



Improving Justice in
Child Contact

PARTICIPATION REPORT

January 2021

KEY MESSAGES

This report has been produced by the Improving Justice in Child Contact project. It sets out the findings and learning from the project in terms of involving children and young people in contested child contact, when they have experienced domestic abuse. The report concentrates on children and young people's influence on policy and practice.

PARTICIPATION REPORT

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Terminology

Domestic violence

As outlined under the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),¹ domestic violence:

- means all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;
- disproportionately impacts women and is a manifestation of historically unequal relationships between men and women; and
- affects children as victims and not only as witnesses.

Child contact

In cases of parental divorce or separation, child contact refers to the arrangements for the parent not living with the child (non-resident parent) to have contact with the child. These arrangements can be made informally by parents or through formal channels including court proceedings. This report focuses on the formal legal systems that decide if, when, and how a child has contact with their non-resident parent in the context of domestic violence.

Children and young people

'Children' are defined in this report as anyone under the age of 18, in line with the UN Convention on the Rights of the Child. We also refer to 'young people' which, for the purposes of this report, means young adults between the ages of 18 and 25.

Yello!

IJCC's young expert group. A group of young people with experience of domestic abuse and the justice system in Scotland advised the IJCC partners throughout the project. Yello! have providing quotes for this report.

¹ Council of Europe (2014) *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

Key findings

- *Despite different systems, processes, and legal contexts across countries, similar systemic issues exist for children and women in relation to domestic violence and child contact, increasing their risk of harm. To ensure effective change, children with experience of domestic abuse must be involved in identifying the solutions.*
- *While children's rights remain constant, their involvement needs to be tailored to the opportunities and challenges for change; participation processes and achievements therefore look different across contexts.*
- *Bringing together children's rights and women's rights organisations provides productive and powerful alliances.*
- *It can be difficult to challenge pre-existing dynamics of a system and to engage stakeholders who often have diverse motivations for getting involved. Stakeholders can be motivated through partnerships and by sharing international examples of improving child contact systems in the context of domestic violence.*
- *When they support the participation of children and young people with experience of domestic violence, organisations increase their professional understanding, learn new approaches and manage risks associated with supporting victims of domestic violence.*
- *The participation of children and young people with experience of domestic violence can provide relevance, credibility and impact for policy-making. In due course, this increases public awareness of domestic violence and positive outcomes for children and young people.*
- *Involving children and young people safely and with a children's rights approach can support their recovery from domestic violence.*

Improving Justice in Child Contact

[Improving Justice in Child Contact](#) (IJCC) aimed to address the issues around child contact and domestic violence by testing out models to better uphold children's rights in child contact systems and enhance children's participation in decision-making. In doing so, the ultimate aim was to improve child contact systems to better protect children and women who have experienced domestic violence.

The project – undertaken by partner organisations working on women's and children's rights in Bulgaria, Cyprus, Portugal, Romania, and Scotland – used approaches piloted in Scotland on children's participation as a 'blueprint' for the other partners to adapt to their own country contexts.

The two models of participation in Scotland are:

Power Up/Power Down (PU/PD)

This participation model focuses on children using their lived experiences of child contact in the context of domestic violence, to influence and inform policy-making at a national level. This participation project was undertaken jointly by Scottish Women's



Aid and the Commissioner for Children and Young People Scotland. The project worked with 27 children aged between 6 and 17, to explore themes of power, children's rights, making their voices heard in court, and how to improve the experiences and outcomes in family courts for children who have experienced domestic violence. Supported by specialist Women's Aid services, the children were given an illustrated story about two children who had experienced domestic violence and the family court system. The story was based on real life examples collected by Women's Aid groups across Scotland. The children and young people explored the story and then made changes to it to improve the outcomes for the children. Through this process the children and young people were able to identify key areas for positive change and they made recommendations for making the system better for children. These recommendations were then used to directly inform national policy and practice in Scotland.

Children's Rights Officer for child contact

This Children's Rights Officer works directly with children on a one to one basis, supporting them to express their views on parental contact, when this is contested in court. Sheriffs,² solicitors, social workers and parents can all refer children to the service. The criteria are that the child must have experienced domestic abuse and have a case within the child welfare system. The views from children are gathered by the Children's Rights Officer and are written down verbatim and compiled in a letter submitted to the Sheriff.

International context

There is growing awareness at an international level of the problems around child contact and domestic violence. The Council of Europe's Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) is the only legally binding instrument on violence against women that has an explicit provision on child custody. It highlights the critical relationship between women's and children's human rights: in the context of violence against women, ensuring that women are safe ultimately supports children.³ Article 31 of the Istanbul Convention makes this clear by requiring States Parties to 'take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account' and that 'the exercise of any visitation or custody rights does not jeopardise the rights and safety of the [adult] victim or children.'⁴

² Sheriffs are judges in Scotland. They tend to hear most of the contested contact cases, in the first instance.

³ As recognised in Para. 454 of Scotland's National Child Protection Guidance 2014. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2014/05/national-guidance-child-protection-scotland/documents/00450733-pdf/00450733-pdf/govscot%3Adocument/00450733.pdf>

⁴ Council of Europe (2011) *Council of Europe Convention on preventing and combating violence against women and domestic violence*. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>; https://www.ed.ac.uk/files/atoms/files/mhses-ijcc-webinarslides_0.pdf

The United Nations Convention on the Rights of the Child (UNCRC) sets out a range of human rights for children. These include four general principles, which are: Article 2 (non-discrimination); Article 3 (a child's best interests should be a primary consideration); Article 6 (survival and development); and Article 12 (due regard to a child's views). All countries involved in the project are States Parties to the UNCRC.

What are children's experiences of domestic violence and court ordered contact?

It is not necessary for children to directly witness or be subject to abuse to be affected by it. Children and young people experience domestic violence with all their senses: they hear it, see it and experience the aftermath.⁵ Domestic violence can result in profound disruption to the stability and nurturing environment of a child's home. This can impact on them physically and emotionally. Domestic violence is likely to have disrupted relationships with other adults in children's lives: the abuser may have prevented those relationships or this may have happened because the children have been forced to move home and school regularly to conceal and continue the abuse. The children will have experienced significant loss of friends, family members, community, and/or pets. They will have high levels of anxiety and fear, which may continue even after they have left the abuser. They will be concerned about their own and their family's safety and confidentiality. Their space for action is restricted because of the abuser.⁶

*"When people don't listen to me it feels like they think you aren't a person, you're not good enough. It's even worse when that person is in power. It's like I'm nothing. It affects my self-esteem. Makes me think that everything that has happened is my fault."*⁷

Article 19 of the UNCRC sets out children's right to be free from all forms of violence:

(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

⁵ Callaghan, J. E. M. (2015) 'Mothers and children? Representations of mothers in research on children's outcomes in domestic violence', *Psychology of Women Section Review*, 16, pp.2-5.

⁶ Katz E. (2015) 'Domestic Violence, Child Agency and Mother Child Relationships', *Children and Society*, 29 (1), pp.69-79.

⁷ Houghton, C. & Macdonald, R. (2018) *Everyday Heroes: Justice report*, p.7. Available at: <https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/everyday-heroes-briefing2-Justice.pdf>

(2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Across all project partner countries, the IJCC found that domestic violence was frequently ignored when determining contested child contact cases, resulting in serious risks to children and their mothers. The views of children about contact were not adequately considered by those in the civil justice system.

Perpetrators often use court proceedings, or threats of court proceedings, and non-compliance orders to continue control over the non-abusive parent and children.⁸ A failure to understand the complexities of domestic violence can result in victim-blaming of the non-abusing parent by professionals or a victim of abuse being urged to put their differences aside for the sake of their child.⁹ It may lead to the unjustified assumption that shared parenting is almost always in the best interests of the child. If there is a failure to obtain relevant information about the abuse from the victims or inadequate and safe legal representation, court-ordered contact can result in direct risks to the safety of the child and non-abusing parent.

Because of these risks, it is vital to seek the views of children and young people who have experienced domestic abuse. By listening to and working alongside children and young people, positive changes can be created.

⁸ McLeod D & Flood S. (2018) *Coercive control: Impacts on children and young people in the family environment: Literature Review*. Dartington UK.

⁹ Harrison, C. (2008) 'Implacably hostile or appropriately protective?: Women managing child contact in the context of domestic violence', *Violence Against Women*, 14, pp.381–405.

“We need legal workers who are actually educated in domestic abuse. My mum saw lots of people and none of them referred her to get help for domestic abuse. She was given a leaflet when she came out of court, but when you are coming out of court a leaflet is not any good. All the stress and struggle and total exhaustion she went through to go through the court case was not worth it.

It was 5 years after the court case till she got the help she needed. When she got the help she needed from specialist services, it really worked for her and now she helps other people in the same situation.” Yello! member.

Children’s right to be heard should not only be a momentary act but the starting point for an intense exchange between children and adults.¹⁰

What do we mean by participation?

Children’s participation rights are increasingly on the agendas of legislators, policy makers and practitioners.¹¹ Participation is not just about listening to children’s views, but about ensuring these views actively influence processes, decisions, and activities that affect their lives. This requires ongoing dialogue between adults and children that recognises and respects children as social actors, alongside the duties on adults to keep children safe. Taking a holistic approach to children’s rights can be challenging, especially when it comes to the participation of potentially vulnerable groups such as children affected by domestic violence.

The UNCRC groups together a number of Articles as participation rights. These include Article 13 (freedom of expression), Article 14 (freedom of thought, conscience and religion), Article 15 (freedom of association and peaceful assembly) and Article 17 (access to information). Further, the UN Committee on the Rights of the Child has identified Article 12 as a General Principle of the UNCRC. Article 12’s precise wording is:

(1) States Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the

¹⁰ UN Committee on the Rights of the Child (2012) *General Comment No. 12: the right of the child to be heard*. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en, para 13.

¹¹ Birnbaum, R. & Saini, M. (2012) ‘A scoping review of qualitative studies on the voice of the child in child custody disputes’, *Childhood*, 20(2), pp.260–282.

child, the views of the child being given due weight in accordance with the age and maturity of the child.

- (2) *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The UN Committee on the Rights of the Child General Comment provides an expansive understanding of capacity. Rather than a child having to prove their capacity, the child should be presumed to have capacity to form a view.¹² There is no age limit on a child's right to express a view and they need not have comprehensive knowledge to be considered capable.

UN Committee on the Rights of the Child sets out 9 requirements for participation. Processes should be:

- (1) Transparent and informative
- (2) Voluntary
- (3) Respectful
- (4) Relevant
- (5) Child-friendly
- (6) Inclusive
- (7) Supported by training
- (8) Safe and sensitive to risk
- (9) Accountable (which involves feedback to children and evaluation).¹³

A key principle of a rights-based approach is building the capacity of rights-holders (children) to claim their rights. If children are not aware of what their rights are, they cannot claim them. Therefore, before asking for children's views on how to improve systems, children need knowledge and understanding of their rights, in order to be able to evaluate how these rights are currently being met.

¹² UN Committee on the Rights of the Child (2012) *General Comment No. 12: the right of the child to be heard*. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f12&Lang=en, para. 20.

¹³ UN Committee on the Rights of the Child (2009) *General Comment No. 12: the right of the child to be heard*. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f12&Lang=en, p.5.

Participation with children and young people who experience domestic violence

The experiences of living with domestic violence (and inappropriate interventions or responses) prevent children and young people from fully realising their rights in numerous ways. Some of these are obvious, such as children's right to be protected from all forms of violence, abuse, and neglect (Article 19 UNCRC). Children's rights may also be affected in less obvious ways. For instance, a child's right to relax and play (Article 31 UNCRC) may be undermined through deliberate social isolation by their perpetrator. Their right to education (Article 28 UNCRC) could be at risk, through having to repeatedly move schools or not being able to complete their homework at night.

It is essential, then, that participation activities take steps to address the negative impacts of domestic violence on children and young people by actively promoting their rights. By working alongside children and young people, and supporting them to share their experiences in a safe way, we can broaden our understandings of how domestic violence manifests in families and help children and young people gain a sense of agency and empower them by highlighting the positive skills they have developed by coping with abuse.¹⁴

Children and young people feel more able to cope and survive domestic violence if they feel their views have been heard, they have been able to participate in decisions affecting them and they perceive adults as supporting them. Participation projects can enable children and young people to work together to share their experiences both with each other and with those adults working alongside them. Providing children with a safe space to share with others supports them and helps them to feel less isolated. Sharing their experiences with each other offers validation and peer support and provides the adults an opportunity to broaden their understandings of the impact domestic violence has on children and young people. By increasing their learning on what structures are in place, children are empowered to influence the changes they want to make to those structures.

“The thing I have most enjoyed about being part of Yello! is meeting people with similar experiences and knowing that I was going to achieve something at the end of it. If there is one thing I want everyone to know it is that you are not alone.”
Yello! member.

¹⁴ Houghton C. (2013) *Voices Against Violence: Young People's experiences of domestic abuse*. PHD dissertation, University of Warwick.

Despite children being recognised as people in their own right, the national and local policy is often dominated by a need to control and regulate children and young people.¹⁵ To participate meaningfully, children and young people must feel able and comfortable to speak about their experiences; it is not enough for them just to be protected but to feel enjoyment, empowerment and emancipation.¹⁶ To participate actively, children require the opportunity to make decisions and to build social connections. This will support their recovery from domestic violence.

Embarking on participation

Children are often prohibited from taking part in the decision-making forums because of adult fears that children will be re-traumatised. Children's and support staff feedback from two of the most recent participation projects in Scottish Women's Aid¹⁷ evidence that participation projects can be a helpful mode of support and be part of the therapeutic process.

[The IJCC Participation toolkit](#) has an extensive breakdown on what organisations need to work with children and young people who have experienced domestic abuse in participation projects.

You can find advice there on developing a methodology, creating safe spaces, planning and suggested resources -- and the importance of taking a rights-based approach when developing and managing a participation project.

Meaningful participation projects not only rely on facilitators engaging directly with the children and young people, but on the enthusiasm, passion and encouragement of critical stakeholders. The IJCC project demonstrates the significant positive outcomes of partnership working and stakeholder engagement when embarking on participation projects. In every country there was identified improvement in laws and policies that protect women and children. More information about these outcomes can found in the [IJCC Collaboration Report and the Evaluation](#).

¹⁵ McMellon, C. & Tisdall, E.K.M. (2020) 'Children and Young People's Participation Rights: looking backwards and moving forwards', *The International Journal of Children's Rights*, 28 (1), pp.157-182.

¹⁶ Houghton C. (2013) *Voices Against Violence: Young People's experiences of domestic abuse*. PHD dissertation, University of Warwick.

¹⁷ Houghton, C. and Macdonald, R. (2018) *Everyday Heroes: Justice report*, p.7. Available at: <https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/everyday-heroes-briefing2-justice.pdf>; SWA and Children and Young People's Commissioner Scotland (2017) *Power Up/Power Down*. Available at: <https://womensaid.scot/project/power-up-power-down/>

“I was very positively surprised by the way the project was welcomed by organisations. From the beginning, our invitation to take part in forum got a very positive response; organisations got really engaged in the projects and gave good input.” IJCC Partner.

Learning from Portugal ...

In Portugal, IJCC partner’s [UMAR](#) adapted the participation model Power Up/Power Down from Scotland. UMAR worked with a group of children, to discuss children’s rights in the Portuguese justice system. This successful group led onto a Young Expert group who engaged with external partners. Meeting children and young people in person helped decision-makers to feel more responsibility to take account of the children and young people’s views. The participation of the Young Experts in multi-stakeholder forums made a hugely positive impression on stakeholders and helped to open doors for further engagement, with multiple invitations for the Young Experts to talk to other colleagues including judges. The Young Experts co-produced briefings alongside adults on key issues around domestic violence and child contact.¹⁸

“Involving children and young people in the project has made a massive difference. This was a new approach here, but it has helped to put the issues firmly on the agenda.” IJCC Partner

Working directly with children and young people who have first-hand experiences helps gain a fuller and clearer understanding of the issues. Engaging with children and young people in participation projects can lead to significant change for organisations and their wider community. Participation can model new ways of working, create shared learning across sectors, shift public understanding and responses to domestic violence and children’s rights, and influence real change at political levels. An example of this is given below.

Learning from Romania ...

In Romania, [the Community Safety and Mediation Centre](#) recruited and supported a group of young experts aged 11-18. They named themselves #Aurora (inspired by the

¹⁸ The English version of the briefing ‘Listening to children’ is available at https://www.ed.ac.uk/files/atoms/files/portugal_briefing_english_final.pdf whereas the Portuguese version ‘A Audição Das Crianças’ is available at https://www.ed.ac.uk/files/atoms/files/portuguese_briefing_portuguese_0.pdf. Details about UMAR’s work with the Young Experts were mentioned in our webinar ‘Children and young people’s participation is not a project, it’s a right!’ on the 2nd November <https://www.ed.ac.uk/education/rke/centres-groups/childhood-and-youth-studies-research-group/research/ijcc/project-outputs>

young Norwegian singer Aurora Asknes, who is known for the way she highlights the perspectives of vulnerable people in her songs). The group – despite COVID-19 – held more than 10 weekly meetings in a rural location near the city of Iasi. They recorded podcasts, prepared drawings and shared their views with therapists, lawyers, teachers and even a woman senator, about the need for children to be listened to by courts. The young experts worked with staff to create further opportunities to meet members of parliament. The success of these meetings led to the creation of a webinar called ‘Our voices are heard and protected!’ The webinar was attended by members of the parliament, the Juridical Committee, education system and journalists. Attendees heard directly from children on their views being heard in domestic violence cases.¹⁹ The webinar has led to concrete legislative proposals to be taken forward in [the next Romanian Parliament](#).

Learning from Scotland ...

The Children (Scotland) Bill updated the Children (Scotland) Act 1995 and contained a range of provisions that would impact children’s rights in Scotland. Yello! (the project’s young expert group) submitted written evidence to the Scottish Parliament’s Justice Committee during Stage One. They were subsequently invited to provide oral evidence in a private session at the Parliament.

The young experts spoke specifically about the need for: trained specialised advocates for children and young people who have experienced domestic violence; the views of children to be listened to regardless of age; increased confidentiality of children’s personal information in court proceedings; and improved safety in contact centres.

Yello! took part in all 3 stages of the Bill and, during the debates and discussions among the committees and Members of the Scottish Parliament (MSPs), their written and oral evidence was referred to frequently. Parliamentarians described the evidence as powerful, compelling and moving. For example, Rona Mackay MSP said in the Stage 3 Debate of the Bill:

One of the most memorable parts of our journey in getting the bill to Stage 3 was the evidence that the committee heard in private from young people from Yello!, which was an expert group advising the Improving Justice in Child Contact project [...] One by one, we heard of the traumatic and unhappy experiences of court-ordered contact in which the young people had felt powerless to express what they really wanted. I was in awe of their bravery in telling their stories to a room full of adults. They have helped to shape the bill so that future generations will not have to endure their experience.²⁰

¹⁹ <https://www.facebook.com/iulia.scantei/videos/768471107076521>

²⁰ Scottish Parliament (2020) *Stage 3 Proceedings: Children (Scotland) Bill* [Online]. 25th August 2020, Scottish Parliament, Edinburgh. Available at: <https://www.scottishparliament.tv/meeting/stage-3-proceedings-children-scotland-bill-august-25-2020>

“Being part of the participation projects means we get to speak to people in power. When you talk to people in power you know that something is going to get done because they can get things done quicker.” Yello! member

Creating meaningful change for women and children relies on their voices and views being at the centre of policy work.

Learning across the IJCC project partners ...

When planning and engaging your own project there will be a need to tailor your approach to participation according to your own specific context. While we experienced many similarities across our different countries, we were all working within different systems, meaning that our models had to adapt to fit within these systems. For example, if you are working in a context where there is little understanding or awareness of children’s rights or how children are affected by domestic violence, there may be some initial groundwork to build capacity before you can take participation work forward.

If children do not feel safe within the participation process it can be disempowering and can lead to negative impacts on their wellbeing. All stakeholders involved need to have an understanding of domestic violence, its impact on women and children and what stronger protection is needed to provide safety.

“In my opinion I think projects like ours are important because not that many children and young people have a say in their lives, because people think we are too young to know better. Overall, I think everything went great and everyone is really kind, willing to listen to your ideas without judging and really caring. Groups like these are so special we should have more of them all over the world.

Through Yello! and other projects, I have realised that participation projects are important and really do benefit us, as well as give us a voice and a chance to be listened to. It should be a priority to listen to children and young people and make them feel that their views matter, and this should be at the heart of a participation project.” Yello! member.

Conclusion

Children and young people’s participation is an essential part of influencing change. Involving children and young people with lived experiences ensures that developments adequately reflect children and young people’s realities and galvanises stakeholders to

engage in processes of change and take children and young people's views into account. IJCC has evidenced that participation projects can be successful in different contexts when a children's rights approach is taken. Each country encountered difficulties in engaging support from stakeholders but all successfully managed to make impact on policy and practice when working with children and young people.

ABOUT IJCC

Improving Justice in Child Contact (IJCC) aims to improve children and young people's participation in decision-making around child contact for families affected by domestic violence.

- By 'child contact' we mean communication (such as phone calls or spending time) between a child and a parent who are not regularly living together.
- By 'participation' we refer to children's human rights under the United Nations Convention on the Rights of the Child (UNCRC). Children have a range of participation rights, including the right to express their views freely in matters that affect them and for those views to be considered seriously.

Improving Justice in Child Contact is a project across five European countries (Bulgaria, Cyprus, Portugal, Romania and Scotland) running from November 2018 to November 2020. Each country is exploring models for children and young people to participate and working with stakeholders to eliminate the barriers for, and enhance the mechanisms that support, children and young people's participation.

More information is available on our website.

www.ed.ac.uk/education/ijcc

Our Young Advisers

Improving Justice in Child Contact is advised by a group of young experts, called Yello!, who have previous



experience of participation work. The young people are aged between 12 and 18 and have experience of domestic violence.

SUPPORT

If you are looking for advice or information about domestic violence, help is available. Women Against Violence Europe have information on specialist services across Europe at www.wave-network.org/find-help

Funding

This document is funded by the European Union's Rights, Equality and Citizenship Programme (2014-2020).



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