DRAFT

Children and Access to Justice: National Practices, International Challenges

Bingham Centre for the Rule of Law Report

October 2016

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Chapter 1: Introduction

1.1 Context: Access to justice for children

Access to justice is essential for the protection of the rights of children. It is especially important for protection from discrimination, violence, abuse and exploitation and for ensuring their best interests in all actions involving or having an impact on them. Due to their dependent status, children are most vulnerable when they need the justice system or come into contact with it as victims, witnesses and offenders, or when judicial or administrative intervention is required for their custody or protection. Children living in poverty are (like adults in poverty) particularly exposed to denial of their rights and are at additional risk of exploitation.

This report examines barriers and challenges to access to justice for children and the ways those are overcome in different jurisdictions. While exploring the position in individual countries, it does so with a view to understanding national issues as international challenges. In that regard, two dimensions of the international context are of particular note.

First, the framework for rights is established in international law. The importance of access to justice for children as a right in itself and for the enjoyment of other rights is clearly established in the UN Convention on the Rights of the Child (CRC) as well as in other main international human rights instruments.[1] This report builds on the framework of the CRC as the reference document containing binding commitments applicable globally with regard to children's rights.[2] The UN system in general embraces an expanded notion of access to justice, which entails 'much more than improving an individual's access to courts … It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable'[3]

As the Committee on the Rights of the Child explains,

> 'Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So 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-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including

1 UN Convention on the Rights of the Child (CRC), adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, Art 39; International Covenant on Civil and Political Rights (ICCPR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, Art 2, para 3 and Art 14.
2 The United States is the only country that has signed but not ratified the CRC.
3 United Nations Development Programme (UNDP), Access to Justice: Practice Note, 2004, p 3.

compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39 (CRC).'[4]

Secondly, recent international commitments to sustainable development have set out a way forward that will be profoundly important in the protection of children's rights. Access to justice for all is a key priority for development and it is one of the 17 Sustainable Development Goals (SDGs) that were unanimously adopted in September 2015 by the UN General Assembly. These are part of the Sustainable Development Agenda that will direct international aid and development for the 15 years from 2015 to 2030.[5] The Agenda recognises the relationship between poverty reduction and sustainable development, on the one hand, and respect for human rights, the rule of law, justice and equality, on the other. Justice systems can be powerful tools in breaking the cycle of poverty by empowering vulnerable groups and individuals. Accordingly, the Agenda includes law and justice among the essential ingredients of sustainable development and eradication of poverty.

Access to justice for all is incorporated, for the first time, as a stand-alone goal under the new Agenda. Goal 16 sets out to:

'[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'.

At the same time, the 2030 Sustainable Development Agenda emphasises the growing interest in and concern by the international community about the protection and empowerment of children, as part of the global resolution to create the conditions for achieving their full human potential. It is also acknowledged that 'children and young women and men are critical agents of change' and the new Agenda purports to provide a platform to channel their capacities.

Building on these sources the report uses a comprehensive concept of access to justice that covers different stages of the process of obtaining a solution to justice problems.[6] It starts with the existence of rights enshrined in laws and awareness and understanding of such rights. It embraces access to dispute resolution mechanisms as part of justice institutions that are both formal (ie, institutions established by the state) and informal (eg, indigenous courts, councils of elders and similar traditional or religious authorities, mediation and arbitration). Effective access includes the availability of, and access to, counsel and representation. It also encompasses the ability of such mechanisms to provide just, fair, impartial and enforceable solutions.

4 CRC, General Comment No 5, General Measures of Implementation of the Convention on the Rights of the Child, 27 November 2003, para 24.
5 UN General Assembly, Draft resolution referred to the United Nations summit for the adoption of the post-2015 Development Agenda by the General Assembly at its 69th session. Transforming our World: The 2030 Agenda for Sustainable Development, UN doc A/70/L.1, 18 September 2015.
6 Such a comprehensive approach is suggested by a number of studies: Mauro Cappelletti and Denis Tallon, *Fundamental Guarantees of the Parties in Civil Litigation* (Oceana 1973); Mauro Cappelletti and Bryant Garth (eds), *Access to Justice: A World Survey*, Volume 1, (Sijthoff & Noordhoff 1979), Part 1, General Report; Hazel Genn, *Paths to Justice, What People Do and Think about Going to Law* (Hart 1999). See also American Bar Association Rule of Law Initiative (ABA ROLI) www.americanbar.org/advocacy/rule_of_law/thematic_areas/access_justice_human_rights.html. This definition was also used in former reports for the IBA Access to Justice and Legal Aid Committee: Julinda Beqiraj and Lawrence McNamara, *International Access to Justice: Barriers and Solutions* (Bingham Centre for the Rule of Law Report 02/2014) (International Bar Association 2014), p 8; Id, *International Access to Justice: Legal Aid for the Accused and Redress for Victims of Violence* (A Report by the Bingham Centre for the Rule of Law 2015/05), International Bar Association, October 2015, p 8.

This report is part of a research project undertaken and commissioned by the International Bar Association (IBA) Access to Justice and Legal Aid Committee ('the Committee') with support from the Law Society of England & Wales and the Bundesrechtsanwaltskammer (BRAK) (the German Federal Bar). The report was preceded by a briefing paper entitled 'Children and Access to Justice in the Agenda for Sustainable Development' published in May 2016. As part of its mission, the IBA Committee has undertaken research into issues it sees as being of prime contemporary importance. Its first project in 2014 looked at general barriers to and solutions for achieving access to justice.[7] The Committee's second project, was more narrowly focused, and addressed legal aid for the accused in criminal cases and redress for victims of violence.[8] This, the third project, focusses on barriers and solutions for a particularly vulnerable group, that is, children.

As in previous years, the research was undertaken for the Committee by the Bingham Centre for the Rule of Law. The Committee also participated directly in the research. Under the research brief, the Bingham Centre designed a survey (in consultation with the Committee), the Committee and the Bingham Centre distributed it to garner responses, and the Centre analysed the data. This report has been written by the Bingham Centre, with the Committee commenting on drafts.

The Committee's goals in undertaking and presenting this work are to:

- Raise awareness of the different types of barriers to access to justice children and of different ways of addressing those barriers.
- Provide a valuable tool for lawyers, practitioners, civil society organisations and others who are engaged with the design of reforms, projects and programmes that address key problems affecting access to justice for children, thus ensuring that rights are enforced in reality and enjoyed in practice, rather than existing solely on paper.
- Provide a basis for further discussion and research into how the legal community, working with civil society and governments, can be involved in maintaining or improving access to justice for children, especially in times of austerity.

The Committee sees this project as part of its ongoing activities that will gather, publicise and coordinate information from around the world on barriers to access to justice in different jurisdictions, and ways in which these barriers can be overcome.

The Committee liaised widely with the relevant divisions, fora and committees of the IBA, as well as the Bar Issues Commission and the IBA Human Rights Institute.

7 Ibid.
8 Ibid.

1.2 Aims

The research pursued three complementary aims:

- To identify barriers to the availability and effectiveness of access to justice for children across jurisdictions;
- To draw together examples of strategies and solutions that have been used to overcome those barriers; and
- To provide insights into how examples of good practice may be transferable internationally to inform access to justice practices.

The focus of the study is on access to a fair and equitable justice system that guarantees adequate protection of the rights of children, whether as accused, victims, witnesses or bearers of other interests, including comparative consideration of whether certain groups of children in different countries are differently or particularly affected in these respects. It aims to feed into the international debate on efforts to improve access to justice through sharing information, raising awareness, involving an expanding range of stakeholders and institutions, and spreading good practice.

1.3 Structure of the report and further resources

This introduction explains the project context and aims. Chapter 2 outlines the methodology, the data gathered and issues relating to interpretation of the data. The next three chapters constitute the core of the report. Each addresses groups of obstacles in access to justice for children and related examples of projects and best practices adopted to surmount them. Each chapter identifies common trends, approaches and solutions for achieving and improving of access to justice for this vulnerable group by eliminating, reducing or side-stepping the identified obstacles. In order, these chapters examine:

- Barriers and solutions related to the legal framework and awareness of rights including strategies aimed at overcoming them regarding the dissemination of information
- Barriers and solutions related to legal standing issues for children, including those affecting approaches to protective authorities and the powers of such authorities, and criminal legal responsibility.
- Barriers and solutions related to the justice system across the different areas of justice, that is, criminal justice, family and civil justice (including pursuing civil action for redress for harm), and administrative justice.

Throughout the report there are text boxes with examples and case studies relating to the issues discussed. The sources for these are cited in short form with details listed by chapter in the bibliography.

This report will be available online from the websites of the IBA Access to Justice and Legal Aid Committee[9] and the Bingham Centre for the Rule of Law.[10]

The IBA Committee site will provide further resources relating to practices on access to justice for children, which are referred to in the examples cited in this report. The Committee intends that the site will be updated on an ongoing basis, serving as a hub that will provide information and resources about access to justice internationally, with a particular focus on the role of the legal profession.

9 www.ibanet.org/PPID/Constituent/AccesstoJustice_LegalAid/Projects.aspx
10 www.biicl.org/bingham-centre/accesstojustice-iba2015-children

Chapter 2: Methodology

This report draws on an online survey, desk based research, and an expert workshop, mirroring the methodology used for the IBA Access to Justice and Legal Aid Committee's projects in 2014 and 2015. In addition, this year, the report includes an analysis of the most recent data obtained from a survey of European justice systems in almost 50 countries conducted by the Council of Europe's Commission for the Efficiency of Justice (CEPEJ), which is due for release in late 2016.

2.1 Research methods

Desk-based review

This report was preceded by a briefing paper entitled 'Children and Access to Justice in the Agenda for Sustainable Development' published in May 2016. The paper illustrates how the UN Post-2015 Development Agenda can improve access to justice and the economic and social well-being of children, and discusses the role that can be played by lawyers involved in advocacy, law reform, drafting of new legislation, legal education and providing legal assistance and representation.

Part of the desk-based research carried out for the purposes of the briefing paper was also valuable in the context of this report. However, a broader review of the relevant literature on access to justice for children was undertaken with three particular aims:

1. To inform the design of the survey;

2. To gather data about access to justice for children, particularly in relation to countries represented in the IBA survey responses, focusing both on justice issues and the wider social, legal and economic context; and

3. To gather further examples of how barriers to access to justice for children have been addressed, both in countries represented in the IBA survey responses and in countries where there were no survey responses. This data would provide additional and complementary examples to encompass a broader range of samples than that captured by the survey.

To provide the widest possible access to resources, we have referred as much as possible to open source material available free of charge on the internet.

Survey

A survey was designed by the Bingham Centre for the Rule of Law in consultation with the Committee. It retained the essential structure of the former surveys (with a view to building a linked body of research over time and allowing some comparison with earlier findings), though some sections were revised and amended to reflect the specific focus of this project.

The survey asked 30 multiple choice and open-ended questions, structured in nine sections:

1. Introduction and general information
2. The legal framework and awareness of rights
3. Legal standing and access to free legal advice, assistance and representation
4. Access to justice in criminal cases
5. Access to justice in civil and family matters
6. Access to justice in administrative cases
7. Institutions and efficiency of justice
8. Access to justice for children: barriers and change
9. Thank you and contact details.[11]

The survey was designed to take 30–40 minutes to be completed with responses submitted online using Survey Monkey. The intended respondents included legal, academic and related professionals, especially those with expertise in child law and working in child justice issues. Around 200 were targeted through Bingham Centre networks and researchers, with other distribution networks including those of the Access to Justice and Legal Aid Committee. With the exception of one compulsory question that required participants to state their country, all questions were optional. Responses could be made anonymously. The survey was open for approximately 10 weeks. It was available in English only. When data was returned, it was analysed by the Bingham Centre.

There were 39 responses to the survey, coming from 22 jurisdictions. The response rate was fairly typical for a survey of this kind. It should be noted that different laws, procedures and judicial bodies might operate in different parts of a country, depending on its territorial and constitutional organisation; for example, in Australia and the US there are federal systems and in the UK there are internal jurisdictions. Respondents did not always specify an internal jurisdiction. There was a very good response rate from some countries, though most had only one or two responses.

11 The survey and other project material are available on the IBA Access to Justice and Legal Aid Committee homepage: www.ibanet.org/PPID/Constituent/AccesstoJustice_LegalAid/Default.aspx

Afghanistan	3
Andorra	2
Australia	1
Belgium	2
Canada	1
Central African Republic	1
Democratic Republic of Congo	1
Cyprus	1
Denmark	1
Estonia	2
Holy See (Vatican)	1
Hong Kong	3
Ireland	2
Luxembourg	1
Malaysia	1
Morocco	1
Nigeria	2
Poland	1
Sweden	1
(UK) England and Wales	6
(UK)Northern Ireland	1
(UK)-Scotland	4

There were two particularly noteworthy characteristics of the profile of respondents. First, respondents generally had substantial legal experience: almost 50 per cent had over 10 years of professional experience and a further 25 per cent had between five and ten years' experience. Secondly, respondents generally had expertise that was directly relevant to the survey: over two-thirds of respondents specialised in child law. The majority of respondents were women (28 of 39, or almost 72 per cent). Most respondents identified as practicing lawyers (17 of 39, or almost 44 per cent). The remainder included those who identified as civil servants, academics, independent consultants, NGO staff or representatives from other bodies such as children's ombudsman, though many of these will also have been lawyers.

In interpreting and using the survey data we have primarily focused on the examples provided by respondents. These have been useful both of themselves and as indicators of the kinds of work on access to justice for children we have sought to identify in the desk-based research. Where possible, we have verified respondents' examples by checking them against sources in the public domain. We have not made generalisations based on the quantitative data – the survey responses simply do not provide an adequate basis on which to do so – but we have been alert to the ways responses offer insights into the environment in which efforts to improve access to justice for children are undertaken, especially where those responses are consistent with data available in the literature.

Expert Workshop

On 11 July 2016 the Bingham Centre convened an expert workshop, 'Access to Justice for Children: International Challenges and Good Practices' which was hosted by the Law Society of England and Wales.[12] The event aimed to bring together professionals and specialists on child related issues and on the law and practice related to child justice to share their experience and discuss examples of best practice, their effectiveness and the portability of such solutions to other jurisdictions and/or circumstances. Five presenters spoke about work concerning access to justice for children in different jurisdictions across the world. Aneeta Williams, War Child UK, spoke about challenges regarding access to justice for children in humanitarian settings providing examples from the DRC and Afghanistan; Bharti Patel, ECPAT UK discussed some recent developments in the UK's response to child trafficking and transnational child exploitation; and Nikhil Roy, Penal Reform International, examined the specific case of challenges to access to justice for children of imprisoned parents in Uganda. The fourth speaker, Marianne Moore, an international expert in youth justice and Director of Justice Studio Ltd, discussed the findings and impact of a project on the use of alternatives to detention for children in Afghanistan. Finally, Ben Estep, Centre for Justice Innovation, spoke on early intervention programmes and diversion of young people from the main criminal justice system. The chair and moderator was Dr Alison Bisset, Associate Professor in International Human Rights Law, University of Reading, who specialises in children's rights and transitional justice. Over 40 people attended, many of whom had engaged with access to justice work internationally.

Data from the Council of Europe's CEPEJ survey

The European Commission for the Efficiency of Justice (CEPEJ) was established in 2002 by the Committee of Ministers of the Council of Europe (CoE) with the aim of improving the efficiency and functioning of justice in the member States.[13] To this end, the CEPEJ has, among other activities, regularly undertaken studies evaluating judicial systems of the CoE's member states, looking at both the quality and the effectiveness of justice. This is based on a survey conducted once every two years, using national correspondents who are typically judges or government officials.[14]

The Bingham Centre secured permission from CEPEJ to use their most recent data from a major survey on the efficiency of justice systems. CEPEJ kindly provided advance access to the survey data related to access to justice for children. Two questions on youth justice were especially significant. They concern:

12 The event programme and materials are available on the Bingham Centre for the Rule of Law website: www.biicl.org/event/1202
13 See CEPEJ website: www.coe.int/t/dghl/cooperation/cepej/presentation/cepej_en.asp
14 The Evaluation Scheme for the 2016 Edition (2014 data) is available at: www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp

(a) whether there are special favorable arrangements to be applied, during judicial proceedings, to children or youth as vulnerable persons and,

(b) information on the current debate in the countries concerned regarding the functioning of justice and/or foreseen reforms on child friendly justice.

The CEPEJ survey data covers 48 States and entities (or 44 of the 47 CoE member States), and responses are provided from government officials. The results for the United Kingdom are presented separately for England and Wales, Scotland and Northern Ireland, as the three judicial systems are organised on different bases. Data for Lichtenstein, San Marino and Iceland was either not available or of limited relevance to be included among the survey results. Additionally, Israel voluntarily completed the Evaluation Scheme as a CoE observer State.

It has been possible to make limited generalisations based on the quantitative data from the CEPEJ survey, but we have been alert to the differences between jurisdictions, with regard to both the legal system and the reporting methodology.

2.2 Themes: categorisation and connections

In analysing the data, there are a number of common themes that emerge. It is important to take these into account as the general setting for the findings and recommendations in this report:

- One of the most significant considerations that arises often is the gap between the legal and social status of children who on the one hand have rights as individuals but, on the other, lack full autonomy and are dependent on adults. Accordingly strategies to ensure effective access to justice should target both children and the adults that are responsible for their care.
- Analysis of the data and their comparability should be made with some caution, in particular because of the differences between legal systems and sources of law; for example, civil law, common law, religious law, or customary law may apply simultaneously and interact in complex ways.
- While the framework of protection is clearly set in international law, implementation at the national level may be problematic or not sufficiently adequate. In this latter regard, we place particular emphasis on the global movement towards measurement of progress in relation to access to justice set out in the new Sustainable Development Agenda. It is 'sustainability' that is the key concept in this process, including with regard to reforms that have an impact on access to justice for children.

Chapter 3: The legal framework and awareness of rights

3.1 Dissemination of information and legal empowerment: barriers and strategies

Obtaining adequate information about rights is crucial to children's access to justice. Under article 42 of the CRC, States Parties have undertaken to 'make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.' Children's special and dependent status requires on the one hand that adults around children understand that children, like adults, have rights and respect those rights, and on the other, that special efforts are put in place to ensure that children themselves know about their rights and that the information provided is child-friendly and child-sensitive. A number of stakeholders are involved in this process, including parents, family members, teachers and carers, as well as governmental and independent bodies involved in monitoring and implementation.

In jurisdictions applying Islamic law, an important international instrument is the Covenant on the Rights of the Child in Islam, adopted in June 2005 by the Organisation of Islamic Cooperation (formerly Organization of the Islamic Conference). The Covenant outlines the creation of a monitoring committee of the implementation of the obligations enshrined in it once the document has entered into force.
The preamble of the Covenant confirms previous international instruments including, the Cairo Declaration on Human Rights in Islam (1990) and the Declaration on the rights and care of the Child in Islam (1994), and considers the protection of the rights of the child in Islamic Sharia.
The Covenant, defines children with regard to the attainment "of the age of maturity" according to the laws applicable in each jurisdiction, thus leaving it at the discretion of states to set ages of majority.

Source: Abiad and Mansoor (2010).

Responses from the survey indicated that dissemination of information on children's rights is generally provided through both government structures and non-governmental organisation (NGO) and civil society channels, and that children and adults close to children (ie, parents, teachers, guardians, etc.) are equally addressed. The relevant information is mainly delivered online, through internet and social media, and through TV and radio. These methods of enhancing legal knowledge were generally viewed as successful but with some need for improvement. Respondents from Luxembourg, Denmark and England and Wales, in particular, valued online information provided through the internet as 'potentially useful as best practice in the area'.

Respondents from Scotland, Luxembourg, Denmark, the Democratic Republic of the Congo and Andorra reported the existence of governmental programmes consisting of education initiatives to raise awareness about children's rights which were incorporated into the school curriculum at different stages. Although these programmes are often part of limited and ad hoc initiatives (responses from Nigeria, Hong Kong, Afghanistan, Northern Ireland, Ireland, Belgium and Luxembourg), they were generally rated as successful, whether addressed to children or adults. Telephone helplines that provide information or support are also part of the strategy for the dissemination of information. Responses from Nigeria, Hong Kong, Afghanistan, Poland,

Northern Ireland, England and Wales, Denmark and Canada suggested that these schemes are mainly handled by NGOs and civil society groups. One of the respondents from Hong Kong, in particular, reported a limited amount of information available to children, with that available being provided mainly by NGOs with narrow governmental support. It was also said that understanding is especially limited among teachers and social workers, who often treat rights as 'privileges'.

In Canada, Children's Rights Education Week is a national online educational campaign aimed at promoting children's rights among community organizations and schools. It takes place every third week in November.

Source: Child and Youth Advocate, Canada.

In British Columbia, the Justice Education Society is an organization dedicated to justice education programs for teachers, school students, parents and professionals. Many of their materials and campaigns constitute national best practices:

Source: Justice Education Society, Canada.

These results are supported in part by the main findings of a large study conducted on behalf of the Council of Europe on children's views and priorities with regard to the effective enjoyment of the right to access to justice.[15] The study, which covers the views of almost 4,000 children from 25 European countries, indicates that the preferred option among children when choosing how to receive information about their rights is on the internet, and through television, as the next most popular answer. (One might expect that, as the reach of the internet has expanded, it will have taken higher priority in the seven years since that data was collected.) It also shows that children wish to receive the relevant information from people they trust, in particular from parents and teachers and less so from officials and other authorities.

Some of the practical barriers to access to justice for the population as a whole may be especially severe and disproportionately affect children in general, and the effects may be felt more acutely still for particularly disadvantaged groups of children. Responses from the IBA survey, for instance, indicate that low levels of literacy and education have a particularly detrimental effect on the awareness of legal rights by children in alternative care (14 of 21 responses), homeless children (15 of 21 responses) and children living in poverty (16 of 21 responses). Of course, low levels of legal and rights awareness may operate as a barrier among the general population (as one respondent noted), though may affect children more acutely as their avenues for overcoming that barrier will be fewer.

Predictably, language skills were reported to affect awareness of legal rights by children belonging to minority or indigenous groups (13 of 20 responses) and migrant children (16 of 20 responses). One of the respondents from Hong Kong noted that access to equal education opportunities affects knowledge of rights and is a critical issue for children from ethnic minorities. The lack of governmentally provided material and information about police services in languages understood by minority individuals was also reported as an issue of concern. With regard to England and Wales it was pointed out in some depth that child asylum seekers and migrants,

15 Ursula Kilkelly, *Listening to Children about Justice: Report of the Council of Europe's Consultation with Children on Child-friendly Justice*, group of Specialists on Child-friendly Justice (CJ-S-CH), Council of Europe Directorate General on Human Rights and Legal Affairs, 2012.

including unaccompanied children seeking asylum, face particular challenges to access to legal information about their rights and possible remedies.

Discriminatory practices, whether de jure or de facto, also regularly affect awareness of legal rights. Informal discriminatory practices were reported in the majority of responses, in particular in relation to children with disabilities, children belonging to minority or indigenous groups, and migrant children. Surprisingly, perhaps, formal legal discrimination was also reported in a number of cases. Respondents from Nigeria, Hong Kong, Afghanistan, Scotland, England and Wales, the Democratic Republic of the Congo and Canada reported formal legal discrimination against asylum seeker and migrant children in the respective jurisdictions. Respondents from Nigeria, Estonia, England and Wales, Canada and Andorra also reported de jure discrimination against children deprived of liberty, and those from Scotland, Estonia, the Democratic Republic of the Congo and Canada against children with disabilities. Respondents however, did not provide details or examples of the specific form and practices of discrimination.

As to the attitude of governments towards the provision of adequate legal information, an important indication emerging from the survey is the lack of state resources committed to providing adequate legal information targeted at asylum seekers and migrant children (14 of 15 responses). This is consistent with the observations that have been made by the Committee on the Rights of the Child that the effect of economic policies and/or financial downturns is uneven, particularly for disadvantaged children. Accordingly, the Committee emphasises the need for well thought social planning and budgetary decisions informed by the best interests of children as a primary consideration.[16]

In focus: Children's right to be heard

Under article 12 of the CRC children have a right to express their views in all matters affecting them, consistent with their levels of age and maturity, and shall be afforded the right to be heard in any judicial or administrative proceedings concerning them.[17] As noted earlier, the CRC recognises children as active agents in the exercise of their rights; as such, being able to be involved in decisions affecting them, compatibly with their competence, is crucial to empowerment and a core condition for the realisation of rights. This right of active engagement, which has been conceptualised as 'participation', was a new concept in international law when the CRC was adopted and still poses a challenge to most countries throughout the world, where a culture of listening to children is not widespread or even acceptable.[18] It goes beyond participation in judicial contexts and involves

16 CRC, General Comment No 19 on public budgeting for the realization of children's rights, 20 July 2016.
17 Article 12 of the CRC states: (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 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.
18 CRC, General Comment No 12 on the right of the child to be heard, 20 July 2009, para 3.

'an ongoing process of children's expression and active involvement in decision-making at different levels in matters that concern them. It requires information-sharing and dialogue between children and adults based on mutual respect, and requires that full consideration of their views be given, taking into account the child's age and maturity.'[19]

The right to be heard applies to different aspects of a child's life, including in school, in healthcare, in courts, in local communities, and in local and national policy-making. The right to information is a necessary condition that enables relevant and meaningful participation on the part of children. Children left without a voice cannot challenge violence and abuse perpetrated against them. Equally, policy-makers need to hear from children themselves about the existing obstacles to fulfilling their rights in order to identify barriers and solutions. Considering that few states have set the voting age below 18 (though Scotland provides an example, where 16 is the minimum age for voting in Scottish elections), ensuring that due weight is given to the views of children in the local or state-level institutions where decisions are taken. There are examples of state and local practice that have brought to fruition the participation of children in matters and areas that affect them.

Child participation is a key mechanism for ensuring that all the structures of the government, including local authorities, are made aware of children's rights.
In Tanzania, children's councils, comprising children under the age of 18, have been formed to raise policy-makers' awareness about key issues of concern to children in the local community. Children are elected to the council for a two-year period, which is an important element as it instils democratic values among the children. An inclusive approach to membership is adopted, with fair representation being accorded to children with disabilities, as well as other vulnerable children.
The council establishes a work plan with priorities for the coming year, which have included school drop-out as a consequence of poverty, child labour, abuse of children by parents (especially stepmothers) etc.

Source: Save the children (2011) p 10.

Child participation in Nigeria and Serbia has contributed to increasing parliamentarians' awareness of children's rights.
During the public hearing on the draft bill on Children's Rights, in Nigeria, members of the Children's Parliament made their views known through a presentation, entitled 'voices of Nigerian Children – Children are an Investment and not an Expenditure' and. This played an important role in the passage of the Children's Rights Act.

Similarly, in Serbia MPs regularly meet children to hear their voices and views. Participation has increased awareness of children's rights among MPs, and other public officials and has helped building children's trust in parliament.

Source: UNICEF, (2009); Save the Children (2011) p 7.

Different states incorporate the right to be heard into their Constitutions, thereby establishing it as an overarching entitlement in all matters affecting children.

- The Constitution of Ecuador 1998, contains extensive references to the rights of children, including the 'right to be consulted in matters affecting them'.
- The Constitution of Finland 1995, provides that 'Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.'
- The Constitution of Poland 1997, states that 'Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.'

Source: Save the children (2011) p 20, 21.

A recent survey of how children's rights ombudsmen and commissioners in Europe listen to children, provides some interesting examples:

- France and Scotland have organised national consultations with 2,500 and 16,000 children respectively and then advocated drawing inspiration from the children's ideas;
- Finland has sought the views of Sami and Roma children
- Ireland has published the life stories of asylum-seeking children;
- Denmark reported the establishment of a representative panel of approximately 2,000 12-year-old children who complete online questionnaires three or four times a year; the results of the survey are used for campaigning.

Source: Save the children (2011) p 43.

19 Ibid.

In focus: Education and the right to work

Children provided with the necessary information about options that exist and the consequences thereof are better placed to make their voices heard. Education is essential in this regard. It enables children to gain skills, confidence and maturity and makes them capable of expressing views and influencing decisions. Work is also recognised to have positive effects on the development of children by providing them with the necessary skills and experience to be productive members of society when they become adults. However, some work – depending on the child's age, the type and hours of work performed, and the conditions under which it is performed – may affect children's health and personal development or interfere with their education. Work of this kind is generally regarded as being so negative that it should be unlawful and its abolition should be pursued.

Within the framework of its mission to promote rights in employment, the International Labour Organization (ILO) works towards the progressive elimination of child labour worldwide and the eradication of the worst forms of child labour as an urgent priority. Broadly ratified ILO standards set out minimum age thresholds for employment of children.[20] These establish that the basic minimum age for employment should not be below the age for finishing compulsory schooling, and in any case not less than 15. Exceptions may apply to developing countries where the minimum age can be set at 14 years. For work which is likely to jeopardise the health, safety or morals of young persons (in general terms, hazardous work), the minimum age is 18 years. However, children aged 13 to 15 years (12 to 14 for developing countries) can perform light work, as long as it does not threaten their health and safety, or hinder their education or vocational training.

In Nicaragua, temporary workers who harvest coffee move towards coffee growing areas with their family. It is a common cultural practice for children to contribute to harvesting, so as to increase the volume of coffee collected and therefore their household income. Adolescents work long hours, without being formally hired, and are at serious risk of intoxication from pesticides.
A programme involving the Ministries of Labour and Education aimed at preventing and reducing the use of child labour among seasonal coffee harvesters by focussing on improving access to education.
Activities included:

- Education for child labourers focusing on care and development of recreational activities during school holidays located on the plantation.
- Social dialogue, involving guaranteed economic incentives from exporting companies in terms of better purchasing price of coffee to producers who carried out actions to prevent end eliminate child labour
- Activities to raise awareness of and respect for labour legislation
- Promotion of gender equality for girls and adolescent women targeted specifically with education and income generating interventions.

Source: IPEC (2014),ILO, Compendium of best practices on addressing child labour in agriculture, p 65.

States have in most cases incorporated these age limits in legislation and this is generally confirmed in the responses obtained from the IBA survey. The respondents from Hong Kong and Morocco reported that the minimum age for hazardous work is 18 years, whereas the minimum age for work that does not interfere with

20 ILO Convention No 138, Minimum Age Convention, 1973 and Convention No 182, Worst Forms of Child Labour Convention, 1999.

schooling is 13 (response from Hong Kong). While these standards may not be always fulfilled in practice, literature shows that there is scope for improvement also with regard to the legislative framework, especially concerning the definition of 'child', which is set below the age of 18 in some cases, and the inconsistency or lack of clarity in the law with the existence of a variety of minimum ages for employment sometimes operating simultaneously.

A precondition to the establishment of minimum ages for employment is the definition under national legislation of who is a child. The CRC, which has been ratified by all states (except for the USA) defines children as those below 18 years. However, national legislations may set lower ages in this regard.

- In Nigeria, at some states level, the age for the purpose of the definition of child is set at 16 years. In others, child is defined not by age but by 'puberty' (Jigwa state).
- In Viet Nam under the 2004 Law on the Protection, care and Education of Children an individual is considered a child until the age of 16.
- In Fiji, in spite of the definition of the child in the constitution as a person under the age of 18, some pieces of legislation are not yet in full conformity with that requirement
- In Indonesia and Mauritius, the legislation provides that children who are married are considered to be adults.

Source: CRC, Concluding observations: Nigeria (2010) para 26; Vietnam (2012) para 27; Fiji (2014); Indonesia (2014); Mauritius (2015).

National legislation may lack coherence and provide for a variety of minimum ages for employment. More recent pieces of legislation may adapt to international standards but may fail to modify conflicting legislation that was already in place.
The Nigerian Labour Act of 1990 sets out different minimum age limits for minors employed in different sectors (eg, industry, agriculture, domestic work) and age limits are not consistent across different pieces of legislation, including the Child Rights Act of 2003 and the (draft) Labour Standards Bill of 20014.
In a 2012 observation on Nigeria, the ILO Supervisory body on the correct application of Conventions and Recommendations expressed concern on this situation and invited the government to harmonise the legislative framework and to provide for a general minimum age for admission to employment of 15 years.

Source: Committee of Experts on the Application of Conventions and Recommendations (CEACR), Convention No 138, Observation on Nigeria (2012).

Chapter 4: Legal standing and responsibility

4.1 Approaching child authorities and other mechanisms

The effective enjoyment of rights requires that complaint procedures and remedies are provided by law and operate in practice to redress violations. Children's special status places them in a difficult position for pursuing remedies when breaches of their rights occur, because of lack of knowledge, ability and independence. Even when children are sufficiently able to identify and articulate a violation and step forward to seek justice, other constraints may come into play, including dependence on and/or fear of the perpetrator. To overcome these obstacles or at least work towards that goal, effective and child sensitive procedures should be made available to children and their representatives. Therefore, to fulfil the obligations under the CRC states should 'establish independent human rights institutions, such as children's ombudsmen or commissioners with a broad children's rights mandate'.[21] In practice the work of these bodies is often complemented by civil society institutions and mechanisms operating to promote the effective implementation of children's rights.

In focus: Ombudsmen offices for children

Ombudsmen offices for children or specialised children's units within general human rights ombudsmen's offices operate in a number of countries, with different degrees of functions, powers and independence. A 2010 survey of 27 European ombudspersons for children showed some common challenges to the effective realization of the mandates of these bodies.[22] These included: budgetary restrictions and dependency from Governmental resources, limitations on the extent of investigatory powers and limits on mandates to investigate individual complaints, lack of power to initiate and/or support legal action and to intervene in court cases on behalf of children, as well as visibility to children. On a general note, it should however be pointed out that ombudspersons commonly lack the power to make legally binding decisions and can only suggest or recommend their views to public bodies.

Some of the respondents to the survey commented on the performance of similar institutions in their respective jurisdictions. The respondent from Poland reported on the role and contribution of the Polish Office of the Ombudsman for Children. Due to its strong independence and broad powers the institution

21 CRC, General Comment No 12, p 14.
22 European Network of Ombudspersons for Children (ENOC), 2010 survey, *The role and mandate of children's ombudspersons in Europe: Safeguarding and promoting children's rights and ensuring children's views are taken seriously*, by Rachel Hodgkin and Peter Newell, 2010.

has influenced positively the situation of children in Poland and increased the protection of their rights. The response regarding Northern Ireland pointed out the presence of multiple independent public institutions with specialised mandates by topic or established for the protection of specific groups of individuals: the Northern Ireland Commissioner for Children and Young People operates alongside the Human Rights Commission, the Public Services Ombudsman and the Police Ombudsman. The respondent from Denmark noted that the Children's Office at the Parliamentary Ombudsman handles individual complaints from children. By contrast, one of the respondents from Hong Kong reported on the lack of an independent institution for the protection of children's rights despite the long-running debates on the opportunity to establish a children's commissioner who would provide a much needed voice for Hong Kong's children.

The Children and Young People's Commissioner Scotland works to protect the rights of children (ie, everyone under 18) and young people (ie, everyone under 21 who has been looked after or in care).
The Scottish Commissioner's strategic plan for 2016-2020 for involving children and young people consists of five key themes:
- Child poverty
- Children safe from harm
- Discrimination
- Mental health
- Care experienced children and young people.

To ensure meaningful and practical participation of children the Commissioner engages differently with different groups of children, compatibly with their age and maturity. Children involved in directly informing the Commissioner's views and position include many from groups with protected characteristics, such as children who are young carers, those from black and minority ethnic communities, and those with disabilities and communication needs.

Source: Website of the Children and Young People's Commissioner Scotland www.cypcs.org.uk/

4.2 Legal responsibility for criminal acts

The minimum age of criminal responsibility sets the age limit below which children are presumed to lack the capacity to infringe criminal law, however serious their acts or omissions. Children below that age cannot be formally charged, prosecuted and held responsible following a criminal law procedure. The minimum age of criminal responsibility varies greatly among states. Survey responses indicate that the minimum age in the jurisdictions covered by the survey ranges from the very low level of age 7 (eg, Nigeria) or 8 (eg, Scotland) to the higher levels of age of 14 (eg, Estonia and Cyprus), 15 (eg, Poland and Denmark) or 16 (eg, Belgium). The laws can sometimes provide complex alternatives in process. For example, while the age of criminal responsibility in Scotland is 8, the age of criminal prosecution is higher, having been raised from 8 to 12 years in 2010, although a child between 8 and 11 years can accept or have offence grounds established by a Children's Hearing, with a criminal record resulting.

The Committee on the Rights of the Child considers the age of 12 years to be the minimum 'internationally acceptable' standard, and recommends that states should not maintain in force ages of criminal responsibility

below that threshold.[23] The Committee also warns against the practice set in a few states to establish two minimum ages of criminal responsibility. According to such legislation, children between the two age limits can be held criminally responsible if they are judged to have the requisite maturity, understanding and appreciation of their actions. Such assessment is left to the judge often without the involvement of a psychological expert and does frequently result in the use of the lower threshold, especially in cases of serious crimes.[24] Equally, the Committee recommends that exceptions to the minimum age of criminal responsibility allowing the use of a lower age (eg, Namibia)[25] should not be permitted in any case, including when a serious offence has been committed or when the child is considered to be sufficiently mature (eg, Malta).[26]

Under Islamic criminal law, responsibility arises when the person committing the offence is mature and able to discern between right and wrong (*idrak*). It is thus based on both physical maturity and mental development.

The passage to the age of maturity is a physical one, that is, when a boy or a girl shows signs of sexual maturity. The relationship between accountability and the age of puberty is based on the testimonies of Prophet Mohammed regarding exemption of children from criminal responsibility. While there are different Islamic schools of thought fixing upper and lower levels for the age of puberty for boys and girls, the majority of Islamic jurists fix the age limit at 15 years.

With regard to understanding, Islamic law distinguishes three stages. At the first stage, up to 7 years, a child is considered unable to understand and cannot be punished. At the second stage, between 8 and 15 years, a child is considered to have developed some (though weak) understanding but cannot yet be held responsible for crimes, although he or she may be subject to some lesser degree of disciplinary measures or punishment. At the third stage, the child is criminally accountable and liable for punishment. According to some schools of thought this age starts at 15, while for others (ie, Hanaki jurists and the majority of Makilis jurists) it begins at the age of 18.

Source: Criminal Law and the Rights of the Child in Muslim States, p 60 ff.

In focus: Birth registrations

Article 7 of the Convention on the Rights of the Child provides that all children should be registered immediately after birth and have the right from birth to a name and to acquire a nationality. Additionally, Article 8.2 establishes that, 'where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity'.

Lack of birth registrations is a major cause of non-recognition of legal identity and a serious threat to access to justice. Child registration at birth is the first step in securing recognition before the law, in safeguarding the rights of the child and in enabling children to seek redress in case of violation of their rights. Without birth registration it is likely that the enjoyment of civil, economic social and cultural rights will be diminished. Recognition and proof of legal identity, for instance, are often necessary to claim social entitlements, such as healthcare and education. At later stages in life, lack of identity documentation may preclude access to social assistance, the right to vote and the exercise of economic rights or the pursuit of economic activities, such as land purchase, proving the right to inherit property, opening a bank account, obtaining a license to practice

23 CRC, General Comment No 10 on children's rights in juvenile justice, 25 April 2007.
24 Ibid.
25 CRC/C/NAM/CO/2-3 (CRC, 2012) para 74b.
26 With regard to Malta, the Committee on the Rights of the Child noted that the criminal code allows for an assumption that a child aged between nine and 14 years could act with 'malicious intent' and subjects them to trial under criminal law. CRC/C/MLT/CO/2 (CRC, 2013).

a profession or secure a loan to start a business. Moreover, lack of registration may result in early marriage, early conscription to the armed forces or early entry into the labour market.

In relation to legal responsibility for criminal acts, birth registration is a crucial precondition to establishing whether age limits are satisfied or not. Without a provable date of birth, children are extremely vulnerable, particularly within the juvenile justice system and the asylum and immigration system. A majority of participants to the IBA survey reported that birth registration and age determination does not generally represent a barrier to access to justice during childhood and adulthood. However, respondents from Hong Kong, the England and Wales, Nigeria and Afghanistan indicated that challenges exist in this regard, in the respective jurisdictions. The respondents from Hong Kong, for instance, pointed out that birth registration among poor and marginalized groups, especially racial minorities, remains a real problem (albeit for a small minority). Despite clear legal requirements established in the Constitution and statutes, there have been concerns that in practice the relevant departments fail to register all births or even discourage the registration of some especially vulnerable groups of children. Examples of these failures include children in care whose applications for registration are refused registration by the authorities, unless registered by their parents (who may be unable or ill-equipped to care for the child and register the birth), and children whose parents have an unclear immigration status. Respondents from England and Wales and Canada commented that birth registration and age documentation is a problem mainly among immigrant youth. In particular, a England and Wales respondent said that unaccompanied children who are subject to age assessments in that country were reported to be routinely found by local authorities or the border force as over 18 and routed through the adult asylum system.

These practices are clearly contrary to the CRC which requires that where a child's age is in doubt, it is determined on the basis of the child's statements, documentary research, and reliable social or medical investigation (as a last resort), including through a psychosocial interview panel.[27] With regard to other forms of medical investigation the Committee on the rights of the child has raised concerns on the use of bone density analysis by way of carpal x-rays (*Greulich and Pyle* method) as the main method of age determination, which is known to have margins of error of up to five years.[28] In case of lack of or inconclusive evidence the benefit of the doubt should apply and when the age of criminal responsibility needs to be ascertained the child shall not be held criminally responsible.[29]

27 Guidance in this regard is provided in CRC, General Comment No 6 (2005) on treatment of unaccompanied and separated children outside their country of origin.
28 CRC/C/MLT/CO/2 (CRC, 2013).
29 CRC, General Comment No 10, p 12.

The importance of birth registration for the enjoyment of an effective access to justice, including with regard to criminal responsibility and criminal justice, and the recognition of its role as an important empowerment factor in breaking the cycle of poverty has inspired one of the targets under Goal 16 of the new UN Agenda for Sustainable Development. Target 16.9 builds on the recognition of the harmful effects of unregistered births for children (nearly 230 million under the age of five, according to UNICEF), and sets out to provide legal identity for all, including birth registration by 2030.

The achievement of the SDGs and of the related Targets will be assessed in the light of global and national indicators.
The global indicator for target 16.9 aims to measure whether progress has been made in relation to the rate of unregistered children at birth, calculated as the "Percentage of children under five whose births have been registered with a civil authority, disaggregated by age".
Data regarding this indicator is collected at the national level mainly through censuses, civil registration systems and household surveys. With censuses and household surveys being costly and complex, efficient civil registration systems become essential in providing updated data.
The indicator measures registration rates for children under the age of five, however, the scope of Target 16.9 is broader, as it predicts to 'provide legal identity for all' by 2030. It follows that compiling statistics for all children under 18 years is very important to measuring progress in the efforts to increase birth registrations, as well as to ensuring that no child is left behind.
The breakdown of data by sex is well suited to revealing gender equality issues. In particular, it can provide evidence of practices of cultural prejudice and discrimination against women that are reflected in the lack of birth registration.

Source: Beqiraj, McNamara (2016)

In focus: Statutes of limitation

Statutes of limitations are laws setting out the maximum time, after an event has occurred, within which legal proceedings may be initiated. When the period of time specified in a statute of limitations passes, a claim might no longer be filed. This will be especially significant when a person has been a victim of crime or negligence when they were a child. Generally, statutes of limitations begin to run from the date of the act or omission that caused the injury; it is possible that before they become an adult the statute of limitation may apply and they will not be able to commence an action for compensation. However, states often allow exceptions while the person is a minor or was a minor at the time of the occurrence that caused the injury. The survey results showed exemptions in favour of children in a number of jurisdictions. The respondent from Poland commented that where a person has been a victim of crime the statute of limitations may allow them to pursue legal action until the age of 30, while as regards civil claims of children against parents, a statute of limitations runs from the moment the child reaches adulthood. As concerns Denmark, it was reported that with regard to sexual abuse of children, the time limitation period begins when the person reaches the age of 21.

UN human rights monitoring bodies often comment on states' practices and legislation in relation to statutes of limitation for sex offences involving children.

- The Committee on the Right of the Child, welcomed the Chilean law of 2007 which established that the period of limitations for sex offences against children will run from the day on which the child in question has attained the age of majority
  Source: CRC observation on Chile (2008).
- The UN Committee against Torture (CAT), as well, commented positively on the extension, under the new Swiss criminal code of 2007, of the statute of limitations for serious offences against the sexual integrity of children to the time when the victim reaches 25 years of age
  Source: CAT observation on Switzerland (2010).
- In the context of the Universal Periodic Review in 2011, several countries noted with concern the situation in Iceland, and recommended state authorities (1) to take legislative measures to ensure that children older than 14 years of age are effectively protected from sexual exploitation; and (2) revise the penal code, by extending the statute of limitations in respect of sexual abuse cases against children.

Extensions of statutes of limitation in cases involving sexual abuse of children, especially for filing civil actions for compensation for such abuse, are very important because there are many barriers that prevent child victims complaining about abuse at the time, let alone commencing

a legal action. As well as the inherent trauma of abuse there may be fear of and manipulation by the perpetrator to deter reporting. There may be, for example, resistance from parents, school or religious authorities to pursuing an action. It could be that by the time the victim discovers the sexual abuse or the relationship of the conduct to the injuries, the ordinary time limitation may have expired. It could also be that emotional and psychological trauma is accompanied by repression of the memory of abuse. Indeed, child victims of sexual abuse may not discover the link between their psychological injuries and the abuse until undergoing psychological counselling or therapy. As such, the extension of limitations by quite long periods of time may be appropriate.

In focus: Historic inquiries into systematic abuses of children's rights

Inquiries into past practices of widespread abuse of children in residential or care institutions represent a landmark feature of the changing attitudes to children and of the efforts made in the 21st century towards the full acknowledgement of their rights. There are multiple instances of such investigations carried out at the national level which have revealed how the law can be part of both the problem and the solution in cases of poor accountability for children's welfare and safety while in institutional care, such as in education facilities, religious communities or other care facilities.

As a direct outcome of a debate that took place in the Scottish Parliament at the end of 2004, the Scottish government and the then Minister for Education commissioned an independent review of institutional child abuse in residential schools and children's homes between 1950 and 1995. The findings of the report, which were published in 2007, pointed out that despite sufficient evidence of abuse of children throughout the review period, public awareness only started to develop in the 1980s. It also showed that the residential school system in Scotland suffered from 'a lack of qualified care staff, perhaps a symptom of the low status given to residential child care'.[30] The existing legislation was part of the problem as it did not adequately protect and promote children's rights to be heard, did not provide for national care standards, failed to provide services that responded sufficiently to the needs of children, and did not respond in time to the growing awareness of the abuse of children. Access to records and archives and absence of a legal obligation on authorities and organisations to give access to information were major challenges faced by the inquiry.

There are historic inquiries into abuse in other jurisdictions. In Canada, for instance, there has been an inquiry into the systematic physical, sexual and emotional mistreatment suffered by indigenous children in Canada, in the framework of an assimilation policy, while attending the Indian Residential Schools (IRS). From the 1990s,

30 Tom Shaw, *Historical Abuse, Systemic Review: Residential Schools and Children's Homes in Scotland, 1950 to 1995* (independent review), Published by the Scottish Government, November 2007, p 4, available at www.gov.scot/resource/doc/203922/0054353.pdf

former students started to publicly denounce the abuses and began a movement of mass litigation, which brought the federal government, churches, and indigenous groups to agree to a settlement package, which included the establishment of a truth commission and reparations for survivors.[31]

The Committee on the Rights of the Child has recently expressed concern about the attitude of the Holy See in dealing with child victims of different forms of abuse, especially with regard to the balance to be drawn between the preservation of the reputation of the church and the alleged offender, on the one hand, and the protection of child victims, on the other. In particular, the Committee has warned against the use of canon law proceedings instead of national judicial authorities when dealing with abuse cases, as the former do not seem to provide adequately for the protection, support, rehabilitation and compensation of child victims.[32]

31 International Centre for Transitional Justice, Canada, *Submission to the Universal Periodic Review of the Human Rights Coun*cil (2009) http://bitly/1ErQL2Z.
32 CRC/C/VAT/CO/2 (CRC, 2014).

Chapter 5: The justice system

5.1 Criminal justice and children

In Chapter 4 it the minimum age of criminal responsibility was addressed, noting that children below the minimum age cannot be charged and held criminally responsible for their acts or omissions. However, what is the position of children at or above that minimum age, but younger than 18 years? Young people in that age bracket can be subject to criminal law procedures. Nevertheless, the criminal justice processes, including both procedure and the final outcome, must be in full compliance with the rules on juvenile justice established in international and regional standards and guidelines, – including: the CRC (in particular, article 40); the *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the '*Beijing Rules*');[33] the *UN Guidelines on the Prevention of Juvenile Delinquency* ('the *Riyadh Guidelines*');[34] the *UN Rules for the Protection of Juveniles Deprived of their Liberty* ('the *Havana Rules*');[35] the *UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*;[36] the *African Charter on the Rights and Welfare of the Child*;[37] the *European Rules for Juvenile Offenders Subject to Sanctions or Measures*;[38] the *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice*,[39] etc.[40]

These international standards reflect the general principles of a fair trial and treatment that apply to adults, but adapt them to include guarantees that are specifically important to children. On that basis, the Committee on the Rights of the Child recommends that states legislate to ensure juvenile justice rules apply to those over the minimum age of criminal responsibility but under 18, and that where 16 or 17-year old children are exceptionally treated as adult criminals then laws should be revised to set adult treatment only for those who are 18 or older.[41] Some of the specific guarantees suitable to the needs of juveniles are discussed below.

Legal or other appropriate assistance suitable to children

The CRC requires that juveniles who are accused of having committed a criminal offence be provided with appropriate and free of charge assistance, which could include adequate trained legal assistance, such as expert lawyers or paralegal professionals, and/or assistance from social workers with sufficient knowledge and experience in juvenile justice.[42] Respondents to the IBA survey answered that the right of children to free legal assistance, advice and representation is generally established in legislation (10 of 17 responses), and typically

33 Adopted by General Assembly resolution 40/33 of 29 November 1985.
34 Adopted by UN General Assembly Resolution 45/112, 14 December 1990.
35 Adopted by UN General Assembly Resolution 45/113, 14 December 1990.
36 Adopted by UN Economic and Social Council Resolution 2005/20, 22 July 2005.
37 OAU Doc CAB/LEG/24.9/49 (1990), entered into force on 29 November 1999.
38 Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European rules for juvenile offenders subject to sanctions or measures, 5 November 2008.
39 Adopted by the Committee of Ministers on 17 November 2010, at the 1098th meeting of the Ministers' Deputies.
40 In the EU context see the recent Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Brussels, 16 March 2016, PE 2 2016 INIT - 2013/0408 (OLP).
41 CRC, General Comment No 10, 2007, p 12.
42 Ibid, p 15.

in an ordinary law (almost 59 per cent of these). Respondents indicated that public defenders and contract lawyers refunded by the state are commonly the first providers of free legal assistance, followed by pro-bono private lawyers, NGOs and community based organizations. Responses to the survey also suggested that free legal assistance is more frequently available to children accused of having committed a criminal offence, rather than to children as victims or witnesses, to those in detention facilities, or to children participating in ADR mechanisms and restorative justice processes. However, effective access to such assistance might be limited in practice, either by reason of low success rates of the applications for legal aid funding, or because of the low quality of representation services providing assistance to youth in criminal matters. With regard to England and Wales, respondents reported that free legal representation is means-tested, regardless of age, except for some limited free legal representation in police custody. The respondent from Canada commented that, with some exceptions where services are tailored to children (for instance in the provinces of Ontario and Alberta), legal aid services are poorly equipped to represent them.

In Sierra Leone, efforts have increased to ensure that juvenile offenders have access to free legal aid. Given the poverty levels in the country, many litigants should qualify for legal aid, however, it has been noted that 'probably more than 80% of the legal needs of the poor people of Sierra Leone go unmet, and about 85% of the population living outside the Western Area rely on traditional customary law dispute resolution mechanisms'. A number of actors and different schemes actors operate to address the problem:

- In 2009, the Sierra Leone Bar Association (SLBA) established a legal aid scheme, with support from the UNDP. The scheme was rated as very successful; however, it struggles to attract experienced lawyers, given the low salary.
- A number of local NGOs, including, Timap for Justice, Lawyers Centre for Legal Assistance and Legal Access through Women Yearning for Equality Rights and Social Justice, provide legal aid to indigent citizens. Because of a shortage of lawyers and because of the dualist legal structure, in Sierra Leone, community-based paralegals are often involved to provide these services.
- In response to the need to increase legal aid services nationwide, the Pilot National Legal Aid Scheme (PNLA) was officially launched in April 2010 and was followed by the enactment of the National Legal Aid Act in May 2012. Between January 2010 and June 2011, the PNLA has provided legal services to over 3,475 persons, including 2,851 adults and 624 juveniles.

Source: Suma (2014)

Special arrangements during judicial proceedings

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43 The states that completed the survey are: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, The FYROMacedonia, Turkey, Ukraine and the United Kingdom (UK). The UK provided information separately for each of the three constituencies (England and Wales, Scotland and Northern Ireland) and Israel voluntarily participated in the survey as a CoE observer member. Lichtenstein and San Marino did not provide answers to the questions reported here.

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This content is not available for preview access. It draws on new Council of Europe data that is under embargo until October 2016.

In focus: Alternatives to the court system, youth diversion programmes

Article 40.3 of the CRC establishes that States shall seek to promote measures for children allegedly responsible for criminal offences without resorting to judicial proceedings, whenever appropriate and desirable. Juvenile diversion strategies are conceived as substitutes for formal court processes with the goal of reducing contact and exposure to the formal juvenile justice system and, as a consequence, reducing recidivism. They are aimed at redirecting youth away from courts, while still holding them accountable for their actions and providing connections with supportive services. Diversion strategies vary substantially and can go from warn-and-release programmes to more serious treatment or therapeutic programming. Examples include restorative justice programmes (including victim–offender mediation or family group conferencing), community service orders, treatment or skills-building programmes (including cognitive–behavioural therapy or employment training), family treatment, drug courts, and youth courts. Respondents to the IBA survey reported that diversionary programmes are occasionally incorporated into the law and process in their jurisdiction. In Northern Ireland, 'youth engagement clinics' were part of procedural reform in 2012. These are aimed at reducing the number of youth cases that

The Center for Court Innovation is a US NGO that operates a broad range of programmes in key areas related to juvenile justice across New York State.

- Prevention: The Centre operates a number of Youth Courts and trains local teenagers to serve as jurors, judges and advocates, handling real-life cases. Positive peer pressure is used to ensure that young people who have committed minor offenses pay back the community (e.g through community service, or letters of apology) and receive the help they need (eg, through links to appropriate social services, tutoring or mentoring) to avoid further involvement in the justice system. The Center's youth courts handle 400 cases and train 100 members per year.
- Victim and offender assistance: The Centre has helped launch Youthful Offender Domestic Violence Courts in the Bronx and Brooklyn to address the needs of teen victims and abusers. The courts hear misdemeanour criminal cases involving domestic violence charges in which the defendant is between 16 and 19 years old. Courts promote victim safety through links to a specialized victim advocate and social services and seek to enhance accountability of adolescents arrested for violent behaviour through educational classes that focus on healthy relationships and respect. The Courts work with 600 victims and defendants each year.

Source: http://www.courtinnovation.org/topic/juvenile-justice

progress to court, by introducing a meeting between youth specialists and the young person to explain if a diversionary disposal is available and what are the options available to the young person at that stage.[44]

Diversion also presents cost advantages, because, by reducing the burden on the court system, the caseload of juvenile probation officers, and avoiding confinement, it releases (limited) resources that can be employed in services for high-risk juvenile offenders.[45]

In focus: Children in detention

Under the CRC (article 37) the two leading principles in relation to children and detention are that: (a) arrest, detention or imprisonment of a child shall be in conformity with the law, a measure of last resort and for the shortest appropriate period of time; and (b) deprivation of liberty shall not be unlawful or arbitrary. Article 40 (4) of the CRC provides a number of examples of possible alternatives to institutional care and deprivation of liberty, including 'care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes'. Although these safeguards are often incorporated in the legislation, incarceration rates are still high in some states or jurisdictions within states. As it was pointed out by one of the respondents on Canada, youth criminal behaviour that is rooted in addictions, mental health or poverty is not adequately monitored for criminogenic risk and more cases than necessary are prosecuted and result in the incarceration of the juveniles involved. This, however, may vary significantly within the country, where the youth incarceration rate in some provinces or territories may be up to ten times higher than in others.

A recent document released by the Australian Government reports that the absolute number of young people aged 10-17 in detention on an average day in 2014-2015 was 752 in Australia, 1,037 in England and Wales, 1,040 in Canada and 46,061 in the United States.

In relative terms (data per 10.000 young people), the rate of young people in detention in Australia for the same period was 3.3 in Australia, 2.0 in England and Wales, 6 in Canada and 13.9 in the United states.

Source: Australian Government, Youth Justice

The Committee on the Rights of the Child has noted with concern the use of pre-trial detention, including with regard to children, as a prevalent practice in a number of states.[46] In the context of the SDGs, one of the global indicators for assessing progress in the achievement of Target 16.3 (promote the rule of law and ensure access to justice for all) sets out to measure the rate of detained persons before a final decision about their case has been taken, as a percentage of overall prison population. The

Information regarding the SDG indicator on pre-trial detention is mainly obtained from national administrative records. However, comparability of data across jurisdictions faces a number of challenges, including different definitions of 'detention', and the day and the year on which the data is collected.

At the global level, UNODC collects prison data and information through its annual survey (UN-CTS). It is reported that data on unsentenced and total detainees from the UN-CTS is available for 114 countries. Further data, covering another 70 countries, is available from supplementary sources such as research institutions and NGOs.

The recommended breakdown for this indicator is by age, sex and length of pre-trial detention.

Source: Beqiraj, McNamara (2016).

44 Source: CEPEJ survey 2012, question 208.
45 *Cost-Benefit Analysis of Juvenile Justice Programs, Juvenile Justice Guidebook for Legisla*tors, National Conference of State Legislatures, 2009, http://bit.ly/2cthNhQ; The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense, The Justice Policy Institute, May 2009, http://bit.ly/2bR72qY
46 CRC, GC 10, p 21.

indicator purports to measure the efficiency of the justice system in the light of respect for the standard of presumption of innocence, and as a corollary, of the principle that persons awaiting trial shall not be unnecessarily detained in custody.

Obtaining data on pre-trial and 'pre-sentence' detention affecting children, disaggregated by sex and length of detention, will enable a better visibility and understanding of the phenomenon – both globally and within national jurisdictions – and will help in detecting gender equality issues where, for instance, different levels of pre-trial detention exist for boys and girls. Measuring the extent to which detention is used with regard to children will provide evidence to assist countries in identifying and implementing suitable alternatives to deprivation of liberty that promote the child's reintegration into society. It will also prompt the adoption of targeted measures that match situations specific to different jurisdictions. The legal community can play an active role both during the detention stage, by ensuring that young detainees understand their rights and are treated fairly when their case is heard, and in offering advice on alternatives to detention which promote and enhance rehabilitation.

The Queens Engagement Strategies for Teens (QUEST) in the United States, is an alternative-to-detention program that supervises young people (over 270 each year) whose matters are pending before the Queens Family Court. The programme, is housed in a church located close to the Court, and provides community monitoring and after-school programming. On-site social workers meet regularly with participants and their families to ensure that they are getting the help they need and complying with the conditions of release.

A related specialized programme, QUEST Futures, provides services to young people with mental health disorders in the juvenile justice system. The programme assists young people since the early stages of the delinquency and remains involved with them and their families during the whole life of the cases.

Source: http://www.courtinnovation.org/topic/juvenile-justice

Recourse to detention by prosecutors and courts is a common practice in Afghanistan, and children are often detained for petty crimes, deriving from poverty, exclusion and family violence. The 2005 Juvenile Code foresees different alternative measures to detention but these are rarely employed in practice because of lack of knowledge of the provisions of the Code and lack of guidance on how exactly to implement the alternatives.

Following an agreement between the Supreme Court and different Ministries (including the Ministries of Justice, Education, Public Health, Women's Affairs etc.) a group of NGOs with support from the EU Commission and UNICEF carried out a project on alernatives to detention in Kabul, Daikondi, Jalalabad, Herat, Mazar-i-Sharif, and Panjshirby. The progamme, which was aimed at understanding the attitudes of communities in these regards, found that such schemes are used more in Herat where tribal and religious groups shared common values, where there was less corruption and where trained stakeholders participated in the programme.

Source: Moore (2013).

Even after trial, as a sentencing measure, deprivation of liberty or institutional care should be limited to the most serious cases of children found guilty of an offence. In any case, article 37 CRC prohibits the imposition of life imprisonment without possibility of release if the offence has been committed by persons below 18 years of age. According to the Committee on the Rights of the Child, despite the possibility of release, life imprisonment makes it very difficult to achieve the aims of juvenile justice and therefore it strongly recommends the abolishment of all forms of life imprisonment in cases of offences committed by persons under 18.

There were 362 reported minors in the state of Michigan, in 2013, serving life sentences without parole, of whom 69% of African descent. The case of Henry Hill, an African-American who was sentenced when he was a minor to life in prison without the possibility of release, is currently before the Inter-American Commission of Human Rights.

While the United States has not ratified the CRC, petitioners challenged the legislation of the State of Michigan on life sentencing without parole as a violation of several rights under the American Declaration of the Rights and Duties of Man (1948), including the right of the child to special protection, to be free from cruel inhuman or unusual punishment, to humane treatment and due process guarantees, to education and to rehabilitation.

Source: http://web.law.columbia.edu/human-rights-institute/inter-american-human-rights-system/jlwop

The CRC further establishes minimum standards and procedural rights concerning treatment of and living conditions for children whilst in detention. These require in the first place that children deprived of liberty shall be separated from adults. However, there is broad evidence that children are often placed in adult prisons, where their basic safety, the ability to remain out of criminal cycles and the possibilities to reintegrate are at high risk of being compromised. These standards also require that children deprived of their liberty have the right to be examined by a physician upon admission to the detention facility and should undergo periodic health examinations carried out by a medical professional or in community health facilities. A majority of respondents to the IBA survey reported that health examinations are carried out in their respective jurisdictions, though respondents from Nigeria, Afghanistan, Northern Ireland, Ireland and Belgium reported that such examinations were not conducted.

While children may be deprived of liberty as a consequence of their criminal behaviour, children whose parents are in prison and so must also live in prison with them are an invisible and often highly vulnerable group. In 2013, the African Committee of Experts on the Rights and Welfare of the Child adopted its first General Comment on the rights of children when their parents or primary caregivers are in conflict with the law. The General Comment also addresses the issue of children living in prison with their mothers and states that decisions allowing a child to live in prison with the mother should be subject to judicial review. It also recommends the implementation of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which require that children are provided with an environment for their upbringing as close as possible to that of a child outside prison.

An estimated 200,000 children in Uganda have a parent in prison. There were almost 240 children living with their mothers in prison in July 2015. A recent report by Prison Reform International and the Foundation for Human Rights Initiative assesses the extent to which the guidance contained in the General Comment has been implemented in Uganda.

In Uganda, children may stay with their mothers in prison up to the age of 18 months, although many stay longer if there are no other family alternatives or an NGO to take care of them. The report points out that the process by which children end up living in prison with their mothers depends on whether or not the mother is arrested along with her young child. It recommends that the process should be formalised, including the possibility of judicial review, and clear criteria should be developed that take into account the individual characteristics of the child, such as age, sex, level of maturity, the quality of the relationship with the mother, and the existence of suitable alternatives available to the family.

Source: PRI report (2015).

In focus: Death penalty

Prohibition of capital punishment for persons below the age of 18 is an internationally accepted standard, enshrined in the ICCPR and its Second Optional Protocol, in the CRC, and in the African Charter on the Rights and Welfare of the Child. As the Committee on the rights of the child has noted, the text of the relevant provisions in this regard makes it clear that the death penalty cannot be imposed for a crime committed by a person who at that time was not 18 years old. The key criterion is the age at the time of the commission of the offence, regardless of the age at the time of the trial or sentencing. Despite this, and the undeniable positive global trend with regard to the total abolition of the death penalty, several states, including Maldives, Yemen, Iraq and Liberia have not yet (either de jure or de facto) abolished the death penalty for children.[47]

In Islamic law capital punishment is prescribed for crimes such as murder, adultery, apostasy and armed robbery. In case of murder, the heirs can retaliate or agree to accept 'blood money' compensation (*diyah*). Thus, in principle, it is the heirs' right to commute the death penalty into *diyah.* Differently from Western criminal justice where it is the state that has the right to prosecute and punish the offender, in Islamic law the state often acts as a mediator between the victim's and offender's families aiming to avoid the death penalty for child offenders via the instrument of *diyah* and the determination of its amount.

D*iyah* is essentially a reconciliatory instrument, but it may be of lesser use in states (eg, Saudi Arabia) where there are no codified provisions regarding the amount of compensation, which can be set at the discretion of the family of the victim.

Human Rights Watch (HRW) reports that the Saudi King, the government and other leaders are often involved as goodwill ambassadors to facilitate the agreement on the amount of *diyah*. For instance, in the case of the 17 year old Sadiq Ali Abdullah al-Jama, sentenced to death, the royal family allegedly intervened to convince the family of the victim to accept blood money, but the offender remained in prison while the funds were being raised and until the victim's heirs were old enough to accept the settlement.

The execution rate in Saudi Arabia, however, seem so have dramatically increased in 2015, with 152 executions between January and November, mostly for murder and non-violent drug offenses, including a man convicted for crimes related to a 2011 protest movement, allegedly committed before he was 18.

Source: Abiad, Mansoor (2010) p 78.

5.2 Civil and family justice

It was explained in Chapter 1 that Article 12 of the CRC establishes that children should be provided the opportunity to be heard in any judicial and administrative proceedings affecting them. This should occur either directly, or through a representative and in a manner consistent with the procedural rules of national law. Children are clearly affected by court decisions in cases of separation and/or divorce. This is even more the case when a decision needs to be taken on removing a child from his or her family as a result of abuse or neglect at home. In conformity with the CRC, the legislation of many states requires that, in family disputes and or separation from parents, judges should give primary consideration to the 'best interests of the child'. This involves hearing the views of the child before a decision is made by the court or during the mediation process.[48]

While the CRC provides that participation of children in civil and family law proceedings should be determined on a case by case basis, depending on age and maturity, some jurisdictions establish by law the minimum age at which the child is considered as a young person of sufficient maturity and capable of expressing views which

47 See CRC, General Comment no. 10, p 21; UN, Moving Away from the Death Penalty: Arguments, Trends and Perspectives, 2015.
48 CRC, General Comment No 12, p 15.

should be considered. The respondent from Estonia, for instance, reported that in custody cases children of at least seven years of age can be heard by the court. Under the Norwegian Child Act, children who have reached the age of seven and also children under seven who are able to form their own opinions shall be allowed to express their opinion before decisions affecting their personal situation are made. It also provides that after the age of 12 the child's opinion shall be given considerable priority.[49]

The respondents from Scotland, Belgium and Morocco reported a higher age threshold, at least 12 years old. The Moroccan Family Code (2004) establishes that a child who has reached 15 years of age has the right to choose between the father and the mother as custodian. In other cases the age threshold may be higher still. The CRC Committee, for example, has noted with concern that under the Hungarian Family Act, children below the age of 14 years do not have a right to be heard in decisions related to their custody, and in practice, children above that age are heard only as an exception, including in divorce and child custody cases.[50]

Despite the existence of legislation affirming the right of children to express their views in legal proceedings, implementation of such right in practice may be scarce.

A 2004 study on complex divorce cases in Denmark showed that only about 25% of children were offered the possibility to express their views. Moreover, only 52% of 7-11 year-olds gave an interview in practice. The reasons provided included the heavy caseload of social workers and, curiously, their "lack of confidence" in interviewing children.

Source: O'Donnell, (2009).

Is it possible that the effective participation of children in civil proceedings, and more broadly in court disputes, may be limited, in part, to the extent to which it is culturally and socially unacceptable for children in a specific jurisdiction to lodge complaints and claim redress? A majority of respondents to the survey disagreed or strongly disagreed with that proposition (14 of 20 responses). However, respondents from Afghanistan, Scotland, Ireland, Andorra and Hong Kong, conveyed the message that there is a cultural barrier to the active participation of children in complaints proceedings in those jurisdictions. With regard to Hong Kong, one of the respondents commented that in family matters, children are almost never directly interviewed by the judge, but have the opportunity to state their opinion exclusively through a state social worker assigned to the case. In Denmark, it was reported that children will be given the opportunity to state their opinion, compatibly with their age and maturity, only if the parents cannot reach an agreement.

A majority of respondents to the survey reported that in family cases, measures aimed at minimising potential harm to children, are included in dispute resolution processes as 'common practice' (5 of 16 responses) or 'sometimes' (8 of 16 responses). The respondent from Denmark noted that child specialists that talk directly with children are involved when there is no agreement between the parents. It was also reported that mediation between the parents takes place in two out of nine departments of the Danish authority that handles family cases; such procedure is aimed at focusing the attention of the parties on the best interest of the child. In relation to Canada, one of the respondents commented that Family Group Conferencing has been successfully

49 Norway, The Children Act (Act No 7 of 8 April 1981 relating to Children and Parents), Ministry of Children, Equality and Social Inclusion, Section 31.
50 CRC/C/HUN/CO/3-5 (CRC, 2014).

introduced in New Brunswick, resulting in a decline of almost one third of the number of youth in care, while strengthening family and parental capacity.

The survey also asked whether children receive information about judicial proceedings, the options available and possible consequences that are compatible with their age and maturity, in a language that they understand, and in a manner sensitive to culture and gender. A majority of respondents that answered this question (12 of 19) including from Poland, Afghanistan, Nigeria, Scotland, Belgium, Estonia and Luxembourg disagreed or strongly disagreed with the assertion, while respondents from Denmark, Canada and Andorra, in particular, replied that the information about judicial proceedings provided to children in their jurisdiction generally satisfies those requirements.

5.3 Administrative justice

As noted by the Committee on the Rights of the Child, in general, children are more likely to be involved with administrative proceedings - such as, mechanisms to address discipline issues in schools, refusals to grant a school certificate or a scholarship, applications for social benefits, asylum requests for unaccompanied children - rather than with court proceedings.[51] It is thus very important to ensure that proceedings are child-friendly and accessible and that the child's right to be heard is enjoyed in practice.

The IBA survey asked a number of questions regarding access to justice for children in administrative proceedings. Slightly fewer than half of the respondents (8 of 17 responses) reported that free legal advice and representation is available for children in administrative proceedings. With regard to England and Wales, one of the respondents commented on the recent legal reform of the justice system which has restricted access to legal aid, including in administrative proceedings, both de jure (by narrowing the group of those who can qualify for legal aid and the introduction of a residence test) and de facto (the rate of successful applications is very low).

In 2014, the UK Government proposed to introduce a residence test for civil legal aid through an amendment of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 (Amendment of Schedule 1, Order 2014). The test purported to limit funding to lawful residents in the UK, who have been so for at least 12 months continuously.

Recently, the proposed residence test was summarily thrown out in a unanimous ruling by the Supreme Court. Before that the High Court, had ruled that the residence test was 'ultra vires' of the LASPO Act, and in breach of common law and of the Human Rights Act (in particular Article 14 of the ECHR regarding prohibition of discrimination in the enjoyment of rights read with Article 6 on the right to a fair trial) - and therefore discriminatory.

Source: *R (Public Law Project) v Secretary of State for Justice* [2014] EWHC 2365 (Admin).

Children involved in immigration and asylum proceedings are in a particularly vulnerable situation, therefore it is particularly important and urgent to adopt measures aimed at guaranteeing their effective access to justice. The Committee on the Rights of the Child has emphasized that these children should be provided with all the relevant information on the immigration and asylum process, in their own language, so as to enable them to make their voice heard.[52] They may additionally need access to family tracing services and information on the

51 CRC, General Comment no 12, p 17.
52 CRC, General Comment No 12, p 27.

situation in the country of origin. Also, the Committee has noted that particular assistance may be required for children formerly involved in armed conflict, who may not be able to identify, articulate or pursue their needs adequately.[53]

Respondents to the IBA survey were asked to rank what they considered to be the most important barriers affecting migrant and refugee children in the respective jurisdictions with regard to access to justice. Lack of access to free legal representation was considered as the first main challenge, followed by lack of culturally-sensitive legal assistance and representation services and lack of access to legal information about rights, including because of language barriers. Accordingly, the quality of access to justice in relation to services and social benefits for unaccompanied and/or separated children was categorized as poor by a majority of respondents (8 of 14 responses). This may be amplified by adverse regulations that apply differently to migrant and to citizen children, such as a residency requirement for most welfare services, as commented in particular by the respondents from Hong Kong, and Denmark.

53 Ibid.

Chapter 6: Access to Justice for Children Internationally: Directions and Pathwavs

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As noted at the beginning of this report, the new Agenda for sustainable development adopted in September 2015 purports to draw children out of poverty and trigger their human development. Goal 16, in particular, provides a unique opportunity to boost the realisation of the benefits of the Agenda for children, by ensuring that they are better assisted and protected by justice systems, and by strengthening the rule of law efforts regarding justice for children and full respect of their rights.

Although the goals and targets as such do not specifically use human rights language, nor do they enclose legally enforceable commitments, some of them closely echo the obligations enshrined in human rights instruments concerning children's rights. Moreover, the Agenda specifies a number of procedures for follow-up and review, including the development of global and national indicators capable of gauging progress towards the realisation of the goals.

The innovative aspect of the Agenda is that the new sustainable development framework is grounded on a fresh commitment to realise the conditions that will enable the fulfilment of the longstanding obligations enshrined in human rights instruments concerning children's rights. Examples include the undertaking to ensure universal access to health care services, especially for children (Target 3.8); to eliminate all harmful practices against girls (Target 5.3); or to eradicate the worst forms of child labour, including by promoting safety and health standards in the workplace (Targets 8.7 and 8.8). The commitment to the rule of law and

access to justice for all in Target 16.3, which calls for the establishment of mechanisms of enforcement and accountability, will benefit children with regard to the enforcement of their human rights in practice.

Against this background, monitoring and assessing the significance and impact of the action undertaken in the context of the new Agenda is of crucial importance. The indicator framework, thus introduces a concrete mechanism to measure progress, based on political and civic peer-pressure for holding governments to account. The follow-up mechanisms place the emphasis on the measurement of outcomes and the concrete impact of reforms, policies and programmes on individuals.

In practice, the efforts put in place by states in the collection of data and their breakdown along the relevant categories will supplement the existing human rights monitoring system with a quantitative measurable dimension of the progress made in the delivery of the Agenda and on its impact on the wellbeing of children. There are at least five important pathways through which lawyers involved in advocacy, law reform, drafting of new legislation, legal education and in providing legal assistance and representation can make a uniquely useful contribution to the delivery of the Agenda. They can do so by:

1. Helping place the SDGs in a legal context, both by contributing to a better understanding of the legal significance of the SDGs framework, and by bringing the goals' language, overall vision and general principles in legislative processed and in legal arguments in the case law. The legal community has competence, expertise and the tools to identify and address poverty and development challenges where law is either part of the cause or part of the solution.
2. Playing a key role in promoting legal interpretations on the correct implementation of existing laws that reflect and are inspired by sustainability concerns.
3. Informing the understanding of legal concepts involved in data collection and promoting evidence-based policy reforms.
4. Contributing to the legal empowerment of the most vulnerable through legal assistance and representation in their day-to-day work.
5. Providing legal support and technical assistance to governments and civil society organisations aimed at strengthening the understanding of the importance of legal frameworks in the context of sustainable development.

It is time there are opportunities for the legal community to recognize its role in the fight against poverty and be proactive in the delivery of the objectives of the Agenda for sustainable development.

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