

Recommendations on access to justice for children¹

To States

Executive and legislative bodies

- Sign and ratify all international complaints mechanisms, including the Optional Protocol to the CRC on a communications procedure;
- Adopt and/or amend and implement laws and rules to ensure that:
 - the CRC and its optional protocols form part of national law, take precedence over conflicting laws, and are enforceable before domestic courts;
 - children of any age have standing to initiate legal proceedings in their own name without a representative, and have the option to appoint a representative of their choosing if they so wish;
 - if a representative brings legal proceedings on behalf of a child, they act in the child's best interests and do not have any adverse interests to those of the child;
 - any other limitations on children or their representatives bringing legal proceedings are removed;
 - children have access to all courts and complaints mechanisms, including civil, criminal and administrative proceedings and informal or other complaints mechanisms;
 - there is a child-specific national human rights institution that can receive complaints directly from children through a complaints procedure that is child-friendly, informal, free of charge, and accessible to all children and where complainants can choose to remain anonymous; the institution can investigate 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;
 - various forms of collective action are permitted, without any limitations, which do not require individual child victims to be involved, including opt-out class actions and proceedings brought to enforce the rights of a group or class of children;
 - all non-governmental organisations have standing to file and intervene in legal proceedings in their own name, on behalf of, or in the interest of, a child or group or class of children, without any limitations;
 - courts have broad powers to remedy rights violations, and can issue orders for restitution; for compensation; to stop the enforcement of a law, subsidiary legislation or policy; to order the government to take steps to prevent a violation; to guarantee non-repetition; to repeal laws; to annul or amend administrative decisions, acts or omissions; to launch an investigation; or bring proceedings at the court's initiative;
 - all legal proceedings involving children are heard in specialised children's courts that are child-friendly and easily accessible to all children;

¹ For full details on CRIN's Access to justice for children project see: <https://www.crin.org/en/home/law/access>.

- children are automatically guaranteed access to State-funded legal aid in all types of proceedings in which they are involved - including in civil, criminal, administrative, family, and all other judicial settings, whether as a plaintiff, victim, witness, suspect or defendant - and exempted from paying all court costs and case-related expenses; procedures for obtaining legal aid are simplified, informal, child-friendly, accessible and free of charge; children have the right to a state-funded lawyer of their own choosing, with experience commensurate with the nature of the claim or offence and assistance tailored to the rights and needs of children; and children in conflict with the law are guaranteed access to legal aid at every stage of the criminal process, from arrest to trial and any appeal;
- there are systematic procedures that promote pro bono, such as tax arrangements that incentivise law firms to do pro bono work or other arrangements which lead to a flourishing pro bono culture;
- limitation periods with respect to children in any type of proceedings do not begin to run until the child has turned 18; and limitation periods do not apply to serious violations of international human rights law, are not “unduly restrictive” for other rights violations;
- children have the right to be heard in all matters that affect them - including in civil, criminal, administrative, family, and all other legal proceedings - and their views and statements are given due weight in accordance with their age and maturity;
- children of any age can give evidence and are not required to take an oath; and there are child-friendly procedures to facilitate the giving of evidence;
- child-friendly procedures are in place to facilitate the giving of evidence by children;
- all cases involving children are expedited and resolved without delay;
- children have the right to appeal in all types of legal proceedings - including civil, criminal, administrative, family, and all other settings;
- the judiciary is independent and judicial decisions are enforced and respected;
- the privacy of children involved in court proceedings - whether as a plaintiff, defendant, witness or victim - is protected and respected; proceedings involving children are closed to the public, and the publication of a child’s identifying details is prohibited (even after the child has turned 18); and proceedings can be brought without naming individual child victims.
- Systematically address access to justice for children during reviews by international and regional bodies;
- Collaborate with civil society on the above activities to improve access to justice for children; and
- Make all national and regional or international mechanisms for challenging children’s rights violations widely known, by appropriate and active means, to adults and children alike.

Judicial bodies (courts and judges)

- Refer to and apply the CRC in judicial decision-making in all relevant legal proceedings concerning children - including in civil, criminal, administrative, family, and all other proceedings;
- Ensure that children’s right to be heard in all legal proceedings affecting them is respected and that judicial decisions are based on the best interests of the child; and

- Promote the facilitation of giving of evidence of children through child-friendly procedures.

National human rights institutions (including ombudspersons, children’s commissioners, and children’s rights or human rights defenders)

- Establish a child-specific department that can receive complaints directly from children through a complaints procedure that is child-friendly, informal, free of charge, and accessible to all children and where complainants can choose to remain anonymous;
- Disseminate information about the complaints procedure and ensure children know how to assert their rights; and
- Refer to and apply the CRC in decision-making in all cases concerning children.

To the United Nations

UN Committee on the Rights of the Child

- Systematically address access to justice for children during State reviews;
- Publish a general comment on access to justice for children; and
- Urge States to adopt and/or amend and implement laws and rules to ensure that they address all of the above matters (see the list of recommendations under States (executive and legislative bodies)).

UN Human Rights Committee, UN Committee on Economic, Social and Cultural Rights, UN Committee Against Torture, UN Committee on the Elimination of Racial Discrimination, UN Committee on the Elimination of Discrimination Against Women, UN Committee on the Rights of Persons with Disabilities, UN Committee on Enforced Disappearances, and UN Committee on Migrant Workers

- Ensure that the complaints procedures under the Optional Protocols to the respective treaties, if in effect, are adapted to receive complaints from children directly, and are child-friendly, informal and accessible to all children; and
- Systematically address access to justice for children during State reviews, in accordance with the respective treaty.

UNICEF, UNDP and other UN agencies

- Mainstream access to justice within all programmes for children; and
- Provide technical assistance to States with the implementation of legal and policy reforms regarding access to justice for children.

UN Human Rights Council

- Appoint a special rapporteur on access to justice for children.

UN General Assembly

- Adopt a resolution on access to justice for children following discussions during a Third Committee Session.

UN special procedures

- Consider the issue of access to justice, generally and specifically with regard to children, in annual reports and country mission reports, as applicable to their mandate.

OHCHR

- Promote and mainstream access to justice in all its work on children's rights;
- Support treaty bodies' work related to access to justice for children;
- Provide assistance to national human rights bodies in enhancing children's access to complaints mechanisms, for example by preparing a handbook on receiving complaints by children;

To regional bodies

- Ensure that regional complaints procedures are adapted to receive complaints from children directly, and are child-friendly, informal and accessible to all children; and
- Refer to and apply the CRC in decision-making in all relevant cases concerning children.

To civil society

- Use the country reports produced by CRIN and its partners as a source of information on access to justice for children, and update the information where necessary;
- Provide human rights bodies at the national, regional and international levels with the information necessary to hold States to account for their laws, policies and practices (or lack thereof) concerning access to justice for children;
- Use courts and other complaints mechanisms at the national, regional and international levels to bring, or support children or their representatives in bringing, challenges to violations of children's rights, including through collective action;
- Monitor, support and contribute to the development of laws, policies and practices to improve access to justice for children, in line with the recommendations to States above;
- Campaign to raise the legal status and profile of children at the national, regional and international levels; and
- Provide training to legal professionals, including judges and lawyers, on children's rights under the CRC, facilitating children's participation in proceedings, and making decisions based on the best interests of the child.

To parents and others acting on a child's behalf

- Act in the child's best interests when representing them in legal proceedings, and facilitate their participation in proceedings;
- Refrain from representing a child if there is a conflict of interests;
- Protect and respect the privacy of children involved in court proceedings - whether as a plaintiff, defendant, witness or victim - and refrain from sharing a child's identifying details with the media (even after the child has turned 18).

To professional legal bodies (bar associations, law societies, law firms, etc)

- Set aspirational targets for, or a mandatory minimum number of, pro bono hours for lawyers, and adopt other rules, procedures and incentives to promote a strong pro bono culture throughout the legal profession;
- Provide training for judges, lawyers and other legal professionals on children's rights and working with children victims of rights violations and acting in their best interests.

To the media

- Protect and respect the privacy of children involved in legal proceedings - whether as a plaintiff, victim, witness, suspect, or defendant - and refrain from publishing a child's identifying details (even after the child has turned 18).

To donors

- Prioritise and fund organisations and programmes that seek to improve access to justice for children.