹⁸⁸

Role of representatives and actors

Generally, a child (under 18) needs the assistance of a parent, guardian, or representative to bring a case to court. However, there are exceptions, such as children aged 14 or older who can lodge criminal complaints with or without parental consent.¹⁸⁹ Additionally, while parents have the right and duty to represent their children in court, a special curator (curatore speciale) may be appointed by the judge to represent the child's interests, especially when parents are unable or unwilling to act on their behalf or when their interests

¹⁸⁷ [‘Access to justice for children. Country fact sheet: Italy’](#) (Terre des Hommes), June 2021.

¹⁸⁸ [‘Just Closer: La Giustizia A Misura Di Minorenne: La Voce Dei Ragazzi E Delle Ragazze In Italia’](#) (Defence for Children International Italia).

¹⁸⁹ [Access to Justice for Children: Italy](#) (Child Rights International Network CRIN) January 2014.

conflict with the child's. The appointment of a special curator is frequent practice in *de potestate* proceedings in juvenile courts.¹⁹⁰

Informal or Paralegal Access to Justice (Non-Exclusively Legal Ways)

Government Initiatives

The Italian Authority for Children and Adolescents (AGIA): it is an independent national institution that promotes child rights. Its functions include listening to children, providing opinions on legislative projects, reporting violations, and monitoring/inspecting facilities. It provides suitable forms of consultation, including those dedicated to young persons and family associations. AGIA facilitates consultation with children and association and promotes and protects child rights, including enhancing the theme of listening and participation of children.¹⁹¹ The culture of social mediation, as promoted by AGIA, is a successful practice, especially with vulnerable groups like Roma children. It involves using impartial third parties to facilitate dialogue between children/families and juvenile justice institutions. This involves providing information, explaining procedures, promoting contact, and supporting families.¹⁹² A crucial role is also played by social workers and educators: professionals in social services, reception centres (like the Emergency Reception Centres - CPA), and communities provide practical support, explanation of procedures, social and psychological assistance, and aid reintegration. While part of the broader support system, their direct interaction and guidance help children engage with or navigate situations that might otherwise escalate to formal justice involvement.¹⁹³

¹⁹⁰ [Il diritto all'ascolto delle persone di minore età in sede giurisdizionale. Indagine relativa alle modalità messe in atto sul territorio nazionale dai tribunali per i minorenni, tribunali ordinari e relative procure della Repubblica \(Autorità Garante per l'Infanzia e l'Adolescenza AGIA\) April 2020.](#)

¹⁹¹ UN Committee on the Rights of the Child (CRC), [Concluding observations on the combined fifth and sixth periodic reports of Italy](#), CRC/C/ITA/CO/5-6 (28 February 2019).

¹⁹² [Child Rights and Juvenile Justice. Best Practices and Lesson Learned From Save The Children Italy National And International Programs](#) (Save the Children Italy) January 2016.

¹⁹³ ['Just Closer: La Giustizia A Misura Di Minorenne: La Voce Dei Ragazzi E Delle Ragazze In Italia'](#) (Defence for Children International Italia).

While part of the broader support system, their direct interaction and guidance help children engage with or navigate situations that might otherwise escalate to formal justice involvement.¹⁹⁴

NGOs and Civil Society Support

NGOs are essential in aiding children and their families to access justice. Legal front offices and assistance, e.g. Save the Children's project CLAIM, offer legal orientation and extra-judicial assistance, helping children and families navigate administrative procedures (immigration, citizenship, access to health, housing, education, work) and supporting contact with public services. This provides practical, non-court based legal support. Such organisations provide direct support, including legal aid services (distinct from formal legal aid in court), and implement projects for prevention, protection, and reintegration. They act as key partners in building a network of support and linking children to necessary services.¹⁹⁵

A lasting and fruitful project regarding access to justice for children is *Telefono Azzurro* NGO, Child Emergency Helpline: the Child Emergency Helpline (+114) is a free, multilingual service available nationwide in Italy, operating 24/7 throughout the year. Managed by SOS Il Telefono Azzurro Onlus under the auspices of the Department for Family Policies, it allows individuals to report situations of risk or emergency involving children and adolescents. The helpline offers multidisciplinary support, including psychological, psycho-pedagogical, legal, and sociological assistance, and functions within a multi-agency framework to coordinate with relevant social, judicial, and law enforcement authorities.

The role of civil society also regards awareness-raising and education: initiatives focus on informing children and the public about rights and preventing involvement in crime. Schools play a role in promoting rights and education for lawfulness.¹⁹⁶ Community-based initiatives

¹⁹⁴ ['Just Closer: La Giustizia A Misura Di Minorenne: La Voce Dei Ragazzi E Delle Ragazze In Italia'](#) (Defence for Children International Italia).

¹⁹⁵ [Child Rights and Juvenile Justice. Best Practices and Lesson Learned From Save The Children Italy National And International Programs](#) (Save the Children Italy) January 2016.

¹⁹⁶ [UN Study on Violence against Children. Response to the questionnaire received from the Government of the Italian Republic](#), July 2004.

and networks are also essential: as mentioned, Law 285/97 encouraged local services and collaborations between municipalities, health authorities, schools, social forces, and associations. This network provides a broader system of support and opportunities for children's involvement outside formal justice, such as participation in local environmental initiatives or children's town councils.¹⁹⁷

Key Takeaways

Italy has made important strides in recognising the rights of babies and young children within its legal system, particularly through its ratification of the UNCRC and the development of specialised institutions and procedures. Positive initiatives, such as restorative justice reforms, improved multidisciplinary collaboration, and the active role of organisations like Save the Children Italy, demonstrate growing awareness and commitment to child-friendly justice. While Italy has a formal specialised justice system for children, it also relies on a network of policies, non-exclusive legal mechanisms, and dedicated actors to facilitate access and participation, including diversion, various forms of mediation, social services, and the crucial work of NGOs and local community initiatives. Some of these highlighted here are:

- *Trained guardians: Italy appoints trained volunteer guardians for unaccompanied children.*
- *Professional training: Italian professionals (judges, social workers) receive mandatory training on children's rights.*
- *Expert input in Courts: Italy includes psychologists and social workers in juvenile court decisions. Scotland could increase expert involvement in early years cases.*

¹⁹⁷ [UN Study on Violence against Children. Response to the questionnaire received from the Government of the Italian Republic, July 2004.](#)

- *Specialised courts: Italy has dedicated juvenile courts. Scotland could explore more judicial specialisation for children's cases.*
- *Stronger oversight: Italy's national children's authority monitors rights enforcement. Scotland could expand the role of its Commissioner in justice matters.*

However, significant gaps remain between legal principles and practical implementation. Fragmented institutional responsibilities, inconsistent application of child participation rights, inadequate resources, strong differences throughout the 20 regions, and systemic delays continue to hinder meaningful access to justice, especially for marginalised groups such as unaccompanied foreign children and Roma children. Moreover, while there are laws and safeguards that refer to children, and even some that mention children under 12, there is still very little, if anything, specifically addressing access to justice for babies and very young children, especially in the legal framework and formal context.

Kenya

Best Practices

- *Robust provisions for access to justice in the constitutional framework, bolstered by UNCRC incorporation and specific child-focused legislation*
- *Strong National plan for procedural frameworks to implement access to justice for young children*
- *Comprehensive provisional model for specific application for the rights of babies and young children with potential for increased implementation*

Introduction

The 2010 Kenyan Constitution provides a robust legal framework for both children's rights and access to justice for all ages.¹⁹⁸ Article 2 of the Constitution directly incorporates all ratified international treaties - including the UNCRC - into the legal framework of Kenya, making these rights actionable within the judicial system.¹⁹⁹ Furthermore, Article 48 guarantees that 'The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice,'²⁰⁰ and Article 53 affirms this provision extends to children.²⁰¹ It also articulates specific rights for children, including the consideration of best interests as paramount.²⁰² The Children Act 2022 reinforces the constitutional provisions for children's rights - including specific provisions for access to justice, such as children's courts and alternative dispute resolutions for child-related matters.²⁰³

¹⁹⁸ Children's Rights International Network, 'Access to Justice for Children: Kenya' (CRIN, 2013) https://archive.crin.org/sites/default/files/kenya_access_to_justice_0.pdf (accessed: 1 May 2025).

¹⁹⁹ The Constitution of Kenya [Rev. 2002], Art. 2(6).

²⁰⁰ *Ibid*, Art. 48.

²⁰¹ *Ibid*, Art. 53.

²⁰² *Ibid*.

²⁰³ The Children Act, No.29 of 2022 (Kenya).

The strength of this legal framework for children’s rights and access to justice underpins the strong procedural frameworks that aim to implement and operationalise: the National Council of the Administration of Justice (NCAJ) Strategic Plan of 2021-2026 was implemented to improve access to justice for vulnerable persons, including children. The findings of these initial reports presented significant gaps in the implementation of child friendly justice such as a lack of child-friendly infrastructure, overburdened courts regarding cases involving children, and a lack of institutional capacity to support children.²⁰⁴ The following report, the 2023-2028 National Strategy on Justice for Children, seeks to close these gaps with a mission to achieve a ‘specialised justice system that respects, protects, upholds, and safeguards children’s rights and best interests’, and creating ‘a child-centric justice system that is responsive and accessible to all children’.²⁰⁵ Despite the inclusivity of this statement, the strategy does not make any specific reference to babies or early years children- representing a potential blind spot in the accessibility of justice for this age group. However, this may be because the approach to children’s access to justice for children in Kenya is primarily framed around the interaction of children with the justice system (i.e. children in conflict with the law), with a focus on children’s rights and protections as they relate to legal matters.²⁰⁶ Regardless, this strategy is still an excellent example of a procedural framework that could support access to justice for all ages; with attention to justice for babies and young children, the provisions of this model could be adapted to specifically support access to justice for this age group.

²⁰⁴ Ibid, Pp. 12.

²⁰⁵ National Council on the Administration of Justice, ‘National Strategy on Justice for Children 2023-2028,’ (National Council on the Administration of Justice, n.d.) <https://www.ncaj.go.ke/wp-content/uploads/download-manager-files/FINAL-NATIONAL-STRATEGY-ON-JUSTICE-FOR-CHILDREN-21st-feb-2024.pdf> (accessed: 1 May 2025) Pp.19.

²⁰⁶ Children’s Rights International Network, ‘Access to Justice for Children: Kenya’ (CRIN, 2013) https://archive.crin.org/sites/default/files/kenya_access_to_justice_0.pdf (accessed: 1 May 2025).

Practical Implementation and Policy

Strategic Model for the Efficient Administration of Child Justice

This model is headed by multiple guiding principles that align with international child justice standards, including the best interests of the child, utilising child-centred and rights-based approach, ensuring child participation and respect in proceedings, incorporating the right to privacy and legal representation in proceedings, among others. To ensure the effective implementation, Kenya has sought to strengthen specialist capacities within the justice sector and improve linkages between justice agencies, child protective service providers, families, and communities.²⁰⁷ Reform efforts have been distilled down to the following strategic areas:



Summary of Strategic Areas and Outcomes

Four ‘strategic areas’ have been selected from the larger report for in-depth discussion for their relevance to access to justice for babies and early years children.

²⁰⁷ National Council on the Administration of Justice, ‘National Strategy on Justice for Children 2023-2028,’ (National Council on the Administration of Justice, n.d.) <https://www.ncaj.go.ke/wp-content/uploads/download-manager-files/FINAL-NATIONAL-STRATEGY-ON-JUSTICE-FOR-CHILDREN-21st-feb-2024.pdf> (accessed: 1 May 2025) Pp. 21.

1. *Alternative Justice Systems:* Kenya introduced Alternative Justice Systems as a forum for the primary contact with children in all appropriate cases, offering an alternative to formal court proceedings. This framework promotes a more child-centered approach to disputes, such as custody matters, to ensure a ‘less adversarial and more strengths-based response to children in need of care and protection.’²⁰⁸ For babies and young children, alternative justice mechanisms are particularly valuable for keeping this more vulnerable age group out of formal legal settings where possible, while still supporting access to justice in a developmentally appropriate and sensitive manner.
2. *Support and Protection for Children Throughout the Justice Process:* Where a child does interact with the formal justice system, this strategy aims to curb any negative impacts by ‘ensuring protection for their legal rights as well as their emotional and psychological well-being’.²⁰⁹ Of particular concern in this area is the lack of child-friendly representation of children in legal cases. In response, numerous programs in Kenya have been introduced to streamline specialised training and capacity building for advocates and paralegals.²¹⁰ There is also a focus on developing the child’s access to legal/children’s rights information, including the development of accessible, child-friendly legal materials through resources like comic books and websites, and distributing these materials to schools.²¹¹ As babies and young children are particularly vulnerable to emotional and psychological harms when interacting with the justice system, it is important that they are offered tailored support and protection throughout their interaction. Training child-friendly representatives is particularly important to allow these individuals to best support access to justice for children who may be unable to advocate for themselves, like babies and young children. Furthermore, adapting legal/children’s rights information into child-friendly

²⁰⁸ *Ibid*, Pp. 27.

²⁰⁹ *Ibid*, Pp. 31.

²¹⁰ *Ibid*, Pp. 32-33.

²¹¹ *Ibid*, Pp. 33.

material allows children to understand what they are going through in an age-appropriate manner. It is important to further focus on babies and young children, adapting the information in ways that are accessible to them.

3. *Child-friendly and Expeditious Court Proceedings*: This strategic area is aimed at ensuring that the child can fully understand and participate in a courtroom environment and court procedures, where applicable.²¹² To this end, Kenya has made significant reforms to its justice system. This includes the establishment and expansion of Specialised Children's Courts, as mandated in the Children Act 2022.²¹³ To support child victims and witnesses in the courts, this area also highlights expanded capacity to use virtual testimony options to ensure protection of the child's privacy, and creating child-friendly spaces to provide testimony, protection boxes for children to block the view of a potential perpetrator, and other methods to make justice child-friendly.²¹⁴ Additional strategies have been implemented to make the courtroom appear less intimidating, especially to younger children.²¹⁵ Of particular interest here is the implementation of a 'one-stop Child Justice Center,' which combines all necessary legal bodies for a child under one roof to create a more integrated and expeditious response within one child-friendly space.²¹⁶ For babies and young children in particular, these innovations are critical to facilitating access to justice: by reducing the intimidating nature of court proceedings and fostering holistic, child-friendly support, the system becomes more inclusive of the youngest children.
4. *Coordination and Information Management*: Finally, the 'child justice system' consists of several core, linked agencies coordinated to ensure an efficient, child-friendly justice system.²¹⁷ Part of this system includes an optimised data

²¹² *Ibid*, Pp. 36.

²¹³ *Ibid*, Pp. 36.

²¹⁴ *Ibid*, Pp. 40.

²¹⁵ *Ibid*, Pp. 39.

²¹⁶ *Ibid*.

²¹⁷ *Ibid*, Pp. 45.

management plan and an integrated information management system for children in the justice system, and a multi-year research plan to identify and address gaps in relation to child justice.²¹⁸ For babies and young children, a unified and well-connected justice system allows for coordinated and child-centred efforts at all points of contact with the justice system, better supporting this age group's interaction with and access to justice through the justice system.

Key Takeaways

A national-level strategic and systematic policy focused on justice for children helps concentrate efforts to strengthen procedural frameworks for access to justice. Scotland's own strategy 'A Rights-Respecting Approach to Justice for Children and Young People' reflects this approach. The practices of other countries, such as Kenya, can offer valuable inspiration for updating and enhancing Scotland's plan. The strategic areas highlighted here offer a snapshot of lessons that can be learned. However, a critical takeaway is the lack of explicit reference to babies and young children in Kenya's plan. To best support access to justice for this age group, specific and intentional reference in procedural frameworks and improvement strategies is important.

Further Information

As an additional note, the African Child Policy Forum (ACPF), a research institute for African children, created the report 'Spotlighting the Invisible, Justice for Children in Africa.'²¹⁹ This report reflects the result of substantive country briefs and reports to determine the fundamental principles of child-friendly justice, its general elements, and a specific focus on 'vulnerable groups of children and barriers to their access to justice.'²²⁰

²¹⁸ *Ibid*, Pp. 46-47.

²¹⁹ - '[Spotlighting the Invisible, Justice for Children in Africa](#),' (2018) African Child Policy Forum.

²²⁰ *Ibid*, Pp. 97.

The Netherlands

Best Practices

- *Integrated Child and Family Support through Cross-Sectoral Initiatives (e.g. IKC, Centres for Youth and Family)*
- *Universal Access to Youth Health Care and Early Intervention (e.g. “Promising Start” and Infant Mental Health)*
- *Legal Recognition of the Right to be Heard, with Lowering Age Thresholds in Some Courts*
- *Child-Friendly Justice Innovations, Including Adapted Court Environments and Interview Standards*
- *Mandatory Local-Level Child Participation Policies as of 2025*
- *Strong Civil Society Support for Child Rights Advocacy and Legal Empowerment (e.g. Defence for Children, Jeugdstem)*

Introduction

This analysis focuses on how Dutch law and policy recognise, or overlook, the rights and voices of babies and young children. It highlights early intervention programmes and integrated services, while identifying key gaps in participation rights and legal representation for the youngest children. Lessons are drawn for Scotland to strengthen rights protections from birth. The Netherlands ratified the UNCRC on 5 February 1995, granting it immediate domestic effect.²²¹ However, not all UNCRC provisions are directly enforceable in Dutch courts. The applicability of individual provisions depends on whether they are considered to have direct effect, as determined by national courts.²²² The Dutch government has

²²¹ M. Limbeek and M. Bruning, ‘The Netherlands: Two Decades of the CRC in Dutch Case Law’ in T. Liefwaard, J. E. Doek (eds.), [Litigating the Rights of the Child: the UN Convention on the rights of the child in domestic and international jurisprudence](#) (Springer 2014) 89.

²²² *Ibid*, 90; see articles 93 and 94 of the Dutch Constitution.

nevertheless acknowledged that certain provisions satisfy this criterion.²²³ Despite this, the Dutch Constitution does not contain any explicit reference to children's rights. The only reference to a state duty toward children is found in Article 23, which deals with education.²²⁴

Relevant Legal Frameworks

*Youth Act (Jeugdwet)*²²⁵

The Youth Act applies to all children under the age of 18.²²⁶ It provides for the appointment of a confidential advisor (vertrouwenspersoon) to support children, parents, or foster parents in matters relating to youth care services, certified institutions, and domestic violence or child abuse reporting centres.²²⁷ The Child Judge (kinderrechter) is always required to hear the child in relevant proceedings.²²⁸

Dutch Civil Code

In various family law matters, such as adoption,²²⁹ divorce,²³⁰ or right of access arrangements,²³¹ a child under the age of 12 may be heard if deemed capable of forming a reasonable opinion. These provisions recognise that younger children can, in some cases, meaningfully participate in decisions affecting them.

*Artikel 809 of the Dutch Code on Civil Procedure*²³²

This provision requires judges to give children aged 12 or older the opportunity to express their views in legal matters concerning them, unless the case is of clearly minor importance.

²²³ *Ibid*; Articles 7(1), 9(2)(3)(4), 10(1), 12(2), 13, 14, 15, 16, 30, 37, and 40(2) of the CRC should be considered to have direct effect. Additionally, Articles 5, 8, and 12(1) may also be considered directly effective.

²²⁴ Article 23 Dutch Constitution; E. H. Ballin, 'Wat niet in de grondwet staat: kinderrechten' 23 May 2019 <https://www.nederlandrechtsstaat.nl/wat-niet-in-de-grondwet-staat-kinderrechten/>.

²²⁵ Jeugdwet, Stb. 2024, 323.

²²⁶ *Ibid*, Article 1.1.

²²⁷ *Ibid*, Article 1.1. and 4.1.9.

²²⁸ *Ibid*, Article 6.1.10.

²²⁹ Article 228 Burgerlijk Wetboek, Stb. 2023, 316.

²³⁰ Article 251a Burgerlijk Wetboek, Stb. 2023, 316.

²³¹ Article 377g Burgerlijk Wetboek, Stb. 2023, 316.

²³² Article 809 Wetboek van Burgerlijke Rechtsvordering, Stb. 2025, 24.

Judges may also choose to hear younger children but are not obligated to do so, even when the child explicitly requests it.²³³

Articles 815 and 828 of the Code of Civil Procedure and Article 1:247a of the Civil Code

Since 1 April 2009, parents are legally required to draft a parenting plan (ouderschapsplan) when divorcing. While this measure aims to ensure child participation and protect their best interests, studies suggest it has had little effect on children's wellbeing or on the degree of their actual involvement in the planning process.²³⁴

Relevant Jurisprudence

Under Dutch civil law, children are generally not considered legally competent to act as parties in legal proceedings.²³⁵ Typically, their legal representatives, parents with custody, guardians, or court-appointed special guardians (bijzondere curatoren), act on their behalf.²³⁶ The special guardian (bijzondere curator) plays a key role in protecting the child's interests during civil proceedings.²³⁷ The court may appoint one when the child's interests' conflict with those of their legal representatives. In matters of affiliation, such an appointment is standard. Although the appointment of special guardians has become more

²³³ A.Bolscher, M. Bruning, '[Het hoorrecht van minderjarigen: leeftijdsgrens nog houdbaar?](#)' in M.R. Bruning, K.F.M. Klep, E.C. Punselle (eds.), *De invloed van 30 jaar Kinderrechtenverdrag in Nederland: Perspectieven voor de rechtspraktijk* (Wolters Kluwer 2020).

²³⁴ G. Ruitenbergh, '[Kinderen in \(echt\)scheidingszaken. Nog een wereld te winnen?](#)' (2020) 69:6 *Ars Aequi*, 614-619.

²³⁵ M.R. Bruning, D.J.H. Smeets, K.G.A. Bolscher, J.S. Peper and R. de Boer, [Kind in proces: van communicatie naar effectieve participatie: Het hoorrecht en de procespositie van minderjarigen in familie- en jeugdzaken](#) (WODC 2020) 61; M. Limbeek and M. Bruning, 'The Netherlands: Two Decades of the CRC in Dutch Case Law' in T. Liefwaard, J. E. Doek (eds.), [Litigating the Rights of the Child: the UN Convention on the rights of the child in domestic and international jurisprudence](#) (Springer 2014), 92;

²³⁶ M.R. Bruning, D.J.H. Smeets, K.G.A. Bolscher, J.S. Peper and R. de Boer, [Kind in proces: van communicatie naar effectieve participatie: Het hoorrecht en de procespositie van minderjarigen in familie- en jeugdzaken](#) (WODC 2020), 60; In recent years, exceptions allowing minors to act independently in formal and informal legal proceedings have emerged throughout the Civil Code, but these are typically based on age thresholds of 12 or 16 years, see e.g. Article 29 Jeugdwet, Stb. 2024, 323 and Article 8:21, para 1 and 2 Algemene Wet Bestuursrecht, Stb. 2022, 261.

²³⁷ Article 1:250 Burgerlijk Wetboek, Stb. 2023, 316.

common in recent years, a significant proportion of requests are still denied, and they remain relatively underused in family and youth-related cases.²³⁸

Family Law

Under Dutch family law, the best interests of the child are strongly embedded, and courts actively apply the UNCRC.²³⁹ In cases involving long-term foster care, for example, Article 20 of the UNCRC has been cited. In a ruling by the Supreme Court in November 2013, the importance of the child's right to be heard was emphasised. The Court rejected the social worker's argument that it was in the child's best interest not to be heard, affirming that any exception to this right must be justified by the judge.²⁴⁰

Migration Law

In migration law, courts have shown reluctance to grant direct effect to UNCRC provisions, making it difficult for legal practitioners to invoke them successfully.²⁴¹ However, the Council of State has shown gradual progress. It ruled that Article 3(1) of the UNCRC has direct effect, requiring consideration of the child's interests.²⁴² The Council also confirmed that administrative bodies must consider the best interests of the child, even when this goes against specific statutory provisions.²⁴³

²³⁸ M.R. Bruning, D.J.H. Smeets, K.G.A. Bolscher, J.S. Peper and R. de Boer, [Kind in proces: van communicatie naar effectieve participatie: Het hoorrecht en de procespositie van minderjarigen in familie- en jeugdzaken](#) (WODC 2020), 63.

²³⁹ M. Limbeek and M. Bruning, 'The Netherlands: Two Decades of the CRC in Dutch Case Law' in T. Liefwaard, J. E. Doek (eds.), [Litigating the Rights of the Child: the UN Convention on the rights of the child in domestic and international jurisprudence](#) (Springer 2014) 95.

²⁴⁰ Supreme Court of the Netherlands 11 November 2013, ECLI:NL:HR:2013:1084.

²⁴¹ M. Limbeek and M. Bruning, 'The Netherlands: Two Decades of the CRC in Dutch Case Law' in T. Liefwaard, J. E. Doek (eds.), [Litigating the Rights of the Child: the UN Convention on the rights of the child in domestic and international jurisprudence](#) (Springer 2014) 97.

²⁴² [Administrative Jurisdiction Division of the Council of State 7 February 2012](#), ECLI:NL: RVS:2012:BV3716.

²⁴³ [Administrative Jurisdiction Division of the Council of State 15 August 2012](#), ECLI: RVS:2012: BX4660.

Social Security

In social security law, courts have been very hesitant to recognise UNCRC provisions as directly applicable, except for Article 2(1).²⁴⁴ However, the Central Appeals Tribunal has used UNCRC norms to enhance interpretation. Articles 3(1), 3(2), and 27(3) of the UNCRC have been applied to interpret "very pressing reasons" under the Work and Social Assistance Act, enabling children with Dutch nationality to access social assistance independently in emergencies.²⁴⁵ The Tribunal also extended the right to minor foreign nationals with legal residence, using Article 2(1) of the UNCRC and related provisions to rule that their exclusion from social assistance was inconsistent with UNCRC standards.²⁴⁶

Practical Implementation and Policy

Participation in Family Law: The Child's Voice in Court

In the Netherlands, children aged 12 and older are invited to speak with a judge in family cases or youth protection cases.²⁴⁷ Younger children are generally not invited.²⁴⁸ However, a 2020 study recommended lowering the age to 8, noting that this should be a flexible rather than strict legal threshold.²⁴⁹ Research shows that children value being heard and feel more confident and respected when involved in decisions about their lives.²⁵⁰ Children as young

²⁴⁴ M. Limbeek and M. Bruning, 'The Netherlands: Two Decades of the CRC in Dutch Case Law' in T. Liefwaard, J. E. Doek (eds.), [Litigating the Rights of the Child: the UN Convention on the rights of the child in domestic and international jurisprudence](#) (Springer 2014) 99.

²⁴⁵ [Central Appeals Tribunal 29 March 2005](#), ECLI:NL: CRVB:2005:AT3468.

²⁴⁶ [Central Appeals Tribunal 24 January 2006](#), ECLI:NL: CRVB:2006: AV0197.

²⁴⁷ Article 809 Wetboek van Burgerlijke Rechtsvordering, Stb. 2025, 24.

²⁴⁸ G. Ruitenbergh, '[Kinderen in \(echt\)scheidingszaken. Nog een wereld te winnen?](#)' (2020) 69:6 *Ars Aequi*, 614-619.

²⁴⁹ M.R. Bruning, D.J.H. Smeets, K.G.A. Bolscher, J.S. Peper and R. de Boer, [Kind in proces: van communicatie naar effectieve participatie: Het hoorrecht en de procespositie van minderjarigen in familie- en jeugdzaken](#) (WODC 2020), 265 (Report published on behalf of the Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC), Ministry of Justice and Security); M. Bruning, '[Hoorrecht voor twaalfminners \(gastcolumn\)](#)' (2020) 21:2 *De Pedagoog* 27.

²⁵⁰ M.R. Bruning, D.J.H. Smeets, K.G.A. Bolscher, J.S. Peper and R. de Boer, [Kind in proces: van communicatie naar effectieve participatie: Het hoorrecht en de procespositie van minderjarigen in familie- en jeugdzaken](#) (WODC 2020), 130.

as 4 can already express opinions, and by age 8 they typically have the skills to participate meaningfully in conversations.²⁵¹

In practice, some courts already apply lower thresholds. The Amsterdam District Court invites children from age 8 to express their views in child protection, custody, relocation, and residence matters.²⁵² The Hague District Court hears children from age 6 in international child abduction cases, and even younger children (from 3 years) may be heard by behavioural experts or through the appointment of a guardian ad litem in cross-border mediation.²⁵³

Efforts have also been made to make courts environments more child-friendly, with specially designed rooms and playful decorations.²⁵⁴ Nonetheless, regional variations persist, and professionals often remain uncertain about when and how to involve children, particularly in voluntary youth care procedures.²⁵⁵ In contrast, closed youth care procedures tend to follow clearer, more structured frameworks.²⁵⁶

To promote consistency, Dutch courts have developed professional standards for child interviews in family cases. These provide guiding principles for judges, although they may be

²⁵¹ *Ibid*, 141 and 159; A. Bolscher, M. Bruning, “[Het hoorrecht van minderjarigen: leeftijdsgrens nog houdbaar?](#)” in M.R. Bruning, K.F.M. Klep, E.C. Punselle (eds.), *De invloed van 30 jaar Kinderrechtenverdrag in Nederland: Perspectieven voor de rechtspraktijk* (Wolters Kluwer 2020).

²⁵² *Ibid*, 162.

²⁵³ *Ibid*, 164.

²⁵⁴ M. R. Bruning, D. J. H. Smeets and K. G. A. Bolscher, ‘[Child Participation in Dutch Family Law and Child Protection Proceedings](#)’ in M. Paré, T. Moreau, & C. Siffrein-Blanc (eds.), *Children's Access to Justice: A Critical Assessment* (Cambridge University Press 2022) 25-37.

²⁵⁵ T. Liefwaard and S. Rap, ‘[Hoezo kindvriendelijk? Over ‘child-friendly justice’ ter bevordering van effectieve participatie van kinderen in juridische procedures en besluitvorming](#)’ (2018) 6 *Tijdschrift voor Familie- en Jeugdrecht* 180-186; S. Rap, D. Verkroost and M. Bruning, ‘[Children’s participation in Dutch youth care practice: an exploratory study into the opportunities for child participation in youth care from professionals’ perspective](#)’ (2019) 25:1 *Child Care in Practice* 37-50.

²⁵⁶ T. Liefwaard and S. Rap, ‘[Hoezo kindvriendelijk? Over ‘child-friendly justice’ ter bevordering van effectieve participatie van kinderen in juridische procedures en besluitvorming](#)’ (2018) 6 *Tijdschrift voor Familie- en Jeugdrecht* 180-186.

departed from under specific circumstances.²⁵⁷ Truly child-friendly procedures require adequate information and involvement before, during, and after decision-making that affects children.²⁵⁸

Policy Innovations

Integrated Support for Children and Families

In the Netherlands, various policy initiatives aim to support children's development through early intervention and cross-sectoral collaboration.

1. *Integral Child Centres* (Integraal Kindcentrum, IKC) integrate education, childcare, health, and welfare services to offer holistic support for children's wellbeing, motivation and language development.²⁵⁹
2. *Centres for Youth and Family* offer integrated support to parents and children, combining guidance, information, and cooperation with youth care services. They assist with common parenting issues such as behavioural, sleeping, or eating problems, but also with difficult family transitions like divorce.²⁶⁰
3. *Youth health care* (jeugdgezondheidszorg) offers universal developmental monitoring and free advice to families from pregnancy through age 18.²⁶¹ The "Promising Start" programme focuses on the first 1,000 days of a child's life, supporting vulnerable

²⁵⁷ 'Professionele standaarden familie en jeugdrecht' (De Rechtspraak) 2 October 2020 <https://www.rechtspraak.nl/SiteCollectionDocuments/Professionele-standaarden-familie-en-jeugdrecht.pdf> (accessed 1 May 2025).

²⁵⁸ T. Liefwaard and S. Rap, "Hoezo kindvriendelijk? Over 'child-friendly justice' ter bevordering van effectieve participatie van kinderen in juridische procedures en besluitvorming" (2018) 6 Tijdschrift voor Familie- en Jeugdrecht 180-186.

²⁵⁹ 'Integraal Kindcentrum (IKC)' (wij-leren.nl) 10 Februari 2025 <https://wij-leren.nl/integraal-kindcentrum.php> (accessed 1 May 2025).

²⁶⁰ 'Waar vind ik hulp voor mijn kind van 4-18 jaar?' (Rijksoverheid) <https://www.rijksoverheid.nl/onderwerpen/jeugdhulp/vraag-en-antwoord/hulp-vinden-voor-kind-4-18-jaar> (accessed 1 May 2025).

²⁶¹ 'Over jeugdgezondheidszorg' (Nederlands Centrum Jeugdgezondheid) <https://www.ncj.nl/over-jeugdgezondheid/> (accessed 1 May 2025).

families through local coalitions and early intervention.²⁶² Infant Mental Health (IMH) further supports early bonding and mental health in young children.²⁶³

Participation in Local Governance and Rights Advocacy

As of January 2025, the Strengthening Participation at the Local Level Act is in effect. Municipalities are now formally required to implement meaningful child and youth participation. This includes active involvement in decisions, shared ownership, and long-term engagement, particularly for children under 14. Key success factors include orientation, motivation, outreach, talent development, feedback, and continuity.²⁶⁴

In Rotterdam, child participation starts as early as age 4. The municipality is developing systems that allow children aged 4–12 to contribute to decisions affecting their neighbourhoods and city, aiming to give them a real voice in local governance.²⁶⁵

Other organisations, such as De Kleine Ambassade and Defence for Children Netherlands, specialise in youth participation and child rights advocacy.²⁶⁶ They run tailored projects, offer legal help, and push for stronger rights protections in policy and law. The Defence for Children Netherlands offers free legal support through its children's rights helpdesk to children whose rights are at risk of being violated.²⁶⁷ Youth Voice Netherlands (Jeugdstem)

²⁶² 'Actieprogramma Kansrijke Start' (Kansrijke Start) <https://www.kansrijkestart.nl/actieprogramma-kansrijke-start> (accessed 1 May 2025).

²⁶³ 'IMLH. Wat betekent het eigenlijk?' (IMH Nederland) <https://imhvoorouders.nl/wat-is-imh/> (accessed 1 May 2025).

²⁶⁴ 'Handreiking Kinder- en Jongeren' (Lokale Democratie) 28 April 2025 <https://vng.nl/publicaties/handreiking-kinder-en-jongerenparticipatie> (accessed 1 May 2025).

²⁶⁵ 'Kinderparticipatie gemeente Rotterdam' (Garage 2020) <https://www.garage2020.nl/projecten/kinderparticipatie-gemeente-rotterdam/> (accessed 1 May 2025); see also 'De inzet van jeugd- en jongerenparticipatie Het perspectief van beleidsmakers bij de gemeente Rotterdam' (Convergence Healthy Start) May 2024 <https://convergence.nl/app/uploads/Healthy-Start-rapport-II-Jongerenparticipatie-in-beleid-DEF-v3.pdf> (accessed 1 May 2025).

²⁶⁶ 'Ons doel' (De kleine ambassade) <https://www.dekleineambassade.nl/ons-doel/> (accessed 1 May 2025).

²⁶⁷ 'Wat doen we' (Defence for children Nederland) <https://www.defenceforchildren.nl/wat-doen-we/> (accessed 1 May 2025).

provides confidential advice and support for children, young people, and parents involved in youth care, helping them understand their rights and file complaints if needed.²⁶⁸

Challenges

Despite these efforts, challenges remain. A 2024 report by the National Ombudsman and the Children's Ombudsman found that children and parents still feel insufficiently involved in their youth care trajectories, especially regarding access to and execution of services, with unclear complaints procedures further limiting their influence.²⁶⁹ Since 2015, municipalities have overseen youth care services, but there are substantial regional differences in how children's participation is realised. Children under 12 are often excluded from meaningful involvement in youth care decision-making, although some courts are improving participation in compulsory care procedures.²⁷⁰

Key Takeaways

The Netherlands demonstrates robust child and family support systems, including integrated services and increasing legal recognition of child participation. However, the rights and voices of babies and young children (particularly under 8) are still under-recognised in both legal and policy frameworks. While early intervention programmes like “Promising Start” provide strong foundations for child development in the first 1,000 days, legal participation mechanisms and complaints procedures often exclude young children. Regional disparities and professional uncertainty further limit consistent engagement of younger children. Explicit recognition of the rights of babies and young children in constitutional, legal, and procedural contexts remains limited. Key suggestions include:

²⁶⁸ ‘Wat we doen’ (Jeugdstem) <https://jeugdstem.nl/wat-we-doen> (accessed 1 May 2025).

²⁶⁹ ‘Participatie vanaf de zijlijn’ (Nationale ombudsman en kind ombudsman) 6 November 2024 <https://www.kinderombudsman.nl/publicaties/participatie-vanaf-de-zijlijn> (accessed 1 May 2025).

²⁷⁰ S. Rap, D. Verkroost and M. Bruning, ‘Children’s participation in Dutch youth care practice: an exploratory study into the opportunities for child participation in youth care from professionals’ perspective’ (2019) 25:1 Child Care in Practice 37-50.

- *Integrated Early Years Hubs: Scotland could adopt the Dutch model of child and family centres (IKCs), tailored to babies and toddlers, to streamline care and support during the earliest, most formative years.*
- *First 1,000 Days Focus: Dutch programmes like “Promising Start” centre policy around babies’ development from pregnancy onward. Scotland should build comparable early-years-centred frameworks with targeted support for vulnerable families.*
- *Empowering Infant Voices: Dutch NGOs like Defence for Children offer indirect representation for young children. Scotland could strengthen independent advocacy for babies and toddlers, particularly in care, protection, and migration contexts.*

South Africa

Best Practices

- *Constitutional implementation of the requirement to observe the best interests of the child, even in situations where a young child is not deemed at an appropriate age, maturity and level of development, their interests still need to be considered.*
- *Child-friendly courts make it more accessible for young children to participate in court proceedings.*
- *No age restriction for participation, based instead on an assessment of age, maturity and level of development*

Introduction

South Africa is a mixed legal system, possessing characteristics of Roman-Dutch law, English common law, customary law and religious personal law.²⁷¹ It adopted its Constitution on the 4th of December 1996, following the first democratic elections in 1994, which marked the official end of apartheid. During apartheid, black children were among the most impacted victims of human rights violations, suffering severe infringements on their rights to health care, housing, education and protection from police brutality.²⁷² Moving on from this means South Africa not only had the challenge of ensuring new international human rights standards for children are met but also had to combat decades of discrimination and inequality. Since 1994, South Africa has made significant progress towards realising the rights of all children, ratifying the UNCRC in 1995. While the UNCRC has not yet been fully incorporated into domestic law, it has had a substantial influence on

²⁷¹ "South African Law: A guide for researching South African law" (The University of Melbourne) <[Legal system and sources of law - South African Law - Library Guides at University of Melbourne](#)> (accessed 6/5/2025).

²⁷² Mosikatsana, Tshepo. "[Children's Rights and Family Autonomy in the South African Context: A Comment on Children's Rights Under the Final Constitution](#)" (1998) *Michigan Journal of Race Law* 3, 341 .

South African legislation, most notably through the inclusion of Section 28 on children's rights in the Constitution.²⁷³

Relevant Legal Frameworks

Section 28 of the Constitution is a progressive realisation of children's rights, enshrining rights including to a name, nationality, access to basic nutrition and healthcare and the right to a legal practitioner in civil proceedings. Furthermore, it also states that "a child's best interests are of paramount importance in every matter concerning the child", arguably the most influential sentence of the section.²⁷⁴ As a result, any new legislative changes affecting children must consider the best interests of the child, thereby ensuring a high level of legal protection.²⁷⁵ Two other important pieces of legislation are the 2005 Children's Act and the 2008 Child Justice Act. The latter is less relevant for the age bracket under consideration in this research brief, as although it contains provisions for children under 10 (age of criminal conviction), its primary role is to provide protection for children who have committed a criminal offence.

The Children's Act is designed to give effect to the rights enshrined in the Constitution. Throughout the Act there are references to the UNCRC's concept of evolving capacities, including in Article 6, which outlines the importance of respecting the child's inherent dignity, treating them fairly and recognising their need for development. Additionally, it highlights the obligation to provide children with information on matters concerning them in a manner appropriate to their age, maturity and stage of development. The latter criterion is reiterated in Article 7, the best interests of the child, which expands to include mandatory consideration for the physical and emotional security as well as intellectual, emotional, social and cultural development of the impacted child. What is especially relevant for young

²⁷³ Kilkelly, Ursula & Liefwaard, Ton "[Legal implementation of the UNCRC: lessons to be learned from the constitutional experience of South Africa](#)" (2019) *De Jure Law Journal* 521.

²⁷⁴ Constitution of the Republic of South Africa, 1996, Section 28(2) .

²⁷⁵ Kilkelly, Ursula & Liefwaard, Ton "[Legal implementation of the UNCRC: lessons to be learned from the constitutional experience of South Africa](#)" (2019) *De Jure Law Journal* 521, 522.

children is that the Act does not define an age restriction on participation in matters concerning that child. The right to participate and express their views depends on whether they are considered to qualify underage, maturity and level of development.²⁷⁶ In addition, every child has the right to bring (or be assisted in bringing) a matter to the court regardless of age or capacity.²⁷⁷ The Act also widens the right to legal assistance for children to also include all care, contact and guardianship proceedings, which means they can be represented separately from their guardians.²⁷⁸ When children are young or do not meet the development criteria to give instruction to their legal representative, they can access a 'best interests legal representative', who must consider any views or interests the child is able to express, while also having contact with parents. The representative should act independently from other parties and provide submissions to the court on a course of action that is of the best interest of the child and the child's wishes.²⁷⁹

Relevant Jurisprudence

Interesting case law in the promotion of young children's rights:

1. The case of *Christian Education South Africa v Minister of Education* outlined that children are individuals with autonomy and that no one can speak in their name, only on their behalf²⁸⁰. Restricting the overall power of guardians or representatives to maintain the best interests of a child.
2. Case of *Van Niekerk v Van Niekerk* was the first case of children becoming separate parties to their parents in a case, with their own legal representation, providing them with greater autonomy.²⁸¹

²⁷⁶ [Children's Act](#) 38 of 2005, Art. 10 .

²⁷⁷ [Children's Act](#) 38 of 2005, Art. 14.

²⁷⁸ Pretoria University Law Press, 'Guidelines for legal representation of children in civil matters' (2016) https://www.childlinesa.org.za/wp-content/uploads/2016_guidelines_legal_representatives_children_civil_matters.pdf .

²⁷⁹ "Guidelines for legal representation of children in civil matters" (Pretoria University Law Press, 2016) <https://www.childlinesa.org.za/wp-content/uploads/2016_guidelines_legal_representatives_children_civil_matters.pdf > (accessed 6/5/2025).

²⁸⁰ *Christian Education South Africa v Minister of Education* [2000] CCT 4/00 ZACC 1, para 53.

²⁸¹ *Van Niekerk v Van Niekerk and Another* [2010] no. 6361/10 ZAKZPHC 85 .

3. Case of *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development and others*, it was reiterated that in a case where a child needs to testify, the individual, needs, wishes and feelings of the child must be taken into consideration.²⁸²
4. Case of *Centre for Child Law v. Department of Home Affairs* which stressed the importance of registering the birth of a child, in ensuring that the child does not become “invisible” and exposed to risks such as exclusion from the education system, access to healthcare and social assistance, in addition to the disproportionate severity of non-registration on indigent families.²⁸³
5. Case of *African Climate Alliance and others v The Minister of Mineral Resources* it expanded the best interests of the child to include future impacts, specifically environmental, deeming the 2019 resource plan including significant coal-fired power to be unconstitutional and in violation of both the right to a healthy environment and the best interests of the child (Section 24 and 28 of the Constitution).²⁸⁴

Practical Implementation and Policy

Children’s Courts

The Children Act also establishes requirements for enabling children's participation in court proceedings regarding matters concerning them, such as abuse or parental right disputes. These courts must be furnished and designed to keep the child at ease and calm, in a more informal setting.²⁸⁵ There must be appropriate questioning techniques used for very young children.²⁸⁶ The child must be allowed to express their view if found at a suitable age, maturity and stage of development, if the child chooses to do so.²⁸⁷ Indicating both a right to participate and a requirement of consent.

²⁸² [*Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development and Others*](#) [2009] CCT 36/08 ZACC 8.

²⁸³ [*Centre for Child Law and Director-General: Department of Home Affairs*](#) [2021] CCT 101/20 ZACC 31.

²⁸⁴ [*African Climate Alliance and others v The Minister of Mineral Resources*](#) [2024] ZAGPPHC 1271.

²⁸⁵ [Children’s Act](#) 38 of 2005, Art. 42.

²⁸⁶ [Children’s Act](#) 38 of 2005, Art. 52(2)a.

²⁸⁷ [Children’s Act](#) 38 of 2005, Art. 61.

Programs for the Implementation and Fulfilment of Child Rights:

The South African Human Rights Commission (SAHRC): An independent human rights assessment body for children, established by the Human Rights Commission Act. It is founded on 15 different principles surrounding child participation, including age-appropriate communication, child-friendly spaces, consideration of evolving capacities and the need for safe spaces. The SAHRC has a child-friendly complaints procedure, an online form using accessible language and design that children can use to lodge complaints of human rights.²⁸⁸

RISIHA is a community-based prevention and early intervention program for orphans and vulnerable children. It was launched during COVID in partnership with UNICEF to try and reduce and prevent the abuse and suffering of vulnerable children. It consists of access to a support network of social workers in addition to community-based drop-in centres. These centres offer essential services for the emotional, physical and social development of vulnerable children. Their support ranges from psychosocial care, HIV support, to food and nutritional assistance for children and their families.²⁸⁹

Department of Social Development is a government department focuses on social issues including reducing poverty, inequality and protecting children. The department offers financial assistance and parenting classes for young parents, which can have a direct impact on the well-being of the child.²⁹⁰

Challenges

²⁸⁸ "Children's Complaint Box" (South African Human Rights Commission) <<https://www.sahrc.org.za/childrensrights/index.php/en/childrens-complaint-box#:~:text=Children's%20Complaint%20Box,closest%20to%20you%20will%20respond.&text=Please%20type%20your%20full%20name.>> (accessed 6/5/2025).

²⁸⁹ Oosthuizen, Willem "From vulnerable to resilient: South Africa's commitment to children's rights" (The CO-OP Community Trust, 2023) <<https://communitydevelopment.co.za/from-vulnerable-to-resilient-south-africas-commitment-to-childrens-rights/>> accessed 6/5/2025; Nala, Ntombifuthi "Protecting our children" (South African Government, 2024) <<https://www.gov.za/blog/protecting-our-children>> (accessed 6/5/2025).

²⁹⁰ "Navigating an unplanned pregnancy in South Africa; Guidance for teens and parents" (UNICEF, 2024) <[Navigating an unplanned pregnancy in South Africa | UNICEF South Africa](#)> (accessed 6/5/2025).

South Africa remains a widely divided society regarding wealth and development. Access to basic rights under the Constitution, such as healthcare, shelter and nutrition, which are vital for babies and young children, is not evenly spread across the country. In addition, there is still limited recognition at the legislative and policy level for the rights of specifically babies and young children, with a lack of consistent application of the measurement of age, maturity and level of development. One criticism of the current approach is that the law is created by a liberal elite; however, is enacted by a more conservative public body, which can lead to discrepancies in the fulfilment of rights and respect for a child's capacity to participate.²⁹¹ The current legislation does not ensure that children are suitably informed of their rights under the Children's Act and the Constitution, nor require childcare workers, social workers, and clerks of the court to be trained in child rights and participation.²⁹² There are still many attitudinal barriers from assumptions that children do not have the intellectual, physical or psycho-social capacities to participate, especially young children of those with disabilities.

Key Takeaways

The legal infrastructure is present in South Africa, but systematic difficulties impact implementation. Scotland should ensure all legislation protects access to justice for babies and young children and continue to assess how inequalities impact its implementation. There is added strength to the incorporation of child rights into the constitutional framework. The best interest of the child is already a key principle in Scottish child law, but the importance of integrating this concept should not be forgotten. There is no age presumption in South African law which can be applied to diverge from the Scottish assumption of competence at the age of 12. Even without the ability to communicate, babies and young

²⁹¹ Jamieson, Lucy & Manjang, Hussienatou "[A critical review of South Africa's Child Participation Frameworks](#)" (Children's Institute, 2024)

²⁹² Jamieson, Lucy & Manjang, Hussienatou "[A critical review of South Africa's Child Participation Frameworks](#)" (Children's Institute, 2024)

children in South Africa cannot be spoken for in their name only on their behalf, meaning they retain autonomy and can be represented separate from their guardians; their best interests are also protected under law, without any requirement for them to advocate for themselves. Babies and young children can also be represented separately from their parents if it is in their best interests, giving all ages of children greater autonomy. Creating accessible outreach points is vital for the fulfilment of a baby or young child's rights, including support for parents. Scotland, like South Africa, should continue to focus on accessibility for vulnerable children who may be in lower-income or more rural areas.

The United States of America

Best Practices

- *Existence of Integrated Support Resources*
- *Development of Innovative Tools to Enhance Babies' and Young Children's Participation in Judicial Systems*
- *Legislative Case Study: Cultural Rights of Babies and Young Children Under the Indian Child Welfare Act*

Introduction

The United States of America (U.S.) remains the only State not to have ratified the UNCRC.²⁹³ The U.S. government maintains that its domestic legal frameworks already provide sufficient protection of children's rights, rendering formal ratification unnecessary.

This, coupled with a wide variety of legal inconsistencies and issues,²⁹⁴ undoubtedly presents a significant gap in the ability of this legal framework to comprehensively ensure access to justice for babies and young children. However, it is important to acknowledge that the U.S. has developed several notable procedural frameworks aimed at promoting access to justice for this age group, primarily in relation to child welfare. The *Indian Child Welfare Act* also provides an interesting legislative case study for the specific area of cultural rights. These highlighted best practices have the potential to be adapted and strengthened within

²⁹³ United Nations Children's Fund, 'Frequently asked questions on the Convention on the Rights of the Child' (UNICEF, n.d.) <https://www.unicef.org/child-rights-convention/frequently-asked-questions> (accessed: 1 May 2025).

²⁹⁴ For a comprehensive summary of the legal frameworks for children's access to justice, see Children's Rights International Network, 'Access to Justice for Children: The United States' (CRIN 2013) https://archive.crin.org/sites/default/files/unitedstates_access_to_justice-updatedoct2015.pdf (accessed 1 May 2025).

the strong domestic legal and procedural frameworks of a country with UNCRC incorporation – like Scotland – warranting inclusion in this report.

**The U.S. legal system operates at both the federal and state levels. While both offer valuable avenues for research, this report focuses on best practices and a case study at the federal level to ensure consistency and maintain a targeted scope.*

Procedural Frameworks

Integrated Support Resources: Children’s Bureau

The Children’s Bureau (CB), an Office within the Administration for Children and Families of the U.S. Department of Health and Human Services, is a national support service to improve the safety and well-being of children. In partnership with its subsidiary service, the Child Welfare Information Gateway (CWIG), they offer a centralised database that compiles guidance for child welfare proceedings – including guidance on the rights of parents, caregivers, and children.²⁹⁵ For example, one resource is the ‘Determining Best Interests of the Child’ guidelines,²⁹⁶ which outline the guiding principles in state statutes for determining the best interests of the child. These resources can help parents and caregivers be aware of the child’s rights and, in turn, recognise a rights violation. The database also includes directions for how parents and caregivers can raise concerns and report rights violations, with the ability to search for specific instructions based on the individual’s relationship to the child.²⁹⁷ Overall, these support resources provide clear, accurate, and accessible guidelines for how any individual can recognise and report a rights violation, which is especially important in facilitating access to justice for babies and young children who may be unable to recognise or report rights violations themselves.

²⁹⁵ Child Welfare Information Gateway, ‘[Search for Resources](https://www.childwelfare.gov/resources/)’ (Child Welfare Information Gateway, n.d.) <https://www.childwelfare.gov/resources/> (accessed: 1 May 2025).

²⁹⁶ Child Welfare Information Gateway, ‘[Determining the best interests of the child](https://www.childwelfare.gov/resources/determining-best-interests-child/)’ (Child Welfare Information Gateway, 2024) <https://www.childwelfare.gov/resources/determining-best-interests-child/> (accessed: 1 May 2025).

²⁹⁷ Child Welfare Information Gateway, ‘[Search for Resources](https://www.childwelfare.gov/resources/)’ (Child Welfare Information Gateway, n.d.) <https://www.childwelfare.gov/resources/> (accessed: 1 May 2025).

Innovative Tools for Enhancing Baby and Early Years Participation in Judicial Systems

The National Council of Juvenile and Family Court Judges (NCJFJ) has published guidance titled *Seen, Heard, and Engaged: Children in Dependency Court Hearings*, which focuses on how best to involve children in court hearings.²⁹⁸ The best practice recommendation of this guidance specifically states that children should be present at hearings and – importantly – there should never be an assumption that a child might be too young to attend.²⁹⁹ The guidance recommends supporting the engagement of children of any age through age-appropriate interactions.³⁰⁰ It includes the Youth Engagement in Court Bench Cards - NCJFCJ, created by the American Bar Association (ABA), which provide age-specific guidance on youth engagement. Notably, there are bench cards for Young Children (ages 0-12 months)³⁰¹ and Toddlers (ages 1-3) and Preschoolers (ages 3-5).³⁰² Each card recommends how to observe and document the child's behaviour, appearance, and interactions with the court, and how to ensure that the court is 'child-friendly' for that specific age group. The practical implementation of this guidance was tested through Model Courts, which involved children of all ages – for example, the Los Angeles Model Court involved a 4-year-old child.³⁰³ These Model Courts allowed judges to develop and refine their approach to engaging with children of varying ages, in line with the NCJFJ guidelines. Ultimately, the NCJFJ Guidance and ABA Bench Cards are reliable parts of the procedural framework to ensure that babies and young children can access justice by directly involving them in the judicial process in a healthy manner. Furthermore, the testing of this through

²⁹⁸ Elizabeth Whitney Barnes and others, '*Seen, Heard, and Engaged: Children in Dependency Court Hearings*,' (National Council of Juvenile and Family Court Judges, 2012) <https://www.ncjfcj.org/wp-content/uploads/2012/08/Seen-Heard-Children-Dependency.pdf> (accessed: 1 May 2025).

²⁹⁹ *Ibid*, pp. 6.

³⁰⁰ *Ibid*, pp. 17.

³⁰¹ American Bar Association, '*Engaging Young Children (Ages 0-12 mo) in the Courtroom*' (American Bar Association, 2008) <https://ncjfcj.org/wp-content/uploads/2021/03/Engaging-Young-Children-ages-0-12-mo-in-the-courtroom.pdf> (accessed: 1 May 2025).

³⁰² American Bar Association, '*Engaging Toddlers (Ages 1-3) & Preschoolers (Ages 3-5) in the Courtroom*,' (American Bar Association, 2008) <https://ncjfcj.org/wp-content/uploads/2021/03/Engaging-Toddlers-ages-1-3-Preschoolers-ages-3-5-in-the-courtroom.pdf> (accessed: 1 May 2025).

³⁰³ Elizabeth Whitney Barnes and others, '*Seen, Heard, and Engaged: Children in Dependency Court Hearings*,' (National Council of Juvenile and Family Court Judges, 2012) <https://www.ncjfcj.org/wp-content/uploads/2012/08/Seen-Heard-Children-Dependency.pdf> (accessed: 1 May 2025). Pp. 6.

Model Courts allows for practical evaluation and refinement of these approaches, ensuring they are effective, developmentally appropriate, and responsive to the needs of this age group. The development of these innovative tools indicates that babies and young children are taken seriously by public bodies and legal authorities, which is a key factor in accessing justice.

Legislative Case Study: Cultural Rights of Infants and Young Children under the Indian Child Welfare Act

The Indian Child Welfare Act (ICWA), enacted in the U.S. in 1978 with subsequent regulations published in 2016, established Federal minimum standards for protecting the best interests of Native American³⁰⁴ children by promoting the stability and security of Native tribes and families.³⁰⁵ Specifically, ICWA confirms Tribal jurisdiction over child-custody proceedings involving Native children, attempting to protect cultural rights by preventing their removal from their communities.³⁰⁶ This federal legislation has been used, albeit inconsistently, to successfully promote and protect the cultural rights of Native babies and young children in child custody proceedings. For example, the recent landmark case of *Haaland v Brackeen*, while concerned with the constitutionality of the ICWA, was based on three cases concerning babies and young Native children where the law had been successfully used to protect their cultural rights.³⁰⁷ It is worth highlighting that the protection of cultural rights under the ICWA was successful even though the caregivers of these children were bringing claims against ICWA. This demonstrates that the legislation is strong enough to protect the cultural rights of babies and young children even where parents and caregivers are not advocates of those rights.

³⁰⁴ The term Native American is used here despite the legal framework utilising the outdated term ‘Indian’.

³⁰⁵ Indian Child Welfare Act 1978 (US), Pub L No 95–608, 92 Stat 3069; U.S. Department of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs, ‘Guidelines for Implementing the Indian Child Welfare Act’ (U.S. Department of the Interior – Indian Affairs, 2016) <https://www.bia.gov/sites/default/files/dup/assets/bia/ois/pdf/idc2-056831.pdf> (accessed: 1 May 2025).

³⁰⁶ *Ibid.*

³⁰⁷ *Haaland, Secretary of the Interior, Et AL., v. Brackeen Et AL.* U.S. 255 (2023).

Key Takeaways

The U.S.'s legal framework with regards to the UNCRC does not offer much inspiration for Scotland. However, some procedural frameworks may be worthy of consideration: creating a centralised database of support services, such as guidelines on children's rights and directories for making claims, enables parents and caregivers to support access to justice for babies and young children. Potential concerns for this type of resource arise where a lack of internet access may limit access to these resources when they are distributed online. Furthermore, creating specific guidance for how the judicial system should engage with babies and young children is a useful element of a procedural framework that supports access to justice for this age group. The practical implementation of this guidance can be supported by programmes like Model Courts, to ensure it truly supports access to justice for this age group. Finally, strong legislation on children's cultural rights, focused on particularly vulnerable groups, can support access to these rights for all ages, including babies and young children. In the Scottish context, this type of legislation would be significantly bolstered by UNCRC incorporation.

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