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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Access to justice for children

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to resolution 22/32 of the Human Rights Council. It addresses the definition of access to justice for children and its relation to other concepts, such as child-sensitive justice and juvenile justice, and discusses the legal framework and challenges for children in accessing justice. The main part of the report provides an overview of standards and good practices in relation to some particularly important aspects of access to justice for children.

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I. Introduction

1. The Human Rights Council, in its resolution 22/32 on the right of the child to the enjoyment of the highest attainable standard of health, decided to focus its next full-day meeting on the theme of “access to justice for children”, and invited the Office of the High Commissioner for Human Rights to prepare a report on that issue, and to present it to the Council at its twenty-fifth session, to inform the annual day of discussion on children’s rights.

2. The Council requested relevant stakeholders, including States, the United Nations Children’s Fund, other relevant United Nations bodies and agencies, relevant special procedures mandate holders and the Special Representative of the Secretary-General on Violence against Children, regional organizations and human rights bodies, civil society, national human rights institutions and children themselves, to provide input for the report.¹

A. Access to justice for children

3. Access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights. In the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, adopted in September 2012, Member States of the United Nations reaffirmed the right of equal access to justice for all, including members of vulnerable groups and “recognized the importance of the rule of law for the protection of the rights of the child, including legal protection from discrimination, violence, abuse and exploitation, ensuring the best interests of the child in all actions, and recommit to the full implementation of the rights of the child”.²

4. For the purpose of the present report, access to justice refers to the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child.³ It applies to civil, administrative and criminal spheres of national jurisdictions, including customary and religious justice mechanisms, international jurisdictions, as well as alternative and restorative dispute resolution mechanisms, and covers all relevant judicial proceedings, affecting children⁴ without limitation, including children alleged as, accused of, or

¹ The following States submitted information: Albania, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cambodia, Colombia, Denmark, Estonia, Finland, Georgia, Germany, Greece, Ireland, Japan, Kuwait, Lithuania, Mexico, Morocco, Norway, Oman, the Russian Federation, Sierra Leone, Slovenia, Spain, Syrian Arab Republic, Qatar, Ukraine and Uzbekistan. The report was also informed by contributions of five international and regional organizations, the Inter-Agency Panel on Juvenile Justice, two special procedures mandate holders, five National Human Rights Institutions, the European Network of Ombudspersons for Children, and 34 non-governmental organizations and other civil society actors. In addition, children were asked to provide their views on accessing justice in a survey that was conducted by Child Rights Connect during the summer of 2013. In total, 310 children between 11 and 17 from 24 countries participated in the survey. Only a selection of the wealth of experiences and initiatives on which information was received is outlined in this report.

² General Assembly Resolution 67/1, paras. 14 and 17.

³ UN Common Approach to Justice for Children, p. 4.

⁴ The Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (article 1).

recognized as having infringed the penal law, victims and witnesses⁵ or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection.

5. The concept of access to justice for children requires the legal empowerment of all children. They should be enabled to access relevant information and to effective remedies to claim their rights, including through legal and other services, child rights education, counselling or advice, and support from knowledgeable adults.⁶ Moreover, access to justice for children requires taking into account children's evolving maturity and understanding when exercising their rights.

B. Child-sensitive justice and juvenile justice

6. While juvenile justice and child-sensitive justice are related to the concept of access to justice for children, these concepts should be distinguished. Juvenile justice specifically addresses the situation of children alleged as, accused of, or recognized as having infringed the penal law. It refers to "laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children in conflict with the law".⁷

7. The United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime define child-sensitive as "an approach that balances the child's right to protection and that takes into account the child's individual needs and views".⁸ Similarly, according to a definition of the Council of Europe, child-friendly justice "means creating a justice system which guarantees the respect and the effective implementation of all children's rights, giving due consideration to the child's level of maturity and understanding and to the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity."⁹

II. Legal framework

8. Human rights norms and standards relevant to ensuring access to justice for children are set out in a series of legally binding and non-binding international and regional human rights instruments.¹⁰ Elements of access to justice for children in particular include the

⁵ "Child victims and witnesses" denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders; Economic and Social Council resolution 2005/20, article 9 (a).

⁶ UN Common Approach to Justice for Children, p. 4.

⁷ United Nations Office on Drugs and Crime/UNICEF, *Manual for Measurement of Juvenile Justice Indicators*, 2006, p. 54.

⁸ Economic and Social Council resolution 2005/20 article 9(d).

⁹ Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, article II.a; for the purpose of this report, child-friendly and child-sensitive are considered as synonymous.

¹⁰ All core international human rights treaties are relevant in this context. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which also places obligations on States to follow the principles of child-sensitive justice, should be particularly highlighted. Regional human rights treaties – such as the American

rights to relevant information, an effective remedy, a fair trial, to be heard, as well as to enjoy these rights without discrimination. In addition, the responsibility of States Parties to realize the rights of all children requires structural and proactive interventions to enable access to justice.

9. The International Covenant on Civil and Political Rights and the Convention on the Rights of the Child are of particular relevance. Under both instruments, States are required to ensure that their domestic legal framework is consistent with the rights and obligations provided, including the adoption of appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice.¹¹

10. Article 2(3) of the International Covenant on Civil and Political Rights provides for the right to an effective remedy. In its General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, the Human Rights Committee emphasized that “in addition to effective protection of Covenant rights, States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children.”¹² Article 2 (3) of the International Covenant on Civil and Political Rights also requires the availability of adequate reparations to individuals whose rights have been violated.¹³

11. While it is not explicitly mentioned in the Convention on the Rights of the Child, the Committee on the Rights of the Child held that the right to an effective remedy is an implicit requirement of the Convention. The Committee affirmed that “States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-sensitive information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.”¹⁴ The Committee also stressed that in case of violations of rights, “there should be appropriate reparation, including compensation, and, where needed, measures to

Convention on Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms; Charter of Fundamental Rights of the European Union; Arab Charter on Human Rights; African Charter on Human and Peoples’ Rights; and African Charter on the Rights and Welfare of the Child – also guarantee relevant human rights to ensure access to justice for children. Relevant international and regional non-binding standards include, *inter alia*, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Guidelines on Justice in matters involving Child Victims and Witnesses of Crime; Standard Minimum Rules for the Treatment of Prisoners; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; United Nations Rules for the Treatment of Prisoners and Non-custodial Measures for Women Offenders; United Nations Standard Minimum Rules for Non-custodial Measures; Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters; Guidelines for the Alternative Care of Children; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice; Guidelines on Action for Children in the Justice System in Africa; Child Friendly Legal Aid in Africa.

¹¹ Article 2 of the International Covenant on Civil and Political Rights and article 4 of the Convention on the Rights of the Child; see also: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, article I.2.b.

¹² Para. 15.

¹³ Human Rights Committee, General Comment No. 31, para. 16.

¹⁴ Convention on the Rights of the Child, General Comment No. 5, para. 24.

promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39 [of the Convention]”.¹⁵ The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime further specify that procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.¹⁶

12. While all the fair trial guarantees provided in the International Covenant on Civil and Political Rights are equally applicable to children, the Convention on the Rights of the Child additionally provides a list of fundamental safeguards to ensure fair treatment of children, including the rights to information,¹⁷ expeditious decisions,¹⁸ prompt access to legal assistance and to prompt decisions by the court.¹⁹ Article 12 of the Convention on the Rights of the Child, which establishes the child’s right to be heard and taken seriously, is of particular importance. Paragraph 1 assures, to every child capable of forming his or her own views, the right to express those views freely in all matters affecting the child. It requires that the views of the child be given due weight in accordance with their age and maturity. In addition, paragraph 2 establishes that children shall be provided the right to be heard in any judicial or administrative proceedings affecting them, either directly, or through a representative or an appropriate body. The Committee on the Rights of the Child recognized article 12 as one of the four fundamental principles of the Convention on the Rights of the Child, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child’s best interests, which frame children’s access to justice and should be considered in the interpretation and implementation of all other rights.²⁰

III. Barriers to children’s access to justice

13. In spite of the comprehensive legal framework ensuring and protecting children’s rights and due to their special and dependent status, access to justice remains a tremendous challenge for children.²¹ There are several reasons for this situation.

14. The complexity of justice systems makes them difficult to understand for children. Children are often unaware of their rights and the existence of services, lacking information about where to go and whom to call to benefit from advice and assistance.²² Moreover, legislation and procedures concerning the treatment and participation of children in proceedings, including criminal, administrative and civil proceedings, are often not adapted to children’s rights and needs or may even be discriminatory towards children based on their age and gender. States have also highlighted that specialized judges, prosecutors, lawyers and other personnel working with children, as well as sufficient resources to provide specialized training, are frequently lacking.

¹⁵ *Ibid.*

¹⁶ Para. 35; children may, for instance, need protection in addition to financial redress for violations of their right; see European Court of Human Rights, *Case of K.U. v. Finland* (Application No. 2872/02), Judgment of 2 December 2008, para. 47.

¹⁷ Art. 17.

¹⁸ Art. 10.

¹⁹ Art. 37(d).

²⁰ Convention on the Rights of the Child, General Comment No. 12, para. 2.

²¹ Convention on the Rights of the Child, General Comment No. 5, para. 24.

²² Joint report of the Special Representative of the Secretary-General on Violence against Children and the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Safe and child-sensitive counselling, complaint and reporting mechanisms to address violence against children*, 2012, p. 6.

15. The justice system is often intimidating for children. They may be afraid to make complaints out of fear of harassment, further stigmatization, abandonment or reprisals against them or their families. They may also lack trust and confidence that their complaints will be taken seriously and fairly assessed.²³ In addition, in some parts of the world, it is culturally and socially unacceptable for children to lodge complaints and claim redress. Doing so would place children at great risks of reprisals, including violence, intimidation, exclusion and ostracism. Violence against children is also often considered as a fact of life rather than a rights violation that could be brought to court.

16. In addition, access to justice for children usually depends on the support provided by adults, who themselves may not be aware of children's rights or know how to best support their children. Children often have no capacity to act without their parents or legal representatives, which is particularly problematic in case of a conflict of interest. In addition, children are sometimes not accepted or seen as rights holders, but rather as subject to the good will of adults, who may not act in the best interest of the child. During the process, decisions are often taken without explaining them and their consequences to children. Children's ability to access justice is also affected by factors such as the costs of proceedings and the physical distance to courts as they often lack the necessary means to pay for fees or organize travel.

17. While difficulties mentioned above are experienced by many children, certain groups of children, including children in alternative care, children deprived of their liberty, children with disabilities, children living in poverty,²⁴ children living in the streets, belonging to minorities or who are indigenous children,²⁵ girls,²⁶ children in conflict situations, asylum-seeking and migrant children, are faced with additional barriers in accessing justice. These children are often exposed to multiple forms of stigmatization and discrimination, including on grounds of sex, disability, race, ethnicity, colour, language, religion, national or social origin, property, birth, or other status, such as sexual orientation or gender identity, as well as violence, such as gender-based violence, domestic violence, murder and violence related to organized crime and gangs, witchcraft and serious forms of violence based on ill perceptions towards children with disability and albinism. It should be emphasized that girls and boys often experience violence differently. While boys are more exposed to serious forms of violence on the streets, in gangs and in organized crime, girls are more exposed to violence in the private sphere, in particular sexual violence, which is often associated with shame, fear and distrust, which prevents them from speaking out and seeking help to bring the perpetrator to justice.

²³ Child Rights Connect, survey, see footnote 1 above.

²⁴ See the Report of the Special Rapporteur on Extreme poverty and human rights (A/67/278), analysing the obstacles to access to justice for persons living in poverty.

²⁵ See the Study by the Expert Mechanism on the Rights of Indigenous Peoples on Access to justice in the promotion and protection of the rights of indigenous peoples (A/HRC/24/50), paras. 66-70.

²⁶ UN Women, *Progress on the World's Women 2011-2012: In Pursuit of Justice*, 2011. On 18 February 2013, the Committee on the Elimination of Discrimination against Women held a half-day general discussion on access to justice, in order to start elaborating a general recommendation on access to justice for women and girls.

IV. Good practices

A. Empowering children with child-sensitive information

18. Children's access to information about their rights and ways of promoting their safeguard and implementation, as well as ensuring their informed consent to decisions in line with their evolving capacities, is a crucial dimension of access to justice. Most countries that contributed information to the present report indicated that dedicated arrangements for the dissemination of adequate information to children are in place. These arrangements include, *inter alia*, (a) information on websites and online counselling services; (b) initiatives to raise awareness, such as human rights education, discussions and presentations in schools, organization of court visits and moot courts; (c) the publication and dissemination of brochures, leaflets, posters in child-sensitive language and adapted to children's age in police stations, courts, and victim support services; (d) the establishment of help-lines that provide free, private and confidential 24-hour telephone counselling for children, as well as other creative initiatives. For instance, in Belarus, writing and art competitions aiming at enhancing knowledge about children's rights are carried out.

19. In this context, it is important to recall that children should be provided with information and advice that is adapted to their age, maturity and circumstances. It should be conveyed in language children are able to understand and which is gender- and culture-sensitive, and supported by child-sensitive materials and information services.²⁷

20. Information should also be available to parents, teachers and people working with and for children. In a survey conducted by Child Rights Connect with 310 children from 24 countries on their views and opinions on accessing justice, children overwhelmingly stated that the main source of information about remedies would come from their parents or family members. The vast majority of children also said that they would want their parents to help them in obtaining access to justice because they trusted them. The survey also showed a preference for information to be sent directly to them as well as for information to be provided at school and online.²⁸ In that regard, the essential role of civil society organizations in awareness-raising, providing information and promoting public discussion on children's rights has been highlighted by a number of States.

B. Child-sensitive procedures as a prerequisite condition to access justice

21. In order to ensure effective access to justice for children, national legal systems should have the capacity to accept and address complaints from or on behalf of children, while fully respecting, protecting and ensuring their rights. This implies that the system is child-sensitive, in particular taking into account the general principles and relevant provisions of the Convention on the Rights of the Child, as well as all other relevant human rights norms and standards.²⁹

²⁷ *Safe and child-sensitive counselling, complaint and reporting mechanisms to address violence against children*, footnote 22 above, p. 7.

²⁸ Child Rights Connect, survey, see footnote 1 above.

²⁹ See paras. 8-12. In particular, the United Nations Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, and the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice provide further guidelines on the requisite elements of a child-sensitive justice system. The main elements of a child-sensitive system are addressed throughout chapter IV of this report.

22. A number of States provided information on initiatives to ensure child-sensitive justice systems. Denmark, for instance, reported that it strengthened the advocacy function of its National Council for Children in 2012. The Council, *inter alia*, advises the Government and Parliament about areas in legislation or administrative practices where the rights of the child are not taken into account. Spain informed about its comprehensive national strategy to prioritize the implementation of children's rights in the political agenda. Moreover, several States referred to comprehensive reforms of their juvenile justice systems to ensure that it takes into account the needs of children and complies with the rights of children involved with the criminal justice system, including through ensuring the full participation of children in proceedings.

Existence of child-sensitive alternative mechanisms to solve disputes and seek redress

23. Apart from judicial and administrative authorities, alternative mechanisms exist in some States. Article 40 of the Convention on the Rights of the Child requires States to develop and use effective alternative mechanisms to formal criminal proceedings that respect human rights and procedural safeguards and are child- and gender-sensitive. These alternatives include diversion, restorative justice processes,³⁰ mediation and community-based programmes, including treatment programmes for children with substance abuse problems.³¹ Georgia, for instance, reported on extensive diversion and mediation programmes for child offenders, including a programme called "my senior friend" which brings together child offenders with adults who have successfully undergone such a programme.

24. States have also developed child-sensitive alternative models for civil and administrative procedures. For instance, in Australia, Family Relationship Centres and other family dispute resolution services provide a child-inclusive practice as part of the family dispute resolution process. In Finland, a child-sensitive alternative dispute resolution and mediation mechanism has been established in district courts for disputes on child custody and visiting rights.

25. The Committee on the Rights of the Child has urged States to establish National Independent Human Rights Institutions and ombudspersons for children with the authority to receive individual complaints submitted by or on behalf of children, carry out investigations, and secure effective remedies for breaches of children's rights.³² The joint report by the Special Representative of the Secretary-General on Violence against Children and the Special Rapporteur on the Sale of Children on *Safe and child-sensitive counselling, complaint and reporting mechanisms to address violence against children* found that compared to the judicial system, Independent Human Rights Institutions for Children are generally more accessible as their complaint system is free of charge, less formal and simpler to use, and does not require the involvement of a lawyer. They are also crucial to disseminate information and raise awareness of children's rights to empower children and support efforts to access justice. However, they require adequate resources, institutional cooperation with other actors and independence in the performance of their mandate in order to be effective. Their effectiveness is also dependent on the level of trust they generate among young people.³³

³⁰ In this regard, see also the report by the Special Representative of the Secretary-General on Violence against Children, *Promoting Restorative Justice for Children*, 2013.

³¹ Convention on the Rights of the Child, General Comment No. 10.

³² Convention on the Rights of the Child, General Comment No. 2, para. 13.

³³ *Safe and child-sensitive counselling*, p. 19-20.

26. A number of States have established Ombudsman Offices or similar institutions to receive complaints from children about violations of their rights. In Estonia, for example, the Ombudsman Office for Children is, *inter alia*, responsible for resolving complaints related to children's rights concerning individuals and authorities that perform public functions, and to verify whether the legal acts related to children's rights are in accordance with the Constitution and international law.

Complaints mechanisms for children in closed institutions

27. Mechanisms through which children in closed institutions can file a complaint regarding their treatment are of utmost importance to these children. When a child is placed in such an institution, States are responsible for ensuring their safety, protection, welfare and appropriate care and treatment. Without access to complaint mechanisms, these children face an increased risk of suffering abuse of authority, humiliation, ill-treatment and other unacceptable deprivations of rights.³⁴

28. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide that children in closed facilities of any kind "should have the opportunity of making requests or complaints to the director", and the right to make complaints to administrative and judicial authorities, and to be informed of the response without delay. The Rules also call for the establishment of an independent office, such as an ombudsman, to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of settlements.³⁵ Moreover, the Guidelines for the Alternative Care of Children provide that "[c]hildren in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement".³⁶

29. For example, Uzbekistan stated that children deprived of their liberty have the right to report infringements of their rights to a wide variety of actors, including the administration of the institution where they are held, Government bodies, civil society groups and other institutions and organizations. All places of detention are also equipped with letter-boxes for complaints. In police facilities, a helpline is available, which can be used to obtain legal assistance.

Customary and religious justice systems

30. Customary and religious justice systems in some State are recognized by law and provide certain types of dispute resolution processes. The Human Rights Committee has indicated that these mechanisms should be limited to minor civil and criminal matters.³⁷ Customary justice mechanisms are sometimes more available for children and their families and provide the means for easier conflict resolution. The Special Representative of the Secretary-General on Violence against Children noted that they tend to use more accessible language, have a greater potential for healing, are less costly and promote more direct involvement of the offender and victim, as well as their families and the community.³⁸ The

³⁴ See, for instance, the Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (A/HRC/21/25), paras. 52–55; Report of Working Group on arbitrary detention (A/HRC/10/21), para. 47.

³⁵ General Assembly resolution 45/113, rules 69, 75–78; para. 36 of the Standard Minimum Rules for the Treatment of Prisoners; General Assembly resolution 43/173, principle 33.

³⁶ General Assembly resolution 64/142, para. 98.

³⁷ Human Rights Committee, General Comment No. 32, para. 24.

³⁸ *Promoting Restorative Justice for Children*, p. 26.

child normally appears in a customary proceeding with his or her family, and the focus is on reparation, reconciliation and ensuring the child remains part of the community.

31. However, in spite of some of the positive features of customary and religious justice mechanisms, human rights concerns may nevertheless arise.³⁹ Persons acting in a judicial or quasi-judicial capacity may not be familiar with the Convention on the Rights of the Child, there may not be specially established procedures when dealing with children, and they may still use sanctions for wrongful conduct that are incompatible with human rights, such as corporal punishment or banishment, and sanctions that discriminate on the basis of gender or other status. Possible avenues to address human rights issues in customary and religious justice mechanisms, without jeopardizing their positive aspects, may include training and awareness raising initiatives, as well as education on children's rights.

Complaint mechanisms at the international level

32. States parties are primarily obliged to develop appropriate national mechanisms to enable children whose rights have been violated to have access to effective remedies at the domestic level. However, in order to reinforce and complement the national system, complaint mechanisms have also been established at the regional⁴⁰ and international level.⁴¹ One important development in that context is the adoption of the third Optional Protocol to the Convention on the Rights of the Child, which establishes a communications procedure. Upon entry into force of the third Optional Protocol,⁴² children will have the possibility to submit a complaint about violations of their rights to the Committee on the Rights of the Child.

Training on access to justice for children and children's rights

33. Another crucial aspect of the right to access to justice for children is the training of relevant professionals on relevant legislation, including anti-discrimination and gender equality laws, training and development of child-sensitive skills to communicate with children and creating a safe environment in the justice process. Such training should be multi-disciplinary and include all persons working with and for children, such as lawyers, judges, public prosecutors, police, teachers, prison staff, social workers, health professionals, as well as persons working in the alternative care system, public administration, immigration control, civil society actors and traditional leaders.

34. In most countries, important initiatives have been undertaken to ensure child rights training for professionals working in the justice system and other public officials, including the incorporation of children's rights training in university curricula and compulsory training courses. The Mexican Supreme Court, for instance, issued a "Protocol of action for those delivering justice in cases affecting children and adolescents". By comprehensively expounding the general rules and principles that need to be observed at all stages of a

³⁹ Special Representative of the United Nations Secretary-General on Violence and Children and Plan International on *Protecting children from harmful practices in plural legal systems*, 2012, p. 9.

⁴⁰ For example, the Inter-American Commission and Court of Human Rights, the European Committee of Social Rights and the European Court of Human Rights; the African Court and Commission on Human and Peoples' Rights.

⁴¹ Violations of children's rights may be raised before all human rights treaty bodies that have the competence to consider individual complaints.

⁴² According to article 19 (1) of the third Optional Protocol to the Convention on the Rights of the Child, the protocol will enter into force three months after the deposit of the tenth instrument of ratification or accession. As of November 2013, 8 States had ratified the Convention, including Albania, the Plurinational State of Bolivia, Gabon, Germany, Montenegro, Portugal, Spain and Thailand.

process involving children, the document provides guidelines not only for judges and magistrates, but also to lawyers and other relevant actors, as well as civil society at large.

35. While training for teachers, parents, civil society actors and other persons working with children was less often referred to in contributions to this report, a number of initiatives have also been highlighted. Burkina Faso, for instance, reported on training and awareness raising initiatives for parents associations, as well as civil society actors on children's rights. The Ministry of Education, Youth, and Sport in Cambodia also regularly carries out trainings on children's rights for school (deputy) directors and teachers in primary and high schools across the country.

C. Triggering judicial action

36. The right of children to take legal action or invoke administrative proceedings to protect their rights differs in various countries. In this context, the importance of non-discriminatory birth registration as provided in article 7 of the Convention on the Rights of the Child should be highlighted.⁴³ Apart from ensuring the existence of the child under law, birth registration provides the foundation for safeguarding children's rights, including children's access to justice.

37. Some States recognize the legal standing of children to lodge complaints before judicial and other authorities. For instance, the South African Children's Act enables children not only to participate in civil proceedings but also to institute proceedings themselves. In some countries, the exercise of this right is limited to older children and may also depend on the fulfilment of other requirements, such as the child's level of personal development, their capacity to understand the legal proceedings, or the consent of their parents. Younger children sometimes have the possibility to turn to administrative bodies, which may initiate legal proceedings on their behalf if they consider it appropriate.⁴⁴ For instance, in the Russian Federation, when the rights and legitimate interests of a child are infringed in relations between the child and the parents or other legal representatives, all children, irrespective of their age, shall be legally entitled to approach the child care authorities to seek their protection, or a court on reaching the age of 14 years. However, in many countries, children can only take action through their parents or legal representatives. In this case, it is important that the child's views are transmitted correctly to the competent body. Moreover, the representative should be aware that he or she represents exclusively the interests of the child.⁴⁵

38. The interest of children and their legal representative may also be in conflict. For instance, parents involved in separation or divorce may seek to use their interpretation of their children's rights to pursue their own interests, rather than their children's. Furthermore, parents or legal representatives may be the direct or indirect perpetrators of breaches of many children's rights. In a number of countries, courts are empowered to exclude parents/legal representatives from proceedings and appoint an ad hoc legal guardian to represent a child's interest in such cases. For instance, in Germany, parents are excluded from representing the child in certain civil cases prescribed by law, such as legal transactions between the child and one of his or her parents, and a supplementary curator is appointed for the child in that matter. Before the family court, the court must appoint a

⁴³ Article 16 of the International Covenant on Civil and Political Rights also recognizes that "[e]veryone shall have the right to recognition everywhere as a person before the law".

⁴⁴ *Safe and child-sensitive counselling, complaint and reporting mechanisms to address violence against children*, footnote 22 above, p. 12.

⁴⁵ Convention on the Rights of the Child, General Comment No. 12, paras. 36-37.

legal advisor to the child in order to be able to clearly assert the child's best interest in cases of significant conflict with parents' interest. The legal advisor establishes what is in the child's best interest and asserts those interests in court. Moreover, he or she also informs the child, in an appropriate manner, of the subject matter, the course and possible outcome of the proceedings.

39. A number of non-governmental organizations emphasized the fact that if the parents, legal guardians or legal representatives are unable or unwilling to represent child victims in court, it may also be beneficial for children to be able to turn to other actors in getting redress, including National Human Rights Institutions, legal clinics, public child defenders and non-governmental organizations. Moreover, the possibility to access group litigation and complaints, such as combined cases or test cases, can provide the opportunity to challenge systematic, grave or widespread children's rights violations. This possibility is particularly relevant if there are difficulties in identifying victims without doubt due to the nature of violations, such as in the case of child pornography, or characteristics of the victims, for example very young children.

Legal and other appropriate assistance for children

40. As children are usually at a disadvantage in engaging with the legal system, whether as a result of inexperience or lack of resources to secure advice and representation, they need access to free or subsidized legal and other appropriate assistance to effectively engage with the legal system. Without such assistance, children will largely be unable to access complex legal systems that are generally designed for adults. Free and effective legal assistance is particularly important for children deprived of their liberty.

41. The right to legal and other appropriate assistance in the context of criminal proceedings, including for children, is well established under international human rights law.⁴⁶ The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems specify that "[l]egal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children." The Committee on the Rights of the Child has also explicitly recognized that legal or other appropriate assistance for children should be free of charge and recommended that States provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance includes, for instance, social workers, psychologists, National Human Rights Institutions, friends and family members. Such a person must, however, have sufficient knowledge and understanding of the various legal aspects of the judicial process and must be adequately trained to work with children in conflict with the law.⁴⁷

42. In this regard, Sierra Leone provided information that it piloted a national legal aid scheme which, *inter alia*, provides legal aid to children in conflict with the law and supports lawyers in providing legal assistance to victims. Moreover, Sierra Leone acknowledged the important role that paralegals can play in providing legal aid and reported that it trains paralegals to monitor police stations and advocate for the release of children, as well as to provide free legal advice and mediation services at grassroots level.

43. While the right to free legal assistance is not explicitly provided for in international law outside the criminal law context, access to legal and other assistance in these matters is

⁴⁶ See the Convention on the Rights of the Child, article 40(2)(b)(ii) and (iii); article 14 of the International Covenant on Civil and Political Rights; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, paras. 2, 3 and 10.

⁴⁷ Convention on the Rights of the Child, General Comment No. 10, para. 49.

nevertheless essential for ensuring that children are able to take action to protect their rights. The Basic Principles on the Role of Lawyers establish that all persons should have effective and equal access to lawyers, and call on Governments to “ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons”.⁴⁸ In South Africa, for instance, the child’s right to legal assistance at State expense in civil matters is guaranteed in its Constitution. In many States, however, free legal aid is provided only for specific cases and parents are often viewed as the natural representatives for children.

Statutory limitations

44. Limitation periods can pose a problem for children in accessing justice since they may not be able to challenge violations of their rights until they have reached majority. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law require that statutes of limitations should not apply to gross violations of international human rights law and should not be unduly restrictive for other types of violations.⁴⁹ In the context of violations of children’s rights, this includes that the time period should not begin running until the child has reached majority, or even later.

45. Austria reported that its statutory period of limitation for certain offences against children was extended. According to the second Violence Protection Act, the time from the day the offence was committed to when the victim has reached the age of 28 shall no longer be included in calculating the period of limitation. Similarly, in the context of a civil claim to defend their property rights against an insurance company, which had become time-barred when the applicants reached majority, the European Court of Human Rights found that the strict application of a statutory limitation period, without taking into account the particular circumstances of the case, had prevented the applicants from using a remedy that in principle was available to them.⁵⁰

D. Participation in proceedings

The right to be heard

46. The right to access to justice also requires that children be able to participate in an effective and meaningful way in all matters affecting them, including criminal, civil and administrative proceedings. Wherever possible, children should be heard directly. Children must not only be provided the possibility to express their views and to be heard, States must also ensure that their views are given due consideration and that children are not subjected to undue pressure or manipulation.⁵¹

47. As emphasized by the Committee on the Rights of the Child, article 12 of the Convention on the Rights of the Child manifests that children are subject of rights. They hold rights which have an influence on their life, and not only rights derived from their vulnerability or dependency on adults.⁵² In this respect, the Committee on the Rights of the Child also clarified that article 12 imposes no age limit and confirmed that children are able

⁴⁸ United Nations Basic Principles on the Role of Lawyers, paras. 2 and 3; see also Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, guideline H.

⁴⁹ Paras. 6–7.

⁵⁰ European Court of Human Rights, *Stagno v. Belgium*, Application No. 1062/07, Judgment of 7 July 2009, para. 33.

⁵¹ Convention on the Rights of the Child, General Comment No. 12, para. 34.

⁵² *Ibid.*, paras. 18, 21.

to form views from the youngest age, even when they may be unable to express them verbally. The Committee, furthermore, established that all processes in which children are heard and participate must be transparent and informative, voluntary, respectful, relevant, child-sensitive, supported by training, safe and sensitive to risk and accountable.⁵³

48. The right to be heard has also been emphasized by many States as an important element of access to justice for children. For instance, Belgium reported that its Constitution recognizes children's right to be heard on any question which concerns them. Their opinion must be taken into account in accordance with the child's age and discernment. According to the Norwegian Child Welfare Act, a child who has reached 7 years of age, and younger children who are capable of forming their own opinions, shall receive information and be given an opportunity to state their opinion before a decision is made in cases concerning them.

Treatment of children during proceedings

49. The hearing of a child is a difficult process and can even be traumatic, in particular for child victims of sexual crimes. Therefore, article 12 of the Convention on the Rights of the Child requires States to ensure a safe, child-sensitive environment in which the child feels respected, as well as conditions that take into account a child's individual situation.⁵⁴ During proceedings, the privacy and confidentiality of children must be protected and their safety ensured.

50. Many States have reported on a wide variety of special protection measures for hearings and questioning of children, as well as interrogation of children. Measures taken include (a) the establishment of child-sensitive premises for the hearing of a child; (b) the conduct of hearings solely in the presence of a parent, guardian or any other person who takes care of the child, except where this does not correspond to the child's interest, or other specially trained professionals, such as psychological experts; (c) measures to ensure privacy for children, such as the restriction of public access to courts and the prohibition to disclose certain information; (d) audio-visual recording of the interview of the child and questioning outside the courtroom, as well as one-stop shops which bring together services under one roof to collect forensic evidence, provide legal advice, health care and other support. These measures are taken to prevent re-victimization of the child, to gather necessary evidence, to support healing and reintegration, and to prevent impunity.

51. In order to ensure that children can effectively participate throughout the whole process, it is also important that decisions are explained to children in a way that they can understand. As emphasized by the Committee on the Rights of the Child, information and feedback about the weight given to their views should be made available to them.⁵⁵

E. Measures to ensure access to justice for children at special risk

52. The right to equality and the prohibition of discrimination obliges States to eradicate discriminatory laws, policies and practices, and to take affirmative measures to ensure that all individuals, including children, are entitled to equal access to judicial and adjudicatory mechanisms without distinction of any kind. In addition, States are required to ensure that all parties in judicial or legal proceedings are treated without any discrimination. The Committee on the Rights of the Child emphasized that the non-discrimination obligation

⁵³ *Ibid.*, para. 134.

⁵⁴ *Ibid.*, paras. 23–24, 34.

⁵⁵ *Ibid.*, para. 45.

requires States to identify actively individual children and groups of children the recognition and realization of whose rights may demand special measures, such as the collection of disaggregated data and changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.⁵⁶

53. Some States have reported on specific measures to ensure access to justice for certain groups of children. For instance, in Slovenia, children have the right to a refugee counsellor, who provides support and legal aid to them. Ukraine provides a right to free legal aid to children lacking parental care. The Greek General Secretariat for Youth is currently implementing a project aiming at providing free legal assistance to socially vulnerably groups of children and young people, such as underage offenders, victims of domestic violence or trafficking in persons, drug users and unaccompanied minors. However, some groups, such as children with disabilities, have not been specifically addressed by most contributions of States.

V. Conclusion and recommendations

54. **International and regional human rights norms and standards provide a comprehensive framework for ensuring access to justice for children, which is an essential prerequisite for the protection and promotion of all other human rights of children. However, due to their special and dependent status, children are still faced with a number of serious challenges in accessing justice. States should thus revise their laws, policies and procedures to ensure better compliance with international norms and standards, in particular the Convention on the Rights of the Child, and its Optional Protocols. The legislation should decriminalize status offences and survival behavior and include legal safeguards to protect the child's best interests and protection from discrimination; the child's right to freedom from violence and to free and safe participation in proceedings throughout the justice process, as well as the right to legal and other relevant assistance; and the right to a swift consideration of cases concerning children.**

55. **Independent, safe, effective, easily accessible and child-sensitive complaint and reporting mechanisms should be established by law in compliance with international human rights norms and standards, in particular the Convention on the Rights of the Child. Where such mechanisms already exist, States should secure their availability and accessibility for all children, including children deprived of their liberty, without discrimination of any kind. In addition, States should ensure that complaint and reporting mechanisms act in an effective and child-sensitive manner and pursue the best interests of the child at all times.**

56. **Being aware of, and having access to, information about their rights and how to obtain a remedy is another key element of ensuring access to justice for children. Information should be age-appropriate and adapted to the needs of children. It should be presented in ways that children accept and understand. In addition, information should be made available to parents and other persons acting as legal representatives of children.**

57. **States should develop and strengthen multi-disciplinary capacity-building and training initiatives to ensure that all persons working with, and for, children have the necessary knowledge and skills relating to children's rights and needs. Children's access to justice often faces significant barriers at the community level, where children**

⁵⁶ Convention on the Rights of the Child, General Comment No. 5, para. 12.

may fail to be perceived as human rights holders. Training initiatives should therefore be promoted and complemented with awareness-raising and capacity-building to community, religious and traditional leaders, mediators, facilitators and other justice providers, to parents and to children themselves.

58. Children should have the possibility to complain and initiate legal proceedings in cases of violations of their rights. As children are usually at a disadvantage when engaging with the legal system, they have a particularly acute need for legal assistance. States should provide legal or other appropriate assistance to children free of charge in all matters affecting them. Legal assistance should be of sufficient quality and be provided to all children within the State's territory, including non-citizens. If children are represented by a parent, guardian or any other person, these persons should be required to always act in the best interest of the child.

59. States must also ensure that the views of children, including children from the youngest age, even when they may be unable to express themselves verbally, are given due consideration. Moreover, in order to avoid (re-)victimization of children participating in judicial processes, States should make sure that their privacy and confidentiality are safeguarded at all times. States also must ensure that children are protected from all forms of violence when coming into contact with the justice system.

60. States should take necessary measures to protect children from the risk of manipulation, harassment, reprisals or intimidation. To ensure access to justice for particularly vulnerable and socially excluded groups, including children in alternative care, children deprived of their liberty, children with disabilities, children living in poverty, children living in the streets, minorities, indigenous children, girls, asylum-seeking and migrant children, States should address additional barriers for and adopt special protective measures that enable them to participate in proceedings and feel empowered, when needed and appropriate, to provide their informed consent to decisions affecting them.

61. Children and those acting on their behalf should also be provided access to international and regional mechanisms when domestic legal remedies fail to protect children. In particular, States should become parties to the Third Optional Protocol to the Convention on the Rights of the Child and promote its effective implementation. Moreover, States should ensure that justice for children is integrated in the post-2015 development agenda and children's rights are an integral part of broader justice reforms and rule of law initiatives.
