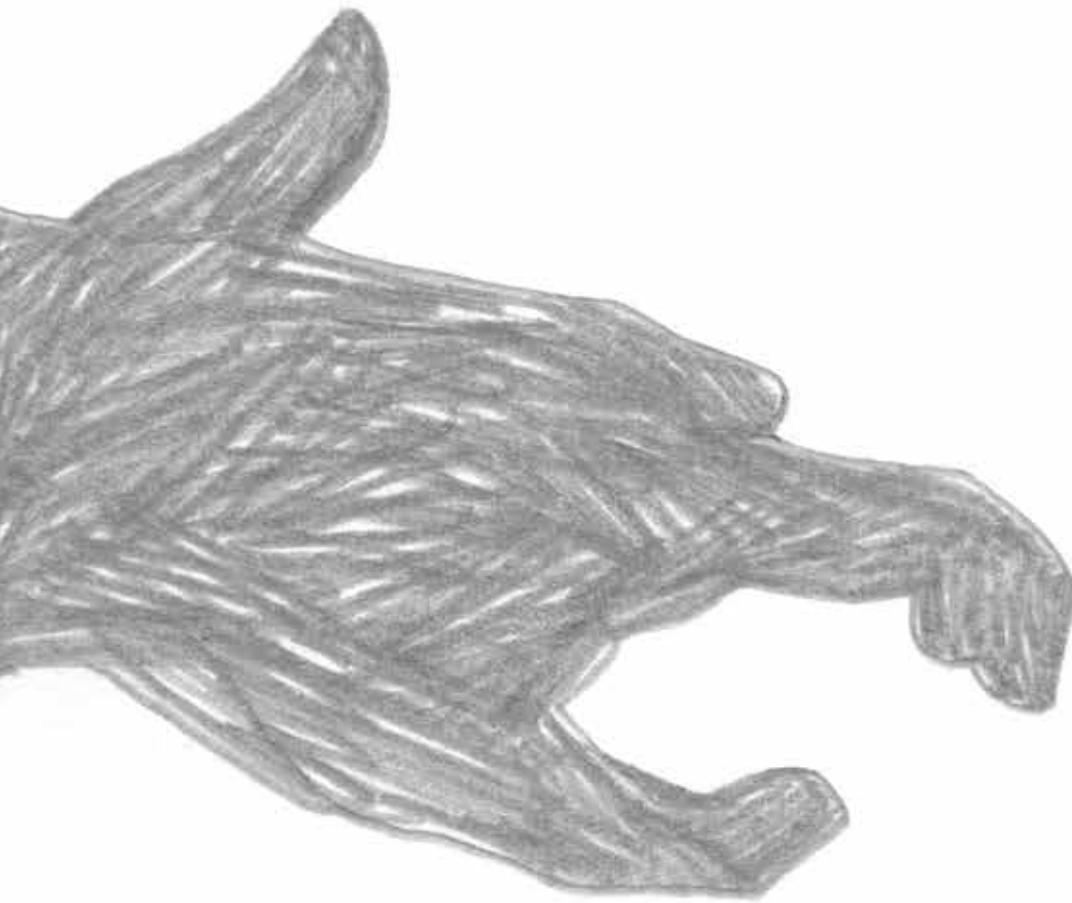


Rights, Remedies & Representation:

GLOBAL REPORT ON
ACCESS TO JUSTICE FOR CHILDREN



Acknowledgements

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CRIN is a global children's rights advocacy network. Established in 1995, we press for rights - not charity - and campaign for a genuine shift in how governments and societies view and treat children. We link to nearly 3,000 organisations that between them work in children's rights in every country in the world and rely on our publications, research and information sharing.

CRIN would like to express our thanks to the many lawyers and NGOs that have supported this work and without whom this project would not have been possible. The 197 country reports that form the basis of this research were prepared by DLA Piper, Skadden, Arps, Slate, Meagher & Flom LLP, Iran Human Rights Documentation Center, CRIN and others. Each report is individually credited. Thanks also go to Translators Without Borders whose volunteer translators have translated many of the reports produced as part of this project.

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Foreword—

Child rights standards in international instruments do not mean much for the lived reality of children if they are not implemented. In particular, if the fundamental rights of children are violated, it is critical that children or those acting on their behalf have the recourse, both in law and in practice, to obtain a remedy to cease, prohibit and/or compensate for the violation. Failing to deliver redress to a child for a human rights violation is a particularly telling sign that a legal system or a society is falling short of regarding children as rights-bearers.

In 2003, the United Nations Committee on the Rights of the Child stated in its General Comment No. 5: “[f]or rights to have meaning, effective remedies must be available to redress violations”.¹ More recently, access to justice for children gained further attention at the UN’s 2014 Human Rights Council discussion day on the topic, resulting in the Human Rights Council’s unequivocal resolution that “[e]very child whose rights have been violated shall have an effective remedy.”²

In April 2014, the new complaints mechanism under the Optional Protocol on a Communications Procedure to the UN Convention on the Rights of the Child entered into force with its tenth ratification. To date, 50 States have signed the new treaty, and 24 have ratified it. This instrument has created an additional hope of increased access to justice for children.

This is the backdrop to the current study undertaken by CRIN – the most comprehensive review of the extent to which children’s right to an effective remedy is secured in national legal systems on a global scale. The research shows that as a global community we have a long way to go to ensure that children can interact with legal mechanisms to obtain redress for rights violations.

Having learned where legal systems fall short of guaranteeing access to effective remedies, the next step is to work towards improving the status quo. I believe that the materials prepared as part of the research will be of immense help to all actors working to promote children’s access to justice.

The Committee welcomes this research and already envisages its concrete contribution to its various engagements with States Parties. We hope that other stakeholders such as UN agencies, civil society organisations, national human rights institutions, and academic institutions also make use of the research to collaborate with States in their legal reform processes, and where necessary, systematically use legal systems to challenge violations of children’s rights when other methods have failed.

I hope this study is only the beginning of a new shift in making access to justice for children a priority that will enable other rights to be fulfilled.

Mr. Benyam Dawit Mezmur
Chairperson of the UN Committee on the Rights of the Child

¹ General Comment No. 5 para 24.

² UN Human Rights Council, Resolution on the Rights of the Child: Access to justice, A/HRC/25/L.10, 25 March 2014.

Access to Justice for Children—

Access to justice is a human right, but it is also what makes other rights a reality. For children's rights to be more than a promise, there must be a way for those rights to be enforced.

Access to justice for children means that children, or their appropriate advocates where applicable, must be able to use and trust the legal system to protect their human rights. The legal system must provide children the means to obtain a quick, effective and fair response to protect their rights; the means to prevent and solve disputes; mechanisms to control the abuse of power; and all of this must be available through a transparent, efficient, accountable and affordable process. The importance of access to justice applies equally to children and adults, yet children's rights in this area have long been neglected and ignored.

This report is the result of a research project scrutinising how the legal systems of 197 countries empower children to realise their rights or perpetuate the rights violations that they should combat. With the support of hundreds of lawyers and NGOs from around the world, we have published a report for every country on earth setting out the status of the UN Convention on the Rights of the Child in national law; how the law treats children involved in legal proceedings; the legal means available to challenge violations of children's rights; and the practical considerations when challenging violations using the legal system.

This research shows the way that national legal systems can be used to challenge violations of children's rights and the ways that children can use the law to assert their own rights. It identifies where the law falls short and where legal systems are designed in ways that make it difficult or impossible to combat abuses of children's rights. We have documented the good, the bad, the effective, the ineffective, the radical and the revolutionary ways that children can access justice around the world and now we want to use this information to promote their rights.

It is not just governments that have a role to play in improving access to justice for children; myriad individuals and entities have an impact, from courts, national human rights institutions, the UN and regional bodies to civil society, parents and other legal representatives, lawyers, the media, and donors. We hope this project will guide governments on how to improve children's access to courts and other complaints mechanisms to enforce their rights, and encourage the UN and regional bodies to address children's access to justice in a more systematic way throughout their work. We hope it will inspire NGOs and children's advocates to consider stronger and more strategic forms of advocacy, and encourage lawyers to assist children and their representatives with seeking redress through the legal system.

Access to justice should be at the core of guaranteeing children's rights around the world.

Executive Summary—

Achieving access to justice for children across the world is a work in progress. This report represents a snapshot of how the world has tried to develop mechanisms to protect children’s rights and ensure that there are remedies for violations of children’s rights. This report is also the tip of an iceberg, representing an overview of the findings of 197 country specific reports amounting to thousands of pages of research all of which is available at www.crin.org/home/law/access.

Ranking the world

The ranking of States in this report was reached by scoring each country against international standards for access to justice for children.³ These standards come from treaties that States have voluntarily ratified, resolutions they have negotiated at the UN and guidelines developed by the UN’s specialised agencies. This is not a ranking of how well countries protect children’s rights but of how well States enable children to access justice and enforce their rights. Nonetheless, it is hard to ignore the fact that the countries with the most deplorable human rights records do not score well on access to justice.

The top of the list is dominated by Western Europe, while the countries that score worst are those governed by authoritarian regimes or where the legal system is so underdeveloped as to be an ineffective means of protecting children’s rights. But what the ranking also shows, is that no country on earth perfectly protects children’s access to justice, there is room for improvement even among the highest scoring States and all countries could learn a great deal from each other.

Our findings are split into four sections: the legal status of the CRC, meaning whether the CRC is incorporated into national law, takes precedence over it, and can be enforced in domestic courts; the legal status of the child, meaning how the law treats children involved in legal proceedings; remedies, referring to the legal means to obtain redress for violations using courts and other complaints mechanisms; and the practical considerations when challenging violations using the national legal system.

3 For full details, see CRIN, Access to Justice for Children: Model Report.

The legal status of the Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is the foundation stone of children's rights in international law, setting out the full range of children's rights, from the prohibition of torture to guaranteeing access to education. Every State - with the exception of the United States - has ratified the Convention, yet this almost universal commitment has not filtered through to many national legal systems. To date, 94 countries have fully incorporated the Convention into national law while a further 29 have incorporated but with reservations that limit its application. Just under half of all countries allow the Convention to be directly enforced in courts, enabling children to challenge laws or practices that violate their rights under the CRC. The countries of the Commonwealth have been reluctant to adopt this practice, limiting the CRC to a tool used to interpret national legislation and denying children its full protection.

Recognising that legal standards are of little value if they are not enforced, courts around the world have grappled with how to use the CRC in their judgments. This project found evidence of the Convention being cited in 60 per cent of countries⁴ including examples from all regions and legal traditions, though in only 20 countries was the use of the CRC frequent and consistent enough to amount to an established jurisprudence.

The legal status of the child

A lack of independence and legal status is likely to amount to a serious barrier to children accessing justice. In many ways, the way that a State formulates its rules on how children can make complaints is emblematic of the way it views their rights: children can be empowered or thrown into the shadow of their parents.

While States almost universally recognise the right of children to bring a case in their own name - a basic standard that recognises that children are legal persons with their own interests - the ability of children to engage with the legal system is severely hampered around the world. Blanket provisions requiring all people under a certain age to approach the courts through a litigation guardian or similar person are common, while more nuanced rules that take into account the capacity of any particular child approaching the courts are much rarer.

Legal systems promoting the involvement of parents in protecting their children's rights will often make sense - most parents have their children's best interests at heart - but restrictive parental consent rules are common and can stymie

children's access to the courts. Throughout the Middle East and North Africa this has become a serious problem, where parental legal authority is commonly strictly vested in fathers or grandfathers adding a further discriminatory limit on children's access to courts and other complaints procedures. Across South East Asia, several countries have also developed rules preventing children from bringing complaints against their parents, a practice that risks promoting impunity for abuses of children within the family. A small group of 14 States from a range of legal traditions has paved the way in combating these kinds of barriers, requiring that a child's representative, whoever that may be, act in the best interests of the child.⁵

Protection of the right of a child to be heard in legal proceedings is also an integral part of ensuring access to justice for children - a court can only protect a child's interests if it is able to find out what they are - yet a fifth of the world's children do not have the right to be heard in legal proceedings that concern them. A little over a quarter of countries guarantee this right to children in all legal settings, 84 countries enshrine the standard in more limited circumstances while 58 countries do not recognise children's right to be heard in their legislation.

Remedies

For rights to have meaning, effective remedies must be available to address violations⁶ and to ensure that children can access remedies, they must have access to all courts and complaints mechanisms to enforce their rights. With this in mind, remedies are at the core of the country reports produced during this project.⁷

It would be impossible to cover the full range of ways that legal systems have sought to protect the rights of children in such a short space - the country reports set out this information in much fuller detail - but this report highlights some of the innovative and detrimental ways that national legal systems have addressed these problems. Part III of this report analyses the innovative means that legal systems and traditions have developed to deal with rights abuses, from the practice of constitutional and administrative litigation that often dominates the protection of human rights to quasi-judicial Ombudspersons and private prosecutions where the state has shown an unwillingness to prosecute a criminal rights abuse.

This project particularly examines the development of collective litigation and public interest litigation across the world as an effective way of challenging widespread violations

4 See CRIN's CRC in Court Database to search for cases by jurisdiction. Available at: www.crin.org/en/library/legal-database.

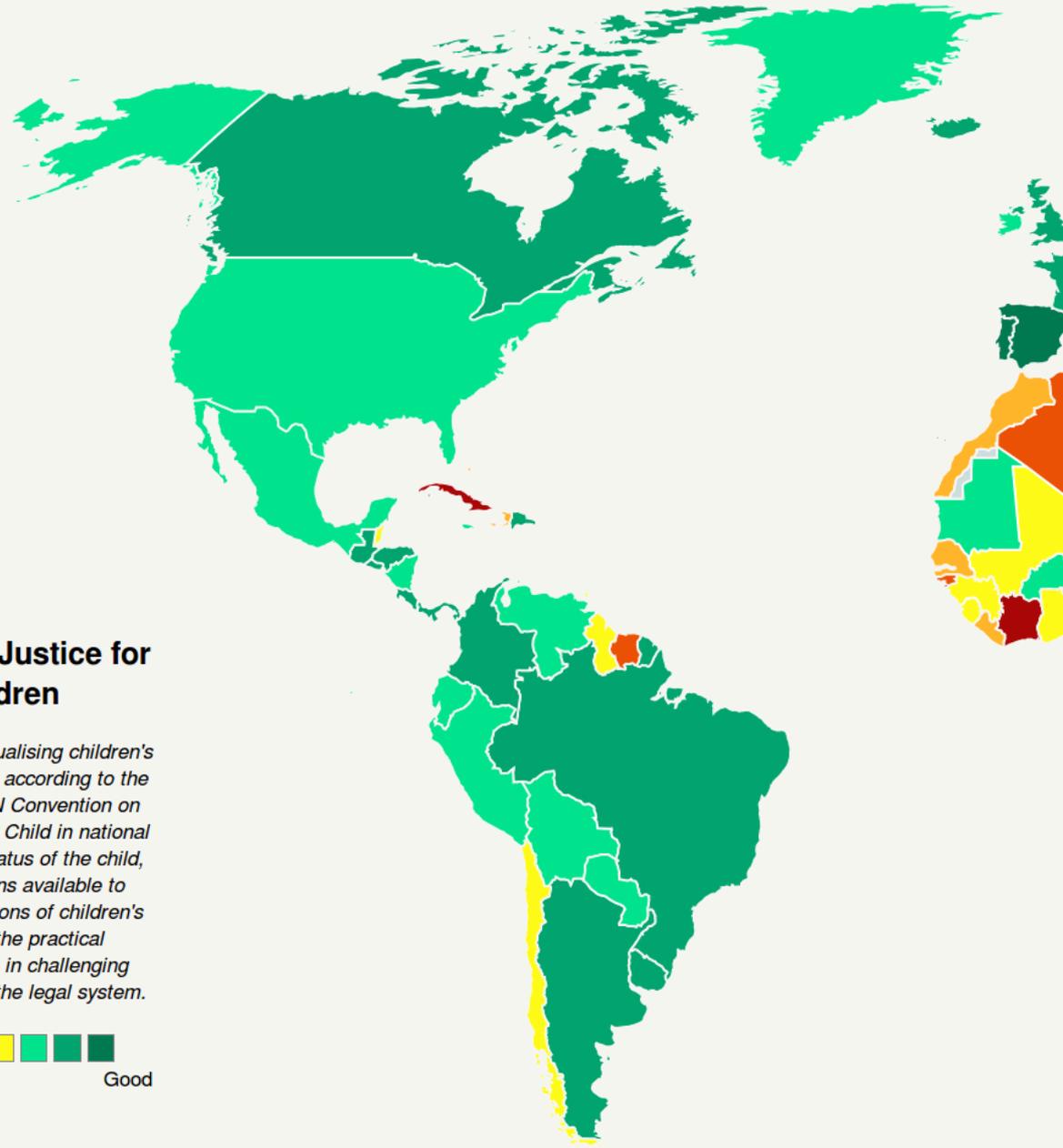
5 Bahamas, Bahrain, Bolivia, Costa Rica, Djibouti, Ecuador, Iceland, Iraq, Israel, Kuwait, Romania, Spain, Tanzania, Venezuela.

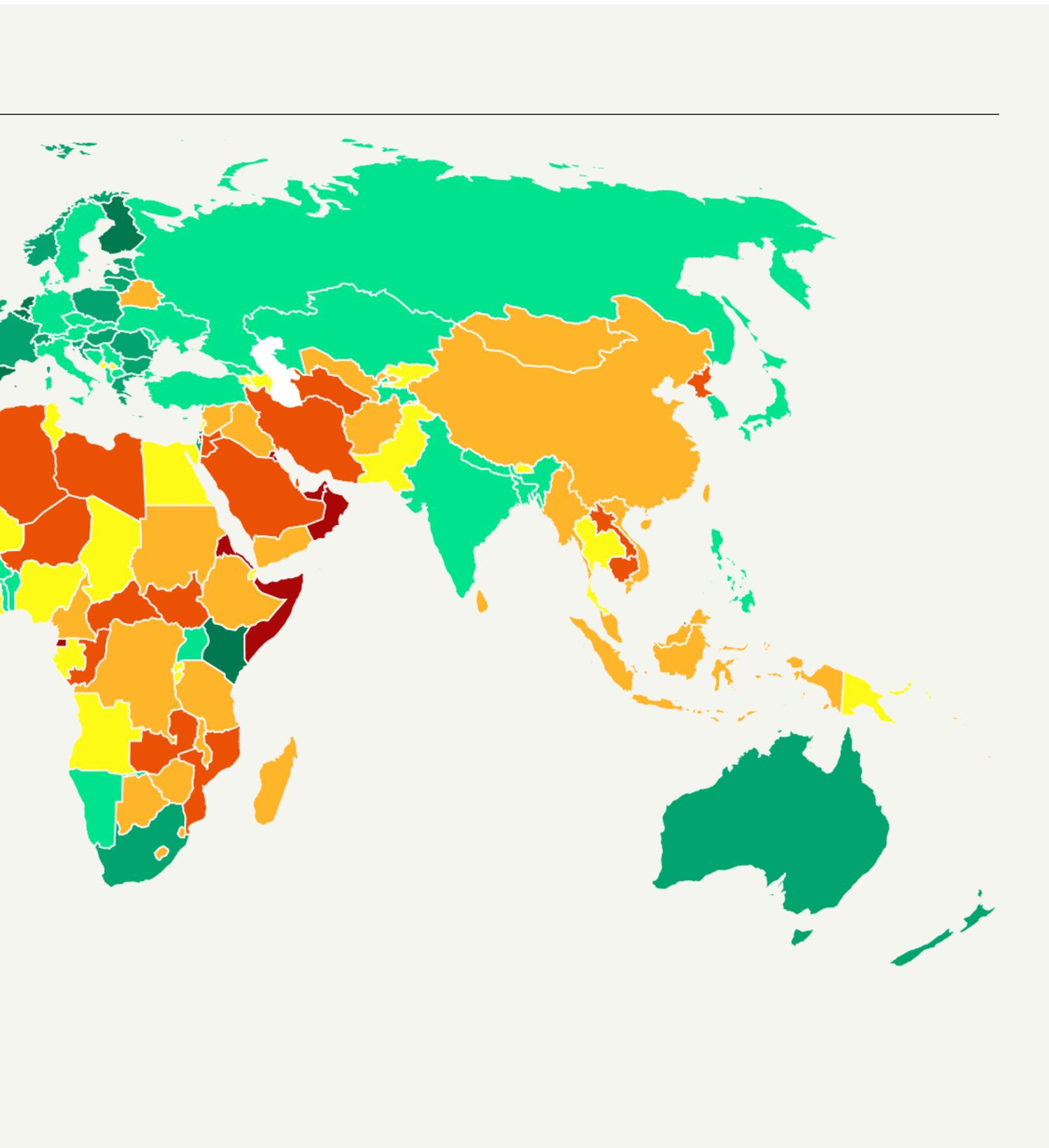
6 Committee on the Rights of the Child, General Comment No. 5 on general measures of implementation, para. 24.

7 All country reports are available at www.crin.org/home/law/access.

Access to Justice for Children

A global map visualising children's access to justice according to the status of the UN Convention on the Rights of the Child in national law, the legal status of the child, the legal means available to challenge violations of children's rights, and the practical considerations in challenging violations using the legal system.





of children's rights. Despite the opportunity these measures present, they have yet to become standard practice across the world. While the power to combine similar cases has been uncontroversially adopted in 148 countries, less than half of States allow collective litigation in some settings and around 15 per cent allow collective action across the board. These measures represent an underdeveloped tool with the potential to greatly increase the protection of children's rights.

Child focused non-governmental organisations will often be well placed to challenge widespread violations of children's rights or simply to support an individual child seeking redress. Yet procedures that enable organisations to do so are far from universal: around a half of States allow NGOs to bring cases in their own name, while a slightly larger majority of 54 per cent permit NGOs the more limited power to intervene in cases that have already been filed. The project also traced the rise in government control over which NGOs are able to take these actions, mechanisms that risk barring access to justice along political lines.

Practicalities

Many of the most serious barriers to children accessing justice lie in the practicalities. The financial burden of seeking legal advice, intimidating courtrooms and labyrinthine legal procedures can be difficult to overcome for many adults, but they can render access to justice for children a fiction.

Despite the central role of legal assistance and legal aid in realising access to justice, fully functioning state-funded legal aid systems are completely absent from 42 countries worldwide meaning that 220 million children worldwide have no access to free legal aid in any type of case. Of the remaining countries, legal aid is usually available in very limited circumstances, while in only 28 is legal aid available in all types of case.⁸ This research also saw a trend emerging of pro-bono - that is free and voluntary legal services - filling the gap provided in state legal services. Researchers found evidence of pro-bono practice in 60 per cent of countries, in some of which it was the only free legal assistance available.

Even when children's cases do reach the courts, procedural obstacles often prevent children from meaningfully participating in judicial proceedings and proving their case. Almost a quarter of States fail to meet the most basic requirement of allowing all children to give evidence, either by imposing a strict minimum age for appearing as a witness or attaching seriously limited weight to the testimony of children. Numerous legal systems also bar children from giving evidence by requiring children to gain the consent of their parents to appear before the court or requiring a "personality check" before giving evidence in a sexual abuse

case.⁹ Yet despite these regressive rules, a small group of countries have begun to reject rigid age limits, introducing standards that recognise that capacity varies from child to child and some children will be able and willing to give evidence at a younger age than others.

Recognising the risks in publishing information about children involved in the justice system, including revictimising children seeking redress and stigmatising those accused of criminal offences, almost three quarters of countries have adopted some kind of legislation to protect the privacy of children. These protections vary widely in quality, from strict private hearings that might prevent the kind of scrutiny that guarantees a fair trial to those effectively preventing the publication of identifying information of children involved in proceedings.

States are increasingly responding to the risk that strict limitation periods - time limits on how soon a case must be brought after the offence, harm or injury occurred - may prevent children from accessing justice. The risk of preventing children from seeking redress when they come to terms with abuses that they have faced has been long established in sexual abuse cases but the same principle can apply to other rights abuses that children face. Around the world, 84 countries allow these time limits to be relaxed in certain circumstances, often until a child reaches adulthood and is in a position to approach the courts. Nonetheless, despite this progress very strict time limits will often apply in rights cases and remain a significant barrier to children accessing justice.

An ongoing project

In some ways this report paints a grim picture of children's access to justice around the world, but there is also hope. Many legal systems are poorly adapted to protecting children's rights, but there are countless inventive and ingenious mechanisms across all legal traditions that empower children and combat pervasive or systemic abuses of their rights. This report is an introduction to the extensive research that has made up this project to date, we intend to use this research with partners as a tool to press for reform to improve access to justice for children around the world.

⁸ By this it is meant that legal aid is available in criminal, civil, administrative, family court and other judicial settings, though it is not to say that there are no limits on its provision.

⁹ Sao Tome and Principe, Code of Criminal Procedure, Article 114.2.

Methodology

The 197 country reports were prepared by CRIN and pro bono lawyers at DLA Piper and Skadden, Arps, Slate, Meagher & Flom LLP, with the assistance of Emery Mukendi Wafwana & Associés (DRC report), Iran Human Rights Documentation Center (Iran report) and Confluent Law (Iraq report) and others. The reports were amended according to comments and feedback provided by experts - including Ministries of Justice, State permanent missions to the UN, national human rights institutions (including ombudspersons, children's commissioners and children's rights and human rights defenders), NGOs, children's rights advocates, academics, lawyers, judges and other experts - up until 1 November 2015. Expert feedback was received on more than 60 per cent of the country reports.

This global report was prepared based on the content of the country reports, as amended as of 1 November 2015. Examples of countries are provided throughout this report; they are intended for illustrative purposes only and may not be an exhaustive list. Full details of countries' provisions referred to in this report are available in the country reports at www.crin.org/home/law/access.

Each country report was coded to help us analyse trends across the world and to develop the scoring system that forms the basis of the global ranking. Full details of the coding scheme and methodology are available online at: www.crin.org/home/law/access/methodology.

A ranking of all 197 jurisdictions examined can be found on [page 42](#) of this report along with the percentage score achieved by each country.



PART I

Legal Status of the Convention on the Rights of the Child



The Convention on the Rights of the Child (CRC) is the foundation stone of children's rights in international law, setting out the full range of children's rights, from the prohibition of torture to guaranteeing access to education. In many ways, the Convention has been a great success - it is the most ratified human rights treaty in the world - but to move beyond a grand statement of principle, the Convention needs to become part of national law and practice. The Convention should have the force of law in every State that has ratified it, it should take priority over contradictory provisions in domestic law and children should be able to invoke it before courts when their rights have been violated. To date, this aspiration is unfulfilled.

Incorporation and precedence - giving the CRC the force of law

How States regard treaties is one of the core features of any national legal system. The countries of the world fall broadly into two categories: monist and dualist. For monist States, to ratify the Convention was to make it part of national law; while for dualist States ratification is more a statement of intent that requires further legislation to make the Convention part of national law. In general, the Convention will have greater effect in monist countries, but the distinction is not always so clear cut and some dualist States have taken steps to give the Convention the full force of the law.

Burundi is a prime example of the monist approach to the Convention. All treaties enter into force upon ratification and the Convention on the Rights of the Child is explicitly identified as an integral part of the Constitution.¹⁰ Kosovo has a similar provision.¹¹ This is a common and very simple way of bringing treaties and the Convention into national practice, adopted across the world from Venezuela¹² to Bosnia and Herzegovina.¹³

The Bahamas, by contrast, ratified the Convention more than 20 years ago, but its legal system does not recognise treaties as part of the national legal system. In the absence of legislation to incorporate the Convention, the CRC plays a marginal role in the national legal system.¹⁴ The overwhelming majority of dualist countries, particularly those within the Commonwealth, have adopted a similar approach, failing to recognise the Convention as part of the national law and limiting its effect in the domestic legal system in favour of developing piecemeal legislation on the various areas that the Convention addresses. This need not be the case. Finland, a dualist country, ratified the Convention in 1991 and the same year enacted legislation to incorporate the entire treaty

and clarify its place in national law.¹⁵ Though this approach is rare, Hungary, Italy and Iceland have also gone through similar processes to give effect to the Convention.¹⁶ There is no insurmountable legal obstacle for dualist countries in making the Convention part of their law, the barrier is political.

Once the CRC is recognised as part of a national legal system, the question is what place it holds in the legal hierarchy. The value of incorporating the Convention lies in ensuring that the rights are applicable at the national level and allowing Convention rights to override conflicting law is an effective way of enforcing those rights. In 42 per cent of countries the Convention does just that, taking precedence over primary legislation. Other jurisdictions, overwhelmingly those within the Commonwealth such as the United Kingdom¹⁷ and India,¹⁸ have made it clear that where national law clearly conflicts with the Convention, national law must be applied.

In a little over half of States, the Convention takes precedence over at least some conflicting provisions in national law. In Belgium, for example, only those provisions of the CRC considered to be "directly applicable" can take precedence over national law.¹⁹ This practice leaves the courts with discretion to decide which provisions take precedence over domestic law on a case by case basis. As this example illustrates, the place of the Convention in the formal legal hierarchy can only be part of the picture: the courts must be able to use this authority to enforce the rights in the Convention.

Using the CRC in court

The ultimate test of the Convention's place in a national legal system and of its usefulness to children who experience rights violations is whether it can be relied upon in court and, if so, to what effect.

The Convention can be directly enforced in its entirety in 48 per cent of all countries. Every country in Central and South America (with the exception of Guyana) and most Council of Europe Member States²⁰ allow for the CRC to be directly enforced in court. By contrast only half of MENA countries and less than half of the countries of Sub-Saharan Africa grant courts this power. In over half of Asian countries,

15 Treaty Series 59/1991 and 60/1991.

16 For full details, see respective country reports. Available at www.crin.org/home/law/access.

17 E.g. *Cameron Mathieson, a deceased child (by his father Craig Mathieson) v. Secretary of State for Work and Pensions* [2015] UKSC 47. See CRIN, *Access to justice for children: England and Wales for discussion*.

18 E.g. *People's Union for Civil Liberties v. Union of India* [1997] 125 ILR 510. Available at: <http://indiankanoon.org/doc/544871/>. See CRIN, *Access to justice for children: India for full discussion*.

19 See CRIN, *Access to justice for children: Belgium*, April 2015, p. 1. Available at: www.crin.org/node/41373.

20 The exceptions are Albania, Austria, Belgium, Czech Republic, Denmark, Finland, France, Greece, Ireland, Liechtenstein, Malta, Monaco, Netherlands, Sweden, Switzerland, United Kingdom (England and Wales, Northern Ireland, Scotland).

10 Constitution of Burundi, Articles 19 and 292.

11 Constitution of Kosovo, Article 19.

12 Constitution of Venezuela, Articles 19 and 23.

13 Constitution of Bosnia and Herzegovina, Annex I.

14 See CRIN, *Access to justice for children: Bahamas*, July 2014, p. 1. Available at: www.crin.org/node/40238.

it is not possible to directly enforce any provision of the Convention.²¹

The ways that courts can use the Convention vary. At the strongest end of the spectrum, courts in Bulgaria and Colombia have been willing to clearly enforce the Convention over conflicting national law. In 2010, the Supreme Administrative Court of Bulgaria struck down a national legal provision barring families with children from adopting, in part because the Convention prevails over contradictory legislation.²² The Constitutional Court of Colombia, meanwhile, has recognised the obligation under the Convention to provide free compulsory primary education as binding on the government.²³

In a large number of countries, the Convention has been used less directly as an interpretive tool to develop national law. This approach is popular among Commonwealth States that have not incorporated the CRC. The Supreme Court of Nauru used the Convention to develop its interpretation of adoption legislation²⁴ and ruling on the right to legal assistance, the Supreme Court of Samoa has held that “there is a clear mandate to the courts of this country to have regard to the provisions of the Convention in appropriate cases”.²⁵

Other States have combined these two approaches, adopting either method depending on the specific right they are considering. It is common for States from the French legal tradition, such as Belgium, to directly apply the Convention where the court considers that a specific provision is clear enough not to require further implementing legislation. France’s Court of Cassation has declared that it is willing to directly apply 11 of the Convention’s articles.²⁶

The power of courts to use the CRC is a useful tool to improve national practice, but to make proper use of this power the courts must regularly rely on the Convention. The CRC has been cited around the world: this project found evidence of the Convention being cited in 60 per cent of

countries²⁷ including examples from all regions and legal traditions, though in only 20 countries was the use of the CRC frequent and consistent enough to amount to an established jurisprudence. There was no evidence of the Convention being cited in 40 per cent of countries. This finding may be in part a result of the limited publication of court judgments in some jurisdictions. Several States do not have up to date searchable case law databases and our findings are likely to be limited for these States. However, in others the evidence collected points to a potential avenue for children’s rights advocates working in similar legal systems. The ways that the Convention has been used in a Commonwealth State that has made extensive use of the CRC, for example, could be used to support cases in another where the issue has yet to be explored before the courts.

Declarations and reservations

Reservations can seriously undermine the effect the Convention has in the national legal system. Fourteen per cent of countries that have incorporated the CRC have entered a declaration or reservation that limits the scope of the Convention in some way.²⁸ Among the most detrimental of these restrictions are those that limit the application of the Convention in line with religious law. Mauritania, Afghanistan and Saudi Arabia have all entered broad reservations with respect to conflicts between Islamic religious law and the CRC. Saudi Arabia’s reservation “with respect to all such articles as are in conflict with provisions of Islamic law” would prevent the Convention’s application to many of the most severe human rights abuses in the country. Iraq, Oman, Somalia and the Holy See have all entered more restricted reservations to Article 14’s protection of the right of the child to choose his or her own religion. Other States with more secular approaches to human rights, for example France, have taken particular objection to the minority rights protections under the Convention.

21 The CRC is partially enforceable in Japan and Saudi Arabia and fully enforceable in Armenia, Azerbaijan, Bahrain, Bhutan, Cyprus, Georgia, Jordan, Kazakhstan, Democratic People’s Republic of Korea, Kyrgyzstan, Lebanon, Nepal, Qatar, Tajikistan, Turkey, Turkmenistan, Viet Nam and Yemen.

22 Kerezov v. Minister of Justice [2002] Supreme Administrative Court of Bulgaria, Case No. 2829/2002. Case summary and full judgment available at: www.crin.org/node/7016. From the judgment: “On the strength of Art. 5 (4) of the Constitution of the Republic of Bulgaria, the [Convention on the Rights of the Child and Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption] shall constitute part of the country’s internal law and shall prevail over those norms of the national legislation that contradict them...”

23 Decision C-376/10 [2010] Colombian Constitutional Court. Case summary and full judgment available at: www.crin.org/node/7090.

24 In re: Lorna Gleeson [2006] Supreme Court of Nauru, NRSC 8; Miscellaneous Case No. 4 of 2006. Case summary and full judgment available at: www.crin.org/node/7086. Chief Justice Robin Millhouse: “I am told that Nauru is a signatory to the Convention [on the Rights of the Child]. Whether it has become part of the domestic law of Nauru is a moot point. Whether it is or is not part of our domestic law, I feel able to take the Convention into account in considering the cases state...”

25 Police v. Vailopa [2009] Supreme Court of Samoa, WSSC 69. Summary and full judgment available at: www.crin.org/node/7025.

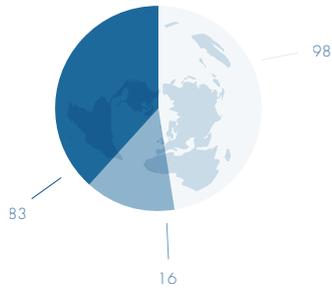
26 Articles 2(1), 3(1), 4, 6(1), 10(2), 12, 16(1), 18(1), 19(1), 29(1), and 37.

27 See CRIN’s CRC in Court Database to search for cases by jurisdiction. Available at: www.crin.org/en/library/legal-database.

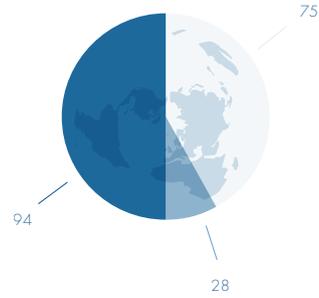
28 A full list of State reservations and declarations with regards to the CRC is available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mdsg_no=IV-11&chapter=4&lang=en#EndDec.

I Status of the CRC

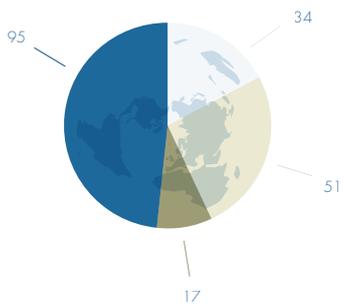
CRC takes precedence over national law



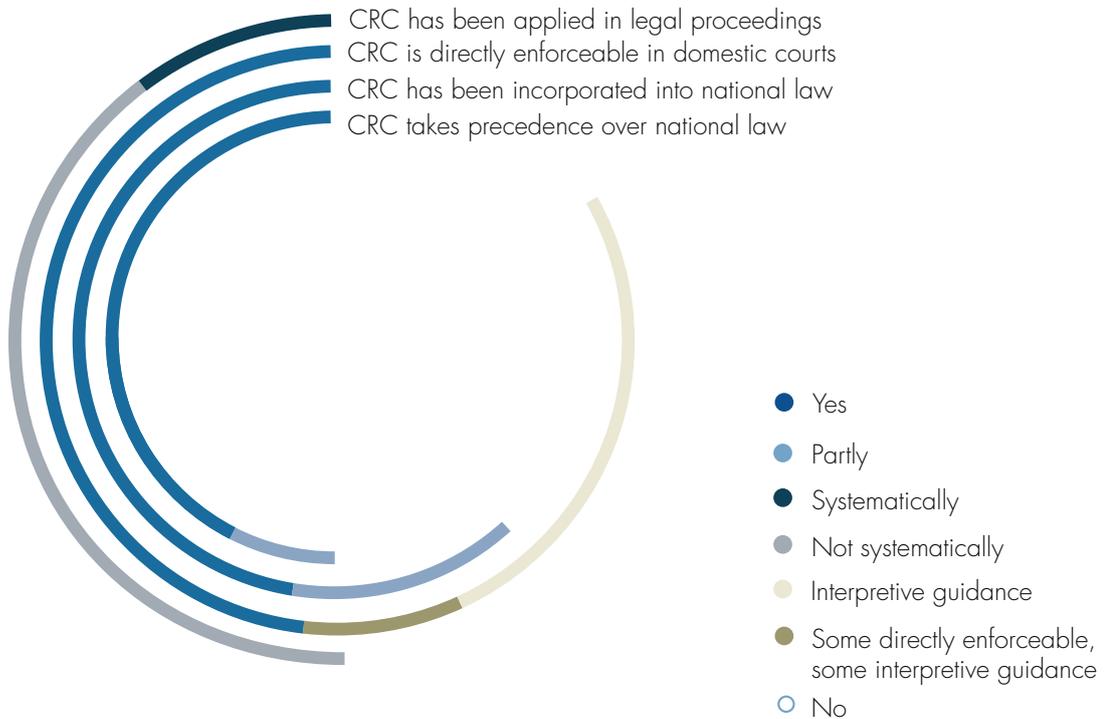
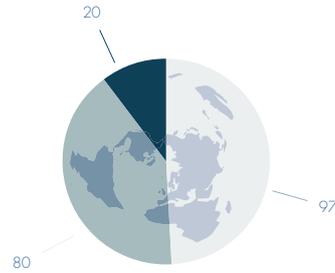
CRC has been incorporated into national law



CRC is directly enforceable in domestic courts

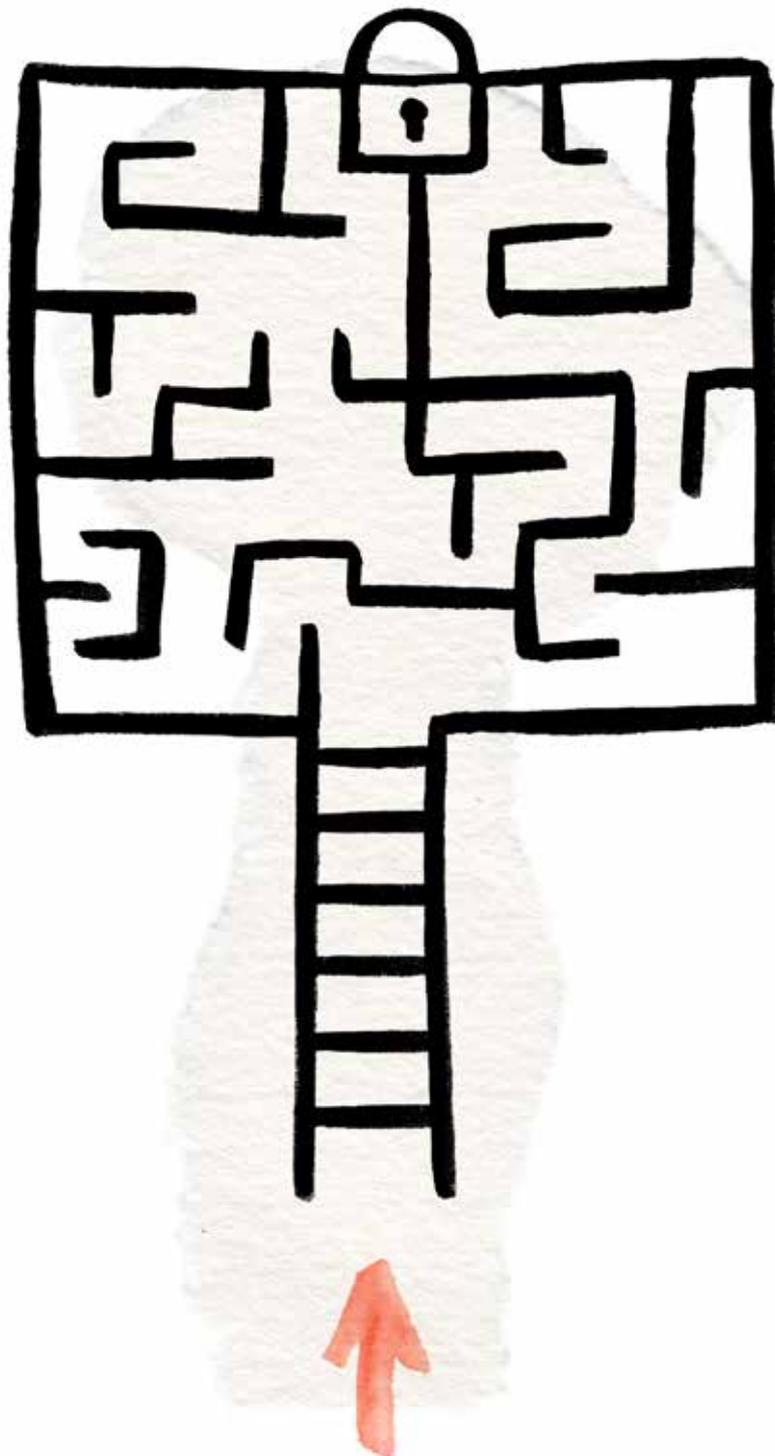


CRC has been applied in legal proceedings



PART II

The Legal Status of the Child



A lack of independence and legal status is likely to amount to a serious barrier to children accessing justice. In many ways, the way that a State formulates its rules on how children can make complaints is emblematic of the way it views their rights: children can be empowered or thrown into the shadow of their parents.

Standing - getting a foot in the door

Restrictive rules on legal standing - that is the rules governing who is able to bring a case to court - can prevent children from challenging a violation of their rights, regardless of the strength of their case. The most basic requirement here is that a child be able to bring a case in his or her own name. Legal systems may put in place a range of restrictions as to how a case may be brought and by whom, but this almost universally respected standard ensures that the law treats children as their own legal person with interests that the court should protect.

Once this basic right is in place, the question is how a child can approach the court and through whom. The countries of the world overwhelmingly enshrine a general rule that children lack the standing to approach courts by themselves and require children to do so through a representative. This representative might be the child's parent, litigation guardian, guardian ad litem or 'next friend who instructs lawyers and makes decisions about how to proceed in court.²⁹ Approaches among States vary as to how and when this representation is required. The simplest provisions often impose a blanket requirement that everyone under a certain age be represented in order to be heard in court. Reflecting the internationally agreed definition of a child, this age will usually be 18, but some countries have set a higher age, for example 21 in Liberia,³⁰ while Paraguay sets the age at 20, though it can be reduced to 18 with parental consent.³¹

Many countries adopt a more graduated approach, granting children greater standing before the court as they get older and approach the age of majority. Scotland, for example, sets 16 as the age of full legal capacity. Children under that age are considered competent to instruct a solicitor and to sue or to defend in any civil proceedings provided that they have "a general understanding of what it means to do so". For children over the age of 12, it is presumed that they will have this capacity.³² These rules attempt to strike a balance between the fact that many children will need and want support and representation in order to engage with the legal system, with a recognition that there is no arbitrary age

at which children are willing and able to act on their own initiative.

Other States have attempted to deal with situations where a child does not want to act through a mandatory representative by setting out limited situations in which a child may act alone. Barbados, for example, generally requires children to act through a "next friend" in court proceedings, but individual children can apply to the court to remove this requirement.³³ In Tunisia, where a child would usually have to act through his or her parents, children can claim damages independently where a parent has refused to claim damages for harm caused to the child.³⁴

It is also common for States to allow children to act alone in specific types of cases. In Macedonia³⁵ and Croatia,³⁶ for example, children aged 16 or older are able to request a criminal prosecution or private charge by themselves. A common practice has emerged, particularly though not exclusively among countries in Eastern Europe and Central Asia, allowing children to initiate proceedings for a protection order when they are affected by domestic violence. Kosovo,³⁷ Seychelles³⁸ and Samoa³⁹ have all developed such a system. Other legal systems express these exceptions more explicitly in matters of rights; Hungary, for example, allows children over the age of 14 to take legal action by themselves 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.⁴⁰

Parental consent, patriarchy and conflicts of interests

Involving parents in the protection of their children's rights will often make sense - parents will usually have their children's best interests at heart - but overly strict requirements that a child act through his or her parents are common and can seriously stymie children's access to the courts. Many of the most restrictive provisions in this regard are found in the laws of MENA countries, which in Algeria,⁴¹ Kuwait,⁴² the UAE⁴³ and Qatar,⁴⁴ for example, strictly vest parental authority for initiating legal proceedings with a child's father or grandfather. The practice is not restricted to

29 Lebanon is an interesting exception to the rule that children must approach the courts through a representative, in that it permits courts to respond to complaints brought by a child of any age and regardless of whether the child makes the complaint orally, in writing or even by phone.

30 Liberian Code of Laws Revised, Title I - Civil Procedure Law, § 5.12.

31 Civil Code, Article 36.

32 For full discussion, see CRIN, Access to justice for children: Scotland (UK), January 2015. Available at: www.crin.org/node/31970.

33 Civil Procedure Rules of the Supreme Court, Rules 23.2(2)-(3).

34 Obligations and Contracts Code, Article 9.

35 Criminal Procedure Code 2010, Articles 59 and 66.

36 Criminal Procedure Act 2009, Article 62.

37 Law No. 03/L-182, Law on Protection Against Domestic Violence, Article 13(1).

38 Family Violence (Protection of Victims) Act 2000, Section 3(2).

39 Family Safety Act 2013, Section 4.

40 Civil Code, Section 85(1) (Section 2:54(2) of the New Civil Code).

41 Family Code, Articles 81 and 82.

42 Personal Status Law (n 11), Article 209. Fathers assume guardianship, followed by the paternal grandfather or another paternal relative in the absence of the father.

43 Personal Status Code 2005, Articles 32 and 34.

44 Law No. 40 of 2004 on the Guardianship Over Minors' Funds, Article 4.

the Middle East, Niger⁴⁵ too vests authority exclusively with a child's father when parents are married while Honduras grants almost exclusive authority to fathers in "protecting and directing [the child] and administering their property".⁴⁶

Such overtly discriminatory provisions clearly undermine the protection of children seeking to challenge violations of their rights, but even where the authority lies with parents and guardians more broadly these restrictions can be harmful. In Thailand, children are prohibited from bringing civil or criminal actions against their parents unless the case is taken up by the public prosecutor,⁴⁷ while in Lao PDR, children must gain parental consent prior to lodging a complaint or seeking legal assistance.⁴⁸ These restrictions can prevent children from accessing justice, particularly where there is a conflict of interests between the child and his or her parents, or where the parents may be involved in the violation of the child's rights. To some extent this problem is mitigated in the model adopted by Turkey, which has a general rule requiring parental consent for a child to initiate legal proceedings, but allows an exception where the parents or guardians are alleged to have violated the child's rights.⁴⁹ This rule would still permit parents to prevent a child accessing justice when he or she is fully capable of making decisions about what is in his or her best interests.

More substantial protections are found among more than half of States, which have limited parents' powers to act on behalf of a child in line with the best interests of the child or have rules to police cases where parents' interests may conflict with that of their children. Tonga, for example, requires any representative of a child to identify him or herself to the court and a lawyer representing the child must certify that the representative has no interests in the proceeding that would be adverse to that of the child.⁵⁰ Sri Lanka has a similar process requiring a child's prospective representative to apply to the court demonstrating his or her fitness for the purpose and that there is no conflict of interests.⁵¹

More fully realised protections to ensure that children's representatives act in the best interests of the child are relatively rare globally. Only 14 States specifically require parents or legal representatives to act in the best interests of the child in legal proceedings.⁵²

Right to be heard

The right to be heard is an integral requirement for children to access justice; it allows children to participate directly in judicial proceedings concerning their rights. A legal process that does not place a child at its centre or that excludes him or her from proceedings cannot effectively protect that child's rights, yet a fifth of the world's children do not have a right to be heard in legal proceedings that concern them.

A little over a quarter of countries enshrine a right of children to be heard in all matters concerning them, whether or not the relevant law explicitly states its application to judicial proceedings. Egypt's Child Law, for example, guarantees a right for a child "who is able to form his own opinions" to "access information which empowers him to form and express such opinions and to be heard in all matters related to him, including judicial and administrative procedures, in accordance with procedures specified by law."⁵³ Many States from the French legal tradition, including France,⁵⁴ Mauritius,⁵⁵ Belgium⁵⁶ and Luxembourg,⁵⁷ have particularly strong protections of the right to be heard permitting any child capable of discernment or of forming his or her own views to request to be heard directly by the court or judge in any proceedings concerning the child.

A further 84 States guarantee a more qualified right to be heard restricted to certain types of legal proceedings. Israel, for example, specifically guarantees children a right to be heard in family court proceedings,⁵⁸ while in Papua New Guinea the child's right to be heard is guaranteed in proceedings subject to child protection legislation.⁵⁹

More than a quarter of States - 58 countries spread across the Americas, Asia, Africa and MENA - do not recognise the right of the child to be heard in their legislation. The right is particularly poorly protected in Asia and MENA.

45 Code Civil, Book I, Title IX, Articles 372 and 373.

46 Civil Code of the Republic of Honduras, Article 238.

47 Civil and Commercial Code, Section 1562. "No person can enter an action, either civil or criminal, against his ascendants, unless the case is taken up by the Public Prosecutor upon application of such person or a close relative of such person".

48 UN Committee on the Rights of the Child, Concluding observations on the second periodic report of Lao PDR, CRC/C/LAO/CO/2, 8 April 2011, para. 30.

49 Turkish Criminal Procedure Law, Article 90.

50 Supreme Court Rules, O.9 Rule 7(2)(b).

51 Civil Procedure Code, Section 481.

52 Bahamas, Bahrain, Bolivia, Costa Rica, Djibouti, Ecuador, Iceland, Iraq, Israel, Kuwait, Romania, Spain, Tanzania, Venezuela,

53 Child Law, Article 3(c).

54 Civil Code, Article 388-1.

55 Mauritius' Civil Code, Section 388-1.

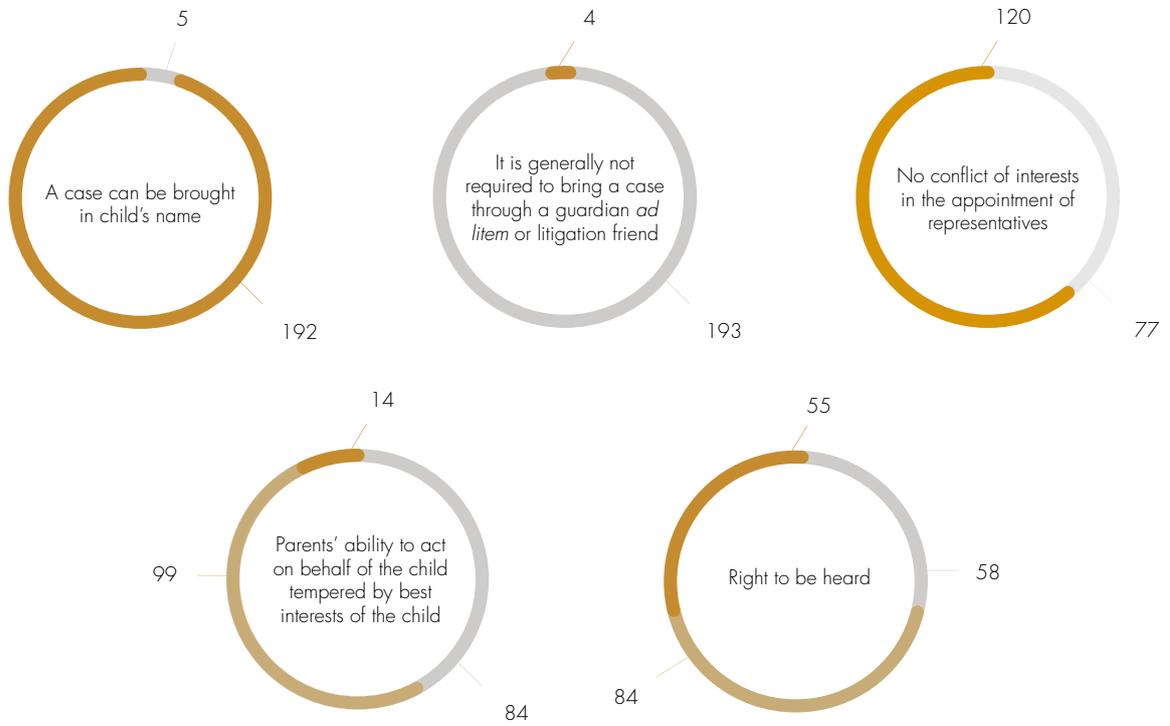
56 Judicial Code, Article 1004/1; Youth Protection Law.

57 Third and fourth periodic reports of Luxembourg to the UN Committee on the Rights of the Child, CRC/C/LUX/3-4, 12 November 2012, paras. 86, 145.

58 Civil Procedure Regulations (as amended). Relevant legislation available in Hebrew at: http://www.nevo.co.il/law_html/Law01/055_060.htm.

59 Lukautim Pikinini (Child) Act 2009, Section 3 and Schedule 1.

II Legal Status of the Child



- No
- Yes
- Partially



PART III

Remedies



For rights to have meaning, effective remedies must be available to address violations⁶⁰ and to ensure that children can access remedies, they must have access to all courts and complaints mechanisms to enforce their rights. The courts should have broad powers to remedy children's rights violations; they should be able to impose orders for restitution or compensation; to stop the enforcements of laws and subsidiary legislation; to repeal laws; to require the government to take steps to prevent a violation; and to guarantee the non-repetition of violations. Courts should also have the power to launch investigations or to bring proceedings at their own initiative.

Courts and complaints mechanisms

It would be impossible to cover the full range of ways that legal systems around the world have sought to protect these rights in such a short space - the country reports for each country set out this information in much fuller detail⁶¹ - but this section seeks present some of the innovative and detrimental ways that national legal systems have addressed these problems.

Administrative and constitutional

Violations of children's rights often stem from laws and the actions of the state, and the way that States incorporate human rights standards into national law correspondingly places the burden for their protection on government bodies. This is why so much children's rights litigation takes place through administrative or constitutional law - the law that governs how the state functions - and why properly developed complaints mechanisms are so important in this area.

In around 87 per cent of countries it is possible to challenge laws or government decisions through some form of case brought under administrative or constitutional law. These provisions take various forms depending on legal culture and tradition - Latin America has largely adopted the model of *amparo* proceedings,⁶² while in countries from the English legal tradition adopt constitutional review and judicial review.

Often, these challenges take the form of a complaint that a law or government action has violated the bill of rights as enshrined in the national constitution, though a number of Commonwealth countries have developed separate human rights legislation that fulfils a similar function.⁶³ In the United States, for example, an allegation that a federal or

state law violates the rights provisions of the Constitution can be filed directly in a state or federal court.⁶⁴ A small number of countries have extended this mechanism to allow constitutional cases against private individuals. In Papua New Guinea, for example, children may bring complaints through their representatives when they are adversely affected or threatened by any act or omission of a private person or company.⁶⁵ This wide reaching power moves beyond the traditional scope of constitutional challenges as a means to keep the power of the state in check. Commonly in civil law jurisdictions, a review of the constitutionality of legislation takes place before legislation has been enacted, as in Finland.⁶⁶

The remedies available for administrative and constitutional complaints vary as widely as the forms of challenge. Where the constitutionality of a law is concerned, some courts can strike down unconstitutional legal provisions as in the United States or invalidate unconstitutional acts as in Ecuador, while others can only review legislation before it is enacted as in Sri Lanka and Finland. In the United Kingdom, the courts can strike down secondary legislation, but not primary legislation, while Canada treads a middle path, allowing courts to strike down parliamentary legislation that it rules violates human rights standards, but Parliament can reenact the law for a five year period.⁶⁷

Administrative court decisions, meanwhile, commonly come with their own set of remedies. Commonwealth States have developed common practices: *certiorari*, to quash unlawful acts; *mandamus*, to require performance of a public duty; prohibition, to prohibit unlawful acts; injunctions, to require a person to do or cease doing a specific act; and *habeas corpus*, for judicial review of the lawfulness of an individual's imprisonment or detention. In some countries, some traditional administrative remedies are not available against the government, placing substantial limits on the power of the courts to provide redress. For example, in Singapore, the High Court cannot grant injunctions against the government or its officers.⁶⁸

Criminal

Criminal law is primarily the role of the state, but where public bodies fail to bring charges or investigate offences, children and their representatives should be able to bring perpetrators to justice themselves through private prosecutions. This power can act as a check on corruption or negligence in the prosecution service and is permitted in some form in 100 countries worldwide. Private prosecutions

60 Committee on the Rights of the Child, General Comment No. 5 on general measures of implementation, para. 24.

61 All country reports are available at www.crin.org/home/law/access.

62 The writ of *amparo* (*recurso de amparo* or *juicio de amparo*) is a form of litigation used to allege a violation of Constitutional rights across legal systems from the Spanish tradition.

63 In the United Kingdom, the Human Rights Act 1998 incorporated the European Convention on Human Rights into domestic law as a means of making human right standards applicable nationally while New Zealand enshrined human rights standards through the Human Rights Act 1993.

64 See David Sloss, *Constitutional Remedies for Statutory Remedies*, 89 Iowa L. Rev. 355, 2004.

65 Human Rights Rules 2010; National Court Rules O.23, Part 8, Rule 6.

66 For full details, see CRIN, *Access to justice for children: Finland*, November 2013, p. 6. Available at: www.crin.org/node/38852.

67 See the relevant country reports for full discussion of rights based review and courts' powers.

68 Government Proceedings Act, Section 27(a).

are usually required to be pursued by the parent or guardian of a child, but some States, including Montenegro,⁶⁹ Macedonia,⁷⁰ Croatia⁷¹ and Portugal,⁷² have taken steps to allow older children to bring private actions, charges or criminal prosecutions by themselves.

Private prosecutions may also be subject to a number of limitations that risk undermining their value. In Singapore, for example, private prosecutions are only permitted if the complainant has attempted criminal mediation with the intended defendant.⁷³ In several jurisdictions, including the United Kingdom, state prosecution services have the power to take over a case started privately and to continue or stop the prosecution.⁷⁴

Even where a criminal case is prosecuted by the state, it is important to allow child victims to play a role in these proceedings to defend their interests. Several countries provide for children to do so. Portugal, for example, allows child victims to intervene in criminal proceedings as an *assistente* either alongside the public prosecutor or by themselves, while in Turkey child victims are automatically appointed a representative if they wish to intervene in a criminal case.⁷⁵

Civil

In the vast majority of countries - 194 - violations of a person's rights can be challenged even if they are not a crime. In many cases, this will mean children bringing a case to court through their legal representatives to claim compensation from a perpetrator for a loss or injury. Several countries, particularly those from the French legal tradition, have permitted the victim of a crime to join criminal proceedings to claim civil damages for the alleged crime.⁷⁶

Customary and other traditional authorities

In many countries where customary law or religious law applies, traditional authorities rather than the formal justice system deal with many, if not the majority of, disputes. These authorities are typically familial, community, and spiritual authorities, such as customary courts, religious courts, village courts, village chiefs, clan elders, and the family, and are commonly used to resolve disputes in private matters, such as those involving family disputes, personal status, adoption, guardianship, inheritance and marriage. Customary courts and traditional authorities can be a quicker, more cost-effective and informal means of children seeking redress, but they also risk perpetuating traditional attitudes harmful to

children.

There are some positive examples of where customary or traditional justice mechanisms ensure more meaningful access to justice for children when compared with the formal justice system. In some countries, customary or traditional justice is the basis for restorative justice mechanisms⁷⁷ for dealing with children in conflict with the law. However, customary and religious legal practices are often tied to abuses of human rights standards, including those enshrined by the CRC.

In Guinea, the Criminal Code does not criminalise sexual acts with a child aged 14 to 18 in the context of a marriage celebrated under customary laws.⁷⁸ In Kiribati, the traditional response to crimes of sexual abuse is the cultural practice of “te kabara bure” (formal apology), which may reduce a perpetrator's sentence or even result in impunity for the perpetrator.⁷⁹ There are also cases of customary justice discriminating against girls and adopted children in inheritance matters. In Chad, Ordinance No. 6-67 on reform of the judicial system allows inheritance matters to be governed by customs, which provide that girls inherit only half of the share inherited by boys. In a case in Nauru, the Nauru Lands Committee, which is the statutory successor to the chiefs of Nauru, held that a child who was adopted by a man from outside his family did not have the same rights to succeed to land, in custom, as biological children. The Supreme Court, however, held that any adopted child, whether from within the family or outside, had the same rights of succession as a biological child.⁸⁰

Remedies in child protection proceedings

Child protection proceedings around the world, too, have seen developments in remedies to empower children. In Grenada, the Domestic Violence Act allows for the removal of the perpetrator of the abuse as opposed to the removal of the child.⁸¹ Similarly, under the Protection of Domestic Violence Victims Act in Thailand, the investigating officer may prohibit the perpetrator from returning to the home where the child resides, and the court has the authority to approve this order.⁸²

69 Criminal Procedure Code, Article 53.

70 Criminal Procedure Code 2010, Articles 59 and 66.

71 Criminal Code, Article 8 and Criminal Procedure Act 2009, Article 62.

72 Criminal Code, Article 113.

73 For full details, see CRIN, Access to justice for children: Singapore, July 2014, pp. 2 and 6.

74 In England and Wales, the relevant procedures are found in the Prosecution of Offences Act 1985, Section 6.

75 Criminal Procedure Law, Article 234.

76 Benin, for example, has adopted this process (*partie civile*). See Loi n° 2012-15 portant code de procédure pénale en République du Bénin (Criminal Procedure Code), 18 March 2013, Articles 366-370.

77 Restorative justice mechanisms consist of any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by the crime, together participate actively in the resolution of matters arising from that crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles. With regard to children in particular, the aim is to promote the child's rehabilitation and reintegration within the community: http://srsg.violenceagainstchildren.org/sites/default/files/publications_final/srsgvac_restorative_justice_for_children_report.pdf.

78 Criminal Code, Article 302.

79 Summary prepared by the Office of the United Nations High Commissioner for Human Rights, para. 23; Compilation prepared by the Office of the High Commissioner for Human Rights, Universal Periodic Review, A/HRC/WG.6/8/KIR/2, 19 February 2010, paras. 27-28.

80 For further details, see CRIN, Access to justice for children: Nauru, May 2015, p. 10. Available at: www.crin.org/node/41624.

81 For further information, see CRIN, Access to justice for children: Grenada, July 2014, p. 7. Available at: www.crin.org/node/40809.

82 Protection of Victims of Domestic Violence Act, Section 10.

National human rights institutions

A common mechanism, available in 129 countries, is to empower a national human rights institution (NHRI) to receive complaints itself or pursue a case through the courts. The Public Defenders in Georgia, for example, can receive complaints that state, local government authorities, public institutions or officials have violated the rights and freedoms under the Georgian Constitution.⁸³ The Public Defender of Kyrgyzstan has a similar power, as well as the authority to appeal to the Constitutional Chamber of the Supreme Court to declare unconstitutional laws concerning human rights.⁸⁴ Fiji's Human Rights Commission,⁸⁵ the New Zealand Director of Human Rights⁸⁶ and Ireland's Human Rights and Equality Commission⁸⁷ all have a similar power to bring proceedings on behalf of a class of persons to vindicate their human rights. A child-specific human rights institution or a person or department charged with protecting children's rights in a general human rights institution exists in 80 countries.

National human rights institutions

National human rights institutions (NHRIs) like civil society can serve an important "watchdog" role, holding government officials and public bodies accountable and reviewing a State's progress in meeting human rights standards. These mechanisms, whether they take the form of ombudspersons, children's commissioners or another form of independent human rights body have become a popular tool for enforcing human rights: at the time of writing such a body with a mandate that covers children existed in 130 countries. These organisations, however, can only be as effective as they are empowered to be.

International complaints mechanisms

In 2014, the complaints procedure under the Convention on the Rights of the Child came into force, opening an avenue for children to challenge violations of their rights under the Convention when national legal systems have fallen short. While this complaints procedure is likely to be the most relevant for children to challenge violations of their rights, to date only three per cent of the world's children are able to access the procedure. Nonetheless, similar procedures exist under all nine of the UN's core human rights treaties that are open to complaints from children as well as adults.⁸⁸ All of these complaints mechanisms are available in States that have ratified them, provided that domestic remedies have been exhausted.

Regional courts and complaints mechanisms

Regional human rights courts and complaints mechanisms exist in Africa,⁸⁹ the Americas⁹⁰ and Europe.⁹¹ The African Committee of Experts on the Rights and Welfare of the Child is the only regional mechanism that exists to specifically address violations of children's rights. The European Committee of Social Rights, meanwhile, is the only regional body that accepts collective complaints about rights violations rather than individual complaints, and is available to certain registered NGOs.

The decisions of these bodies range from legally binding to a means of exerting political pressure. Children across Asia, Oceania and the Middle East have no recourse to any regional complaints mechanism.⁹²

Collective action

Collective action - that is a legal action that allows a number of claimants or victims to bring a case or complaint together or in the public interest - can be a particularly effective way of challenging widespread or large scale violations of children's rights while reducing the burden on any given child victim. Combined cases, test cases, group litigation, class actions and public interest litigation can all fulfil this function with varying degrees of effectiveness.

The power to combine related cases as a means of managing related cases or giving a consistent interpretation is a common and generally uncontroversial power of the courts: 148 countries permit their courts to do so. Ireland's rules on this procedure are typical, allowing all persons to "be joined in one action as plaintiffs in whom any right to relief in respect of or arising of the same transaction is alleged to exist ... where if such persons brought separate actions, any common question of law or fact would arise."⁹³ Similar provisions can be found around the world, from Chile⁹⁴ to Japan.⁹⁵

Building on the power to combine cases, the class action is perhaps the most well-known form of collective action and a more substantial means of addressing widespread abuses of children's rights. At its heart, a class action is a way of allowing a number of individuals to make a joint claim against a single defendant. The United States has one of the best established forms of class action and has acted as a model for

83 Organic Law of Georgia on the Ombudsman of Georgia, Article 13.

84 Law on the Ombudsman of the Kyrgyz Republic, Article 8(3).

85 Constitution of Fiji, Article 45(4)(e) and the Human Rights Commission Decree 2009, Section 12(1)(i).

86 Human Rights Act 1993, Sections 90 and 92B.

87 Irish Human Rights and Equality Commission Act 2014, Section 41(1).

88 For further information and discussion of how these procedures can be used to challenge violations of children's rights, see CRIN, Toolkit on the Complaints Procedure to the CRC, November 2013. Available at: www.crin.org/nde/32116. At the time of writing, the complaints procedure to the Convention on Migrant Workers was yet to come into force. You can also explore complaints before these bodies involving children through CRIN's legal database, available at: https://www.crin.org/en/library/custom-search-legal?promo=1&search_api_language=current.

89 African Committee of Experts on the Rights and Welfare of the Child, African Commission on Human and Peoples' Rights, African Court on Human and Peoples' Rights, ECOWAS Community Court of Justice and East African Court of Justice.

90 Inter-American Commission on Human Rights; Inter-American Court of Human Rights.

91 European Court of Human Rights; European Committee of Social Rights.

92 For full information on regional human rights mechanisms, visit www.crin.org/node/34689.

93 Circuit Court Rules, Order 6, Rule 1.

94 Code of Civil Procedure, Article 94.

95 Civil Procedure Code, Article 38.

other States, allowing hundreds of thousands of claimants to be represented in a single proceeding where there is a common question of law or fact, the representative of the class is appropriate and typical of all of the individuals and a class action is the most appropriate setting for the dispute.⁹⁶ Canada, Australia and Thailand have all adopted this form of litigation.⁹⁷

Class actions - opt-in versus opt-out

Class actions take two common forms, opt-in and opt-out. An opt-out procedure seeks a judgment that applies to everyone who has suffered the same kind of damage through a single procedure unless that individual asks to be excluded from the judgment. This procedure means that not all individuals affected by a case need to be identified by name to the court, but rather that they can benefit from the decision as long as they have suffered the same kind of loss or damage. Opt-in procedures can be more restrictive, requiring every individual who will benefit from the decision to be identified to the court (e.g. Sweden, Italy and Austria).

Public interest litigation allows a different focus, justifying bringing a case not necessarily on the joint interests of a group of victims, but the public interest in general without specifying individual victims. In South Africa, for example, the Constitution allows “anyone acting as a member of, or in the interest of, a group or class of persons”, “anyone acting in the public interest” or “an association acting in the interest of its members” to bring a case alleging a violation of the Bill of Rights.⁹⁸ Kenya has developed an almost identical procedure.⁹⁹

These methods are at their most effective when they can be applied in all settings, but it is common for States to limit to specific areas of the law, particularly for consumer rights, environmental actions or labour rights. Bolivia, for example, allows popular actions to be filed by any individual or on behalf of a community when an authority is alleged to have violated (or threatened to violate) collective rights and interests related to the homeland, public, spaces, safety and public health, the environment or other rights of a similar nature as recognised by the Constitution.¹⁰⁰ In several other countries, particularly across Europe, collective action is specifically protected in consumer rights cases. France, for example, has empowered certain non-profit organisations to pursue collective actions in civil and criminal courts for

consumers, investors and victims of environmental risk.¹⁰¹

NGO standing - sufficient interest and the public interest

Child focused non-governmental organisations will often be well placed to identify and challenge widespread violations of children’s rights or may simply have the expertise to support an individual child seeking redress. Recognising this value, around a half of States permit NGOs to bring cases in their own name, on behalf of victims or in the public interest while a slightly larger majority (54 per cent) permit NGOs the more limited power to intervene in cases that have already been filed.

Rules of standing in this area can be a useful way of keeping the courts clear of nuisance suits and ensuring that cases are brought by the person best placed to do so, but if drawn too narrowly, can prevent abuses of children’s rights from being challenged. Common law countries have adopted very similar standards in this regard, requiring an NGO to demonstrate “sufficient interest” in the subject of a judicial review¹⁰² application in order to file or intervene in the suit. Jamaica’s provision that “[a]n application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application” is typical of this approach.¹⁰³ Trinidad and Tobago has adopted a slightly more flexible standard allowing an NGO that doesn’t meet the “sufficient interest” test to apply for judicial review where the application is “justifiable in the public interest”.¹⁰⁴ This more flexible standard recognises the value to the public that comes from a well founded challenge to the way that a government has exercised its power.

Countries from the French legal tradition have generally adopted a more restrictive approach to NGO standing, permitting only individuals with a direct and personal interest in an issue to bring a case.¹⁰⁵ Côte d’Ivoire, however, bucks this trend by permitting NGOs to bring litigation in their own names to challenge abuses of human rights.¹⁰⁶

Several countries, particularly across continental Europe, have developed an approach that permits NGOs to act on behalf of their members or within the scope of their expertise.

101 For more information, see Clifford Chance, *Collective Actions in Europe*, p. 8. Available at: http://www.cliffordchance.com/content/dam/cliffordchance/PDF/collective_actions_europe_2010.pdf.

102 Judicial review is a form of litigation used to challenge the actions of the government or legislature.

103 Civil Procedure Rules 2002, Rule 56.2.

104 Judicial Review Act 2000, Section 5(2).

105 In France, for example, a party must be directly affected by a matter in order to initiate proceedings, though NGOs have limited powers under the Civil Code to support the claim of a party to a case. For full details, see CRIN, *Access to justice for children: France*, February 2014, p. 9. Available at: www.crin.org/node/39405.

106 See Kamga, Serge, *An assessment of the possibilities for impact litigation in Francophone African countries*, 2014. Available at: <http://www.ahrj.up.ac.za/table-of-contents-volume-14-no-2-2014/42-issues/volume-14-no-2-2014/452-an-assessment-of-the-possibilities-for-impact-litigation-in-francophone-african-countries>.

96 For more information, see CRIN, *Access to justice for children: United States*. Linklaters, *Collective actions across the globe - a review*, 2011, p. 26. Available at: www.linklaters.com/pdfs/mkt/london/1103_Collective_actions.pdf.

97 For full information, see respective country reports, available at: www.crin.org/home/law/access.

98 Constitution of South Africa, Section 38.

99 Constitution, Articles 22, 258; Draft Rules for the Protection of the Rights and Fundamental Freedoms and Enforcement of the Constitution, Rule 28.

100 Bolivian Constitution, Articles 135 and 136.

In Norway, for example, an NGO is allowed to file a case in its own name for non-compensatory relief to protect the interests of the general public or a specific group, provided that the claim relates to the purpose and normal scope of the NGO.¹⁰⁷ Similarly, in the Netherlands, an NGO is allowed to bring a case on behalf of others provided that they can represent those interests in line with its articles of association.¹⁰⁸

The most empowering form of standing for NGOs is found in a number of countries, particularly across English speaking Africa. In South Africa, NGOs are explicitly permitted to bring cases in the public interest against violations of the Bill of Rights or Children's Act¹⁰⁹ and Kenya has developed almost identical protections.¹¹⁰

Governmental restrictions

In a small number of States, government is able to exercise control over which NGOs can file and intervene in court proceedings, with the risk of barring access to justice on political grounds. Lao PDR and Cambodia, for example, require NGOs to receive government approval in order to file or intervene in a case, while in Sudan, NGOs must register with the Humanitarian Assistance Commission, which regularly places restrictions or bans on the operations of NGOs. In Iran, children's rights organisations must obtain authorisation from the Ministry of Justice to act as a plaintiff on behalf of children under their protection.

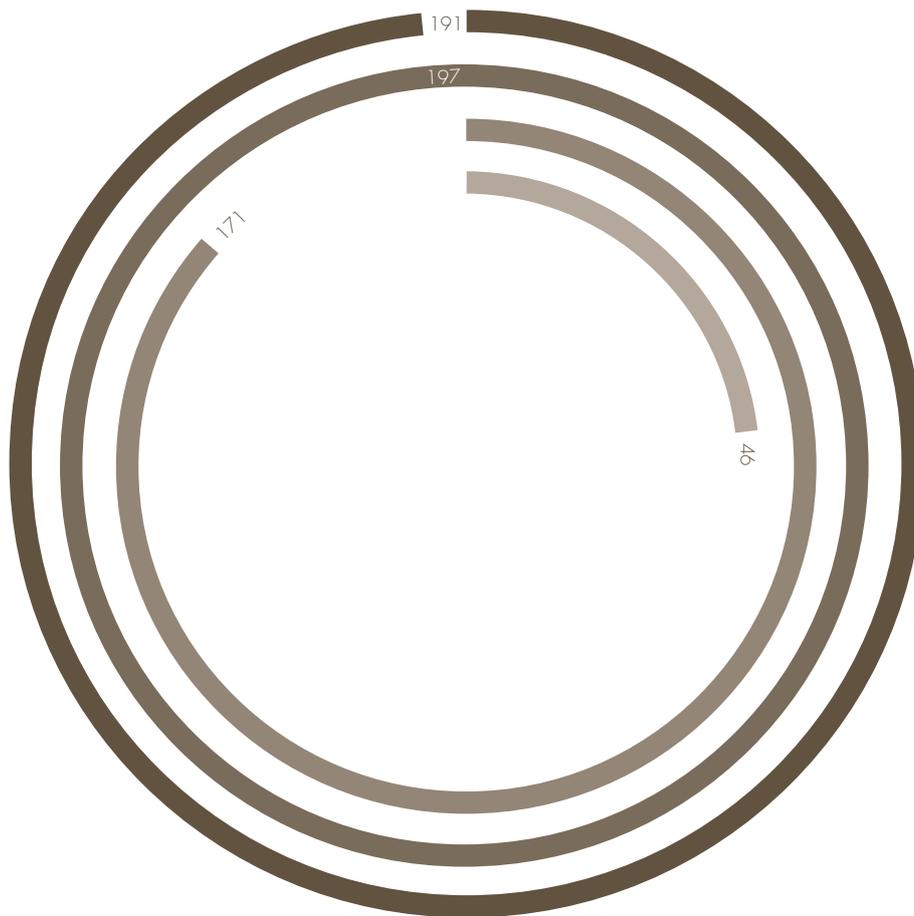
107 Dispute Act, Sections 1-4, 15-7.

108 See General Administrative Law Act, Articles 8:14 and 8:26.

109 See Children's Resource Centre Trust v. Pioneer Food; Constitution, Section 38; Children's Act Section 15.

110 Constitution, Articles 22, 258; Draft Rules for the Protection of the Rights and Fundamental Freedoms and Enforcement of the Constitution, Rule 28.

III Remedies: Children Have Access to All Courts



- Criminal
- Civil
- Administrative
- All other settings (including informal and customary)

III Independent Human Rights Bodies

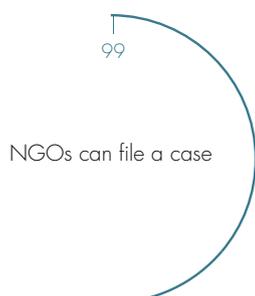
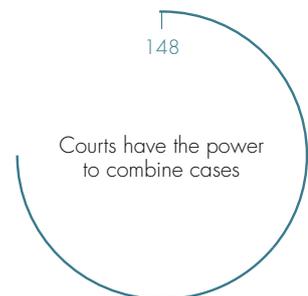
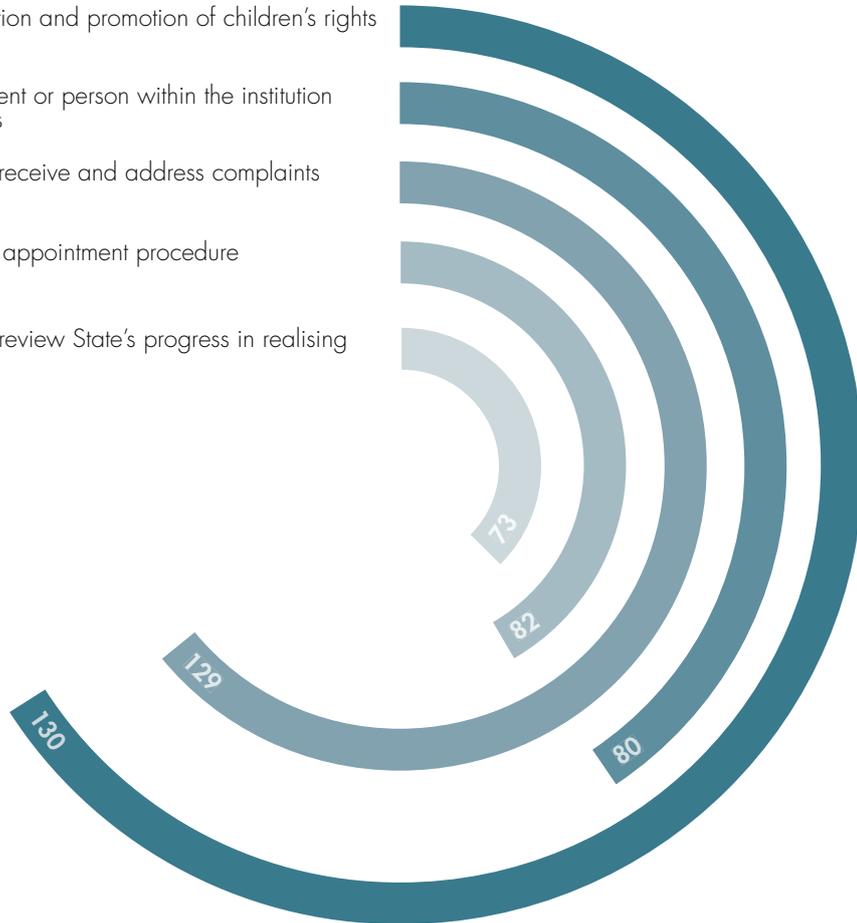
Mandate covers the protection and promotion of children’s rights

There is a specific department or person within the institution to deal with children’s rights

Institution is empowered to receive and address complaints

Institution has a transparent appointment procedure

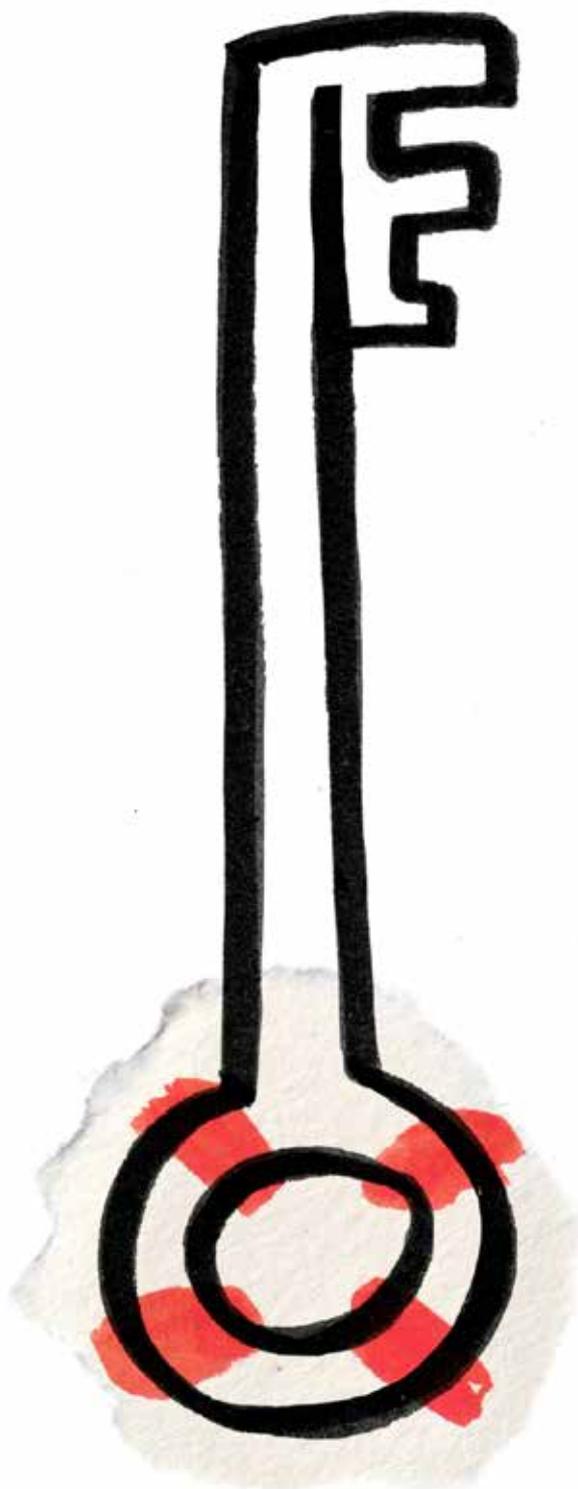
Institution is empowered to review State’s progress in realising children’s rights



— Yes
 — Partially
 — No

PART IV

Practicalities



Many of the most serious barriers to children accessing justice will lie in the practicalities. The financial burden of seeking legal advice, intimidating courtrooms and labyrinthine legal procedures can be difficult to overcome for many adults, but they can render access to justice for children a fiction.

Venue

Where a case is held can fundamentally alter the process that children face, their access to specialised court staff and even whether they are able to physically reach the courts. A common means of addressing these issues is the development of a system of children's courts. This project found specialised children's courts in 40 per cent of all countries, though their jurisdiction was often limited to younger children, to criminal cases or to child protection proceedings. Recognising that the need for specialised treatment of children applies in all proceedings, States such as Bolivia¹¹¹ and Ecuador¹¹² have given children's courts broad jurisdiction over civil, criminal and some rights based cases. Several States have also legislated for a minimum number of children's courts to ensure children can access them easily, for example in Bangladesh.¹¹³ However, these commitments often remain unfulfilled. Haiti passed a law in 1961 requiring the establishment of five children's courts, though to date only one is operational in the capital¹¹⁴ and Mauritania¹¹⁵ has no functioning specialised courts despite enacting legislation requiring that they be set up. Mobile courts have been used as an alternative to establishing many permanent children's courts, particularly across francophone Africa.¹¹⁶

Where specialised children's courts do not exist, States should at least ensure that the judiciary has specialised expertise in children's rights. To this end, a number of States have designated divisions of ordinary courts to handle cases involving children. This mechanism is particularly common across Africa (for example in Togo¹¹⁷ and Swaziland¹¹⁸) but has also been adopted further across other regions, including in

Kosovo¹¹⁹ and Lao PDR.¹²⁰

Relaxation of the filing process is a simple means of making the courts more accessible to children. More than half of countries have adopted some kind of relaxed filing procedure for children or flexibility in the ways that courts can accept cases from children. Ecuador, for example, allows children to file administrative cases involving their rights verbally and without an attorney, as does Paraguay and Solomon Islands¹²¹ where the court considers it necessary or reasonable. This flexibility allows courts to pursue cases to protect children's rights however the allegation has come to the court's attention.

Legal assistance and legal aid

Justice can be expensive, but it is also a human right: no one should be prevented from seeking justice because of an inability to finance their case out of pocket. Despite the central role of legal assistance and legal aid in realising this right, functioning state-funded legal aid systems are completely absent from 42 countries worldwide meaning that 220 million children have no access to free legal aid for any type of legal action. The remaining countries have some form of legal aid available, often in very limited circumstances, while only 28 make legal aid available in all types of case.¹²²

It is very common to limit legal aid to criminal proceedings or even to just the most serious of criminal offences. In Kuwait, for example, legal aid is automatically available for "felonies" (more serious criminal offences) but only on a discretionary basis for "misdemeanours". Brunei Darussalam has implemented even more restrictive rules for criminal legal aid, limiting it to capital offences.¹²³

A small number of States provide legal aid to children automatically where a particular type of legal action is covered by the legal aid system. Belgium has exceptionally strong and clear rules automatically exempting a child from paying all costs related to judicial proceedings, including legal fees.¹²⁴ Typically, though, eligibility criteria relating to the financial status of applicants will limit the coverage of free legal aid. It is common for these rules to take into account the financial position of a child's parents, provisions that may prevent children from wealthier families that do not support

111 For full details, see CRIN, Access to justice for children: Bolivia, February 2015. Available at: www.crin.org/node/41057.

112 For full details, see CRIN, Access to justice for children: Ecuador, April 2015. Available at: www.crin.org/node/41486.

113 Children Act, Section 16(1). At least one children's court must be established in every district headquarter and metropolitan area.

114 MINUSTAH and UNOHCHR, Bi-Annual Report on Human Rights in Haiti: January-June 2012, October 2012, para 53.

115 Ordinance 2005-015. For full information see CRIN, Access to justice for children: Mauritania, April 2015, pp. 8-9. Available at: www.crin.org/node/41768.

116 For more information, see country reports for Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Cote d'Ivoire, Comoros, Congo, Djibouti, Democratic Republic of the Congo, Gabon, Guinea, Mali, Madagascar, Niger, Senegal.

117 Children's Code, Article 292 (protection measures for children in danger) and Article 328 (sentences for child offenders).

118 Hauser Global Law School Program, Buhle Dube and Alfred Magagula, Update: The law and legal research in Swaziland, June 2012. Available at: <http://www.nyulawglobal.org/globalex/Swaziland1.html>

119 Law on Courts, Article 12(1.5).

120 For full information, see CRIN, Access to justice for children: Lao PDR, June 2015, p. 6. Available at: www.crin.org/node/41603.

121 For full details, see CRIN, Access to justice for children: Ecuador, April 2015, p. 8. Available at: www.crin.org/node/41486.

122 By this, it is meant that legal aid is available in criminal, civil, administrative, family court and any other judicial setting, though not that there are no limits on its provision.

123 Special Lecture on the Enforcement of the Syariah Penal Code Order by the Attorney General, 30 April 2014. Available at: http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2014/EN/english.pdf#search=%22legal%20aid%22.

124 For full details, see country reports available at: www.crin.org/home/law/access.

their legal action from approaching the courts. Lithuania¹²⁵ and Luxembourg¹²⁶ have both sidestepped this barrier by excluding a child's parents' income from the decision on whether to grant legal aid to a child, while Finland only considers parental income where the parents are assisting the child in bringing the case.¹²⁷

Non-financial criteria can also present a barrier to children accessing free legal aid. Several countries, including Namibia, provide legal aid where a suit is reasonable or it is in the interests of justice for a person to be represented.¹²⁸ China's decisions on legal aid include a consideration of whether the lawsuit is necessary to protect the individual's legal rights.¹²⁹

The right to legal aid is often far from a guarantee that it will actually be available. A large number of the countries covered by this research reported serious problems with implementing legal aid, whether the restriction of services to only certain states in Nigeria¹³⁰ or, in the case of Lesotho, to a single Legal Aid Office in the capital.¹³¹

Free legal services provided by law firms, legal clinics, legal charities and others - commonly called pro-bono - have become increasingly common. This research found evidence of pro-bono services able to assist on children's rights cases within 60 per cent of countries in many cases. In a substantial number of countries, including Ethiopia, Swaziland and the Bahamas, pro-bono offers the only free legal assistance in the country.¹³²

The remaining 40 per cent of countries present a range of barriers to pro-bono. In many States there is simply not a culture of the practice: in Romania, for example, lawyers reported a general reluctance to provide free legal assistance related to professional rules prohibiting advertising and unfair competition between lawyers.¹³³ Other States have been actively more hostile to pro-bono and in Jordan, researchers found evidence of a lawyer being disbarred for providing free legal assistance to refugees.

Pro-bono should never be a replacement for a functioning legal aid system, but it can complement and strengthen the system. Yet provisions to promote and foster a pro-bono culture exist in only 26 countries. Mandatory pro-bono

commitments exist in a small number of countries: the Philippines, for example, requires all practising lawyers to provide a minimum of 60 hours of free legal assistance annually,¹³⁴ while lawyers in Uganda must provide 40 hours of free legal support.¹³⁵ In other countries, Bar Councils and other professional organisations are heavily involved in coordinating and promoting pro bono assistance (e.g. France, India and South Africa), while clearing houses have developed to match clients seeking assistance with lawyers willing to provide free assistance.¹³⁶

Giving evidence

Once a case has reached the courts, practical obstacles can still prevent children from meaningfully participating in the judicial proceedings and proving their case.

The most basic guarantee in this regard is ensuring that children are able to give evidence at all, should they wish to do so, regardless of their age. Almost a quarter of States fall short of this standard, either by imposing a minimum age for appearing as a witness or attaching limited weight to the testimony provided by children. At the most restrictive end of the spectrum, Lao PDR prevents all children from giving evidence in court,¹³⁷ while Kosovo has adopted a less severe rule, preventing children under the age of 14 being called to testify unless it is "necessary to solve a case".¹³⁸

Rigid age limits fail to recognise the evolving capacities of children, that some children will be capable of giving evidence when they are younger than others and the fact that even the youngest children are able to express their views and should be able to when it is relevant to a case. Recognising this reality, several countries, including Scotland, Eritrea and Palau have avoided setting age limits for testifying allowing courts to decide on a case by case basis whether to allow a child to testify.¹³⁹

Other legal systems create further bars to prevent children giving evidence, from Guatemala's requirement that children under 14 have the consent of their parents to testify,¹⁴⁰ to the requirement that children who wish to give evidence on sexual abuse in Sao Tome and Principe undergo a "personality check".¹⁴¹ Countries across MENA have

125 For full details, see CRIN, Access to justice for children: Lithuania, July 2014, p. 3. Available at: www.crin.org/node/40517.

126 Third and fourth periodic reports of Luxembourg to the UN Committee on the Rights of the Child, CRC/C/LUX/3-4, 12 November 2012, paras. 84-85.

127 For further information on the granting of legal aid in Finland, refer to the website of the legal aid office, <http://www.oikeus.fi/8852.htm>.

128 Legal Aid Act, Section 11.

129 The Law on the Protection of Minors, Article 51.

130 For full discussion, see CRIN, Access to justice for children: Nigeria, November 2013, p. 5. Available at: www.crin.org/node/39442.

131 See CRIN, Access to justice for children: Lesotho, July 2014, p. 4.

132 For discussion of pro-bono and legal aid provision, see the respective country reports for these countries, available at: www.crin.org/home/law/access.

133 For more information, see CRIN, Access to justice for children: Romania, July 2014, p. 7. Available at: www.crin.org/node/40490.

134 Latham and Watkins, A survey of pro bono practices in 71 jurisdictions, August 2012, p. 230. Available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

135 Latham and Watkins, A survey of pro bono practices in 71 jurisdictions, August 2012, p. 333.

136 CRIN has produced a range of resources on legal assistance for children, which are available at: <https://www.crin.org/en/home/law/legal-assistance>.

137 Code of Civil Procedure, Article 30; Code of Criminal Procedure, Article 32. Second periodic report of Lao PDR to the UN Committee on the Rights of the Child, CRC/C/LAO/2, 10 August 2010, para. 25..

138 Law on Contested Procedure, Article 339.

139 For full discussion, see section IV.E. of the respective country reports, available at: www.crin.org/home/law/access.

140 Code of Criminal Procedure, Article 213.

141 Code of Criminal Procedure, Article 114.2.

enshrined some of the most restrictive and arbitrary limits on the right of children to give evidence, including the provision that children in Yemen are only allowed to give evidence about events where no adult was present.¹⁴²

Just under half of all States allow children to give evidence without taking an oath in certain circumstances and without being liable to any penalty for giving false evidence. However, the ability to give unsworn evidence is usually reserved for younger children, under the age of 12 in Pakistan.¹⁴³ Children in Kosovo¹⁴⁴ and Dominica¹⁴⁵ are never required to take the oath as a result of having reached a particular age.

Once the hurdle of giving evidence at all is overcome, limits on the impact of children's evidence can still undercut its value. It is not uncommon for a child's testimony to be accorded lesser value than that of an adult, particularly in criminal trials. In Malaysia¹⁴⁶ and Jamaica¹⁴⁷ it is not possible to convict a person solely on the basis of a child's testimony, while Kenyan law requires corroboration of a child's testimony to secure a conviction for all offences other than sexual offences.¹⁴⁸ Iranian rules of evidence allow children to testify if deemed mature enough, but evidence of females is accorded less value and some offences can only be proved with evidence provided by men.¹⁴⁹

Even where children are permitted to give evidence and that evidence is given the full weight it deserves, child-friendly procedures are required to ensure children are able to give evidence effectively. This is particularly true in cases where the child is the victim of a crime and the trial process risks revictimising the child. In a third of countries, this project found no evidence of child sensitive procedures for giving evidence. Of those States that did take account of the need to adapt the process of giving evidence for children, the most common modification is the power to exclude people from proceedings while the child gives evidence, while more developed protections might involve children giving evidence outside of the courtroom.

Privacy

It is widely recognised that publishing information about children involved in the justice system can revictimise those seeking redress for violations of their human rights or

stigmatise children accused of criminal offences. At the same time, children's right to freedom of expression and access to justice require that a child be able to bring a human rights violation into the public eye. This is a balance States have often failed to make.

Almost three quarters of States have legal provisions of varying quality to protect the privacy of children involved in legal proceedings. These processes range from closed door hearings¹⁵⁰ in sensitive cases to criminalising the publication of information identifying children in court proceedings. Preventing the publication of the names of children involved in criminal proceedings is a simple and widely adopted provision, although it commonly has exceptions permitting the naming of children with the approval of the court. Bangladesh, India, Nepal and the United Kingdom all have such rules. In the United Kingdom's youth courts, for example, a child may only be named where the court rules that to do so avoids injustice to the child, will assist in finding a child defendant who is "at large" or where the child has been convicted and the court considers it in the public interest to name him or her.¹⁵¹ This has the potential to be seriously damaging to children involved when the decision to release their information is not made based on what is in the best interests of the child.

Timing

Strict time limits on when a case must be submitted can present a serious barrier to children accessing remedies, particularly for young children who may not be able to approach the courts until they have reached the age of majority.

Recognising this vulnerability of children, 84 countries allow for time limits to be relaxed in certain situations. The suspension of limitation periods (the period of time after an offence, injury or harm occurs that a case must be brought) until a child reaches adulthood is a simple and common way of preventing children being excluded from bringing complaints when they are ready to do so. For criminal cases in Norway, for example, the limitation period starts to run when a child reaches 16,¹⁵² while the age is 18 in Angola¹⁵³ and Guatemala,¹⁵⁴ 21 in Burundi¹⁵⁵ and as high as 25 in Lithuania.¹⁵⁶

Similar provisions also exist for civil and constitutional cases. States from the English legal tradition - including the

142 For more information, see Fourth periodic report of Yemen to the UN Committee on the Rights of the Child, CRC/C/YEM/4, 23 October 2012, paras. 64-65.

143 Oaths Act 1873, Section 5.

144 Criminal Procedure Code, Article 340.

145 Children and Young Persons Act, Section 28(1). The oath can only be taken by a person that understands the nature of the oath, any child who does not is able to give evidence without doing so.

146 Evidence Act 1950, Section 133A and Initial report of Malaysia to the UN Committee on the Rights of the Child, CRC/C/MYS/1, 22 December 2006, para. 155.

147 Child Care and Protection Act 2004, Section 20.

148 Evidence Act, Section 125.

149 For discussion, see CRIN, Access to justice for children: Islamic Republic of Iran, February 2015, p. 6. Available at: www.crin.org/node/41975.

150 See, for example, country reports for Samoa, Guinea, Moldova and Nauru.

151 For discussion of the law in this area, see Standing Committee for Youth Justice, What's in a name? The identification of children in trouble with the law, May 2014. Available at: http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf.

152 General Civil Penal Code, Sections 78 and 80.

153 Penal Code, Article 116.5.

154 Penal Code, Article 108(6).

155 Criminal Code, Article 149.

156 Criminal Code, Article 95(3).

Bahamas, Ghana, Kenya, Nigeria, Samoa, Singapore and Zambia¹⁵⁷ - have commonly adopted provisions suspending limitation periods for “persons under a disability”. These provisions cover all people who lack capacity to initiate proceedings because of reason, health or capacity.

Judicial review proceedings, a common way of challenging government actions and bringing human rights based challenges, commonly have very short limitation periods - as short as 30 days in the Marshall Islands,¹⁵⁸ 60 days in parts of Australia¹⁵⁹ and three months in Belize¹⁶⁰ requiring children or their representatives to respond very quickly when alleging a violations of their rights. Scotland has adopted a more flexible approach by avoiding a specific limitation period, but allowing courts to decline to hear a judicial review where the complainant’s delay has “appeared to impair the proper administration of the case”. Nonetheless, countries such as Nigeria¹⁶¹ and Saint Lucia¹⁶² have eliminated limitation periods for cases alleging violations of a fundamental or constitutional right.

It is common for limitation periods to be explicitly relaxed in certain types of proceedings. Recognising that children may take many years to come to terms with sexual abuse and become ready to approach the courts, a number of jurisdictions in Australia have refused to enforce limitation periods on civil claims against the State for damages related to child sexual abuse.¹⁶³ In Slovakia, there is no statute of limitations on civil claims for harm to a person’s health,¹⁶⁴ while time limits are relaxed in Kazakhstan¹⁶⁵ and Estonia¹⁶⁶ where a child is unrepresented.

Resolution

Justice delayed is justice denied. Particularly for children, for whom the passage of time can have a greater effect, delays in the justice system can create serious problems. Yet research as part of this project found chronic delay in judicial proceedings: only 15 per cent of countries demonstrated no systematic undue delay for proceedings involving children while 45 per cent reported serious delays. Problems varied from a shortage of judges in Bolivia to reports of corruption in Bahamas and poor court infrastructure in Haiti.

Complainants in Italy found delay compounded by the fact that limitation periods continued to run while the case was being heard.¹⁶⁷

Several countries have developed mechanisms that aim to combat delay in cases involving children. In Nepal, priority is given to cases involving children, particularly to children under the age of 16 who do not have the support of a parent or guardian.¹⁶⁸ Montenegro goes a step further in certain cases by requiring that child protection proceedings must be treated as urgent and that an initial hearing must take place within eight days.¹⁶⁹ Jamaica has developed an alternative dispute mechanism and night court to attempt to address the backlog of cases,¹⁷⁰ while the Ombudsman of the Judiciary in Israel is able to hear cases about judicial misconduct, including where the manner in which a trial was conducted led to unreasonable length of proceedings.¹⁷¹

157 For full discussion of limitation periods, see respective country reports, available at: www.crin.org/home/law/access.

158 Administrative Procedure Act 1979, Section 117(2).

159 Supreme Court (General Civil Procedure) Rules, r. 56.02. Law applicable in Victoria.

160 Supreme Court (Civil Procedure) Rules, Rule 56.5(3).

161 Fundamental Rights (Enforcement Procedure) Rules, Order II, Rule 1.

162 *Perceval Sonson acting herein by his next friend Anastasie Sonson v. the Attorney General Garvey Hunte* [2005] PC 236, Claim No. SLUHCV 2005/0695, para. 28.

163 For more discussion of limitation periods and child sexual abuse, see CRIN, *Child sexual abuse and the Holy See: The need for justice accountability and reform*, p. 14 to 21. Available at: www.cirn.org/node/38445.

164 Civil Code, Article 106.

165 Civil Code, Article 182.1(4).

166 General Part of the Civil Code, § 165.

167 For full discussion, see respective country reports, available at: www.crin.org/home/law/access.

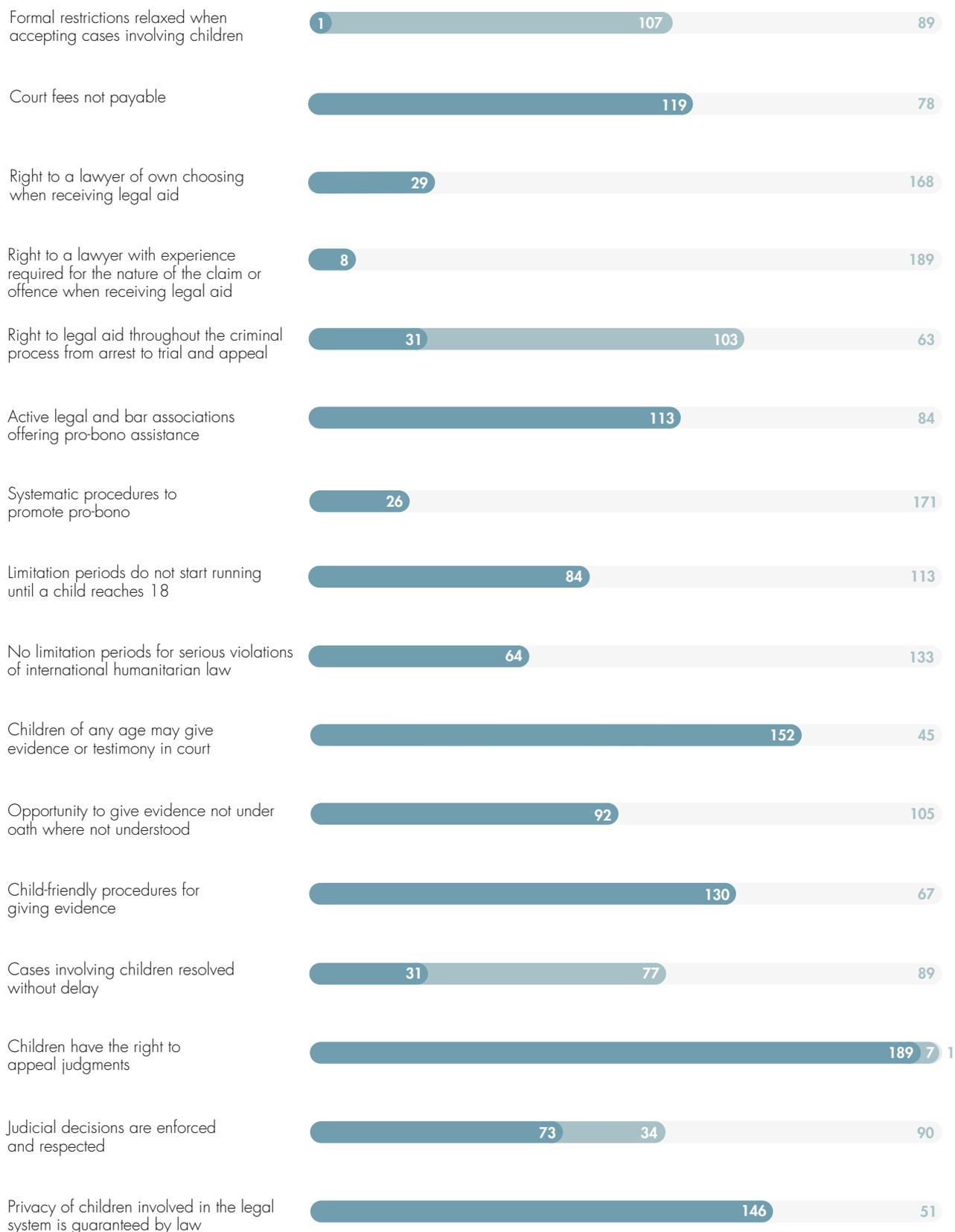
168 General Code, Part 1, Section 11; District Court Regulations, Section 31, Appellate Court Regulations, Section 51(3); Supreme Court Regulations, Section 63(3).

169 Family Law, Article 360.

170 For further information, see CRIN, *Access to justice for children: Jamaica*, February 2015, p. 11. Available at: www.crin.org/node/41116.

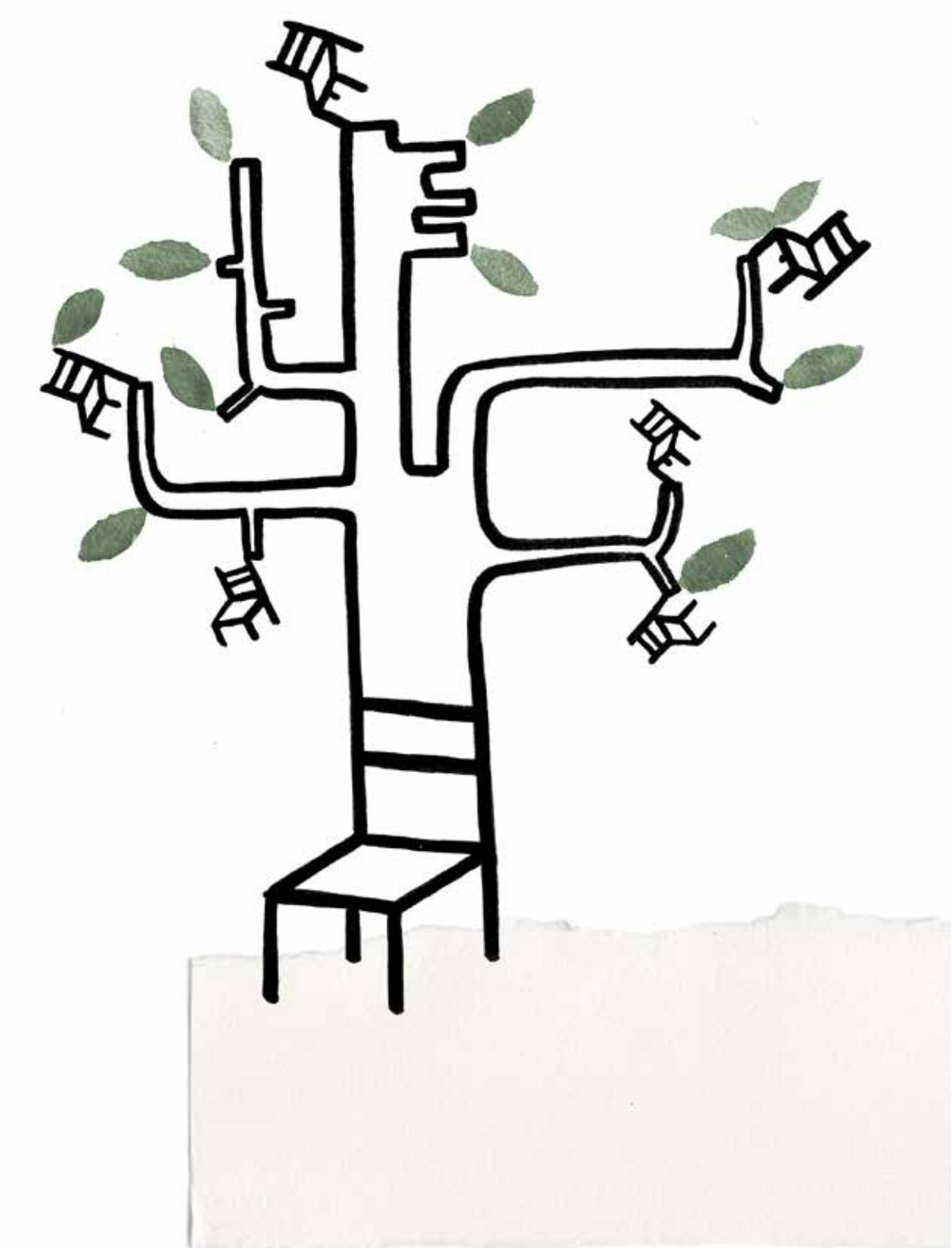
171 For further information, see the website of the Ombudsman of the Israeli Judiciary, available at: <http://index.justice.gov.il/En/Units/OmbudsmanIsraeliJudiciary/Pages/Main.aspx>.

IV Practicalities



REPORT

Eutopian State



This “Eutopian report” sets out to match international standards with the way that they have been realised around the world. By no means does it provide a comprehensive list of every State that has met each obligation, but it highlights the effective ways that the issues have been tackled by countries from different legal traditions and cultures. It is hoped that this will provide a useful tool for those seeking reform to improve children’s access justice around the world.

Full references and further information is available in the country reports for each State, available at www.crin.org/home/law/access. You can also read a more detailed analysis of international standards on access to justice for children at: www.crin.org/node/31972.

EUTOPIA

THE WORLD

The status of the CRC

Ratification, incorporation and the courts

Eutopia has ratified the CRC and all of its Optional Protocols. The CRC and other ratified international treaties were incorporated into national law upon ratification. The CRC therefore has the authority of national law, takes precedence over conflicting provisions in national law and is directly enforceable in domestic courts. The CRC is regularly cited and applied in legal proceedings across all courts.

Burundi has ratified the CRC, OPAC, OPSC and OPIC and at the point of ratification each treaty was incorporated into national law and began to take precedence over national legislation. Finland, as a dualist country, incorporated the Convention through a decree giving the CRC the same authority as other decree laws. Courts in Colombia have been willing to enforce the Convention over conflicting national legislation, while courts in many Commonwealth countries, such as the United Kingdom, have consistently made use of the CRC as an interpretive tool despite the fact that it is not incorporated and so cannot be directly applied.

Legal status of the child

Standing

Children have standing to bring legal proceedings by themselves and in their own name, as well as the right to act through a representative of their choosing, should they wish to do so. A child's representative must act in the child's best interests and must not have adverse interests to those of the child. There are procedures that enable a representative to be removed by the court should they not fulfil these requirements and for a child to appoint a new representative of their choosing. There are no other limits or obstacles on children or their representatives bringing cases to court.

Though globally it is standard practice to require children to act through a litigation guardian, there are exceptions. Barbados has introduced an exception allowing children to apply through the court to act on their own behalf, while children over the age of 13 in Tunisia can request damages for harm they have experienced if their parents refuse to do so. The Bahamas, Bolivia and Iceland have all passed legislation requiring children's representatives to act in the child's best interests. In Sri Lanka and Tonga, a child's proposed representative must be approved by the court as having no conflict of interests with the child before assuming the position.

Right to heard

The right to be heard in all matters affecting the child, including judicial and administrative proceedings, is guaranteed to all children, regardless of their age or development. Every child has the right to express their views freely and to have them given due weight in accordance with the child's age and maturity. There are procedures in place to facilitate children's participation in legal proceedings in a child-friendly and informal manner.

Egypt's Child Law guarantees every child "who is able to form his [or her] own opinions" to "access all information which empowers him [or her] to form and express such opinions and to be heard in all matters related to him, including judicial and administrative procedures specified by law." Many countries from the French legal tradition also allow children to apply to be heard directly by the court in any proceedings that concern them. France, Mauritius, Belgium and Luxembourg all have such laws.

Remedies

Domestic courts

The Constitution and Child Rights Act guarantee children's access to all courts and complaints mechanisms; there are no legislative or procedural obstacles preventing children or their representatives from seeking redress through the justice system for violations of a child's rights. Any person, including a child or group of children, or organisation may initiate proceedings to enforce the rights of a child or group or class of children under all ratified international treaties (including the CRC), the Constitution and the Child Rights Act. Violations of or threats to children's rights by any person or entity - whether public or private - as well as by laws, regulations, administrative decisions or government policies may be challenged in such enforcement proceedings. Child victims of crime may bring private prosecutions for any offences that are not prosecuted by the state. Children have access to all customary courts and traditional authorities, which must respect all rights under the CRC, and may use mediation or alternative dispute resolution to enforce their rights. Individual child victims need not be named in any proceeding - whether civil, criminal, administrative, constitutional, or other - to enforce children's rights.

Various forms of collective action exist which do not require individual child victims to be named or involved, including opt-out class actions, public interest litigation, and proceedings brought to enforce the rights of a group or class of children.

Courts have broad powers to remedy children's rights violations, and may make such orders as they consider appropriate to enforce children's rights, including, but not limited to the following: restitution; compensation; stop the enforcement of a law, subsidiary legislation or policy; order the government to take steps to prevent a violation; launch investigation; bring proceedings at the court's initiative; guarantee non-repetition; repeal a legal provision; annul or amend an administrative decision; and a declaration of rights.

South Africa's Children's Act provides that "every child has the right to bring, and to be assisted in bringing, a matter to court, provided that the matter falls within the jurisdiction of that court." Papua New Guinea allows people to bring a complaint that their human rights or freedoms have been violated by the government, a private person or company. Private prosecutions are available in a cross section of States. Several States, including Montenegro and Portugal have legislated to specifically enable older children to bring these actions themselves.

The United States and Canada have well established forms of class action representing the "opt-out" model, in which any member of a group of people has experienced the same violation is able to claim compensation from a successful case whether or not they were an active part of the case. Many countries have at least one form of litigation in which individual child victims need not be named. Individuals and NGOs in Kenya can bring cases alleging a violation of the Bill of Rights or Constitution in the public interest including without a named victim. India, too, permits public interest litigation by a person or organisation brought on behalf of a large group where they allege a violation of a right under the Constitution.

In Ecuador, the courts have the power to invalidate unconstitutional laws, including in relation to rights provisions, while in Sri Lanka this power is exercised prior to legislation being enacted. Canada has developed a process encouraging debate on rights issues by allowing the courts to strike down legislation incompatible with its human rights charter, but allowing the parliament to re-enact such legislation for a five-year period. Commonwealth countries have developed common administrative remedies allowing the courts to quash unlawful decisions, requiring authorities to fulfil their obligations, prohibiting unlawful acts and requiring that a person cease a specific action (certiorari, mandamus, prohibition and injunction).

Non-governmental organisations

Non-governmental organisations (NGOs) can file and intervene in proceedings in their own name, on behalf of, or in the interest of, a child or group or class of children. Standing is broad, which means NGOs are not required to demonstrate their interest in proceedings.

Across the Commonwealth, including in Jamaica, NGOs are able to file or intervene in any case in which they have “sufficient interest”. In Trinidad and Tobago this is expanded to cases where it is in the public interest that the NGO bring the case. South Africa and Kenya allow NGOs to bring cases in the public interest against violations of the Bill of Rights or Children’s Act.

National human rights institutions

Any person, including a child or group of children, or organisation can submit a complaint about a violation of or threat to the rights of a child or group or class of children by any person or entity - whether public or private - directly with the Children’s Commissioner. The complaints procedure is child-friendly, informal, free of charge, and accessible to all children in Eutopia, and complainants can choose to remain anonymous. The Children’s Commissioner is an independent body that can receive and investigate complaints and violations on its own motion; compel public or private bodies to prevent or cease the violation and/or provide other relief to victims; initiate or intervene in any kind of judicial proceeding on behalf of, or in the interest of, a child or group or class of children; and represent or assist children in proceedings.

Fiji’s Human Rights Commission can receive complaints or act on its own motion and is able to pursue complaints of human rights violations involving groups of people with similar complaints. Northern Ireland’s Human Rights Commission, the Ombudsman of Seychelles and the Public Defender of Georgia are all empowered to bring cases on behalf of rights victims before the courts, including on behalf of a class of people and while maintaining the anonymity of victims. The Ombudsman of Bosnia and Herzegovina can intervene in cases while Poland’s Ombudsman for Children can institute and then participate in legal proceedings.

Complaints to regional and international bodies

Aside from domestic remedies, children and organisations may submit complaints about violations of the rights of a child or group or class of children directly with a regional body or international body in accordance with regional and international human rights treaties, all of which Eutopia has ratified. Complaints about violations of children’s rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC on a communications procedure, which Eutopia has ratified.

The complaints procedure under the CRC (OPIC) offers the most tailored UN complaints mechanism for children’s rights, but the corresponding procedures under the nine core human rights treaties also present effective avenues for redress for violations of children’s rights.

The African Committee of Experts on the Rights and Welfare of the Child is the only regional human rights mechanism that specifically addresses violations of children’s rights, but strong regional human rights courts able to rule on children’s rights cases exist in the form of the European Court of Human Rights and the Inter-American Court of Human Rights.

Practicalities

Venue

Children may file cases with the Children's Court closest to their place of residence or any other court of their choosing. All courts are child-friendly and accessible to children - applications may be filed in written or oral form and all court staff are appropriately trained to work with and assist children in filing applications and dealing with the justice system. The filing of any case by a child, on the child's behalf or concerning children's rights is completely free of charge in all courts. All cases involving children as plaintiffs, victims or defendants - whether civil, criminal, administrative, constitutional, or other - are heard in Children's Courts, unless the child chooses otherwise. Hearings may be held in a location other than the courtroom and at times which do not conflict with the child's educational or other activities.

Bolivia and Ecuador have given their children's courts broad jurisdiction over civil, criminal and some rights based cases involving children. Bangladesh has legislated to require the establishment of a children's court in every district or metropolitan area. Francophone Africa has made wide use of mobile courts where infrastructure and resources have prevented the establishment of permanent children's courts.

Ecuador allows children to file cases verbally without an attorney as do Paraguay and Solomon Islands, where the court considers it necessary or reasonable.

Legal assistance

Children automatically have the right to legal aid free of charge in any legal proceedings - whether as a plaintiff, victim, witness, suspect or defendant - and are exempted from paying all court costs and case-related expenses. Legal aid includes free legal advice, representation and any other support for the case, such as the appointment of experts. It is available at all stages of the process - from obtaining initial advice and preparing the claim to the final appeal and any further complaint to a regional or international body. In criminal matters, it is available from the point of arrest or detention to the final appeal. A child or their representative may request legal aid through a simplified, informal, child-friendly and accessible procedure. Only lawyers who have professional training on children's rights and experience commensurate with the claim or offence can be appointed to represent children. Children also have the right to a state-funded lawyer of their own choosing. There are no restrictions to the provision of pro bono services by lawyers and systematic pro-bono is incentivised.

Belgium exempts children from paying any cost related to judicial proceedings, including legal fees. Lithuania and Luxembourg apply financial criteria to when a child is entitled to free legal aid, but exclude parental income from this decision, while Finland will only consider parental income where a child's parents are assisting a child in bringing a case.

A culture of pro-bono is gradually developing across the world. In the Philippines, all practising lawyers are required to provide a minimum of 60 hours of free legal assistance every year, while in Uganda, they must provide 40 hours of free legal support.

Timing

There are no limitations periods for bringing human rights enforcement proceedings, or prosecutions of serious offences against children, including international crimes. For all other cases, the limitations period does not begin to run until the child turns 18 or later in certain cases (for example, if the harm manifests itself at a later date or in cases of suppressed memories). The limitations period is sufficiently long and not unduly restrictive for each cause of action. A court may still accept a claim if it is satisfied that there was a good reason for the delay in bringing proceedings.

Angola, Guatemala and Lithuania all provide that limitation periods for criminal offences committed against children don't begin to run until after the child reaches adulthood. Togo and Slovakia have no statute of limitations on civil claims for harm to a person's life or health, while Nigeria and Saint Lucia have eliminated limitation periods in relation to any allegation that a fundamental or constitutional right has been violated. Several Australian jurisdictions recognise the particular barriers for children coming to terms with sexual abuse and becoming ready to approach the courts and have refused to apply limitation periods in historic sexual abuse cases.

Evidence

In addition to the right to be heard, evidence of all children can be heard, regardless of their age or development. Children are competent though not compellable to give evidence in court, and an oath is not required where it is not understood. Children are always to be presumed capable of providing testimony; the only circumstance in which a judge may decline to hear testimony of a child is where it would be contrary to the child's best interests. Testimony of children is accorded equal weight to that of an adult. Various child-friendly procedures are implemented across all courts and types of proceedings. For example, court facilities enable child victims and witnesses to give evidence via audiovisual equipment in a child-friendly setting without the presence of the accused. Judges are specifically trained to handle cases involving children. When examining a child witness, lawyers and judges must pose their questions in an appropriate manner so as not to cause any damage to the child's well-being. Child victims and witnesses can request the presence of any person they wish, for example a parent, guardian, or teacher. The court may remove any person from the courtroom on the child's request or in the child's best interests.

Scotland, Eritrea and Palau have all developed rules that avoid setting age limits at which children become able to give evidence, allowing courts to decide on a case by case basis whether a child is able to testify. Children in many jurisdictions are able to give evidence without taking an oath and in Kosovo and Dominica, this opportunity exists for children of any age. Extensive protections are available for children giving evidence in criminal proceedings in England and Wales, including privacy screens, video links and examination through an intermediary. Children's courts in South Africa have a similar range of options available to make proceedings less formal, including removing certain persons from the court, and holding hearings in a non-adversarial atmosphere.

Privacy

All court sessions in cases involving children as plaintiffs, victims or defendants are closed to the public by default, but the child may ask the court to open the sessions to the public or to particular people, for example, certain media representatives only. The court can only refuse such a request if it would be contrary to the child's best interests. The public may also be excluded for some parts of the proceedings, for example, when a child witness is giving testimony. The publication of identifying information of children involved in legal proceedings is prohibited, unless requested by the child and the court is satisfied that publication would be consistent with the child's best interests. This prohibition continues to apply once the child has turned 18.

In Bangladesh and India materials identifying a child involved in judicial proceedings may only be published with the prior approval of a court. In Afghanistan and Bulgaria, documents related to complaints before the national human rights institutions must also be kept confidential. In France, it is an offence to publish the identity of a child victim and the dissemination of information concerning the identity of a child victim is also punishable by a fine.

Resolution

All cases involving children, including cases brought on behalf of a group or class of people that includes children, are given priority by courts and resolved without undue delay. A child or their representative who believes that there has been undue delay in proceedings or other misconduct can complain to an independent body, which has the authority to award compensation and/or compel the court to resolve the case. Children are notified without delay and in a child-friendly manner of any decision affecting them. They are informed of their right to appeal the decision, and enforcement procedures are explained to them.

Nepal's legal system designates cases involving children as "priorities", while Montenegro requires proceedings involving children to be treated as urgent and requires an initial hearing to take place within eight days. Jamaica has developed alternative dispute mechanisms and introduced a night court to combat its backlog of cases while Israel allows the Ombudsperson of the Judiciary to hear cases about judicial misconduct, including where there has been unreasonable delay.

Appeal

Children have the right to appeal a decision in any case they are a party to; this right cannot be exercised by a third party on the child's behalf without the child's views being given due consideration. Decisions of customary courts or other traditional authorities may be appealed to ordinary appellate courts. Child-sensitive procedures are in place at every stage of the appeal process. A judicial decision can be reviewed if a child's rights were breached during the proceedings, for example, the child lacked effective representation, procedures were not sufficiently adapted to the child's age or maturity, or the child did not have an opportunity to be heard or his or her views were not given due weight. Reviews of custodial sentences against child offenders are systematic.

The right of appeal will usually be similarly guaranteed for children as adults, but a number of States also have child specific protections. Nepal provides for additional appeal rights where justice has been impaired through the lack of proper representation of a child in court. In South Africa, all custodial sentences for children must be automatically reviewed by the High Court.

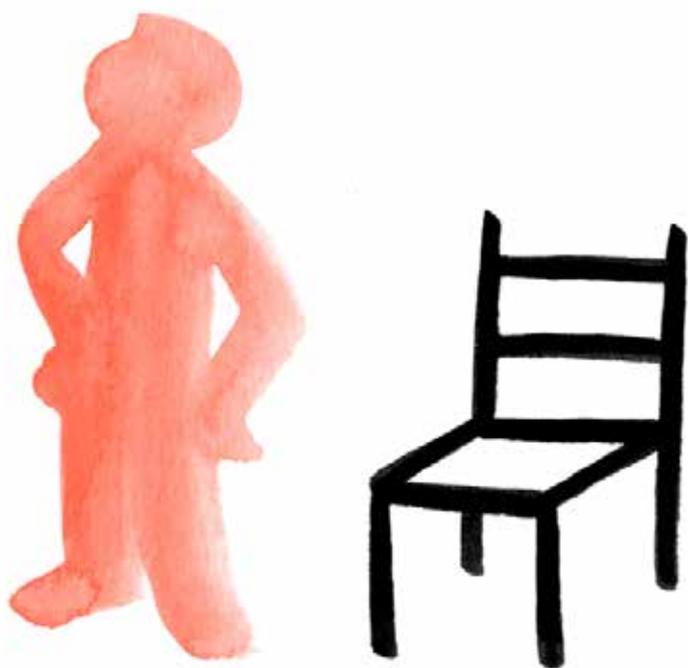
GLOBAL RANKING

Full details of the methodology are available for the global ranking are available online at: www.crin.org/home/law/access/methodology.

RANK	COUNTRY	% SCORE
1	Belgium	81.6
2	Portugal	77.2
3	Spain	77.0
4	Finland	76.4
5	Netherlands	76.1
6	Luxembourg	75.7
7	Kenya	75.3
8	Iceland	74.3
9	Latvia	73.4
10	United Kingdom (<i>England & Wales</i>)	73.0
11	Argentina	72.2
12	South Africa	72.0
13	Norway	71.6
14	Brazil	71.5
15	Canada	71.3
16	Dominican Republic	71.1
17	Andorra	70.7
18	United Kingdom (<i>Northern Ireland</i>)	70.3
19	El Salvador	70.1
20	Slovenia	69.3
21	France	69.0
22	New Zealand	68.6
23	Poland	68.0
24	Bolivia	67.8
=	Croatia	67.8
=	Lithuania	67.8
27	Colombia	67.4
=	Estonia	67.4
29	Honduras	67.0
30	Israel	66.7
=	Uruguay	66.7
32	Bulgaria	66.5
=	Greece	66.5
34	Costa Rica	66.3
=	Switzerland	66.3
36	United Kingdom (<i>Scotland</i>)	66.1
37	Romania	65.3
38	Australia	65.1
=	Guatemala	65.1
40	Hungary	64.8
41	Panama	64.8
42	Mexico	64.4
43	India	64.0
44	Ecuador	63.6
45	Slovakia	63.0
46	Denmark	62.8
47	Italy	62.6
48	Paraguay	62.5
49	Cyprus	62.3

=	Ireland	62.3
51	Uganda	61.7
=	United States	61.7
53	Czech Republic	61.3
54	Peru	61.1
=	Sweden	61.1
=	Turkey	61.1
57	Togo	60.0
58	Philippines	59.8
59	Albania	59.4
=	Burkina Faso	59.4
=	Georgia	59.4
=	Moldova, Republic of	59.4
63	Bangladesh	59.2
=	Bosnia and Herzegovina	59.2
=	Jamaica	59.2
66	Germany	58.8
=	Serbia	58.8
68	Cabo Verde	58.6
=	Namibia	58.6
=	Nicaragua	58.6
71	Austria	58.0
72	Kazakhstan	57.7
=	Macedonia (FYROM)	57.7
=	Tajikistan	57.7
75	Venezuela	57.1
76	Mauritania	56.7
=	Russian Federation	56.7
78	Nepal	56.3
79	Japan	55.6
80	Rwanda	55.4
=	Ukraine	55.4
82	Korea, Republic of	54.8
83	Djibouti	54.6
84	Montenegro	54.4
85	Bhutan	54.2
=	Kosovo	54.2
87	Azerbaijan	53.4
88	Chad	53.0
89	Benin	52.9
90	Grenada	52.5
91	Burundi	52.3
=	Trinidad and Tobago	52.3
93	Nigeria	52.1
94	Sierra Leone	51.9
95	Kyrgyzstan	51.5
96	Chile	51.3
=	Papua New Guinea	51.3
98	Armenia	51.0
=	Barbados	51.0

100	Guyana	50.6	150	Mongolia	36.4
101	Mauritius	50.4	=	Morocco	36.4
102	Gabon	49.8	152	Malawi	36.2
=	San Marino	49.8	153	Ethiopia	36.0
104	Thailand	49.2	=	Kiribati	36.0
105	Samoa	48.5	=	Lesotho	36.0
=	Tunisia	48.5	156	Comoros	35.8
107	Mali	48.1	=	Palau	35.8
108	Angola	47.9	158	Turkmenistan	35.6
=	Lebanon	47.9	159	Madagascar	35.4
110	Saint Lucia	47.3	160	Micronesia, Federated States of	35.2
111	Belize	47.3	=	Syria	35.2
=	Ghana	46.7	162	China	35.1
=	Monaco	46.7	=	Suriname	35.1
114	Viet Nam	56.6	164	Cameroon	34.9
115	Egypt	46.0	165	Tonga	34.5
116	Fiji	45.6	166	Cambodia	34.3
=	Malta	45.6	167	Libya	34.1
118	Guinea	45.0	168	Bahrain	33.9
119	Pakistan	44.8	169	Algeria	33.0
120	Liechtenstein	44.3	=	South Sudan	33.0
=	Singapore	44.3	171	Niger	32.8
122	Indonesia	44.1	172	Central African Republic	32.4
123	Democratic Republic of the Congo	43.3	173	Saint Vincent and the Grenadines	31.6
=	Sri Lanka	43.3	174	Congo	31.4
=	Sudan	43.3	=	Iraq	31.4
126	Gambia	43.1	176	Tuvalu	31.2
=	Timor-Leste	43.1	177	Mozambique	31.0
128	Uzbekistan	42.9	178	Saint Kitts and Nevis	30.3
129	Bahamas	42.5	179	Qatar	29.3
130	Antigua and Barbuda	41.2	180	Zambia	28.5
=	Malaysia	41.2	181	Saudi Arabia	28.4
=	Vanuatu	41.2	182	Iran, Islamic Republic of	28.2
133	Sao Tome & Principe	40.8	183	Guinea-Bissau	27.8
=	Tanzania	40.8	184	Laos People's Democratic Republic	27.2
135	Botswana	40.2	185	Korea, Democratic People's Republic of	26.2
=	Marshall Islands	40.2	186	Jordan	25.7
137	Belarus	39.7	187	Brunei Darussalam	25.3
=	Haiti	39.7	188	Oman	23.9
=	Senegal	39.7	189	Côte d'Ivoire	23.6
140	Solomon Islands	39.3	=	Maldives	23.6
141	Liberia	38.7	191	United Arab Emirates	22.8
=	Yemen	38.7	192	Kuwait	20.9
143	Seychelles	38.5	193	Cuba	17.8
=	Swaziland	38.5	194	Somalia	17.2
145	Dominica	37.7	195	Palestine	15.7
=	Myanmar	37.7	196	Eritrea	13.2
=	Zimbabwe	37.7	197	Equatorial Guinea	11.5
148	Nauru	37.0			
149	Afghanistan	36.6			



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