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Children and Access to Justice: National Practices, International Challenges

Bingham Centre for the Rule of Law Report

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Julinda Beqiraj and Lawrence McNamara

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Executive summary

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 particularly exposed to denial of their rights and are at additional risk of exploitation.

Aims and methodology

The report aims to:

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

The report explores law and practice in individual countries, with a view to understanding national issues as international challenges. It thus analyses national practices that seek to understand and overcome barriers to access to justice for children against the international context; defined, on the one hand, by the protection of the human rights of children (particularly, the United Nations Convention on the Rights of the Child – UNCRC) and, on the other, by the UN Sustainable Development Agenda (the 'Agenda'), particularly Sustainable Development Goal (SDG) 16, which is 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'. SDG 16 is a key reference point for the international pledge to draw children out of poverty and trigger their human development.

The report is part of a research project carried out by the Bingham Centre for the Rule of Law 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 Committee has undertaken research into issues it sees as being of prime contemporary importance.

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

- raise awareness of the different types of barriers to access to justice for 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; and
- 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.

Methodologically, the report draws from an extensive desk-based review of the literature and international legal sources about access to justice for children; a survey completed by legal, academic and related professionals, especially those with expertise in child law, representing 22 jurisdictions across the world; additional previously unpublished data from a Council of Europe (European Commission for the Efficiency of Justice – CEPEJ) survey covering information on 48 European states and entities; and an expert workshop hosted by the Law Society of England and Wales on 11 July 2016. This report consists of six chapters. After explaining the project context and aims (Chapter 1) and methodology (Chapter 2), the main body (Chapters 3, 4 and 5) examines national practices, exploring how access to justice for children is affected by: (i) information and awareness of rights; (ii) strategies and processes for accountability (both of those who violate the rights of children and where children have acted to violate the rights of others); and (iii) systemic barriers and solutions within the operation of criminal, civil and administrative justice systems.

Findings

Key findings of the report include:

- Firstly, that while there is an increasing recognition of the right of children to be involved in decisions affecting them, compatibly with their competence, this right of active engagement still poses a challenge in many jurisdictions. There is broad evidence of state practice aimed at addressing this problem at the roots, through dissemination of information on children's rights and on the content of the UNCRC to both children themselves and to adult stakeholders, including parents, teachers and carers. The attitude of governments in this regard is, however, often shaped by the lack of resources targeted specifically at children, and this may more severely affect particularly disadvantaged groups of children, such as migrants and asylum seekers.
- Secondly, research findings suggest, in light of several practical examples, the important role played by effective and independent redress mechanisms, established by law and provided with a broad children's rights mandate.

- Thirdly, the study finds that in recent years there has been progress towards the recognition of the special needs of children when they encounter the justice system, whether as offenders, witnesses or victims. A broad array of special arrangements aimed at ensuring the effective participation of children in judicial proceedings have been incorporated in different jurisdictions, but the specificity and effectiveness of such practices varies across countries.

In exploring how national practices can assist in an understanding of access to justice barriers and solutions as international challenges, the concluding chapter (Chapter 6) looks into the ways that the Sustainable Development Agenda provides some common ground for the opportunities and directions that might be taken in the coming years. In particular, it sets out 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 benefits of the Agenda for children. They can do so by:

- 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 processes 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;
- promoting legal interpretations that are compatible with sustainability objectives and goals, working to ensure that laws implement, reflect and are inspired by sustainability concerns;
- informing the understanding of legal concepts involved in data collection and promoting evidence-based policy reforms;
- contributing to the legal empowerment of the most vulnerable through legal assistance and representation in their day-to-day work; and
- 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.

The more the legal community recognises it can play both national and international roles in the fight against poverty and the ways that its expertise can be deployed to that end, and the more proactive lawyers are in working towards and facilitating the delivery of the objectives of the Agenda for sustainable development, the better the prospects for children around the world.

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 children's 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.

Firstly, 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 UNCRC as well as in other main international human rights instruments.[1] This report builds on the framework of the UNCRC 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 (CRC), which monitors the implementation of the UNCRC, 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 compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by Article 39.'[4]

1 UN Convention on the Rights of the Child (UNCRC), 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 UNCRC.

3 United Nations Development Programme (UNDP), Access to Justice: Practice Note, 2004, p 3.

4 CRC, General Comment No 5, General Measures of Implementation of the Convention on the Rights of the Child, 27 November 2003, para 24.

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 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 the eradication of poverty.

Access to justice for all is incorporated, for the first time, as a stand-alone goal under the new Agenda. SDG 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 those rights. It embraces access to dispute resolution mechanisms as part of justice institutions that are both formal (that is, institutions established by the state) and informal (for example, 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.

This report is part of a research project undertaken and commissioned by the IBA Access to Justice and Legal Aid 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 Committee has undertaken research into issues it

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; *ibid, 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.

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, focuses 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 for 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; and
- 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:

- identify barriers to the availability and effectiveness of access to justice for children across jurisdictions;
- draw together examples of strategies and solutions that have been used to overcome those barriers; and
- 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's 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 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;
- legal standing issues for children, including those affecting approaches to protective authorities and the powers of such authorities, and criminal legal responsibility; and
- 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 on the websites of the IBA[9] and the Bingham Centre for the Rule of Law.[10]

The 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 to update the site on an ongoing basis, with it 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 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 CEPEJ.

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.

In order 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; and
9. Thank you and contact details.[11]

The survey was designed to take 30–40 minutes to be completed with responses submitted online using SurveyMonkey. The intended respondents included legal, academic and related professionals, especially those with expertise in child law and working in child justice issues. Around 200 experts from over 80 countries were identified and directly emailed by the Bingham Centre with a request to complete the survey. The survey was also distributed to wider groups with a view to capturing others with suitable expertise and experience. The Committee circulated the survey request to its 290 members. In addition, it was circulated by Advocates for International Development (A4ID) and publicised in the IBA E-news. 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 ten 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 United States, there are federal systems, and the United Kingdom has three separate legal systems. 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 materials are available on the IBA Access to Justice and Legal Aid Committee homepage at www.ibanet.org/PPID/Constituent/AccesstoJustice_LegalAid/Default.aspx.

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

There were two particularly noteworthy characteristics of the profile of respondents. Firstly, respondents generally had substantial legal experience: almost 50 per cent had over ten years of professional experience and a further 25 per cent had between five and ten years of 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 practising lawyers (17 of 39, or almost 44 per cent). The remainder included those who identified as civil servants, academics, independent consultants, non-governmental organisation (NGO) staff or representatives from other bodies such as children's ombudsmen, 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. 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, discussed the findings and effect 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. More than 40 people attended the workshop, many of whom had engaged with access to justice work internationally.

Data from the Council of Europe's CEPEJ survey

The 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 evaluation 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 the CEPEJ to use its most recent data from a major survey on the efficiency of justice systems. The 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:

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

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

12 The event programme and materials are available on the Bingham Centre for the Rule of Law website at www.biicl.org/event/1202.
13 See CEPEJ website at 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.

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 UK are presented separately for England and Wales, Scotland and Northern Ireland. 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, common, religious 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 UNCRC, 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 that adults around children understand that children, like adults, have rights and respect those rights, and 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 entrusted with monitoring and implementation tasks.

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 Organisation of the Islamic Conference). The Covenant outlines the creation of a committee monitoring 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 NGOs and civil society channels, and that children and adults close to children (for example, parents, teachers or guardians) 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 Denmark, England and Wales, and Luxembourg, in particular, valued online information provided through the internet as 'potentially useful as best practice in the area'.

Respondents from Andorra, the Democratic Republic of Congo, Denmark, Luxembourg and Scotland 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 Afghanistan, Belgium, Hong Kong, Ireland, Luxembourg, Nigeria and Northern Ireland), they were generally rated as successful, whether addressed to children or adults. Telephone helplines

In Canada, Child Rights Education Week is a national online educational campaign aimed at promoting children's rights among community organisations 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 organisation dedicated to justice education programmes for teachers, school students, parents and professionals. Many of their materials and campaigns constitute national best practices.

Source: Justice Education Society, Canada.

that provide information or support are also part of the strategy for the dissemination of information. Responses from Afghanistan, Canada, Denmark, England and Wales, Hong Kong, Nigeria, Northern Ireland and Poland 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'.

These results are supported in part by the main findings of a large study conducted on behalf of the CoE 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; through television was 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.[16] 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 they 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 government-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, 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

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.

16 On barriers to the right of education for children living in insecure and/or conflict areas see: Rasul, Hausler and McCorquodale, *Protecting Education in the Middle East and North Africa Region*, BIICL / PEIC (2016).

to children with disabilities, children belonging to minority or indigenous groups and migrant children. Perhaps surprisingly, formal legal discrimination was also reported in a number of cases. Respondents from Afghanistan, Canada, the Democratic Republic of Congo, England and Wales, Hong Kong, Nigeria and Scotland reported formal legal discrimination against asylum seeking and migrant children in the respective jurisdictions. Respondents from Andorra, Canada, England and Wales, Estonia and Nigeria also reported de jure discrimination against children deprived of liberty, and those from Canada, the Democratic Republic of Congo, Estonia and Scotland 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 CRC that the effect of economic policies and/or financial downturns is uneven, particularly for disadvantaged children. Accordingly, the CRC emphasises the need for well-thought-out social planning and budgetary decisions informed by the best interests of children as a primary consideration.[17]

The most recent General Comment by the CRC acknowledges that the rights of children can be affected by public budgets and provides the States Parties with a framework to ensure that budgets contribute to the realisation of those rights.

The CRC identifies five basic principles of public budgeting for the effective realisation of children's rights:

- Effectiveness: plan, enact, execute and follow-up in ways that lead to advances in children's rights;
- Efficiency: manage child-related policies and programmes in such a way to ensure value for money;
- Equity: avoid discrimination against any category of children through resource mobilisation or allocation or execution of public funds;
- Transparency: develop and maintain public financial management systems that are open to scrutiny; and
- Sustainability: give serious consideration to the best interests of current and future generations of children in all budget decisions.

Source: CRC, General Comment No 19 (2016).

In focus: Children's right to be heard

Under Article 12 of the UNCRC, 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.[18] As noted earlier, the UNCRC 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 UNCRC 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.[19] It goes beyond participation in judicial contexts and involves 'an ongoing process of children's expression and active involvement in

17 CRC, General Comment No 19 on public budgeting for the realization of children's rights, 20 July 2016.

18 Article 12 of the UNCRC 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.

19 CRC, General Comment No 12 on the right of the child to be heard, 20 July 2009, para 3.

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.'[20]

The right to be heard applies to different aspects of a child's life, including in school, healthcare, courts, local communities, and local and national policy-making. The right to information is a necessary condition that enables relevant and meaningful participation on the part of children.

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; and
- 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.

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'. 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.

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-outs as a consequence of poverty, child labour and abuse of children by parents (especially stepmothers).

Source: Save the Children (2011) p 10.

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

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. 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, however, examples of state and local practice that have brought to fruition the participation of children in matters and areas that affect them.

20 *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 a positive effect 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 adversely 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.[21] These establish that the basic minimum age for employment should not be below the age for finishing compulsory schooling, and in any case not younger than 15. Exceptions may apply to developing countries where the minimum age can be set at 14 years. For work that 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.

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 schooling is 13 (response from Hong Kong).

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 focusing 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 and eliminate child labour;
- Activities to raise awareness of and respect for labour legislation; and
- Promotion of gender equality for girls and adolescent women targeted specifically with education and income-generating interventions.

Source: IPEC (2014) p 65.

Education is affected in many ways during state insecurity and armed conflict. A recent study conducted by the BIICL and commissioned by the Qatar-based organisation Protect Education in Insecurity and Conflict (PEIC), examines how and to what extent education-related violations are being addressed (and may be addressed) through domestic law in states within the Middle East and North Africa region.

Among other findings, the study points out that in Egypt, Iraq and Lebanon alike, the child, especially, is considered to be the subject of special protection but domestic provisions relating to children often neglect the right of the child to participate in decisions affecting their lives. Furthermore, the issue of child labour is highlighted in the study as an obstacle in practice to the realisation of the right to education.

Source: Rasul et al (2016).

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

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

- In Nigeria, at some state levels 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 Vietnam, under the 2004 Law on Child Protection, Care and Education, an individual is considered a child until the age of 16.
- In Fiji, despite 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 (for example, industry, agriculture or 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 2014.

In a 2012 observation on Nigeria, the ILO Committee of Experts on the 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).

While these standards may not be always fulfilled in practice, literature shows that there is also scope for improvement 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 due to the existence of a variety of minimum ages for employment sometimes operating simultaneously.

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 UNCRC, states should 'establish independent human rights institutions, such as children's ombudsmen or commissioners with a broad children's rights mandate'.[22] 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 realisation of the mandates of these bodies.[23] 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. However, on a general note, it should be pointed out that ombudsmen 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 Children and Young People's Commissioner Scotland works to protect the rights of children (everyone in Scotland under 18) and young people (everyone in Scotland under 21 who has been looked after or is 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; and
- care experienced by children and young people.

To ensure meaningful and practical participation of children, the Commissioner engages differently with different groups of children compatible 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

22 CRC, General Comment No 12, p 14.

23 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.

the role and contribution of the Polish Ombudsman for Children. Due to its strong independence and broad powers, this institution has positively influenced 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.

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 seven (Nigeria) or eight (Scotland) to the higher levels of age of 14 (Cyprus and Estonia), 15 (Denmark and Poland) or 16 (Belgium). The laws can sometimes provide complex alternatives in process. For example, while the age of criminal responsibility in Scotland is eight, the age of criminal prosecution is higher, having been raised from eight to 12 years in 2010, although a child between eight and 11 years can accept or have offence grounds established by a Children's Hearing, with a criminal record resulting.

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 seven years, a child is considered unable to understand and cannot be punished. At the second stage, between eight and 15 years, a child is considered to have developed some (though weak) understanding but cannot yet be held responsible for crimes, although they 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 (for example, 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.

The CRC 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.[24] The CRC 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

24 CRC, General Comment No 10 on children's rights in juvenile justice, 25 April 2007.

of a psychological expert and does frequently result in the use of the lower threshold, especially in cases of serious crimes.[25] Equally, the Committee recommends that exceptions to the minimum age of criminal responsibility allowing the use of a lower age (for example, Namibia)[26] 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 (for example, Malta).[27]

In focus: Birth registrations

Article 7 of the UNCRC 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 cases 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 licence to practise 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 Afghanistan, England and Wales, Hong Kong and Nigeria indicated that challenges exist in this regard, in their respective jurisdictions. The respondents from Hong Kong, for instance, pointed out that birth registration among poor and marginalised 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 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

25 *Ibid.*
26 CRC/C/NAM/CO/2-3 (CRC, 2012) para 74b.
27 With regard to Malta, the CRC 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).

parents have an unclear immigration status. Respondents from Canada and England and Wales commented that birth registration and age documentation is a problem mainly among immigrant youth. In particular, an England and Wales respondent said that unaccompanied children who are subject to age assessments in that jurisdiction 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 UNCRC, 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.[28]

With regard to other forms of medical investigation, the CRC 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.[29] In case of lack of or inconclusive evidence, the benefit of the doubt should apply; when the age of criminal responsibility needs to be ascertained, the child should not be held criminally responsible.[30]

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 and McNamara (2016)

The importance of birth registration in facilitating 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 SDG 16 of the new UN Sustainable Development Agenda. 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.

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 may 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

28 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.
29 CRC/C/MLT/CO/2 (CRC, 2013).
30 CRC, General Comment No 10, p 12.

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) also 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 to take legislative measures to ensure that children older than 14 years of age are effectively protected from sexual exploitation; and 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 reporting abuse at the time it occurs, 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'.[31] 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 the framework of an assimilation policy, while attending the Indian Residential Schools. From the 1990s, 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.[32]

The CRC 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, and the protection of child victims. In particular, the CRC 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.[33]

31 Tom Shaw, Historical Abuse Systemic Review: Residential Schools and Children's Homes.
32 International Centre for Transitional Justice, Canada, *Submission to the Universal Periodic Review of the Human Rights Council* (2009) http://bitly/1ErQL2Z.
33 CRC/C/VAT/CO/2 (CRC, 2014).

Chapter 5: The justice system

5.1 Criminal justice and children

In Chapter 4, 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 UNCRC (in particular, Article 40); the UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules');[34] the UN Guidelines on the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines');[35] the UN Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules');[36] the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime;[37] the African Charter on the Rights and Welfare of the Child;[38] the European Rules for Juvenile Offenders Subject to Sanctions or Measures;[39] and the Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice.[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 CRC recommends that states legislate to ensure that 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 in an ordinary law (almost 59 per cent

34 Adopted by UN General Assembly Resolution 40/33, 29 November 1985.
35 Adopted by UN General Assembly Resolution 45/112, 14 December 1990.
36 Adopted by UN General Assembly Resolution 45/113, 14 December 1990
37 Adopted by UN Economic and Social Council Resolution 2005/20, 22 July 2005.
38 OAU Doc CAB/LEG/24.9/49 (1990), entered into force on 29 November 1999.
39 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.
40 Adopted by the Committee of Ministers on 17 November 2010, at the 1098th meeting of the Ministers' Deputies. 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

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 organisations. 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 alternative dispute resolution mechanisms and restorative justice processes. However, effective access to such assistance might be limited in practice, either due to 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 Alberta and Ontario), 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 established a legal aid scheme, with support from the UN Development Programme. 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.

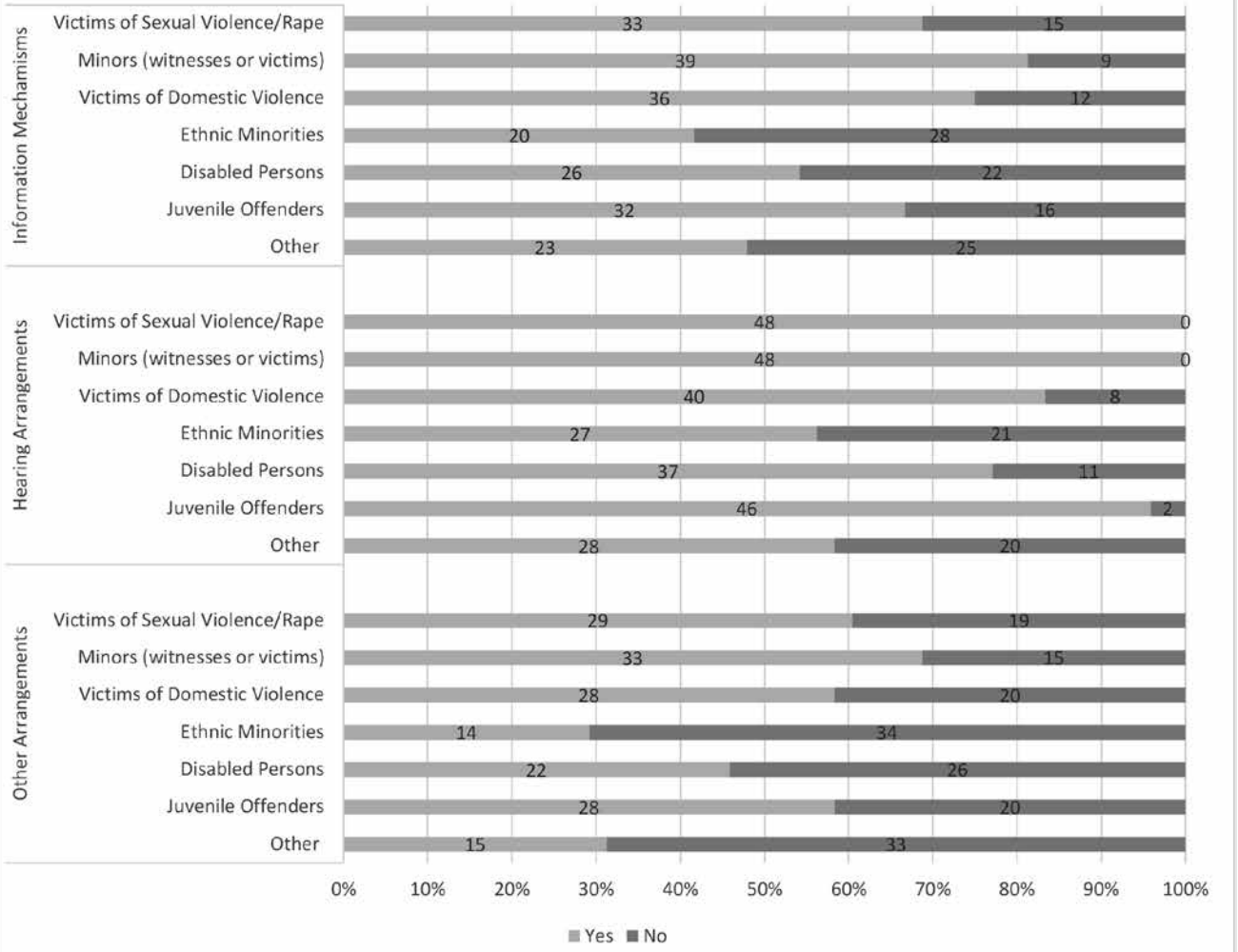
Source: Suma (2014)

Special arrangements during judicial proceedings

Special arrangements are necessary to ensure the effective participation of children in judicial criminal proceedings, whether as accused, victims or witnesses. Data gathered by the CoE through its most recent 2014 CEPEJ evaluation scheme, which covers information on 48 states or entities,[43] illustrates the presence of special favourable measures that apply to specific categories of vulnerable persons during judicial proceedings. Some of the entries in Figure 1 below refer to measures that are not addressed exclusively at children but, on the whole, the figure gives an insight into whether and how often the specific needs of special vulnerable groups (including children within those) are taken into consideration during judicial proceedings in different European jurisdictions.

43 The states that completed the survey were: 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, the Netherlands, Norway, Poland, Portugal, Republic of Macedonia, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the UK. The UK provided information separately for each of the three constituencies (England and Wales, Scotland, 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.

Figure 1: Favourable arrangements applied during judicial proceedings to categories of vulnerable persons



Two aspects of the data are particularly important for considering access to justice.

Firstly, Figure 1 shows that a majority of jurisdictions have put in place special arrangements to address the challenges encountered by vulnerable groups. Special arrangements are more frequently found in court hearings, rather than in general information mechanisms or in other types of arrangements. A closer look at the difference is worthwhile.

Special arrangements in court hearings were defined in the CEPEJ questionnaire as including: the possibility for a minor to have their first declaration recorded; live audio or video-conferencing of the hearing of a vulnerable person so they are not obliged to appear before the accused; in camera hearing excluding the public; and the obligation (or the right to request) that statements of a vulnerable person (for example, a minor) are made in the presence of a probation counsellor or the like. Such in-court provisions are obviously important.

However, it might be thought that information mechanisms are also of vital importance in securing access to justice. 'Information mechanisms' were defined as including: public, free of charge and personalised information provided by the police or the justice system, which enables the victims of criminal offences to get information on the follow-up to the complaints; the obligation to

inform beforehand the victim of sexual violence/rape, in case of the release of the offender; or the obligation of the judge to inform the victims of all their rights.

How much evidence is there that special arrangements are made to provide information? It was reported that in nine jurisdictions (Armenia, Bosnia and Herzegovina, Italy, Lithuania, Republic of Moldova, Russian Federation, Sweden, Ukraine and Northern Ireland), there are no specific information mechanisms for minors who are victims or witnesses to a crime. With regard to juvenile offenders, 16 states or entities (Armenia, Bosnia and Herzegovina, Denmark, Finland, Italy, Lithuania, Luxembourg, Republic of Moldova, Montenegro, Northern Ireland, Poland, Russian Federation, Slovenia, Spain, Sweden and Ukraine) reported that they do not apply special information arrangements during judicial proceedings. (Responses do not include arrangements concerning the police investigation phase.)

Secondly, Figure 1 shows that special measures are applied more frequently with regard to minors, juvenile offenders, victims of domestic violence, sexual violence and rape, and disabled persons, as compared to ethnic minorities or other vulnerable groups, such as victims of human trafficking, forced marriage or sexual mutilation. The latter categories may be easily overlooked because they represent only a small group within a jurisdiction. However, the people who fall within those groups may be exceptionally vulnerable and in no less need of measures that will help overcome the barriers they face.

'*Street Children' (Villagrán-Morales et-al) v Guatemala*, is a well-known case decided by the Inter-American Court of Human Rights (IACtHR) concerning five street children who were kidnapped, tortured and murdered by police officers in Guatemala.

Following the acquittal of the accused officers by the Guatemalan courts for lack of evidence, the case was brought before the IACtHR, which found that the government of Guatemala had violated the CRC obligations by failing to adopt special measures to protect and assist children, and by tolerating instead their arbitrary arrest, torture and murder as part of a larger practice of violence against street children. In the judgment, the Court ordered the building of a school with a plaque in memory of the victims, payment of compensation to the families of the victims, further investigation into the facts of the case and the punishment of those responsible, and the introduction of the necessary changes in the legislation.

Source: 'Street Children' case

Responses to the IBA survey are consistent with CEPEJ data and additionally provide some detailed examples of the types of measures that are applied in the different jurisdictions. In the first place, a majority of respondents reported that the presence of a parent, guardian or a specially trained professional is a practice employed 'quite often' or 'very often' when the proceedings involve a child as an accused (12 of 14 responses), victim (11 of 14 responses) or witness (11 of 14 responses). Additionally, privacy protection arrangements, such as restricted public access to courts, or prohibition of information disclosure are also 'quite often' or 'very often' in place. By contrast, courtroom alternatives, such as video evidence from a different room and the use of screens, or integrated support services (for example, linked up legal, health and social services throughout the process) are more frequently used with regard to child victims or witnesses, rather than in relation to juveniles accused of having committed a crime. Denmark and Poland, for instance, are the only two countries that reported – according to CEPEJ data – not to have special hearing arrangements for juvenile offenders in place, even though they apply special measures when minors are involved as victims or witnesses (see Figure 1). Indeed, the respondent from Poland in the IBA survey commented that in relation to certain offences (for example, sexual abuse or violence), children who are victims or witnesses are generally heard by a judge and by a psychologist. Similarly, the respondent from

Denmark reported that victims of sexual abuse are allowed to provide testimony by video until the age of 15. With regard to England and Wales, one of the respondents reported that although youth courts exist, on the whole, proceedings take place on the premises of the magistrates' courts (the lower courts that hear criminal and some civil matters) and few have separate waiting spaces for young offenders. There are, however, facilities for video evidence and screens. Where a more serious crime has been committed, the trial takes place in an adult Crown Court, but special measures are applied, such as legal counsel not wearing wigs and gowns.

More generally, with regard to the police investigation phase in matters where children are victims of violence, participants to the IBA survey – although with some contrary responses regarding Afghanistan, Estonia and Ireland – replied that the police are usually receptive to reported cases of domestic violence involving children, child victims of violent disciplinary methods at school, and cases of violence against children living on the streets.

In focus: Youth diversion programmes (as alternatives to the court system)

Article 40, paragraph 3 of the UNCRC establishes that States Parties 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, therefore, 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 treatment that is more serious, 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 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]

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 Center 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 offences pay back the community (for example, through community service or letters of apology) and receive the help they need (for example, 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 Center 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 specialised 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: www.courtinnovation.org/topic/juvenile-justice

44 CEPEJ survey 2012, question 208.

Diversion also presents cost advantages: 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

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 (2016)

Under the UNCRC (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, paragraph 4 of the UNCRC 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 for 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.

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, the UN Office on Drugs and Crime (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 and McNamara (2016).

The CRC 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 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,

45 *Cost-Benefit Analysis of Juvenile Justice Programs, Juvenile Justice Guidebook for Legislators*, National Conference of State Legislatures, 2009, www.ncsl.org/documents/cj/jjguidebook-costbenefit.pdf; The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense, The Justice Policy Institute, May 2009, www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf.

46 CRC, GC 10, p 21.

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 that promote and enhance rehabilitation.

In the US, the Queens Engagement Strategies for Teens (QUEST) is an alternative-to-detention programme 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 services. 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 specialised programme, QUEST Futures, provides services to young people with mental health disorders in the juvenile justice system. The programme assists young people from the early stages of the delinquency and remains involved with them and their families during the whole duration of the cases.

Source: www.courtinnovation.org/project/quest

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 to implement the alternatives.

Following an agreement between the Supreme Court and different Ministries (including the Ministries of Justice, Education, Public Health and Women's Affairs), a group of NGOs with support from the EU Commission and UNICEF carried out a project on alternatives to detention in Daikundi, Herat, Jalalabad, Kabul, Mazar-i-Sharif and Panjshir. The programme, 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 of the UNCRC 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 CRC, 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.

The UNCRC 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

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

While the US 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, and to education and rehabilitation.

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

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 Afghanistan, Belgium, Ireland, Nigeria and Northern Ireland reported that such examinations were not conducted.

While children may be deprived of liberty because 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 be 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 International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol, the UNCRC and the African Charter on the Rights and Welfare of the Child. As the CRC 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 was, at that time, 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

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 families of the victim and the offender, aiming to avoid the death penalty for child offenders via the instrument of diyah and the determination of its amount.

Diyah is essentially a reconciliatory instrument, but it may be of lesser use in states (for example, 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, seems to have dramatically increased in 2015, with 152 executions between January and November. These were mostly for murder and non-violent drug offences, including a man convicted for crimes related to a 2011 protest movement, allegedly committed before he was 18.

Source: Abiad and Mansoor (2010) p 78.

regard to the total abolition of the death penalty, several states, including Iraq, Liberia, Maldives and Yemen, have not yet (either de jure or de facto) abolished the death penalty for children.

5.2 Civil and family justice

It was explained in Chapter 1 that Article 12 of the UNCRC 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 their family as a result of abuse or neglect at home. In conformity with the UNCRC, 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.[47]

While the UNCRC 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 deemed a young person of sufficient maturity and capable of expressing views which should be considered. The respondent from Estonia, for instance, reported that in custody cases children of at least seven years of age could 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.[48] The respondents from Belgium, Morocco and Scotland 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 their father and their mother as custodian. In other cases, the age threshold may be higher still. The CRC, 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.[49]

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 per cent of children were offered the possibility to express their views. Moreover, only 52 per cent 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).

It is possible that the effective participation of children in civil proceedings, and more broadly in court disputes, may be limited by 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).

47 CRC, General Comment No 12, p 15.
48 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.
49 CRC/C/HUN/CO/3-5 (CRC, 2014).

However, respondents from Afghanistan, Andorra, Hong Kong, Ireland and Scotland 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' (five of 16 responses) or 'sometimes' (eight of 16 responses). The respondent from Denmark noted that child specialists who 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 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.

Arbitration also is becoming a more popular method of dispute resolution, particularly in family cases, where children are often involved.

Family Law Arbitration Group Scotland (FLAGS) is a group of nearly 50 solicitors, counsel and former members of the judiciary who have undergone training to act as family law arbitrators under the FLAGS scheme.

Differently from other alternative dispute resolution mechanisms, such as mediation or collaborative family law, which are consensual and rely on the parties finding agreement between them, arbitration delivers an adjudication. It involves a resolution being imposed by a third party and this is sometimes required if the parties cannot agree matters themselves. The process and the decision is binding on the parties. As an alternative to the court system, arbitration offers flexibility, privacy, a cost-effective remedy and allows the parties themselves to select who the decision-maker will be.

Source: www.flagsarb.com

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 Afghanistan, Belgium, Estonia, Luxembourg, Nigeria, Poland and Scotland, disagreed or strongly disagreed with the assertion, while respondents from Andorra, Canada and Denmark, 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 CRC, 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 and asylum requests for unaccompanied children – rather than with court proceedings.[50] 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.

50 CRC, General Comment No 12, p 17.

The IBA survey asked a number of questions regarding access to justice for children in administrative proceedings. Slightly fewer than half of the respondents (eight 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 (in England and Wales) 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 European Court of Human Rights 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 especially important and urgent to adopt measures aimed at guaranteeing their effective access to justice. The CRC has emphasised that these children should be provided with all the relevant information on the immigration and asylum process in their own language, to enable them to make their voice heard.[51] They may additionally need access to family tracing services and information on the situation in the country of origin. Also, the CRC 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.[52]

Respondents to the IBA survey were asked to rank what they considered 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 categorised as poor by a majority of respondents (eight 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 Denmark and Hong Kong.

51 *Ibid*, p 27.
52 *Ibid.*

Chapter 6: Access to justice for children internationally: Directions and pathways

This report began by setting out the international context against which national practices that seek to understand and overcome barriers to access to justice for children might be most fruitfully viewed. At the core of that context lies the Sustainable Development Agenda and, particularly, SDG 16, which focuses on access to justice. The main body of this report – Chapters 3 to 5 – examined national practices, exploring the ways that access to justice for children is affected by information and awareness of rights; strategies and processes for accountability (both of those who violate the rights of children and the thresholds of legal responsibility where children have acted to violate the rights of others); and systemic barriers and solutions within the operation of criminal, civil and administrative justice systems.

In this concluding chapter, we return to the international context with a view to looking at two particular aspects of the ways that the exploration of national practices can assist in an understanding of access to justice barriers and solutions as international challenges: (i) how they can be informed by jurisdictional cross-pollination; and (ii) the ways that the Agenda provides some common ground for the opportunities and directions that might be taken in the coming years.

6.1 Barriers and change

In examining the main barriers to access to justice for children and the strategies that have been (or will be) undertaken to overcome these, the IBA survey also asked respondents to identify the principal groups of children that face particular difficulties in having effective access to justice. Survey responses indicated children victims of domestic violence in the first place, followed by migrant and refugee children, and children with disabilities. The survey additionally inquired into the main barriers that are least likely to change in the next 15 years, and respondents pointed out mainly access to legal aid and assistance, lack of available and effective complaints mechanisms and poverty as a crosscutting challenge.

These findings, which reflect the views of the individual experts that completed the survey, are more generally confirmed by the data provided by governments for the purpose of the CEPEJ evaluation. The CEPEJ data warrants some close attention not merely because of its currency (published in October 2016) but because it is wide in scope. Although drawing on European countries means, of course, that it is not international in the fullest sense, it provides the most significant recent data that points to international trends; for countries that are not covered by the CEPEJ study it may provide points of comparison that can inform approaches in other jurisdictions, be that by adoption, adaption or distinction. The CEPEJ study reveals an impressive and remarkable volume of measures and reforms undertaken by states to improve access to justice for children. Despite the specificities related to each legal and social context, four main general trends can be discerned:

1. Increased use of mediation and conciliation procedures

Mediation and conciliation procedures in the context of family proceedings have been introduced in many European jurisdictions during the past six years. Examples include England and Wales, Finland, Israel, Italy, Latvia, Lithuania, Republic of Macedonia, the Netherlands, Norway, Portugal, Switzerland and Ukraine. We have summarised the most relevant measures highlighting current debates on the functioning of justice with regard to children.

Finland	Between 2011 and 2012, four District Courts tested a new kind of mediation procedure in child custody cases that involved a psychologist or a social worker assisting the judge in the mediation process.
Ukraine	Within the framework of a Joint Programme of the European Commission and the Council of Europe on 'Transparency and efficiency of the judicial system of Ukraine', measures inspired by the experience of other European countries were implemented. These included the introduction of pilot projects on the use of reconciliation programmes (for example, victim and offender reconciliation through understanding and compensation for damages), training for mediators and information activities.
England and Wales	The Children's and Family Act 2014, Article 10, sets out that a family mediation information and assessment meeting must be attended by the parties before making a relevant family application. The purpose of the meeting is to provide information about possibilities of mediation of disputes and ways in which the dispute could be resolved otherwise than by the court.
Lithuania	In February 2015, the Lithuanian government approved the Conception on Development of Conciliatory Mediation System. The document is aimed at promoting mediation as an instrument in civil, criminal and administrative proceedings. Although judicial mediation is available in all the courts in civil cases from 2015, it is still under development stage. Following the practice of other states, mandatory recourse to mediation preliminary to court proceedings has been proposed.
Macedonia	Several laws have been implemented since 2010 aimed at promoting mediation. The amendments to the Law on Criminal Procedure, Law on Misdemeanours, Law on Juvenile Justice etc, foresee provisions on informing the parties about the possibility of mediation. Additionally, the Action Plan with Proposed Measures to Promote the Mediation Procedure contains a list of tasks to be implemented by the competent institutions and related deadlines. Activities include the implementation of trainings, with special focus on how to develop listening skills and run the mediation procedure.

2. Legislative reforms inspired by child-friendly justice principles

An important number of European states have adopted or are about to adopt reforms aimed at incorporating child-friendly justice standards in legislative and institutional frameworks. These include Albania, Austria, Bosnia and Herzegovina, Bulgaria, England and Wales, Georgia, Hungary, Italy, Latvia, Montenegro, Northern Ireland, Norway, Poland, Russia, Serbia, Slovakia and Spain. We have produced a summary of five exemplary cases.

Montenegro	Since 2010, Montenegro has adopted a number of laws regarding children as victims or offenders, including the Law on Protection against Domestic Violence (2010); the Law implementing the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (2010); and the Law on Treatment of Juveniles in the course of Criminal Procedure (2011). Reforms related to the Family Law foresee the introduction of a prohibition of corporal punishment of children.
Norway	In the context of juvenile justice, two new measures – Juvenile Sentence and Juvenile Sanction – entered into force 1 July 2014. The Juvenile Sentence is intended to be an alternative to an immediate custodial sentence and in certain cases to community punishment. The measure is imposed by the court and requires the consent and participation of the minor. The Juvenile Sanction is intended to be used in less serious criminal cases. For these measures, social control through close supervision will replace deprivation of liberty in institutional care facilities. Inspired by restorative justice principles, the aim of these measures is to increase the minor's resources and reduce the risk of reoffending.
Georgia	The Georgian Ministry of Justice, in close cooperation with UNICEF and the EU, has recently completed the first ever stand-alone Juvenile Justice Code, which is based on the UNODC Model Law on Juvenile Justice and Related Commentary, the Convention on the Rights of the Child and other relevant international documents. Among the novelties introduced, the Code (in force since 1 January 2016) sets out that in all juvenile cases, priority should be given to the alternative measures while imprisonment should be applied as a measure of last resort, and that juvenile justice procedures shall be administered only by professionals specialised in juvenile justice. Accordingly, an ad hoc Working Group on Specialisation in Juvenile Justice has been established with the task of coordinating and administering the process of specialisation of the professionals involved in juvenile justice reform.
Latvia	The Ministry of Justice has recently developed draft legislation, 'Amendments to Law on Application of Compulsory Measures of a Correctional Nature to Children' and 'Amendments to Latvian Administrative Violations Code', which is aimed at applying compulsory measures of a correctional nature when a child has committed an administrative offence. The administrative sanction shall be imposed only if the application of the compulsory correctional measures in the particular case has not been useful.
Russia	The Russian 'National Strategy for Activities to the Benefit of Children for 2012–2017' is aimed at facilitating the creation of child-friendly services and systems; eradicating all forms of violence against children; and ensuring the children's rights in situations where they are particularly vulnerable. In that framework, a mediation network was created in 2014, for the purposes of rehabilitating children who are involved with delinquency but who have not reached the age of criminal responsibility.

3. Reform of the prison system

The third area that has been subject to reform in the past five years is detention facilities, where legislative and policy changes have been made with a view to accommodate the special needs of minors whenever there is a deprivation of liberty. State practice in this regard concerns Croatia, Italy, Luxembourg, Macedonia, the Netherlands, Norway and Slovakia. We report three particularly relevant examples.

Norway	In 2012, Norway reported that separate prison units for young offenders were being established, to avoid juveniles serving their sentences in prisons together with adults. One had already been established in the western part of Norway, and another juvenile prison unit was planned to be located in the eastern part of the country.
Croatia	Special detention units for minors who are deprived of their liberty, including during the investigatory phase, have been established in Croatia. Minors are placed in rooms tailored to their needs. Exceptionally, when the number of minors exceeds the number of beds in the rooms for minors, they can be placed in in a room with an adult, prior to authorisation by the competent court. Minors are provided with psycho-social assistance during their stay, and through cooperation with social welfare centres and educational institutions, they are provided with training within the previously initiated education. Croatia also adopted the recommendation of the children's ombudswoman according to which visits should take place in a room without glass barriers that allows direct contact. The rooms for the visits of children are arranged so that the children feel comfortable in them, equipped with didactic materials and toys, and in some penal institutions appropriate furnishings have been made in the outdoor space, too, by placing slides and swings.
Macedonia	The National Strategy for Development of the Penitentiary System, adopted in May 2015, is the first national comprehensive document that sets out the objectives and the way forward for the upcoming years (2015–2019). The strategic goals include one on improving the treatment and care for juveniles in the penitentiary and correctional-educational institutions. There are two facilities in the country where measures to be served in a correctional-educational (juvenile) institution can be cleared.

4. Establishment of specialised bodies and/or courts

Finally, chambers within tribunals or special sections at the ministerial level dedicated to family and/or child-related cases have been set up in some jurisdictions with a view to allowing specialisation and making justice services meet more closely the needs of users. Belgium, Bulgaria, England and Wales, and Northern Ireland have adopted measures in this regard. Two examples are especially significant.

Belgium	A new tribunal on family and children issues was established in 2012 in Belgium, which operates in practice as a specialised chamber within the tribunal of first instance. The new tribunal has competence on all cases regarding family issues, including divorce, alimony and child custody.
Bulgaria	Within the Ministry of Justice of Bulgaria, a crisis headquarters on juvenile justice was created in 2012, with the active participation of UNICEF and a group of NGOs. A document, entitled 'Measures for reform of the juvenile justice system', was adopted, recommending an amendment of the legislative and institutional framework with a view to guaranteeing respect of international standards on juvenile justice.

6.2 Imperatives set out by the SDGs and the role of the legal community

As we look ahead – not only to what changes might occur, but to what might motivate and drive change – the UN Sustainable Development Agenda adopted in September 2015 is a key reference point of international agreement, aiming to draw children out of poverty and trigger their human development. SDG 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 do not specifically use human rights language, and nor do they contain 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 long-standing obligations enshrined in human rights instruments concerning children's rights. Examples include the undertaking to ensure universal access to healthcare 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, the monitoring and assessing of the significance and impact of the action undertaken in the context of the new Agenda is of crucial importance. This is because the indicator framework introduces a concrete mechanism to measure progress, based on political and civic peer-pressure for holding governments to account. The follow-up mechanisms place emphasis on the measurement of outcomes and the concrete impact of reforms, policies and programmes on individuals.

In practice, the effort that states make to collect data and to break that data down under 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 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 processes 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. Promoting legal interpretations that are compatible with sustainability objectives and goals, working to ensure that laws implement, 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.

The more the legal community recognises it can play both a national and international role in the fight against poverty and the ways that its expertise can be deployed to that end, and the more proactive lawyers are in working towards and facilitating the delivery of the objectives of the Agenda for sustainable development, the better the prospects for children around the world.

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Further sources for examples

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