

UNICEF Regional Office for Europe and Central Asia

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BREAKING DOWN BARRIERS

Equitable access to justice for children
with disabilities

UNICEF Regional Office for Europe and Central Asia

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Acknowledgements

This briefing paper was developed by the Child Protection section at UNICEF's Europe and Central Asia Regional Office (ECARO). UNICEF ECARO would like to thank the author Frances Sheahan and UNICEF colleagues at Headquarters, regional and country offices for their contributions and input.

We would particularly like to acknowledge the contribution of Nora Shabani and Anja Teltschik (ECARO), Vijaya Ratnam and Kristel Juriloo (HQ) and country office colleagues Dani Koleva and Kremena Chobanova (Bulgaria) and Umeda Asadova (Tajikistan). Development of the paper was led by Phenny Kakama, ECARO child protection specialist

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Acronyms

CoE	Council of Europe
CRC	United Nations Convention on the Rights of the Child
CRIN	Child Rights Information Network
CRPD	United Nations Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
NHRI(s)	National human rights institution(s)
SDGs	Sustainable Development Goals
UN	United Nations
UNDP	United Nations Development Programme

1. Introduction



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Estimates suggest that at least 93 million children worldwide are living with moderate or severe disabilities,¹ but these numbers may be much higher.² In Europe and Central Asia,³ the region of focus for this briefing paper, an estimated 5.1 million children live with disabilities.⁴ Their lives and experiences vary hugely, but in many countries they face disproportionate levels of marginalization and exclusion as well as higher levels of violence, exploitation, abuse⁵ and poverty⁶ than children without disabilities. They also find it more difficult to access

education⁷ and healthcare⁸ and can spend much or all of their lives in residential institutions. In Europe and Central Asia, as many as half of all children living in public residential care have disabilities.⁹

Disability can intersect with other forms of exclusion, resulting in 'double jeopardy'; for example, girls with disability face a higher risk of violence and neglect than other girls.¹⁰ Children with disabilities who live in areas affected by emergencies, disasters or armed conflict also face heightened challenges.¹¹

¹ The definition of disability used in this paper comes from Article 1 of the CRPD: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

² World Health Organization, *World report on disability*, WHO, Geneva, 2011, p.36.

³ The United Nations Children's Fund operates programmes in 21 countries and territories in Europe and Central Asia with a focus on children who are overlooked and left behind by economic and social progress.

⁴ United Nations Children's Fund Europe and Central Asia Regional Office (UNICEF ECARO), 'Regional Disability-Inclusive Strategy 2018-21', UNICEF ECARO, Geneva, 2018, p.2.

⁵ Jones, L., et al., 'Prevalence and risk of violence against children with disabilities: A systematic review and meta-analysis of observational studies', *The Lancet*, Vol. 380, No. 9845, cited by Global Partnership on Children with Disabilities, available at: <http://www.gpcwd.org/endviolence.html>

⁶ *World Report on Disability*, p.36.

⁷ UNICEF CEE/CIS, *Regional Out-of-School Report*, UNICEF, Geneva, 2015.

⁸ *World Report on Disability*, p.36.

⁹ 'Regional Disability Strategy', p.3.

¹⁰ United Nations Human Rights Council, *Thematic study on the issue of violence against women and girls and disability*, Report of the Office of the United Nations High Commissioner for Human Rights, 30 March 2012, A/HRC/20/5, paras 12-27.

¹¹ UNICEF *Children with disabilities in situations of armed conflict, discussion paper*, New York, 2018.



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The UN Convention on the Rights of Persons with Disabilities (CRPD) and the UN Convention on the Rights of the Child (CRC) provide the framework for international standards on access to justice for children with disabilities. These two instruments establish that access to justice is not only a right in itself, it is also a means to uphold and enforce all of the rights that should be guaranteed for every child, including access to health care, education and protection from violence. Formal and informal justice mechanisms can serve as powerful tools to combat discrimination, restore denied entitlements and challenge exclusion from education, healthcare or social services. They can also end violence and abuse by bringing perpetrators to justice.

All children are entitled to a remedy when their rights are violated, to have a fair trial if they are accused of a crime and to be treated fairly if they are a victim of, or a witness to, a crime. Children also have a specific right to express an opinion and be heard when decisions are being made that affect them, such as

during informal or formal justice proceedings.¹² So it is a paradox that children with disabilities are less likely than their peers to be able to obtain the remedies they need. They are also more likely to experience discriminatory treatment when they come into contact with the justice system as defendants, claimants, victims or witnesses. There are myriad explanations for this lack of access to justice.

Social norms often do not recognize children as rights-holders because of their age; this tendency is exacerbated by discriminatory treatment of children with disabilities due to their impairment. The barriers they face in accessing justice are similar to, but also different from, those encountered by other children or by adults with disabilities. Some of these barriers are systemic and relate to lack of coordination between different services – such as child welfare and protection, health, education and justice – leading to a situation in which no single authority takes full responsibility for their care and treatment. Some are physical barriers that literally prevent children from

¹² United Nations, Convention on the Rights of the Child, Article 12.

accessing ombudsperson offices, mediation meeting rooms, court-rooms and lawyers' offices. Other barriers are economic, such as high court and lawyers' fees, while still others are procedural and arise as a result of the complexity and rigidity of many justice system processes.

Box 1.



Why focus on access to justice for children with disabilities?

- ▶ Access to justice is a means to address violations of rights and to uphold and enforce all of the rights that should be guaranteed for every child, including the right to non-discrimination, access to health care and education and protection from violence.
- ▶ It contributes to the fight against impunity and reinforces the view that children with disabilities are active and engaged citizens and holders of rights.
- ▶ It combats poverty and exclusion, since accessing justice can be an important means of strengthening the rights to education, healthcare and protection.
- ▶ It protects children with disabilities from violence, abuse and economic exploitation.
- ▶ It reinforces the rule of law and associated institutions.

Cultural and attitudinal barriers can also prevent children with disabilities from accessing justice; such barriers stem from negative assumptions about their intellectual, psycho-social and physical capacities that the children themselves often internalize. These barriers are constructed and sustained by institutional, policy and legislative failure to challenge and eliminate discrimination, stigma and impunity. Denying children with disabilities their right to access justice compounds the disadvantages they face in their daily lives, leaving them at risk of ongoing exploitation and violence and further entrenching discrimination, impunity and poverty.

This briefing paper was prepared by the UNICEF Europe and Central Asia Regional Office (ECARO); while it focuses on that region, it may also be relevant in other contexts. The paper explores how children with disabilities access justice when seeking a remedy for violations of their rights, in both formal and informal settings, as well as their experiences within justice systems as defendants, victims or witnesses. It relies on the definition of a person with disability provided in Article 1 of the CRPD: "...[t]hose who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Thus, the briefing paper looks at access to justice in relation to children's situation, rather than the nature of their impairment.¹³

The objective of this paper is to provide UNICEF country offices with useful background and context to frame policy dialogue and advocacy initiatives that support and enable children with disabilities to gain equitable access to justice systems. This focus is tied to the important task of mainstreaming disability across all of UNICEF's results areas.¹⁴ The briefing paper seeks to:

- ▶ Examine the scope and content of governments' obligations, in accordance with international and regional law, to guarantee equitable access to justice for children with disabilities.
- ▶ Consider some of the challenges and practical implications of implementing these obligations from the perspective of both a child's age and disability, provide recommendations for action to create an enabling environment and to fully empower children with disabilities, allowing them to successfully access justice on an equitable basis with their peers.

¹³ Rannveig Trausdóttir, 'Disability Studies, the Social Model and Legal Developments' in Oddný Mjón and Gerard Quinn (eds.), *The UN Convention on the Rights of Persons with Disabilities*, Leiden, Martinus Nijhoff, 2009.

¹⁴ UNICEF, 'UNICEF Strategic Plan for 2018-2021', UNICEF, New York, 2017.



Box 2.

Access to justice and international and regional human rights law

Universal Declaration of Human Rights, 1948

- Article 8: Everyone has the right to an effective remedy by national tribunals for acts that violate the fundamental rights granted by the constitution or by law.

International Covenant on Civil and Political Rights, 1976

- Article 2: State Parties must ensure that anyone whose rights or freedoms have been violated has an effective remedy.

Convention on the Rights of the Child, 1989

- Article 3: In all actions concerning children undertaken by courts of law, the best interests of the child shall be a primary consideration.
- Article 12: Children have the right to be heard in judicial and administrative proceedings affecting them.
- Article 37: No child shall be deprived of liberty unlawfully or arbitrarily. Children deprived of liberty have the right to legal assistance and to challenge their detention.
- Article 39: Victims of violence, torture or armed conflict have the right to physical and psychological recovery and social reintegration.
- Article 40: Every child accused or convicted of breaking the law has the right to be treated in a manner that safeguards their sense of dignity and worth.

Convention on the Rights of Persons with Disabilities, 2006

- Article 3: Respect for the evolving capacities of children with disabilities
- Article 5: Prohibits all discrimination on the basis of disability
- Article 7: Children with disabilities enjoy all human rights on an equal basis with other children
- Article 9: Obligation to ensure accessibility to facilities and services
- Article 12: Persons with disabilities have legal capacity on an equal basis with others.
- Article 13: Persons with disabilities have the right to effective access to justice on an equal basis with others, including through the provision of procedural and age-appropriate accommodations

European Convention on Human Rights, 1950

- Article 6: Guarantees the right to a fair trial, including the presumption of innocence.
- Article 13: Guarantees the right to an effective remedy.
- Article 14: Protects people with disabilities against any discrimination in the exercise of their rights.

2. International and regional law and standards



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2.1 What is access to justice for children?

'Access to justice' is a fundamental principle of the rule of law. The importance of access to justice for children as a right in itself is clearly established in the CRC as well as other international human rights instruments.¹⁵ Access to justice is also an enabling right, empowering children to realize the other rights enshrined in the CRC.

Core components of access to justice include the right to information and awareness of rights, to a fair trial, to be heard and to enjoy these rights without discrimination. It also includes availability of and access to legal advice and representation. As the United Nations Committee on the Rights of the Child explains:

Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So, states need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information; advice; advocacy, including support for self-advocacy; and access to independent complaints procedures and to the courts with necessary legal and other assistance.¹⁶

Access to justice means more than simply being able to engage with justice institutions. It also means being able to access legal and judicial *outcomes* that are "just and equitable."¹⁷ In 2003 the United Nations Committee on the Rights of the Child stated: "[f]or rights to have meaning, effective remedies must be available to redress violations."¹⁸ It continues, "[w]here

¹⁵ See in particular CRC, Articles 3, 12, 19, 37, 39 and 40 and the International Covenant on Civil and Political Rights (ICCPR), Articles 2 (3) and Art 14.

¹⁶ Committee on the Rights of the Child, 'General Measures of Implementation of the Convention on the Rights of the Child', General Comment No. 5, CRC/GC/2003/5, 2003, para. 24.

¹⁷ United Nations Development Programme, 'Access to Justice: Practice Note', UNDP, New York, 2004, p. 6.

¹⁸ 'General Measures of Implementation'.

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 39.¹⁹ The United Nations Common Approach to Justice for Children defines access to justice “as the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards (including the CRC).”²⁰

Remedies can take different forms, such as: restitution; compensation; ceasing to enforce a law, subsidiary legislation or policy; ordering the government to take steps to prevent a violation; and launching an investigation. Settled case law in national and international courts can create clarity about the substance of the rights of children with disabilities and can function as a form of deterrent for violations.

Accessing justice does not always involve formal, judicial processes. Children can face enormous obstacles to accessing judicial mechanisms, which may be expensive, slow, riven with procedural challenges and often wholly ill-suited to responding to violations of children’s rights. Children need access to both judicial and non-judicial institutions that ensure respect for their rights and can deliver a just and timely remedy – including civil, administrative and criminal courts, national human rights institutions, ombudspersons, mediation schemes, restorative processes, customary and religious justice systems and regional and international human rights tribunals. Less formal and less expensive avenues for resolving disputes can be problematic if they do not comply fully with the procedural requirements of the CRC and the CRPD. In particular, they may not have specialized procedures for children in place or be staffed by people familiar with the CRC.

Across Europe, regional human rights instruments also incorporate provisions on access to justice for children and provide an additional layer of protection and opportunity for redress, as well as protections on the right to fair trial and to equality. The European

Convention on Human Rights (ECHR), Article 13 establishes the right to an effective remedy at the domestic level. Article 24 of the Charter of Fundamental Rights of the European Union (EU), sets out children’s right to protection and care and to express their views and participate in proceedings, along with the obligation of public authorities and private institutions to consider the child’s best interests as a primary consideration in all actions concerning a child.²¹ The EU has also adopted relevant directives, including on procedural safeguards for children who are suspects or accused persons in criminal proceedings²² and on the rights, support and protection of victims of crime.²³

The Council of Europe (CoE) elaborated specifically on issues related to children’s access to justice in its ‘Guidelines of the Committee of Ministers on Child-friendly Justice’. These affirm that “As bearers of rights, children should have recourse to remedies to effectively exercise their rights or act upon violations of their rights.”²⁴ The Guidelines include the child’s right to participate in legal processes affecting them, to have their best interests given paramount consideration and to be protected from discrimination when they come into contact with all competent bodies and services involved in the administration of criminal, civil or administrative law.

2.2 What is different or the same for children with disabilities?

The CRC and the CRPD are foundational instruments that set out the framework of obligations for access to justice for children with disabilities – they are mutually reinforcing. The CRC has near-universal ratification (only the United States has not yet ratified) and the CRPD has to date been ratified by 180 UN Member States (including the European Union).²⁵

The CRPD is the first international human rights instrument to include an explicit right to access to justice – Article 13 makes it obligatory for States to

¹⁹ Ibid.

²⁰ United Nations Common Approach to Justice for Children, UN, New York, 2008, p. 4. This definition was also used in the *UN Human Rights Council Report on Access to Justice for Children*, 2013, A/HRC/25/35.

²¹ European Union, Charter of Fundamental Rights of the European Union, Official Journal of the European Union, 326/391, 26 October 2012.

²² European Union, Directive 2016/800.

²³ European Union, Directive 2012/29.

²⁴ Council of Europe, ‘Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice’, adopted by CoE Committee of Ministers, 17 November 2010.

²⁵ Information correct as of September 2019.



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“ensure effective access to justice for persons with disabilities on an equal basis with others.”

It also specifically addresses the sort of barriers that people with impairments face in attempting to access justice. Disability is defined in Article 1 not just in terms of a person’s specific physical and/or intellectual impairment or limitation, but also in terms of how society responds to and interacts with these limitations and impairments. This social model of disability focuses on the barriers created by the environment (such as lack of physical access to buildings, transportation and information), social attitudes and prejudices, government policies and practices and the often exclusionary structure of health, welfare, education and other systems.

The United Nations Committee on the Rights of the Child mirrors this approach. It states that children with any kind of impairment encounter a combination of social, cultural, attitudinal and physical obstacles to realization of their rights, and that action is needed to remove those barriers to ensure that they are treated equitably and without discrimination and to ensure

that their best interests are taken in to account as a primary consideration in all decisions affecting them.²⁶

The CRC was the first human rights treaty to include disability as grounds for protection from discrimination.²⁷ Article 23 of the CRC places explicit obligations on States to introduce measures to promote the inclusion and freedom from discrimination of children with disabilities. It emphasizes their right to a “full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community”. It also imposes obligations on States to provide special care and assistance to enable children to achieve the “fullest possible social integration and individual development, including his or her spiritual or cultural development”. Being treated without discrimination does not mean being treated in the same way as everyone else. The United Nations Committee on the Rights of the Child is clear that special measures or adaptations may be needed to ensure that children affected by disabilities have their rights equally respected, protected and fulfilled when they are accessing justice.²⁸

²⁶ See United Nations Committee on the Rights of the Child, General Comment No. 9: ‘The rights of children with disabilities’, CRC/C/GC/9, 27 February 2007, para. 5.

²⁷ CRC Article 2.

²⁸ United Nations Committee on the Rights of the Child, General Comment no. 5, ‘General measures of implementation of the Convention on the Rights of the Child’, CRC/GC/2003/5, 27 November 2003, para. 12.

The CRPD highlights three main areas to ensure that children with disabilities can access justice on an equal basis with others:

- ▶ The right to procedural and age-appropriate *accommodations* is enshrined in Article 13. Such accommodations should be available at every stage of the child's interaction with the justice system and be adequately funded, as long as these accommodations do not impose a disproportionate or undue burden.²⁹ The aim is to ensure equality and the right to a fair trial and to allow children with disabilities to participate fully in the process in the same way as children without disabilities.
- ▶ Article 13 also provides for *appropriate training* for those working in the field of administration of justice, including police and prison staff.
- ▶ Under Article 9 States are also obliged to introduce *accessibility measures* to the "physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas."

A number of targets have been set, along with indicators developed to measure progress toward their achievement. Indicators explicitly encourage the collection of data broken down by category – including disability, alongside age, gender, migration status, etc.³⁰ This is highly significant because there is a large gap in information about the experiences and outcomes of children with disabilities in relation to access to justice. This has rendered them largely invisible in debates, policies and programmes.

To support the collection of disaggregated data, the Washington Group/UNICEF Module on Child Functioning developed a set of questions that can be used in national household surveys and censuses as well as in SDG monitoring efforts.³¹ The questions were designed to identify children aged 2–17 years who are at greater risk of experiencing functional difficulties in different domains (such as hearing, vision, communication/comprehension, learning, mobility and emotions) or who are experiencing limited participation due to an unaccommodating environment. Gathering disaggregated data and statistics in the context of monitoring SDG 16 could potentially be a very useful step in exposing the challenges faced by children with disabilities seeking to access justice.

2.3 Access to justice and the Sustainable Development Goals

Another dimension of international standards on access to justice can be found in the Sustainable Development Goals (SDGs) that were unanimously adopted in September 2015 by the United Nations General Assembly. Access to justice for all is incorporated as a stand-alone goal in SDG 16, which 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." Although the goals and targets are not legally enforceable commitments, they closely echo the obligations on access to justice enshrined in human rights law and standards.

²⁹ The CRPD defines 'reasonable accommodation' as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

³⁰ Global indicator framework adopted by the United Nations General Assembly (A/RES/71/313), including annual refinements contained in E/CN.3/2018/2 (Annex II) and E/CN.3/2019/2 (Annex II), March 2019. Available at: https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%202019%20refinement_Eng.pdf

³¹ For more information on these issues see the Washington Group on Disability Statistics website at: <http://www.washingtongroup-disability.com/washington-group-question-sets/child-disability/>

3. Challenges faced in accessing justice



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3.1 Introduction

In many countries, children and adults are confronted by barriers when accessing justice, such as inability to pay court fees, distrust of authorities and fear of stigma from association with the justice system. However, children with disabilities face additional social, cultural and legal obstacles connected to their status, as explored further below:

- ▶ Children with disabilities may not be recognized as rights-holders, and may not be aware of their rights, including their right to access justice.
- ▶ Their rights are not always equally protected by law. At a minimum, the CRC and CRPD must be ratified and policies and programmes put in place to operationalize these rights. While much progress has been made in ratification of these instruments, there is still room to improve legal protection for the rights of children with disabilities through their incorporation in domestic legislation.
- ▶ Their rights are not always equally recognized in laws. Many children with disabilities are not deemed to have independent legal capacity to initiate or participate in proceedings, which can make it difficult for them to obtain redress for violations.
- ▶ Specialized legal assistance is rarely available to support children with disabilities, even though this can make a critical difference between understanding and participating in judicial processes or not accessing justice mechanisms at all.
- ▶ Judicial procedures are not always as effective for them as for other children; professionals are rarely equipped to support children with disabilities.
- ▶ There is little data or information available about how children with disabilities are able to access justice and the sorts of barriers they face – without this information they continue to be effectively invisible in legislation and policy in many countries.



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The cumulative weight of these obstacles means that efforts by children with disabilities to obtain justice are disproportionately hampered. In the Europe and Central Asia region, these obstacles have not been sufficiently addressed in rule of law reforms that have taken place to date.³²

3.2 Children with disabilities are not recognized as rights-holders and lack knowledge and awareness of rights

In many countries children are not fully recognized as rights-holders. This is particularly the case for children with disabilities, who face discriminatory cultural and social attitudes that prevent them from being recognized as rights-holders stemming from negative assumptions about their intellectual and physical capacities. Such discriminatory attitudes can reinforce the difficulties faced by children with disabilities in gaining access to justice.

One consequence of these negative social norms is that children with disabilities are not always aware of their rights, including their right to access justice. They should have knowledge of the law, procedures and available formal and informal justice mechanisms. They cannot exercise their rights unless they know what they are, how they can be fulfilled and who can help them do so.

Under Article 42 of the CRC, States undertake to “make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.” The CRPD requires that efforts be made to encourage the media to raise awareness and foster respect for the rights of children with disabilities and to provide this information in an accessible form.³³ The UN Common Approach to Justice for Children asserts that: “Proper access to justice requires legal empowerment of all children: all should be enabled to claim their rights, through legal and other services such as child rights education or advice and support from knowledgeable adults.”³⁴

³² UNICEF ECARO, ‘Children’s equitable access to justice’, UNICEF, Geneva, 2015.

³³ United Nations Convention on the Rights of Persons with Disabilities, Articles 8 and 21.

³⁴ United Nations, ‘UN Common Approach to Justice for Children’, p. 4. This definition was also adopted by the UN Human Rights Council, ‘Report on Access to Justice for Children’, A/HRC/25/35, 2013.

Governments too often fall short in their efforts to raise awareness about the rights of children, but children with disabilities are especially vulnerable to being deprived of the knowledge and tools they need. This is in part owing to their social isolation; for example, schools are often focal points for sharing knowledge and awareness of children's rights but millions of children with disabilities do not attend mainstream schools, excluding them from this source of information about where to go and whom to call for support. It is also a result of practical issues around accessing information; for many children with hearing or vision impairments, information on their rights may not be available in an accessible format; use of the internet to disseminate information about rights and justice issues may also exclude children with disabilities who lack internet access.

Families are a major source of information and support for children seeking justice. In 2014 Child Rights Connect conducted a survey on access to justice with over 300 children, 6 per cent of whom self-identified as having a disability. The survey found that 88 per cent received information about remedies for violations of their rights from parents or carers.³⁵ Another obstacle to obtaining needed information on rights and navigating access to justice is that many children with disabilities in Europe and Central Asia live in institutions, where they lack supportive family networks – children with disabilities in this region are almost 17 times more likely to be institutionalized than their peers.³⁶ Another survey on access to justice, tied to education for children with disabilities in Europe, found that “the most vulnerable children often had no one willing or capable to advocate for their rights and, as such, the most vulnerable children were the least likely to have their rights protected.”³⁷

A 2011 World Health Organization report found that children with disabilities are 3.7 times more likely than children without disabilities to be victims of violence and 2.9 times more likely to be victims of sexual violence.³⁸ Girls with disabilities, particularly those with intellectual and psychosocial disabilities and those who are non-verbal or deaf, are more at risk of

violence than girls without disabilities.³⁹ For a complex range of reasons, children with disabilities who have been victims of violence may not seek justice or wish to report their abuse. One typical reason is that they are not aware of their rights or that violent behaviour towards them constitutes abuse.⁴⁰ Other possible reasons include distrust of authorities and fear of retribution or of being placed in institutional care, anxiety about being exposed to shame and stigma and dependence on family members who are perpetrators or relatives of the perpetrators. Finally, they may assume – with good reason – that their claim will not be taken seriously.

Even when children with disabilities have information about their rights and report abuse or violations, negative perceptions of their impairments can mean that they are less likely to be believed or taken seriously. Children who are deaf and/or blind may be considered to be unreliable witnesses because of their disability. The use of derogatory language by justice professionals towards children with disabilities can induce shame and discourage further contact. The result is that many children with disabilities (and their families) do not trust justice authorities or have confidence that they will listen and act in their best interests. In 2015 the Mental Disability Advocacy Centre (MDAC) published a report on access to justice for children with mental disabilities that found that the biggest barrier to accessing justice was “the limited knowledge and exclusionary attitudes of those involved with the administration of justice, including judges, lawyers, police, social workers and psychologists.”⁴¹

³⁵ Child Rights Connect, 'Access to Justice: Findings from a survey with children and teenagers', Child Rights Connect, Geneva, 2014.

³⁶ UNICEF CEE/CIS, 'Social Monitor: Social protection for child rights and well-being in CEE, the Caucasus and Central Asia', UNICEF, Geneva, 2015.

³⁷ DLA Piper, 'Access To Justice and the Right to Education for Children with Disabilities: A Report Exploring Barriers To Access To Justice In The Context Of Inclusive Education In Ten European Countries', prepared at the request of the United Nations Office of the High Commissioner for Human Rights, DLA Piper 2017.

³⁸ World Health Organization, *World Report on Disability*, WHO, Geneva, 2011, p. 36.

³⁹ Save the Children and Handicap International, *Out from the Shadows: Sexual Violence Against Children with Disabilities*, Save the Children, London, 2011.

⁴⁰ *Ibid.*, p.5

⁴¹ Mental Disability Advocacy Centre, 'Access to Justice for Children with Mental Disabilities', Project summary report, MDAC, Budapest, 2015.

Box 3.**Access to justice for women and girls**

Negative attitudes expressed during judicial procedures may intimidate victims [who are girls and women] or discourage them from pursuing justice. Complicated or degrading reporting procedures, the referral of victims to social services rather than the provision of legal remedies, dismissive attitudes by the police or other law enforcement agencies are examples of such attitudes. This could lead to impunity and to the invisibility of the issue, which in turn could result in violence lasting for extended periods of time. Women with disabilities may also fear reporting violence, exploitation or abuse because they are concerned that they may lose the support required from caregivers.

Source: *United Nations Committee on the Rights of Persons with Disabilities, General Comment 3, 'On women and girls with disabilities', CRPD/C/GC/3, 25 November 2016.*

3.3 Unequal legal protection

Legal protections that guarantee the rights of children with disabilities are fundamental for equal access to justice for all. Article 4 of the CRC requires that States ensure that their domestic legal framework is consistent with the rights and obligations described in the CRC – meaning that the rights of the child are enshrined in law and that remedies are provided if they are violated. The CRPD reinforces the obligation to adopt legislation to protect rights and end discrimination and to take “all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”⁴²

The rights of children with disabilities set out in the CRC and CRPD should have the force of law in every State that has ratified them, they should take priority over contradictory provisions in domestic law and

children should be able to invoke them before courts when their rights have been violated. Furthermore, the Committee on the Rights of the Child calls on States to explicitly include disability “as a forbidden ground for discrimination in constitutional provisions on non-discrimination and/or include specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions.”⁴³ Article 4(1)(b) of the CRPD requires that legislative measures be taken, where appropriate, to modify or abolish any existing laws, regulations, customs or practices that constitute discrimination against people with disabilities.

A number of general measures related to implementing laws and policies must also be put in place, including:⁴⁴

- ▶ National strategies and action plans that include children with disabilities;
- ▶ Child impact assessment processes to anticipate the impact of proposed laws, policies or budgetary allocations on all children, including those with disabilities;
- ▶ Establishment of children’s commissioners or ombudspersons;
- ▶ Child budgeting – or the identification, allocation and monitoring of resources spent on children and children’s services;
- ▶ Review of all legislation to ensure that the rights of children with disabilities are fully recognized and protected;
- ▶ Child rights training, awareness-raising and capacity building for all those working with and on behalf of children;
- ▶ Develop means to collect data on children’s lives.

A great deal of progress has been made with regard to ratification of the CRC and CRPD.⁴⁵ In the 21 countries where UNICEF has offices in Europe and Central Asia, the CRPD was ratified by all countries except Tajikistan and Uzbekistan. However ratification of two protocols

⁴² CRPD, Article 7.

⁴³ UN Committee on the Rights of the Child, General Comment No. 9, ‘The rights of children with disabilities’, CRC/C/GC/9, 27 February 2007, para 4.

⁴⁴ UN Committee on the Rights of the Child, General Comment No. 5, ‘General measures of implementation of the Convention on the Rights of the Child’, 27 November 2003, CRC/GC/2003/5.

⁴⁵ UNTC status of ratifications of CRPD available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en

aimed at allowing children to access justice through international complaints mechanisms (Optional Protocol to the CRC on a Communications Procedure and the CRPD Optional Protocol) has advanced much more slowly than the treaties.⁴⁶ In Europe and Central Asia, only seven of 21 countries have ratified the Optional Protocol to the CRC and nine have ratified the Optional Protocol to the CRPD.

Despite the region's progress toward ratification of treaties and related protocols, efforts to incorporate their provisions into domestic law have not been consistent or harmonized across sectors. Medical definitions of disability prevail,⁴⁷ national legislation fails to acknowledge the differences between adults with disabilities and children with disabilities and cooperation across sectors is insufficient.⁴⁸

Table 1. Summary of CRPD and Optional Protocol Ratification

Country	CRPD ratified	Optional Protocol to CRPD ratified	Optional Protocol to CRC ratified
Albania	2013		2013
Armenia	2010	(signed 2007)	
Azerbaijan	2009	2009	
Belarus	2016		
Bosnia and Herzegovina	2010	2010	2018
Bulgaria	2012	(signed 2008)	
Croatia	2007	2007	2017
Georgia	2014	(signed 2009)	2016
Kazakhstan	2015	(signed 2008)	
Kosovo UNSCR 1244			
Kyrgyzstan	2019		
Moldova	2010	(signed 2018)	
Montenegro	2009	2009	2013
North Macedonia	2011	2011	(signed 2012)
Romania	2011	(signed 2008)	(signed 2012)
Serbia	2010	2009	(signed 2012)
Tajikistan	(signed 2018)		
Turkey	2009	2015	2017
Turkmenistan	2008	2010	
Ukraine	2010	2010	2016
Uzbekistan	(signed 2009)		

⁴⁶ At the time of writing, OP3 had been ratified by 44 States parties and the OP to the CRPD had been ratified by 96 States parties.

⁴⁷ The medical model focuses on the impairment and what can be done to 'fix' the disabled person or provide special services for them as an individual. (see https://www.ombudsman.org.uk/sites/default/files/FDN-218144_Introduction_to_the_Social_and_Medical_Models_of_Disability.pdf)

⁴⁸ UNICEF, *UNICEF ECARO Regional Disability-Inclusive Strategy*, UNICEF, Geneva, 2018.

3.4 Unequal recognition in laws

Equal recognition before the law is a necessary precondition for equal access to justice. It means that children with disabilities are recognized as being equal before the law and as possessing legal capacity on an equal basis with others. Legal capacity is “the capacity and power to exercise rights and undertake obligations by way of one’s own conduct; i.e., without assistance of representation by a third party.”⁴⁹ The UN Committee on the Rights of Persons with Disabilities declares that “legal capacity is a universal attribute inherent in all persons by virtue of their humanity.”⁵⁰

Typically, children do not have full legal capacity because of their age. This means that they cannot bring a case independently but can only do so through a parent, guardian or other representative.⁵¹ However, children between the ages of 14 and 18 may have limited legal capacity allowing them to address the court in certain types of cases in some ECAR countries. For example, in Kosovo children are permitted to initiate proceedings for a protection order when they are affected by domestic violence.⁵² Hungary allows children over the age of 14 to take independent legal action to protect their “inherent rights”, including in cases involving equal treatment; freedom of conscience; deprivation of liberty; and insult to their honour, integrity or human dignity. Slovenia allows children aged 15 and older to initiate litigation independently, without legal representation, in marital and family disputes.⁵³ In Albania too, children aged 14 or over may petition a court with the consent of their legal representative or bring a case on their own if it relates to their guardianship.⁵⁴

Limits on legal capacity can prevent all children from accessing justice, particularly where there is a conflict of interest between the child and his or her parents; for example, when the parents are involved in the

violation of the child’s rights or when they refuse to seek justice, contrary to the child’s wishes. The denial of independent legal capacity due to age (status as children) can represent a particularly difficult obstacle to obtaining redress for children with impairments. This is because they are more likely than other children to be living in institutions or apart from their families and may not have access to adults who would be legally permitted to initiate proceedings on their behalf. If they are living in an institution where they have experienced violations of their rights, this limitation presents an inherent conflict of interest.⁵⁵

Another facet of legal capacity is the ability of children with disabilities to participate fully in legal proceedings. In some jurisdictions they face a double disadvantage because of their age and impairments, and are deemed to lack the capacity to participate fully.⁵⁶ For example, a law that allows children to testify in legal proceedings in accordance with their “evolving capacity” might be interpreted by a judge or prosecutor to disqualify children with disabilities from testifying or pleading in criminal matters.

It is also quite common for legislation to state that people with certain disabilities do not have legal capacity. For example, in Armenian law, a person with intellectual or psychosocial disabilities can be deprived of their legal capacity by a court decision; the court then identifies a guardian to make decisions on his or her behalf.⁵⁷ This approach, sometimes called ‘substitute decision-making’, is not always in conformity with Article 12 of the CRPD, which requires that persons with a disability must be guaranteed their right to legal capacity on an equal basis with others.⁵⁸ Thus, Article 12(3) introduces the concept of *supported* decision-making, which requires States to take appropriate measures to provide access by persons with disabilities to the support they may require to exercise their legal rights.

⁴⁹ Office of the United Nations High Commissioner for Human Rights, ‘Legal capacity’, Background conference document prepared for the Sixth Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, August 2005.

⁵⁰ Committee on the Rights of Persons with Disabilities, General Comment No 1, ‘Equal recognition before the law’, (Article 12), 19 May 2014.

⁵¹ For more information on guardianship laws, see EU Fundamental Rights Agency report: ‘Legal capacity of persons with intellectual disabilities and mental health problems’, 2013.

⁵² Child Rights International Network, *Rights, Remedies & Representation: Global Report on Access to Justice for Children*, CRIN, London, 2016, p. 17.

⁵³ N. Kennan and U. Kilkelly, *Children’s involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU*, Policy brief, Luxembourg, EU publications, 2015.

⁵⁴ Child Rights International Network, ‘Albania: Access to Justice for Children’, CRIN, London, 2016.

⁵⁵ ‘When the State Doesn’t Care’.

⁵⁶ UN Division for Social Policy Development and Department of Economic and Social Affairs, *Toolkit on Disability in Africa: Access to Justice for Persons with Disabilities*, n.d..

⁵⁷ Civil Code, art. 24(1) and art. 31(1).

⁵⁸ See: United Nations Committee on the Rights of Persons with Disabilities, General Comment No.1, Article 12, ‘Equal recognition before the law’, CRPD/C/GC/1, 19 May 2014.

Box 4.

Netherlands: Legal capacity to initiate a complaint of rape

In *X and Y v. the Netherlands*, a 16-year-old girl with intellectual disabilities was living in a home for children with disabilities. She was raped by a relative of the person in charge the day after her sixteenth birthday (the age of consent for sexual intercourse in the Netherlands). She was deemed unfit to sign an official complaint given her low mental age. Her father signed the complaint in her place, but proceedings were not brought against the perpetrator because, according to Dutch law, the girl had to make the complaint herself as she was over the age of consent. Observing that the Dutch Criminal Code had not provided her with practical and effective protection, the Court concluded that she had been the victim of a violation of Article 8 of the Convention.

Source: European Court of Human Rights, Case of X and Y v the Netherlands, Application no.8978/80, Judgment, ECHR, Strasbourg, 26 March 1985.

Article 12 of the CRC states that all children have the right to participate and to be heard in judicial proceedings that involve or affect them. Read together, the CRC and CRPD flip the idea of limited legal capacity for children with disabilities on its head, focusing instead on the importance of providing support that will enable them to exercise their legal rights.

Legal assistance is a crucial element of the right to access justice for children with disabilities. In almost all circumstances they will require specialized support and assistance from legal professionals to fully understand and participate in formal and informal proceedings. It has been argued that Article 13 of the CRPD, which refers to the need for “procedural and age-appropriate provisions” for accessing justice, implies the right to legal aid for persons with disabilities.⁶⁰

3.5 Limited access to specialized legal advice and representation

The right to legal and other appropriate assistance, including for children, is well established under international human rights law.⁵⁹ The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems specify that “[l]egal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.”

In reality, access to free legal assistance is patchy at best and in the context of Europe and Central Asia, is most widely available for criminal proceedings. Where it is available, legal professionals do not always have specialized training in assisting children, and tensions can arise in situations when they are representing them as guardians and are obliged to act in their perceived best interests, which may conflict with the child’s own stated wishes.⁶¹

The Committee on the Rights of the Child has also explicitly recognized that legal or other appropriate assistance for children should be free of charge and recommended that insofar as possible, States provide adequate trained legal assistance, such as expert lawyers or paralegal professionals.

⁵⁹ See CRC Article 40(2)(b)(ii) and (iii) and ICCPR Article 14, as well as the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, paras. 2, 3 and 10.

⁶⁰ Frances Gibson, ‘Article 13 of the Convention on the Rights of Persons with Disabilities – A right to legal aid?’; *Australian Journal of Human Rights*, 15, 2, pp. 123-142, in Mental Disability Advocacy Centre, *Access to Justice for Children with Mental Disabilities*, MDAC, Budapest, 2015.

⁶¹ European Union Fundamental Rights Agency, ‘Child-friendly justice – Perspectives and experiences of children and professionals’, FRA, Vienna, 2015.



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Box 5.

Lawyers needed for children with disabilities in police detention

In *Blokhin v. Russia*, the ECtHR found a violation of the right to fair trial because a 12-year-old boy with a neuro-behavioural disorder was held in detention and questioned by police in the absence of his guardian, a legal counsel or a teacher, and because he had not been given the opportunity to cross-examine witnesses. The Court underlined that it was essential for adequate procedural safeguards to be in place to protect the best interests and well-being of a child when his or her liberty was at stake. Children with disabilities might, moreover, require additional safeguards – such as access to lawyers to ensure that they are sufficiently protected.

Source: European Court of Human Rights, Case of *Blokhin v Russia*, Application no. 47152/06, Judgment, ECHR, Strasbourg, 23 March 2016.

3.6 Practical and procedural barriers

The CRPD states that children with disabilities must be provided with disability- and age-appropriate support to enable them to participate in all stages of any legal proceedings affecting them.⁶² In practice, children with disabilities may experience specific practical barriers that render justice procedures and processes less effective and child-sensitive for them

than for children without impairments. Some of these barriers are physical and economic, others relate to the type of procedural accommodations needed, but not always provided.

Children with disabilities are often unable to afford the legal and travel costs of attending court proceedings. Direct costs such as filing fees, translation and transportation can disproportionately serve to exclude them from justice, since lower education levels,

⁶² Convention on the Rights of Persons with Disabilities, Article 7.

Box 6.**The right to a fair trial**

In *S.C. v UK*, the ECtHR held that there had been a violation of the right to fair trial in a case involving an 11-year-old boy with a 'low intellectual age' who had been charged and tried for attempted robbery. The Court concluded he had very little comprehension of the proceedings, or of the nature of the penalty he faced, and had not been capable of participating in his trial sufficiently to satisfy Article 6. The Court held that where a child such as the applicant was tried in criminal proceedings 'it is essential that he be tried in a specialist tribunal which is able to give full consideration to and make proper allowance for the handicaps under which he labours, and adapt its procedure accordingly.' It also recognized that the accused needs to have a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed, in order for the individual to participate effectively in the proceedings.

European Court of Human Rights, Case of S.C. v UK, Application no. 60958/00, Judgment, ECHR, Strasbourg, 15 June 2004.

Box 7.**Child-friendly justice is justice that is:**

- Accessible
- Age-appropriate
- Speedy
- Diligent
- Adapted to and focused on the needs of the child
- Respectful of the right to due process
- Respectful of the right to participate in and to understand the proceedings
- Respectful of the right to private and family life
- Respectful of the right to integrity and dignity

Source: Guidelines of the CoE Committee of Ministers on child-friendly justice, adopted 17 November 2010.

barriers to employment and caring responsibilities mean that they and their families may have fewer financial resources available. Children with physical impairments may confront barriers in accessing court or police buildings (e.g., stairs or narrow doors). Children with disabilities living in institutions may find it hard to attend hearings or meetings because of lack of permission or transport.

The CRPD Committee has said that accommodations must be provided when the authorities are notified that a person with disability needs some adjustments to enjoy rights on an equal basis.⁶³ In practice, such accommodations are provided in an ad hoc and inconsistent manner in the context of formal and informal proceedings and without adequate investigation into the type of adjustments into the type of adjustments required by a child with disabilities. As a consequence, children with disabilities may be required to endure long hearings without sufficient breaks, aggressive questioning, inadequate methods of communication by untrained justice professionals and complex and confusing legal formalities and processes.

3.7 Lack of data and information to inform law and policy

Article 31 of the CRPD requires that States collect appropriate information, including statistical and research data, to enable the development of relevant, evidence-based policy and to "identify and address the barriers faced by persons with disabilities in exercising their rights." The Committee on the Rights of the Child urges States to "systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation

⁶³ United Nations Committee on the Rights of Persons with Disabilities, General Comment, 'Article 9: Accessibility', CRPD/C/GC/2, 22 May 2014.

of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC.⁶⁴ Furthermore, States parties to the CRC and the CRPD are required to submit to the relevant treaty monitoring bodies (the CRPD Committee and CRC Committee, respectively) on a regular basis, “a comprehensive report on measures taken to give effect to [...] obligations under the present Convention and on the progress made in that regard.”⁶⁵ Data and information is required to prepare these reports.

Box 8.



Importance of data

In 2014 the United Nations Human Rights Council pointed out the need to: “...develop and strengthen the collection, analysis and dissemination of data for national statistics in the area of children’s access to justice and, as far as possible, to use data disaggregated by relevant factors that may lead to disparities and other statistical indicators at the subnational, national, sub regional, regional and international levels, in order to develop and assess social and other policies and programmes so that economic and social resources are used efficiently and effectively for the full realization of the rights of the child.”

Source: United Nations Human Rights Council, ‘Rights of the child: Access to justice for children’, UN A/HRC/25/L.10, 25 March 2014.

In the absence of this data, it is difficult for States to make targeted, informed policy decisions about improving access to justice for children with disabilities, since their needs and experiences are in effect rendered invisible. In practice, few countries collect information and data about children’s access to justice in general, let alone for children with disabilities.⁶⁶ A 2015 comprehensive survey of children’s involvement in judicial proceedings in EU Member States found that “there are significant

gaps in the availability of such data, particularly disaggregated data on the involvement [in judicial proceedings] of children with disabilities.”⁶⁷

Box 9.



Bulgaria: Violation of the right to life

In *Nencheva and Others v. Bulgaria*, the ECtHR held that there had been a violation of the right to life when authorities failed to protect 15 children and young adults who died in a home for people with disabilities between December 1996 and March 1997. These young people had either been abandoned by their parents or placed in the home with their parents’ consent. They had died from the effects of cold and shortages of food, medicines and basic necessities. The Court considered that the authorities should have known that there was a real risk to the lives of the children in the home and had not taken the necessary measures available to them.

Source: European Court of Human Rights, Case of *Nencheva and Others v. Bulgaria*, Application no. 48609/06, Judgment, ECHR, Strasbourg, 18 June 2013.

A critical issue is how countries define disability and determine which children are disabled. Data collected as part of TransMonEE showed that 11 out of 19 countries in the Europe and Central Asia region still use definitions of disability in line with a medical diagnosis, rather than definitions that understand disability as a direct consequence of the interaction between a health condition and the physical, human-built, attitudinal and socio-political environment.⁶⁸ As a result, the data does not capture the full picture of barriers that children experience and how their impairment interacts with their environment.

⁶⁴ United Nations Committee on the Rights of the Child, General Comment No. 10, ‘Children’s Rights in Juvenile Justice’, CRC/C/GC/10, 25 April 2007, para 98.

⁶⁵ CRPD Article 35; see also CRC, Article 44.

⁶⁶ See A. Lawson, ‘Access to justice for children with mental disabilities, the collection and dissemination of data: Guidance Report’, Mental Disability Advocacy Centre, Budapest, 2015.

⁶⁷ N. Kennan, and U. Kilkelly, ‘Children’s involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU’, Policy brief, EU, Luxembourg, 2015, p.4.

⁶⁸ UNICEF, ‘Data Collection on Children with Disabilities In Eastern Europe and Central Asia’, Summary report of TransMonEE Country Analytical Reports on Disability Measurement, 2013.

4. Recommendations



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All children experience difficulties and challenges when seeking to access justice; strengthening justice for all children will also help children with disabilities. However, a child with a disability can experience specific and complex difficulties that require specialized interventions and reforms to ensure their equitable access to justice. The following section focuses on these specialized interventions and provides some practical guidance about how UNICEF country offices can identify and break down barriers to access to justice in the context of three specific entry points:

1. Empowering children with disabilities to seek justice;
2. Creating an enabling legal environment so that children with disabilities can access justice;
3. Reforming justice institutions to make them accessible and effective.

It should be emphasized that to remove the barriers faced by children with disabilities seeking to access justice, a wide range of actors need to be involved,

including: representatives from law enforcement, social protection and welfare; education; health; communities; national human rights institutions; civil society organizations, particularly those working on disability issues; and the media.

4.1 Empower children with disabilities to access justice

It is vitally important to directly address the social norms that perpetuate negative stereotypes and perceptions of children with disabilities and the idea that it is unacceptable for them to actively seek out remedies for rights violations. This can be done through:

- ▶ Conducting research on the specific barriers that children with disabilities face in accessing justice;
- ▶ Increasing networking and information exchange between academics, child protection and disability services, justice professionals and civil society organizations;

- ▶ Engaging community and religious leaders to publicly support access to justice for children with disabilities (see Box 10);
- ▶ Information campaigns to raise awareness about disability, challenge stereotypes and stigma and promote positive images of disability (see Box 11);
- ▶ Encouraging the media to raise awareness about the right to equitable access to justice for children with disabilities;
- ▶ Collaborating with organizations led by disabled persons or by advocates or ambassadors who are young people with disabilities.⁶⁹

Box 10.



Kenya: Awareness-raising in communities

In Eastern Kenya very few women and girls with disabilities report crimes of violence to the police, and when they do they are easily intimidated and convinced to drop the case. It is precisely because of these negative attitudes that they are at high risk of violence and abuse. An NGO developed a community-awareness project after becoming increasingly aware of the lack of support for women and girls with disabilities who had become victims of abuse, including the rape of girls with disabilities as they made their way to school.

The project targeted the communities' elders, decision-makers, law enforcement bodies and people with disabilities. As a consequence, for the first time there was recognition that violence against anyone with a disability is a crime. The Deputy District Chief spoke publicly about this issue and declared that he would personally confront anyone accused of sexual abuse against women and girls with disabilities. Some key groups of people, including pastors and village elders, quickly took up the issue and began talking to their communities about how violence against women and girls with disabilities can be managed and prevented. Church services are now used to inform people on how to report abuse. A recent case involving a woman with an intellectual disability was brought to the criminal justice system by the community itself, and was adequately investigated.

Source: Handicap International, 'Making it Work initiative on gender and disability inclusion: Advancing equity for women and girls with disabilities.' Handicap International, Lyon, 2015.

Children with disabilities are often denied access to justice because they do not know their rights, do not know that what happened to them was wrong or because they do not know where to complain. Children, their families and their caregivers need to be aware of their rights, be able to recognize rights violations and know that they can challenge abuse or exploitation without fear of retribution, stigma or further discrimination. This is particularly the case for children who are not in mainstream education.

Raising awareness about rights in general, and of the right to access justice in particular, is a task for a range of stakeholders including government bodies, parents, family members, residential institutions, caregivers, teachers, NGOs and NHRIs. There are many

different methods of dissemination of information, including through the school curriculum, leaflets and posters in police stations and courts and help-lines. All information provided should be accessible to children with disabilities, which may mean providing information in easily-read formats and using assistive aids.⁷⁰

⁶⁹ UNICEF has produced guidance on how to work with children with disabilities on decisions affecting their lives: UNICEF, 'Take us Seriously! Engaging Children with Disabilities in Decisions Affecting their Lives' UNICEF, NewYork, 2013

⁷⁰ For example, UNICEF produced a child-friendly version of the CRPD. Available at: https://www.unicef.org/publications/index_43893.html

Box 11.

Montenegro: Challenging discrimination

The “It’s about Ability” programme (2010–2014) was a nationwide campaign that engaged government officials, celebrities, civil society, educators and school children to increase awareness of the rights of persons with disabilities and to support reforms on inclusive education and de-institutionalization. This innovative approach – which involved young people both with and without disabilities as change agents – attracted considerable public attention, turning the campaign into a movement for social change involving partners from all sectors and institutions.

Children spoke on the most popular TV and radio shows, spurring discussions concerning inclusion right up to the national Parliament. A broad social mobilization campaign comprised numerous stakeholders, such as the media, private sector and celebrities, fuelling donations and volunteerism. Activism by school parliaments increased and more children learned about their rights; some became young TV reporters and some spoke at municipal parliaments. UNICEF ran national advertisements (TV, billboards, newspapers, social media, posters in schools and health centres, etc.) stressing the dignity and potential of children with disabilities.

One outcome was that a quarter of citizens said they had changed their attitude due to the campaign, and that they now communicated with children with disabilities more easily. Another outcome was that the percentage of citizens that accept that children with disabilities attend the same class with their children increased from 51 percent in 2010 to 73 percent in 2013.

Source: Zero Project Report, ‘International study on the implementation of the UN Convention on the Rights of Persons with Disabilities: Innovative Practices, Innovative Policies, and Social Indicators from more than 150 countries’, 2016.

https://zeroproject.org/wpcontent/uploads/2016/02/ZeroProjectReport_2016_barrierfree.pdf

4.2 Create an enabling legal environment that allows children with disabilities to access justice

Some of the steps that States can take to create an enabling legal environment for children with disabilities are described below. While some are the basic foundation for all children to access justice, others focus on special requirements for children with disabilities:

- Ratify and implement international and regional human rights instruments and enshrine them in domestic law so that children can rely on them across all justice institutions;
- Ensure that children with disabilities receive support enabling them to exercise their legal rights and obtain the legal assistance they require;
- Gather and analyse sufficient data and information to inform law and policy.

► Ratify the CRC and the Optional Protocol to the CRC on a communications procedure, as well as the CRPD and its Optional Protocol.

The CRC and the CRPD are the two most important international treaties setting out the right to access justice and related rights for children with disabilities. The Optional Protocols provide an important avenue for children to access remedies. They should be ratified without reservation; all existing reservations related to children with disabilities should be withdrawn.

► Incorporate the CRC and CRPD into domestic law and develop law and policy to ensure their implementation

Both instruments should be incorporated into national law and be directly enforceable in domestic courts. Ongoing reviews of domestic laws should be conducted to ensure that legislation protects the rights of children with disabilities in conformity with the CRC and CRPD. Disability should be included as a forbidden ground for discrimination in constitutional provisions on non-discrimination, and/or a specific prohibition of discrimination on the grounds of disability should be included in specific anti-discrimination laws or legal provisions. Beyond legislation, costed and budgeted national plans for implementation of the rights of children with disabilities should be developed.

Children with disabilities should be consulted directly when developing law and policies that affect them. This is an obligation under CRC Article 12,⁷¹ and the CRPD explicitly requires that: “[i]n the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.”⁷² Their involvement is required because they are experts in their own experience and can bring invaluable insights and expertise.

Box 12.



India: Advocacy for inclusive legislation

An estimated 70 million people with disabilities live in India. Although India has ratified the CRPD, it has not taken many steps to translate these commitments into practical laws and policies. An Indian NGO – the National Centre for Promotion of Employment for Disabled People (NCPEDP) – conducted strong, systematic and sustained advocacy and monitoring, to encourage the Government of India to draft and implement national disability legislation. Through stakeholder meetings, media campaigns and monitoring, NCPEDP brought together people with disabilities and government representatives, resulting in the passage of the Rights of Persons with Disabilities Act in 2016. A key contribution was advocacy for the inclusion of people with disabilities on the drafting committee.

Source: NCPEDP website: <https://ncpedp.org/default>

► Strengthen children’s legal capacity

Children with disabilities should always be presumed to have legal capacity, in accordance with the evolving capacity principle.⁷³ They should be able to initiate formal or informal proceedings on

their own behalf, provide testimony and participate in proceedings unless it is not in their best interests to do so.

Under Article 12 of the CRPD, States are obliged to provide support to ensure that everyone is capable of exercising their legal capacity and that sufficient safeguards are in place to guarantee that the will and preferences of the individual are the basis for such supported decision-making. To achieve this end, it may be necessary to assess children’s communication or other needs and provide reasonable accommodations to ensure their right to be heard. Rather than preventing participation on the basis of legal capacity, the justice system should modify practices and procedures to enable their participation. When a parent, guardian or other representative initiates informal or formal proceedings on behalf of a child, her or his decisions and actions must always be guided by the best interests of the child and give due weight to the child’s views.

► Ensure access to legal assistance and representation

Children with disabilities should automatically have the right to legal assistance that is free of charge during any proceeding – whether as a claimant, victim, witness, suspect or defendant. Assistance should be available at all stages of the process – from obtaining initial advice to the final appeal and any further complaint to a regional or international body. Only legal professionals with training on children’s rights and experience commensurate with the claim or offence should be appointed to represent children. As part of this training, they should be equipped to communicate in a such a way as to take into account the child’s age, gender, physical and/or intellectual or psycho-social impairment, emotional state, education and culture.

Legal professionals should never allow personal views that are discriminatory to affect their decisions or the quality of the service they provide to children with disabilities. As far as possible they should ensure that colleagues working with them do likewise, for example, by having

⁷¹ See also United Nations Committee on the Rights of the Child, General Comment 5, ‘General Measures of Implementation of the Convention on the Rights of the Child’, CRC/GC/2003/5, 27 November 2003, para 12.

⁷² CRPD Article 4.

⁷³ CRC, Article 5 and CRPD, Article 3. For further explanation see Gerison Lansdown, *The Evolving Capacities of the Child*, United Nations Children’s Fund, New York, 2005.

anti-discrimination policies in place and promoting training in the workplace. Legal professionals should ensure that children with disabilities (whether physical, intellectual, sensory, psychosocial) have access to the assistive technology or devices, including communication aids, that they need to give instructions and evidence and participate fully in proceedings.⁷⁴

Box 13.

Bulgaria: Litigation to access education

In *Mental Disability Advocacy Center v. Bulgaria*, the European Committee of Social Rights found a violation of the right to education for children with intellectual disabilities living in institutions and a violation of the right to non-discrimination on the basis of disability. The Committee found a failure to implement a 2002 law that had been put in place to integrate children with intellectual disabilities into mainstream schools, with the result that only 6.2 per cent of children with intellectual disabilities were attending school compared to the national school attendance rate of 94 per cent.

Source: European Committee of Social Rights, *Mental Disability Advocacy Centre v. Bulgaria*, Complaint No. 41/2007, ECSR, Strasbourg, 3 June 2008.

► Gather disaggregated data on implementation of the right to access justice of children with disabilities

Different types of information and data should be collected by government agencies, NHRIs and others to expose any inequality or disadvantage encountered by children with disabilities in obtaining justice. Data is also required to inform law and policy and to make reasonable decisions about targeting resources effectively and efficiently. It is essential to collect this data for the purposes of monitoring implementation of the CRC and the CRPD.

A recommended approach for gathering data on the nature of children's impairments in national censuses, surveys and SDG monitoring was developed by the Washington Group on Disability Statistics, in collaboration with UNICEF. This framework permits the collection of reliable data on children and adults with disabilities that are comparable cross-nationally. The Washington Group also developed an extensive set of questions designed to identify (in a census or survey format) people with a disability, including environmental factors. Emerging good practices in data collection can also be seen in Albania and Bosnia and Herzegovina, where efforts are underway to align data collection to the CRPD definition in censuses. In Albania, Georgia, Moldova and Romania data on children with disabilities is also collected as part of national education management information systems.⁷⁵

4.3 Reform justice institutions to make them accessible and effective for children with disabilities

► Remove physical and economic barriers

Physical barriers that prevent children with disabilities from accessing justice institutions must be identified and overcome; for example, by introducing ramps, lifts, signage in braille and sign language interpreters. All children should be exempted from paying court costs and case-related expenses. A good example of this policy is in Georgia, where civil or administrative cases concerning violations of children's rights are exempt from fees.⁷⁶ In Belarus, Bulgaria and Serbia courts have discretionary power to waive court fees in cases concerning violations of children's rights.⁷⁷

► Assess, identify and provide the support children with disabilities need

Individual assessments must be carried out as soon as a child comes into contact with the justice system, whether as a victim, witness, claimant

⁷⁴ See UNICEF ECARO, 'Guidelines on child-friendly legal aid', GENEVA, 2018.

⁷⁵ UNICEF ECARO, 'Regional Disability-Inclusive Strategy 2018-21', Geneva, 2018.

⁷⁶ See Civil Procedure Code (Georgia), 1997, art. 46, which provides exemptions for civil lawsuits related to violation of children's rights as well as for parents in alimony or custody disputes.

⁷⁷ 'When the State Doesn't Care'.

Box 14.**England: Use of intermediaries for vulnerable witnesses**

Since 2008 police in the United Kingdom have been able to use registered intermediaries in cases involving vulnerable witnesses who might otherwise be denied access to justice because of their inability to communicate clearly and engage with court proceedings. This often includes children who have communication difficulties. The role of an intermediary is to facilitate communication between the vulnerable individual and other participants in the legal process, and to ensure that their communication is as complete, accurate and coherent as possible. To become a registered intermediary applicants must undertake rigorous training.

In an evaluation of this legal step, the father of a child witness with hearing difficulties explained that: “The girls were panicking coming up to the trial. The intermediary put them a lot more at ease than they would have been otherwise. She had the right skills. Without her, my daughter would not have coped at all, as she said she could not lip-read the prosecutor. We thoroughly recommend the intermediary scheme: it is incredible.”

Source: The Advocate’s Gateway – Intermediaries, available at: <https://www.theadvocatesgateway.org/intermediaries>

or defendant. These assessments should identify any disabilities and assess how they might affect a child’s behaviour and engagement with the justice system. In light of this assessment, needed individualized accommodations should be identified and provided at the beginning of the process, but modified or adapted as required.

Accommodations might include: witness support, providing evidence via video-link, child-friendly rooms, regular breaks during proceedings, allowing an adult to accompany the child during proceedings, one-to-one mentoring, visiting a court room prior to a hearing or a referral to social support.⁷⁸ Children who have neurological disabilities and sensory impairments will need communication methods that enable them to read, hear, see and communicate, while children who are deaf and/or blind will need information provided to them in Braille, plain language or alternative formats. Insofar as possible the provision of needed accommodations should involve different disciplines and sectors working in close collaboration. Sectors might include: law enforcement officials, prosecutors, judges, social workers, probation services, civil society organizations, child protection and health and education workers.

► **Specialized professionals**

All justice professionals in contact with children must be trained and specialized in child rights and the specific developmental needs of children with different impairments. They should also be trained in disability rights and empowerment and be aware of the barriers that prevent access to justice. They must understand the need to communicate appropriately – for example, by speaking slowly and carefully, using simple, everyday language, avoiding technical terms or abstract concepts, giving sufficient time for processing a question and by using visual aids. Judicial officers responsible for sentencing should be trained to take account of the relevance of disability to offending behaviour, including the potential impact on the child of difficulties with reading, processing and memory, maturity of judgement, impulsivity and/or ability to understand the perspectives of others.

► **Protect the right to privacy**

The CRC recognizes the right of children to have their privacy respected at ‘all stages of the proceedings.’⁷⁹ The public identification of any child in contact with the law can be extremely harmful. It can be particularly damaging for children who are

⁷⁸ UN Human Rights Council, *Access to justice*.

⁷⁹ Convention on the Rights of the Child, Article 40(2)(b)(vii).



additionally vulnerable because of impairments. Disclosure of their identity can put them at risk of stigmatization by their communities and jeopardize their future opportunities for rehabilitation and reintegration. Disclosure is more likely to occur given that their personal and sensitive data is shared by different agencies more frequently than that of other children. Their personal data should only be shared in accordance with their best interests.

► Promote children's access to NHRIs

The Committee on the Rights of the Child has strongly endorsed the establishment of children's ombudspersons, children's commissioners or similar bodies.⁸⁰ Article 33 of the CRPD requires States to establish or designate national independent human rights monitoring mechanisms to promote, protect and monitor implementation of the Convention. Such institutions play an important role in facilitating access to justice for children with disabilities, since they can be approached directly, their working methods are less formal and no

fees are charged. Ombudsperson institutions are generally perceived by children and their families as less intimidating and more accessible for children.

Several NHRIs have developed specific strategies to reach children with disabilities and ensure their accessibility to them. For example, in Ontario (Canada), the Office of the Provincial Advocate for Children and Youth makes monthly visits to special schools for hearing- and vision-impaired children and/or children with severe learning disabilities to hear about their experiences accessing services.⁸¹ In Tajikistan, the Office of the Ombudsman for Child Rights has an online complaints mechanism that is accessible for children with vision and hearing impairments. The office has also been proactive in monitoring institutions where children with disabilities are living.⁸² The Ombudsman of Bulgaria is empowered to access institutions without prior notice and conduct interviews with children and staff.⁸³

⁸⁰ Committee on the Rights of the Child, General Comment No. 2, 'The role of independent national human rights institutions in the promotion and protection of the rights of the child', CRC/GC/2002/2, United Nations, Geneva, 15 November 2002.

⁸¹ United Nations Children's Fund, 'Championing Children's Rights: A global study of independent human rights institutions for children, Summary report, Innocenti, 2012

⁸² UNICEF Tajikistan, Country Office Annual Report, 2017.

⁸³ Annual Report of the Bulgarian Ombudsman as National Preventative Mechanism (2012), pp. 3-4 cited in CRIN, 'When the State doesn't care'.

5. Conclusions



The CRPD represents a real shift in attitudes towards children with disabilities – no longer are they perceived as passive recipients of care but rather as active and engaged participants in control of their lives on an equal footing with their peers. Nevertheless, they still disproportionately experience violations of their rights – such as not being able to access health care or education, being placed unnecessarily in institutions and being exposed to violence and exploitation. They are also denied their right to access justice both to remedy these violations and when they come into contact with the justice system as defendants, victims or witnesses of crime. A wide range of barriers – social, cultural, economic and attitudinal – remain entrenched.

Denying children with disabilities their right to access justice compounds the disadvantages they face in their daily lives, leaving them at risk of ongoing exploitation and violence and further entrenching discrimination, impunity and poverty. To ensure equitable access to justice requires a wide range of different measures that start with empowering children with disabilities to understand their rights and to seek justice.

Another key intervention to level the playing field is clearly set out in the CRPD. It involves identifying and putting in place reasonable, procedural and age-appropriate accommodations (such as ensuring access to a support person to provide assistance with understanding and participating in court procedures and offer emotional support) throughout the proceedings. Such accommodations can ensure that children can participate fully on an equal footing with others and respects their right to a fair trial.

Investing resources in ensuring that children with disabilities have access to justice is not a side issue of marginal importance only for a minority group. It is essential as a long-term investment in all children's health, education, equitable treatment and as a means of strengthening the rule of law.

Annexes

A. International law and standards on children and access to justice

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B. Regional law, standards and guidance on children and access to justice

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- EU Directive 2010/64 on the Right to Interpretation and Translation in Criminal Proceedings, 2010.
- EU Directive 2012/13 on the Right to Information in Criminal Proceedings, 2012.
- EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
- EU Directive 2013/48 on the Right of Access to a Lawyer in Criminal Proceedings, 2013.
- EU Directive 2016/343 on the Presumption of Innocence and the Right to be Present at the Trial in Criminal Proceedings, 2016.
- EU Directive 2016/1919 on Legal Aid for Suspects and Accused Persons in Criminal Proceedings, 2016.
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C. Further reading

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