



Global Mapping of Access to Justice for Children

Ms Veronica Yates

Child Rights International Network (CRIN)

About the project

CRIN, in partnership with the law firm, White and Case, has embarked on a collaborative project which seeks to establish how children can access justice in every country.

What do we mean by accessing justice?

Access to justice means that children or their appropriate advocates where applicable, must be able to use and trust the legal system to protect their human rights. It covers every instance in which a child comes into contact with the law, whether the child seeks out the legal system, or the legal system seeks out the child.

Access to justice is a human right in itself and also makes other human rights a reality. Yet, children's ability to enforce their rights and challenge violations, are largely neglected or ignored. This is because children are often not viewed as human beings with human rights, but rather as objects of pity or charity, the property of their parents, or thugs menacing communities who need to be disciplined or punished.

There are **four areas** we are looking at:

1. The status of the Convention on the Rights of the Child (CRC) in the national law;
2. How the law treats children involved in legal proceedings, meaning the legal status of the child;
3. The legal means available to challenge violations of children's rights, and
4. The practical considerations in challenging violations using the legal system.

Where are we at?

So far we have published an initial **35 country reports** - all available on our website. Eleven of those are reports on member states of the Council of Europe, as well as Mexico, as participants here. It is too soon to provide detailed analysis, but I can already highlight common issues or interesting examples. **I want to make it clear that the examples I will mention are for illustrative purposes only and are in no way an indication of how well - or how badly a country is doing overall.**

Section 1 - legal status of the Convention on the rights of the Child

States' Obligations

- States need to recognise that children have their human rights enshrined in the UN CRC and make the Convention binding in national law.
- States should also ensure that the CRC takes precedence over competing laws and be enforceable in national courts.
- If a country's domestic system cannot provide a remedy for a violation of children's rights, children and their advocates should be afforded the ability to turn to the international system for redress. In this regard, States should without delay, ratify the third Optional Protocol to the CRC, which will enter into force in two weeks (ten ratifications only so far).

What we found so far:

- States that have incorporated are definitely in the minority
- Relatively rare for the CRC to take precedence over national laws, we have found this is the case for Albania, the Netherlands and Norway;
- If the CRC does take precedence over national statutes, often the country's Constitution still takes precedence over the CRC and other international treaties (e.g. Georgia, Mexico; in the Czech Republic, the CRC and other international treaties are equal in status to the Constitution).
- Almost everywhere has dealt with the CRC in the courts. Some much better than others. But so far, we have not found many examples, for instance, in Denmark, the Danish Human Rights Institution found 5 cases between 2005 and 2010.

Section 2 = legal status of the child

States' obligations

- A full range of legal claims is available to challenge rights violations
- There are independent bodies capable of taking complaints before or on behalf of children;
- Children can bring cases alone or via a representative
- Parents, guardians can bring cases on behalf of very young children
- Children and / or their representatives are eligible for free legal assistance

What we found:

- Bringing a case in the name of the child isn't usually the problem;
- "Legal standing" or "legal capacity" of children is the major issue - the majority of states we've reviewed require children to act through a representative, e.g. parent, guardian, litigation guardian etc. In a number of States parents can prevent children from bringing cases altogether.
- In some States, the legal status of the child's parent is relevant. For example, in Algeria, a child can only bring a case through their "tutor", who is defined in family law as their father only.

- In South Africa, there is a general provision in the Children’s Act guaranteeing every child’s right to bring, and to be assisted in bringing, a matter to court - this applies to all courts. Such legal provisions seem to be rare in other countries.
- One rare example we have found is in Mexico where there is a special provision known as *amparo*, a “constitutional protection lawsuit”. This gives anyone, including children, the right to bring to court challenges to violations of individual rights in the Constitution and international treaties ratified by Mexico (including the CRC) caused by laws, acts or omissions of governmental authorities. Children are entitled to bring actions by themselves to protect their individual rights under the Amparo Law if their legal representative is absent, is prevented from bringing such cases, or refuses to bring such cases. The competent court will immediately appoint a special representative to appear in such trial. If the child is over the age of 14, they may appoint a special representative themselves in the initial lawsuit.

3. The legal means available to challenge rights violations

States obligations

- Children have complete access to all courts and complaints mechanisms, including criminal, civil, or administrative cases, and other informal or customary justice mechanisms
- Courts have broad powers to remedy rights violations, for instance, through restitution, compensation, repeal of a law, launching of an investigation, stopping the enforcement of a law or policy, etc.
- Widespread violations can be challenged without naming individual victims, and children or their representative can file group litigation
- NGOs can file and / or intervene in cases

What we found

- So far, we have not found many countries where cases can be brought without a named individual; in Finland, for instance, cases cannot be brought without a named individual, but cases where the CRC may conflict with national Finnish law, can be brought to the attention of the Parliamentary Ombudsman who can investigate the matter and make recommendations. Although not legally binding, the recommendations are usually followed. A few other countries have similar options, in Georgia, the Public Defender can challenge an action without naming an individual victim
- There are few instances where NGOs can bring cases;
- There are several countries which have an Ombudsperson for children, but they cannot bring cases on behalf of children, for instance in Norway and Finland.
- Few countries have collective complaints, we found Norway and the Netherlands so far

Section 4 - Practicalities

What are the States' obligations?

- Formal settings in legal proceedings can be relaxed as necessary, for instance for particularly vulnerable children
- Legal aid is available, for instance, court fees and other are not payable
- Pro bono services are available and encouraged through, for instance, tax breaks to law firms.
- Timing: limitation periods do not start until the child turns 18, and there is no limitation period for serious violations
- Children may testify or give evidence, they can also give evidence not under oath where this might not be understood. There should also be informal / child friendly procedures to facilitate the giving of evidence
- Privacy of children involved in legal proceedings is guaranteed by law, the public can be excluded
- There are explicit provisions to guarantee children's right to be heard and for his or her views to be taken into account in legal proceedings

What we found so far:

- On the provision of legal aid, legal representation and advice, it's very common for services to be limited to cities. It is also common for the provision of legal aid to be limited to criminal defendants.
- Many countries don't have formalised legal aid systems and are reliant on pro-bono or NGOs.
- There are some good examples of overcoming this, we have seen several: paralegal schemes, for example, are a cheap way of providing legal advice outside of the cities, interesting examples have been in Nepal and a few African countries.
- In South Korea, legal aid is available in all settings - criminal, civil, administrative, Constitutional and family law cases. It is also specifically provided to certain categories of people, including victims of domestic or sexual violence, victims of school violence, and children protected under child welfare.
- A few states now have provisions that disapply limitations periods until a child reaches 18 (or in some cases older). It isn't standard practice, but states seem to be coming round to the idea (Germany, England).

Aim: How accessible is your country's justice system to children?

Now, what are we going to do with this information, you ask? We will of course publish all reports and analysis online and will share reports with relevant States and other parties.

1. Ranking

Well, we are going to score every country on all of the issues I mentioned earlier (and more) out of 100 points. We will then publish a global ranking as well as regional rankings.

- Now, I want to be clear that the examples I gave earlier are just some examples we have come across in the 35 published reports.
- The country reports that we have so far published have not yet been ranked!
- Where one country may score highly in one section, they might score badly in another
- **Our goal with the ranking is not just to shame some states or congratulate others, but will give a means by which we can rate a state's progress in meeting their obligations:**
- **It will enable us to map trends across regions and find good examples**

2. Eutopian State

Of course there will not be one State that is perfect - what we will do is create a Eutopian state by picking out good examples from countries around the world and present what a eutopian state which fully respects children's access to justice will look like.

3. And then what?

The important work begins once we have established gaps and challenges and this is where we need participation and input from States, civil society, ombudsman institutions and the Council of Europe and other relevant intergovernmental organisations.

Homework for States:

- score yourselves on how accessible your justice system is to children - I have brought copies of the score cards and the model questionnaire,
- Comment or use the reports and give us feedback
- Translate into national languages

2 To the Council of Europe and other international and regional groups

- We hope you will make this issue central to your strategy on children's rights for the coming years as a continuation to your work on child friendly justice;

- We would like to work with interested groups to start developing an implementation manual

- To other institutions and organisations: we hope you will examine States' compliance in your work where relevant, and offer technical assistance to States, where necessary

- Perhaps some States that might be champions in some areas are willing to lead regional discussions and share ideas and good practices...