



Children's Equitable Access to Justice:

Central and Eastern Europe and Central Asia

> ALBANIA > GEORGIA > KYRGYZSTAN > MONTENEGRO

IN COOPERATION WITH 

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Aysun, 13, who previously lived on the streets, learns to weave a carpet at the Umid Yeri ('Place of Hope') Children's Shelter and Rehabilitation Centre in Baku, the capital of Azerbaijan.

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The Regional Office for Central and Eastern Europe and
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ACRONYMS

COE	Council of Europe
EU	European Union
EC	European Commission
IDLO	International Development Law Organization
NGO	non-governmental organization
UN	United Nations
UNICEF	United Nations Children’s Fund
UNDP	United Nations Development Programme

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Chapter 1:

Executive summary

Every day, millions of children in the Central and Eastern Europe and Central Asia region have their rights violated. They are denied access to school, health care and social benefits, unduly separated from their families, and affected by exploitation, abuse and violence in their homes and communities. Everywhere, groups of children are being left behind, victims of prejudice and discrimination. Among the most vulnerable are children born into poverty, children of ethnic minorities and children with disabilities.

Yet, only a fraction of children whose rights are violated come forward and seek redress, and even fewer obtain an effective remedy. The right to access justice¹ – while being generally recognized for adults – still seems, in the minds of many, inconceivable or unacceptable when it comes to children. This is true for all children but is exacerbated for the child with a disability, the Roma child, the child in detention – to name just a few of the most excluded groups of children.

The Convention on the Rights of the Child has changed the way children are viewed and treated, and today, more than ever, children are seen as human beings with a distinct set of rights rather than as passive objects of care and charity. The unprecedented acceptance of the Convention – the most rapidly and widely ratified international human rights treaty in history – shows the global commitment to advancing children's rights. This shift does not yet correspond, however, to full recognition – much less full realization – of the child's right to access justice.

Without access to justice, though, child rights commitments will remain only promises on paper. As stated by the Committee on the Rights of the Child, "for rights to have meaning, effective remedies must be available to redress violations."² Accessing justice is a child right in itself, but it is also a means to enforce

all rights under the Convention and other international and national standards. Now, 25 years after the adoption of the Convention, the time has come to address this issue, thus far given insufficient attention.

As well as being core to the realization of children's human rights, access to justice is central to the rule of law and to inclusive and sustainable development. First, ensuring that all children have access to adapted, independent and efficient justice systems is a prerequisite for the rule of law in any given country. There can be no rule of law without the possibility for all children – who make up a fifth of the region's population – to seek and obtain an effective remedy. Experiencing the rule of law as children will also help citizens to value and contribute to a rule of law culture in their adult lives. Second, justice systems – as well as other avenues for accountability such as national human rights institutions (NHRIs) or administrative mechanisms – have an important role to play in combating inequalities, challenging discriminatory practices and restoring entitlements that have been denied.

While extensive resources are invested in access to justice as part of global and regional rule of law agendas, and increasingly, sustainable development agendas, only a limited portion of these resources is devoted towards extending the benefits of reforms to children. Children are rarely considered a distinct priority, and rule of law actors sometimes assume that general efforts to enhance access to justice will automatically reach children. Such assumptions, however, overlook the fact that children have particular rights and needs and that these can be realized only with tailored measures adapted to their age, maturity and evolving capacities. Simply extending to children generic measures designed for adults is not enough.

Very little is known globally about the experience of children as they try to obtain redress for violations of

their rights; about how adapted, or not, justice systems are to hear them; and about how equipped, or not, adults are to support them in the process. This research aims to begin to address in the region this precise knowledge gap, so as to inform concrete action.

Focusing on Albania, Georgia, Kyrgyzstan and Montenegro, *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia* (hereafter *Children's Equitable Access to Justice*) provides insights from children, their families and justice sector professionals on why children become involved in justice systems, where children go to seek justice, the main obstacles they face in the process and whether justice procedures are child-sensitive. By elevating the voices of children – in particular, children living in vulnerable situations – their families and justice sector professionals from the four focal countries, the research sheds light on the kind of strategic interventions needed to ensure that access to justice becomes a reality for all children.

Main research findings

Children's justice needs across criminal, civil and administrative settings are inadequately addressed. While acknowledging the significant work already being done to advance the juvenile justice systems of countries in the region, and the progress in establishing child-sensitive procedures in some countries, the research sheds light on the knowledge gap in relation to access for other children participating in justice processes, including victims and witnesses of crime and children involved in civil and administrative proceedings. The research also confirms that mechanisms in place to provide access to justice for adults are insufficient for children's needs. Violence and abuse in the family was identified as a primary reason for accessing the justice system, along with child custody and visitation rights related to divorce proceedings, withdrawal of parental rights, and the placement of children in alternative care and adoption. Other reasons varied in prevalence between the four countries, but the right to identity documents, denial of social benefits and exclusion from school also featured prominently, as did denial of health services to a lesser extent. Overall, the significant majority of justice sector professionals interviewed considered children to have justice needs that current justice processes do not adequately address.

Children and their families know little about child rights and where to seek redress. *Children's Equitable Access to Justice* points to poor understanding among children and their families, both of children's rights and how to seek help in specific situations. This was even more pronounced among children in vulnerable situations. While children's knowledge of their rights was rather limited, discussions with children nevertheless revealed a holistic understanding of rights. For example, procedures in school and before social protection or local governmental bodies were seen as equally important avenues for achieving justice. Children were cognizant of the uneven realization of rights among children, and the unfair treatment of certain groups such as minorities and children from poor families was highlighted. Children's knowledge of justice mechanisms varied by country, but in general, children were most frequently aware of the courts, the police and the ombudsperson. Children wanted to learn more about their rights and remedies from family members and other trusted adults, and in school settings. Caregivers also expressed the opinion that they lacked sufficient information to support children in accessing justice.

Children face tremendous obstacles in accessing justice. *Children's Equitable Access to Justice* shows that the justice experience for children does not always reflect the legal and policy frameworks in place in a given country. Access to justice for children is largely affected by their age and dependent status as well as by cultural perceptions of children's place in society and within the family. Children have less knowledge, fewer financial resources and are generally less well equipped to deal with the complexity of the justice system, in all its forms. Children depend on adults to receive information about their rights, to navigate and understand available remedies, and to access justice forums and mechanisms.

One of the most striking research findings is the degree to which access to justice for children is negatively affected by social and cultural beliefs. Such beliefs may discourage children from seeking justice altogether because of fear of negative consequences, among other reasons. Deeply entrenched social beliefs and patterns make it unacceptable for children to confide in an adult outside of the home about problems within the home, much less bring a complaint against a family member or community member. Cultural norms reinforce a widely

held belief that violent disciplinary measures are an acceptable part of child rearing. Neither the community nor children themselves see children as rights-holders. To compound this, many children see remedies as useless, as they feel that they are not listened to or believed, nor their experiences valued. Some children even identified negative consequences such as social ostracism for bringing rights violations to attention. Across all four countries, children were categorical in their reluctance to complain about matters within the family, including violence, or to take any action without a parent's permission.

Another barrier to children's access to justice is distrust in the public administration, law enforcement and judicial institutions. Children and parents frequently cited negative experiences of these. Girls and children from minority groups spoke of their fear and mistrust of official institutions and the police, among others. Children and adult caregivers spoke of corruption and the abuse of authority as hindering their ability or willingness to approach some institutions and professionals. Endemic corruption creates for children an additional barrier to accessing justice.

The research findings reveal an array of legal and practical barriers that impede children's access to justice and which disproportionately affect children in vulnerable situations. Court fees, the costs of legal representation, distance to justice institutions, lack of information generally and lack of child-sensitive procedures discourage children from accessing remedies. Justice institutions and procedures have been designed primarily with able-bodied, adult males in mind and are not adapted to meeting the unique needs of all children. Legal advice and legal aid services have not sufficiently taken children into account, and the existing resources allocated to these are insufficient. In many cases, children must have the support of their parents or legal guardians to file complaints, as they lack legal capacity. The right to obtain reparations is rarely fulfilled in practice. Non-enforcement of decisions related to custody, visitation rights and child support or maintenance was identified as particularly problematic for children and their families. The overarching notion that the best interests of the child must be a primary consideration in all decisions affecting her/him is understood as a principle, but is often not applied in practice, nor provided for as a rule of procedure in the legislative or policy framework.



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Judicial and administrative procedures are generally not adapted to children. A review of the judicial systems in the four countries of focus reveals the complexity of adapting a wide range of procedures and forums to meet children’s justice needs and to ensure appropriate specialization on the part of all professionals. In many cases, the use of child-sensitive procedures remains ad hoc, and mechanisms and resources to ensure that justice proceedings address children’s needs and support children’s development are largely absent. For example, special measures designed to protect children from harm during testimony are limited, and in-court witness protection measures and out-of-court psychological and social support services are rare. Interview rooms, courtrooms and waiting areas are not adapted to children in either civil or criminal proceedings. Children’s associated

right to be informed about proceedings, services and potential consequences for them and the right to express their views in proceedings which affect them are not robustly implemented. More efforts are needed to ensure that all mechanisms have in place procedures and staff that allow them to effectively serve children as well as outreach strategies to ensure that children are aware of how to access such services.

For some groups of children, obstacles are exacerbated. Findings suggest that while all children experience awareness and informational barriers, and encounter a variety of legal, practical, social and cultural obstacles on their path to justice, such obstacles are exacerbated by vulnerabilities such as poverty, disability or ethnicity, and influenced strongly by social and cultural norms. Particular attention must



be paid to the most excluded, the poor and the most difficult to reach, in recognition of the fact that these children often face particular challenges in seeking access to justice. They are entitled to special measures and additional assistance to enjoy their rights on an equal footing with other children. Equitable access to justice means that all children, regardless of their age, gender, ethnicity, nationality, disability, socio-economic background or any other status, can equally avail themselves of protection of their rights and recourse to remedies without discrimination.

The way forward

Based on the research findings, *Children's Equitable Access to Justice* details a number of recommendations to strengthen children's access to justice. An overarching imperative is for children's access to justice to be integrated into broader rule of law, security, governance and sustainable development initiatives, and the drive towards integration or closer association with the European Union (EU) by most countries of the region should be leveraged to create progress in this area. Given the multifaceted nature of the issues at hand, responses must involve a wide cross section of stakeholders and initiatives.

In this context, priorities for action were articulated around the following recommendations:

- Strengthen the right to effective and child-sensitive remedies in national legislation.
- Adapt law enforcement and justice systems to children's particular rights and needs.
- Adopt a multidisciplinary, coordinated approach to children's access to justice.
- Strengthen administrative accountability mechanisms within governmental and judicial institutions.
- Strengthen the role of NHRIs and civil society in supporting children's access to justice and holding governments accountable.
- Step up initiatives for the legal empowerment of children and engage families in supporting children's access to justice.
- Promote a shift in social norms to support children's equitable access to justice.

1 Access to justice for children refers to the right to obtain a fair, timely and effective remedy for violations of rights, as put forth in national and international norms and standards, through adapted processes that protect children's dignity and promote their development.

2 United Nations Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, United Nations, Geneva, 27 November 2003, para. 24.

Chapter 2: Background

2.1 Introduction

Children's Equitable Access to Justice is the culmination of research carried out by UNICEF and the International Development Law Organization (IDLO) to examine the reasons why children engage with the justice system, where they seek justice, what obstacles they face in doing so and whether existing mechanisms are effective and child-sensitive. Based on empirical evidence and the perspectives gathered of children³ in vulnerable situations, *Children's Equitable Access to Justice* highlights achievements as well as obstacles in children's access to justice across the four countries under consideration: Albania, Georgia, Kyrgyzstan and Montenegro.

Despite notable progress in the administration of justice, the report signals an overall deficit in rule of law and justice institutions, which brings about or exacerbates a range of violations of children's rights, and delays or prevents the harmonious development of children and the realization of their full potential. Against the backdrop of children living in extreme poverty, social exclusion⁴ and/or facing various forms of violence,⁵ *Children's Equitable Access to Justice* suggests that justice and security institutions are often under-resourced and compromised by a lack of adequate accountability mechanisms. It shows that children's attempts to access justice services are fraught with obstacles, including a generalized absence of legal awareness, widespread discouragement from family and community leaders to access justice services, entrenched discrimination, and reticence by state authorities to enforce children's rights.

2.2 Objectives and methodology

Children's Equitable Access to Justice features research findings drawn from multiple sources. First, it draws on a 2012 exploratory survey supported by the UNICEF Regional Office for Central and Eastern



Europe and the Commonwealth of Independent States and covering nine countries and territories in the region (Albania, Azerbaijan, Georgia, Kosovo,⁶ Kyrgyzstan, the Republic of Moldova, Montenegro, Turkey and Uzbekistan)⁷ which revealed a generalized



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lack of information on children's access to justice, especially as it relates to non-criminal cases. Next, in 2013 and 2014, UNICEF and IDLO carried out in-depth, primary research in Albania, Georgia, Kyrgyzstan and Montenegro⁸ with the aim of gaining a deeper

understanding of the factors that support or inhibit children's access to justice in the region. Finally, the report also draws on available statistics provided during the research process and secondary research based on existing materials.

CHAPTER 2: BACKGROUND

The UNICEF/IDLO primary research, conducted using participatory methods of data collection as detailed in the Appendix, forms the backbone of this report. The research involved 120 justice sector professionals,⁹ 175 children and 32 family members. While the research focused on formal justice systems, it also examined quasi-judicial and administrative proceedings

“ I think that every child should have the same rights no matter from where or what nationality she is, but in reality some children have fewer rights and some children’s rights are violated.”

16-YEAR-OLD GIRL, GEORGIA

and, where relevant, informal justice systems. The overall goal of the research was to understand how legal systems work in practice for children. This was achieved by bringing to the fore the voices of children, families and communities as well as those of professionals working within the justice systems in the four focal countries.

The research placed special emphasis on children in disadvantaged or vulnerable situations, acknowledging that the existence of such factors is associated with greater obstacles to accessing justice, which often overlap with other human rights violations.¹⁰ Particular attention was given during the research and subsequent analysis to ensure non-discriminatory approaches and language. The aim was not to perpetuate stereotypes or to stigmatize, but to ensure a fuller understanding of how vulnerability affects the ability to access justice, and to hear from different groups identified as vulnerable rather than treat children as a single, homogeneous group. Depending on the focal country, the research captured the specific experiences of children living in extreme poverty, children without parental care and/or living in difficult family circumstances, children living and working on the street, children from minorities, internally displaced children, children living in conflict-affected areas, children living in institutions, child migrants, children with physical disabilities¹¹, and girls.¹²

Using a child-centred research methodology,¹³ the research aimed to:

- identify the key legal issues for which children access justice systems
- review avenues through which children seek redress
- identify the extent to which these avenues are child-sensitive and whether they reinforce or overcome inequalities
- ascertain gaps and barriers in the available processes and the groups most affected by such gaps and barriers
- analyse the needs and circumstances of children in vulnerable situations in relation to access to justice
- garner illustrative case studies
- develop recommendations for policy and programming
- elevate the voices of children and practitioners working on child rights and justice issues.

This research is qualitative in nature and seeks to understand the experiences of children through the lens of the children themselves, their adult caregivers and the justice sector professionals who work with children. The relatively small sample size in each country means that the data are not statistically reliable, although the findings are illustrative. The researchers were cognizant of the social desirability bias, particularly among justice sector professionals, meaning that responses tended to align with what was believed to be an appropriate response. Wherever possible, the responses were triangulated against the responses from children and caregivers, and compared against other available data. In addition, justice sector professionals did not represent a homogeneous group; responses from NHRIs, legal aid providers and the non-governmental sector consistently provided contrasting opinions, offering useful insights. This report uses extensive verbatim quotes from research participants, particularly children, to highlight their opinions and experiences.



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- 3 Article 1 of the United Nations Convention on the Rights of the Child provides that “a child means every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier.” United Nations, Convention on the Rights of the Child, General Assembly Resolution A/RES/44/25, United Nations, New York, 20 November 1989.
 - 4 See United Nations Children’s Fund Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Regional Analysis Report 2012*, UNICEF, Geneva, March 2013 (revised), p. 3.
 - 5 See United Nations Children’s Fund, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, New York, 2014.
 - 6 All references to Kosovo in this report should be understood to be in the context of United Nations Security Council resolution 1244 (1999).
 - 7 O’Donnell, Dan, ‘Access to Justice for Children: Results of a survey in selected CEE/CIS countries’ (unpublished), UNICEF, 2012. This exploratory survey offers a broad overview of some of the main challenges for children’s access to justice, focusing on the existing legislative framework.
 - 8 This research is also being carried out by UNICEF in Bosnia and Herzegovina.
 - 9 The term ‘justice sector professional’ usually refers to personnel working within the judiciary (courts and prosecutor’s offices) and to attorneys, the police and prison administrators. For the purpose of this research, the term refers to judges, prosecutors, court and prosecutorial staff such as witness support providers and enforcement officers, lawyers, paralegals, the police, social welfare authorities, national human rights institutions (NHRIs), monitoring bodies, institutions for children, representatives of relevant governmental ministries, non-governmental organizations (NGOs) and informal justice mechanisms (where relevant).
 - 10 This research does not attempt to define the term ‘vulnerabilities’. This is in line with: United Nations, Human Rights Council Resolution A/HRC/25/L.10, United Nations, Geneva, 25 March 2014, which notes that the identification of vulnerable groups is never exhaustive; and with United Nations, Report of the United Nations High Commissioner for Human Rights, Human Rights Council Resolution A/HRC/25/35, United Nations, Geneva, 16 December 2013, para. 17, which states that vulnerable groups “are often exposed to multiple forms of stigmatization and discrimination, including on grounds of sex, disability, race, ethnicity, colour, language, religion, national or social origin, property, birth, or other status”.
 - 11 While children with intellectual and psychosocial disabilities have documented vulnerabilities, they could not be included in the research due to time and resource constraints, which would have restricted the ability to address such subjects ethically and sensitively. Further information: Mental Disability Advocacy Center, ‘Access to justice for children with mental disabilities’, MDAC, Budapest, <www.mdac.org/en/a2j-child>.
 - 12 Specific groups interviewed in each focal country are detailed in the Appendix.
 - 13 This approach is explained in further detail in the methodology provided in the Appendix.
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Chapter 3: A matter of rights, rule of law and development

3.1 Elevating access to justice for children across key international agendas

Over the last few decades, the concept of access to justice has evolved from a right to take legal action for violation of rights into a term that more broadly encompasses equitable and just remedies.¹⁴ Access to justice is “not only a fundamental right in itself, but it is an essential prerequisite for the protection and promotion of all other civil, cultural, economic, political and social rights.”¹⁵ Bridging procedural justice and substantive justice, access to justice is strictly connected with the right to a remedy, as articulated in international and regional human rights standards. Access to justice is crucial for restoring rights that have been disregarded or violated. Equitable access to justice means that all children are equally served and protected by justice systems.

Access to justice is also an integral component of any good rule of law framework. The rule of law embraces the supremacy of the law and accountability to the law of all persons and entities, including the state itself, and necessitates an independent and impartial judiciary. The rule of law is widely recognized as a cornerstone of international peace and security and as a principal means of operationalizing human rights. In 2012, the High-level Meeting of the United Nations General Assembly on the Rule of Law “recognized the importance of the rule of law for the protection of the rights of the child, including legal protection from discrimination, violence, abuse and exploitation.”¹⁶ Effective rule of law frameworks, which encompass access to justice components, are essential to promote justice and accountability.¹⁷ These ensure that individual actors and institutions execute agreed-upon processes and actions that lead to development gains. The rule of law promotes effective redress mechanisms for when agreements, understandings or rights are breached, and guarantees

that government officials are held responsible for breaching commitments, engaging in corruption or violating rights.¹⁸

Increasingly, the rule of law is also seen as a prerequisite for sustainable development, the eradication of poverty, and greater equality.¹⁹ As negotiations on the post-2015 development agenda accelerate towards new global development goals and targets, there is greater appreciation and understanding of the role that access to justice plays in guaranteeing basic rights to education, housing and health, and in supporting other dimensions of sustainable development. As such, access to justice is increasingly recognized as an indispensable means to combat poverty and address inequalities. As the United Nations Development Programme (UNDP) has noted, access to justice is “closely linked to poverty reduction since being poor and marginalized means being deprived of choices, opportunities, access to basic resources and a voice in decision-making.”²⁰ Experts and practitioners in a wide variety of settings, including the consultations on the post-2015 development agenda, consistently note that lack of participation, transparency and accountability limit the effectiveness of programmes aimed at poverty reduction. Access to justice makes a significant contribution in this regard, providing for legal tools while enhancing knowledge and awareness of rights in a manner that enables the poor to demand quality education, sufficient health care and other forms of social service provision that alleviate poverty.

3.2 Accessing justice: Beyond children’s reach?

Children’s Equitable Access to Justice posits that children, with respect to accessing the justice system, are inherently vulnerable given their dependent

status. The research highlights the complexities and multifaceted aspects of access to justice for children, which are compounded further for children in vulnerable situations. It shows that very often children face laws, policies and practices that are not adapted to children's experiences, or otherwise lend themselves to unjust results, in criminal and family matters and in demands for equal rights to education and health care. *Children's Equitable Access to Justice* evidences that even in the presence of specialized laws children are rarely afforded sufficient information on their basic rights and how to seek redress, and calls for greater rights awareness and the mobilization of all professionals and the broader community to support children in accessing justice.

Children's Equitable Access to Justice also identifies gaps and weaknesses in the delivery of justice to children, including procedures that are not child-friendly, too few specialized professionals and the lack of a multidisciplinary, holistic approach to providing support and assistance before, during and after legal proceedings. Meanwhile, the report maintains that the realization of fair justice outcomes for children is not simply a matter of procedure.

Children are guided by a strong and inherent sense of right and wrong; the views expressed by children in this research demonstrate the interconnectedness of their rights, their desire to be taken seriously and their need to see justice being done. Empowering the end-users of justice services (the 'demand-side') must be coupled with a stronger delivery of basic justice (the 'supply-side'). This necessitates sound legal, institutional and policy frameworks fully consistent with international human rights standards.²¹

Where states are unable to provide access to justice in case of harm suffered, children born into poverty are especially vulnerable to a spiral of violence.²² Conversely, well-functioning justice systems create avenues for people to "claim for rights and overcome deprivation, social exclusion and denial of entitlements."²³ Justice systems accessible to children can help to deter further violations, provide redress for harm suffered, improve children's self-esteem, enable them to protect themselves, and have a positive impact on the enjoyment of their rights and on their consequent development.²⁴

Though children are among society's most vulnerable individuals, often suffering grave injustices on account of their dependent status, efforts to ensure the best interests of the child frequently fail to adequately address the justice needs of children. So far, policy prescriptions, programming and research have responded mostly to the needs of children in conflict with the law, rather than focus on broader access to justice questions. Specifically, children's experience in seeking justice has been insufficiently documented. *Children's Equitable Access to Justice* seeks to address this void, by providing a better understanding of children's access to justice issues through evidence-based research and cross-country analysis.

3.3 Compounded challenges for children

Accessing justice is a complex undertaking for adults and it is even more so for children. UNDP identified the following elements as commonly obstructing justice from the end-user's perspective: 1) long delays; 2) lack of affordable and quality legal representation; 3) formalistic and expensive legal procedures; 4) abuse of position or authority, with persons in detention the most vulnerable; 5) weak enforcement of judicial decisions; 6) systemic biases against women, minorities, children, persons with disabilities, the poor and persons with low literacy levels; 7) lack of witness protection, especially for women and children; 8) incomplete information about rights and procedures; and 9) limitations in the available remedies provided in law and practice.²⁵

In the case of children, these challenges are compounded by several orders of magnitude. A child often lacks adequate levels of agency, experience of dealing with public officials, educational background and ability to articulate needs and claims. As in the case of adults, children may be confused and intimidated by formal or informal adjudication procedures. Where poverty is a factor, children are even less likely to approach the justice system to claim their rights: the stigma of poverty and the multidimensional deprivations suffered by the poor, or by those excluded and marginalized on other grounds such as disability, gender or ethnicity, are enhanced by a child's dependent status.²⁶

As *Children's Equitable Access to Justice* articulates, more is required from justice and security institutions



CHAPTER 3: A MATTER OF RIGHTS, RULE OF LAW AND DEVELOPMENT

to provide for the protection of children and to facilitate their potential as contributing members of society.²⁷ For the achievement of equitable access to justice, children must be viewed as individuals entitled to the same protections as adults and to greater protections besides. Furthermore, children are not a single, homogeneous group: younger children require more protection while older children require greater autonomy; children living in rural areas may require additional or different support and services to children

living in cities. The specific challenges that some children face in accessing justice services must be better understood for access to justice to be equitable in its realization as well as in its form. This requires legal and policy reforms to be articulated across the spectrum of child services to ensure not only that justice services are available, but also that proactive policies (and people) are in place to attend to *all* children's justice needs.

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- 14 Access to justice is defined by the United Nations Development Programme as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards." See: United Nations Development Programme Asia-Pacific Regional Centre, *Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*, UNDP, Bangkok, 2005, p. 5. UNDP has also suggested the more recent practitioner's definition of access to justice as: "the right of individuals and groups to obtain a quick, effective and fair response to protect their rights, prevent or solve disputes and control the abuse of power, through a transparent and efficient process, in which mechanisms are available, affordable and accountable." See United Nations Development Programme Justice System Programme, 'Access to Justice Concept Note', UNDP, 2011, p. 2.
- 15 Sepúlveda Carmona, Magdalena, Report of the Special Rapporteur on extreme poverty and human rights, A/67/278, United Nations, New York, 9 August 2012, para. 91.
- 16 United Nations, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, General Assembly Resolution A/RES/67/1, United Nations, New York, 30 November 2012, para. 17. In the United Nations definition, the rule of law is a "principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards." See: United Nations, *Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance*, United Nations, New York, April 2008.
- 17 Good rule of law frameworks typically comprise: 1) laws outlining fundamental rights, consistent with international norms; 2) capable institutions that ensure human rights for all; and 3) an empowered citizenry that enjoys equal access to justice. See: United Nations, *Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance*, United Nations, New York, April 2008, pp. 4–7.
- 18 International Development Law Organization, *Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda*, IDLO, Rome, 18 June 2014, p. 9.
- 19 Ibid., p. 21: "The persistence of poverty and inequality are correlated with deep deficits in governance, human rights and the rule of law."
- 20 United Nations Development Programme, 'Access to Justice Practice Note', UNDP, 2004, p. 3.
- 21 Golub, Stephen, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative', Rule of Law Series Working Paper no. 41, Carnegie Endowment for International Peace, October 2003.
- 22 Sound Off For Justice and JustRights, 'Not Seen and Not Heard: How Children and Young People will Lose Out from Cuts to Civil Legal Aid', Sound Off For Justice/JustRights, 2010.
- 23 United Nations, *UN Common Approach to Justice for Children*, United Nations, New York, March 2008, p. 7.
- 24 Ibid.
- 25 See: United Nations Development Programme, 'Access to Justice Practice Note', UNDP, 2004, p. 4.
- 26 See: Report of the Secretary-General, Legal empowerment of the poor and eradication of poverty, A/64/133, United Nations, New York, 13 July 2009, para. 7.
- 27 See also United Nations, *UN Common Approach to Justice for Children*, United Nations, New York, March 2008, p. 3: "Ensuring that children are integrated in broader justice reform and have access to fair, transparent and child-sensitive justice systems through which they can enforce and protect their rights would result in stronger, better justice systems overall as well as better fulfilment of human rights standards and UN commitments."
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Chapter 4: International and regional legal and policy framework



Before analysing the current status of children's access to justice in the four focal countries, it is essential to consider the relevant international and regional human rights standards that have developed over time. These standards guide law and policy through binding legal obligations, guidelines, best practices and recommendations. It is also important to bear in mind that the notion of access to justice is an evolving one, and even more so with respect to children.

4.1 Relevant international standards

The Universal Declaration of Human Rights enshrines the notion of access to justice

Article 8 of the Universal Declaration of Human Rights provides that: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Article 10 confirms that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him", without excluding persons of any age.²⁸ Although the Universal Declaration, adopted as a resolution of the United Nations General Assembly, is not in itself a legally binding instrument, it laid the foundation for the subsequent development of international human rights law. In this sense, the Universal Declaration provisions discussed above carry special significance because they evidence the fact that the human rights of children have formed an integral part of general international human rights law since its development following the end of the Second World War.

The International Covenant on Civil and Political Rights recognizes the right to an effective remedy for all, including children

Article 2 of the International Covenant on Civil and Political Rights recognizes the right to a remedy where its rights or freedoms have been breached. Like the Universal Declaration of Human Rights, the International Covenant recognizes the human rights of 'everyone', thereby including children as a matter of principle.²⁹ In addition to the fact that the International Covenant in general applies to children together with everyone else, certain provisions refer specifically to children, particularly

in relation to special consideration and protections regarding criminal justice for children.³⁰ Article 26 of the International Covenant reaffirms the principle of non-discrimination and equality before the law, stating that: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law." Also of note is the ratification by all four focal countries of the Optional Protocol to the International Covenant on Civil and Political Rights,³¹ which establishes an individual communications procedure.

In terms of positive obligations to implement the rights set out in the International Covenant, article 2(3) requires States parties to provide an effective remedy to those whose rights or freedoms are violated. This may entail judicial, administrative and legislative measures. Claims must be determined by a competent judicial, administrative or legislative authority, or by any other competent authority provided for by the legal framework of the state. Claims that have been granted must be enforced. The Human Rights Committee, the body established to monitor State party compliance with the International Covenant, has further noted in relation to article 2(3) that: "remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children."³² Articles 9 and 14 include procedural guarantees relating to arrest and detention, and fair trial respectively, which also apply to children.

International human rights law applies to everyone on a non-discriminatory basis

International human rights law includes powerful non-discrimination principles, which are important for children as they can face discrimination based on their age as well as due to a particular vulnerability or status. Article 2 of the Universal Declaration of Human Rights recognizes that: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Thus, Universal Declaration provisions apply to 'everyone' without excluding one or other age group. There are some legitimate exceptions such as the right to vote, the right to stand for election, the right to marry or the right to receive old age benefits, each

of which is considered to be legitimately restricted on the basis of age. Conversely, other human rights guarantees apply specifically to children, as discussed below, in recognition that their needs and vulnerabilities differ in certain respects from those of adults. Accordingly, children's rights reflect their particular situation in the family setting, in society and in relation to state institutions such as schools and the courts.

Similarly, the International Covenant on Civil and Political Rights includes an overarching non-discrimination clause. The Human Rights Committee clarified that discrimination should be understood as "any distinction, exclusion, restriction or preference ... which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."³³ The general principle should be applied to the specific needs of children in situations of particular significance to them or where discrimination is a risk, for example, birth registration, schooling, primary health care and family situations.

Access to justice: A means to realize children's economic, social and cultural rights

The International Covenant on Economic, Social and Cultural Rights sets forth states' obligations to ensure the right to an adequate standard of living and to the highest attainable standard of physical and mental health, among other things. With respect to children in particular, the International Covenant codifies children's rights to education and to protection from social and economic exploitation. Access to justice for children must be read within the framework of article 2, which obliges each State party to take steps "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". Specifically, the Committee on Economic, Social and Cultural Rights noted that: "whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary."³⁴ It underlined further that the lack of a legal remedy would be acceptable only where it would not figure as an "appropriate means" by which to ensure

enjoyment of the right in question, or if there was no need for a legal remedy "in view of the other means used" to guarantee its enjoyment.³⁵

The Convention on the Rights of the Child: The cornerstone of child rights

The Convention on the Rights of the Child codifies a wide range of human rights for children and is complemented by three Optional Protocols: 1) on the involvement of children in armed conflict;³⁶ 2) on the sale of children, child prostitution and child pornography;³⁷ and 3) on a communications procedure.³⁸ The Convention on the Rights of the Child, its Optional Protocols and General Comments issued by the Committee on the Rights of the Child underscore the need for access to justice for children.

The Committee on the Rights of the Child has emphasized:

For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention ... Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.³⁹

It is also important to note that all rights contained in the Convention on the Rights of the Child are infused with the principle of non-discrimination, as set out in article 2.⁴⁰

Access to justice encompasses the right to be heard and to participate in legal proceedings

Children have the right to express their views freely in all matters affecting them. Article 12 of the Convention on the Rights of the Child places a legal obligation on States parties to make sure that a child who can form her/his own views has "the right to express those views freely in all matters" and that these views are

given “due weight in accordance with the age and maturity of the child”. Even more explicitly, article 12(2) provides that: “For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

The United Nations Human Rights Council has noted with concern that children are seldom seriously consulted and that states must “ensure that children are provided the opportunity to be heard in any judicial or administrative proceeding affecting them, either directly or through a representative or an appropriate body, in accordance with article 12 of the Convention on the Rights of the Child.”⁴¹ This requires giving children: the opportunity to participate meaningfully; the opportunity to express themselves if capable of forming views; information about processes in which they are involved, adapted to their age, maturity and circumstances, in a language they understand and in a gender- and culture-sensitive manner; and explanation of the consequences of decisions affecting them. It also necessitates taking an overarching child-sensitive approach, which is adapted to the child’s individual needs and circumstances.⁴²

Access to justice encompasses the right to protection

Article 19(1) of the Convention on the Rights of the Child obliges States parties to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” In terms of access to justice, article 19(2) establishes a duty on the part of States parties to ensure that protective measures for children are effective in terms of preventing, identifying, reporting, referring, investigating, treating and following up in cases involving the maltreatment of a child, including through judicial avenues wherever appropriate.

Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography stipulates:

States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

Indeed, article 9 of the same Optional Protocol obliges States parties to provide the necessary measures for the full social reintegration and physical and psychological recovery of child victims and to ensure that they are able to seek compensation.⁴³ The same instrument places obligations on States parties to follow child-sensitive procedures and sets out that “in the treatment by the criminal justice system of children

who are victims ... the best interest of the child shall be a primary consideration.”⁴⁴ While this Optional Protocol specifically addresses child victims of exploitation, it has been noted that these more detailed provisions can be applied to all children, “particularly as the adoption of the [Optional Protocol] has confirmed States’ ongoing commitment to child-friendly justice principles.”⁴⁵

The best interests of the child as a primary consideration

Another guiding principle of the Convention on the Rights of the Child is the obligation to determine and apply the child’s best interests as a primary consideration when making decisions that affect her/him. Article 3 states: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”⁴⁶ The Committee on the Rights of the Child issued a General Comment in 2012, which fleshed out the notion of best interests as a substantive right, a legal interpretative principle and a rule of procedure. It also provides guidance on what factors must be taken into consideration in, and on the procedural components of, the formal assessment of the child’s best interests.⁴⁷

Access to justice encompasses the rights to reparation, recovery and social reintegration

Further articulation of the child’s right to a remedy can be found in article 39 of the Convention on the Rights of the Child, which recognizes a right to reparation and obliges States parties to: “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.” The child’s right to reparation, depending on the nature of the injury or violation of rights suffered, may include the right to assistance in repairing the consequences of a wrong or injury, and/or financial and/or moral compensation.⁴⁸ In a General Comment on the right of adolescents to health and development, the Committee on the Rights of the Child stated: “adolescents need to have easy access to individual complaint systems as well as judicial and appropriate



non-judicial redress mechanisms that guarantee fair and due process, with special attention to the right to privacy”.⁴⁹

Access to justice for child victims and witnesses

In addition to the Convention on the Rights of the Child and its Optional Protocols, the United Nations



Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime adopted by the United Nations Economic and Social Council provide a framework for states that recognizes the particular vulnerability of child victims and witnesses and their need for protection within justice systems.⁵⁰ The Guidelines reaffirm the fundamental principles of the Convention on the Rights of the Child and assert

that child victims and witnesses have various rights, including to:

- be treated with dignity and compassion
- be protected from discrimination
- be informed

- be heard and given opportunities to express views and concerns
- effective assistance
- privacy
- be protected from hardship during the justice process
- safety
- reparation
- special preventative measures.

The Guidelines also recommend the adoption of a child-sensitive approach, i.e., that which “balances the child’s right to protection and that takes into account the child’s individual needs and views.”⁵¹ The Guidelines specifically acknowledge that they “could also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.”⁵²

The *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, while not a binding instrument, encourages States parties to provide legal aid for victims and witnesses, and also underscores that the best interests of the child must be primary in all legal aid matters.⁵³

4.2 Regional framework: Central and Eastern Europe and Central Asia

European regional human rights instruments incorporate access to justice provisions pertaining to the rights of the child, reinforcing the international human rights framework and providing an additional layer of protection and opportunity for redress. For the purposes of the present report, it is most relevant to explore the activities of the Council of Europe, of which Albania, Georgia and Montenegro are member States.⁵⁴ EU standards in this area are increasingly relevant in the region and will also be briefly mentioned, particularly in regard to the accession processes of Albania and Montenegro.

European Union

Promotion and respect for human rights, the rule of law, minority rights and equality between men and women as well the rights of the child are among the core EU values and aims.⁵⁵ In the Charter of Fundamental Rights of the European Union, article 24 on the rights of the child sets forth the child’s right to protection and care, and to express her/his views and participate in proceedings, and the obligation by public authorities and private institutions to consider the child’s best interests as a primary consideration in all actions concerning a child.⁵⁶

The EU also adopted an important directive on victim rights, which sets forth a number of protections that should be available before, during and after criminal proceedings, and which apply equally to children.⁵⁷ The directive mandates a child-sensitive approach based on the best interests of the child.⁵⁸ Also of relevance to victims’ rights are Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. There are also several directives supporting the enforcement of judicial decisions and the recognition of civil and criminal protection orders throughout the EU.⁵⁹ The EU has adopted a number of important policy guidelines such as the EU Guidelines for the Promotion and Protection of the Rights of the Child (2007).⁶⁰

Council of Europe

Members of the Council of Europe are subject to the European Convention on Human Rights,⁶¹ which applies to children and adults. Article 1 provides that member States “shall secure to everyone within their jurisdiction the rights and freedoms” contained within the European Convention. The European Court of Human Rights – established by the European Convention and responsible for its enforcement – has jurisdiction over all member States to the European Convention, providing an avenue for children’s access to justice in the region.

Children are not excluded from lodging an application with the European Court of Human Rights by virtue of their age, and while difficulties could arise when

considering whether the child has exhausted all avenues for domestic remedies, the European Court's practice has been to have a "benevolent attitude towards access by minors".⁶² The European Court has taken the view that principles of child-friendly justice must be applied in national courts and has made clear that a child must be "dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings, including conducting the hearing in such a way as to reduce as far as possible his feelings of intimidation and inhibition."⁶³

The European Court of Human Rights has set numerous precedents in terms of protecting the rights of children and enhancing their access to justice. In the area of protection of children from violence, the European Court has found corporal punishment and child abuse to amount to a violation of article 3 of the European Convention on Human Rights (the prohibition of inhuman or degrading treatment or punishment) and lack of effective investigations and remedies for child sexual abuse to amount to a violation of articles 3 and 13 (the right to a remedy). In a 2012 case, Hungary was found in violation of article 2 of the European Convention (the right to life) for failing to include three minors and their mother in a witness protection programme.⁶⁴ The European Court has also been instrumental in advancing children's access to remedies with respect to the right to education, the right to respect for family life, the right to privacy and the right to be free from discrimination.⁶⁵ Few cases from the three focal countries that are member States appear to have been brought in regard to children's rights, although there were two notable decisions with respect to Montenegro and 1) the failure to enforce a custody judgement,⁶⁶ and 2) the failure to enforce a decision on child support.⁶⁷ In 2006, Albania was found in violation of article 8 of the European Convention on Human Rights (the right to family life) for failing to have a practical and effective legal framework allowing the enforcement of a custody decision in favour of the applicant (the father) after the mother had taken their daughter to Greece.⁶⁸

In addition, the European Social Charter (Revised), an instrument focused on social and economic human rights, contains provisions specifically directed at the enhancement of children's rights.⁶⁹ Article 7 requires

member States to undertake action to ensure the "effective exercise of the rights of children and young persons to protection" and article 17 provides for the right of children and young persons to social, legal and economic protection. The European Committee of Social Rights oversees compliance of national law and practice with the Charter. Importantly, the Charter includes a 'collective complaints procedure'⁷⁰ that allows non-governmental organizations (NGOs) and other specified groups to lodge complaints where it has been alleged that a member State has not complied with the provisions of the Charter. This procedure has been described as an innovative, efficient, accessible and simple mechanism to uphold children's rights.⁷¹ Albania, Georgia and Montenegro have ratified the European Social Charter but have not accepted the optional collective complaints procedure.

Another important instrument for children's access to justice in Europe is the European Convention on the Exercise of Children's Rights, which has been ratified by Albania and Montenegro.⁷² Article 1(2) sets out its objectives: "in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority."

Part B of the same instrument outlines the role of judicial authorities when making decisions in proceedings affecting a child. This includes: ensuring that children who have sufficient understanding receive all relevant information, consulting children in appropriate cases and allowing children to express their views and have those views be given due weight.⁷³

The 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) requires the criminalization of sexual exploitation and abuse, the criminal prosecution of perpetrators and effective remedies and support for child victims.⁷⁴ Albania, Georgia and Montenegro have each ratified the Lanzarote Convention. The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) requires, among other things, that children are afforded adequate protection and support as victims and witnesses of domestic

violence.⁷⁵ Albania and Montenegro have ratified the Istanbul Convention; Georgia has signed it. The 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which establishes an independent monitoring mechanism for all residential facilities for adults and children, including juvenile facilities, and all social protection institutions, has been ratified by Albania, Georgia and Montenegro.⁷⁶ Also of relevance to the protection of children's rights are the 2008 European Convention on the Adoption of Children (Revised)⁷⁷ and the 1995 Framework Convention for the Protection of National Minorities.⁷⁸

Access to justice for children: Select regional decisions

In *D.H. and Others v. The Czech Republic* (2007),⁷⁹ Roma children brought a suit at the European Court of Human Rights against the Czech Republic, alleging discrimination and violation of the right to education because of the children's placement in special schools for children with mild intellectual disabilities. This was in an area where Roma account for less than 3 per cent of the general population but more than 50 per cent of the population in special schools. The European Court of Human Rights found that the separate schools had a discriminatory impact on Roma children and ordered reparations for the children.

Similarly, in *Mental Disability Advocacy Center v. Bulgaria* (2008),⁸⁰ the European Committee of Social Rights found a violation of the right to education for children with intellectual disabilities living in institutions for children with disabilities, and a violation of the right to non-discrimination on the basis of disability. The Committee found a failure to implement a 2002 law that had been put in place to enable children with intellectual disabilities to be integrated into mainstream schools, with the result that only 6.2 per cent of children with intellectual disabilities were attending school compared to the national school attendance rate of 94 per cent among all other children.

The Council of Europe Policy Guidelines on integrated national strategies for the protection of children from violence aim to create a national, multidisciplinary framework for a systematic and holistic approach to the prevention of and response to violence against children.⁸¹

Finally, the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice⁸² re-emphasize the key principles of the Convention on the Rights of the Child – the best interests of the child, the right to life, survival and development, respect for the views of the child, and non-discrimination – and affirm that “As bearers of rights, children should have recourse to remedies to effectively exercise their rights or act upon violations of their rights.”⁸³ The Guidelines address the “views, rights and needs of the child in judicial proceedings and in alternatives to such proceedings.”⁸⁴

The concept of child-friendly justice is well articulated in article II(c):

“Child-friendly justice” refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.⁸⁵

Moreover, the Guidelines spell out in detail the measures that member States should take to ensure that children fully enjoy the right of participation in judicial proceedings, the fulfilment of their best interests, the right to be treated with dignity and the right not to be subject to discrimination as well as to ensure the rule of law.

CHAPTER 4: INTERNATIONAL AND REGIONAL LEGAL AND POLICY FRAMEWORK

- 28 The reference to criminal charges would in any case not apply to children below the minimum age of criminal responsibility, who should not be subject to any criminal charge.
- 29 The Human Rights Committee has further underlined that “children benefit from all of the civil rights enunciated in the Covenant.” United Nations, Human Rights Committee, General Comment 17, Article 24 (Thirty-fifth session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.1 at 23 (1994), para. 2.
- 30 For example, in article 10 (paras. 2 and 3): “Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication” and “Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.” Similarly, article 14(1) provides that exceptions can be made to the application of the principle of open and transparent criminal proceedings where this is necessary for the protection of children, in particular: “any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”. Article 14(4) provides that: “In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation”, again tailoring the needs of children relative to the justice system. United Nations, International Covenant on Civil and Political Rights, A/6316 (1966), 999 UNTS 171, adopted by the General Assembly of the United Nations, New York, 19 December 1966 (entered into force 23 March 1976).
- 31 United Nations, Optional Protocol to the International Covenant on Civil and Political Rights, General Assembly Resolution A/RES/21/2200, United Nations, New York, 16 December 1966.
- 32 United Nations, Human Rights Committee, General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, United Nations, New York, 26 May 2004, para. 15.
- 33 United Nations, Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.1 at 26 (1994), para. 7. See also: United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, United Nations, Geneva, 2 July 2009.
- 34 United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 9, The Domestic Application of the Covenant, E/C.12/1998/24, United Nations, Geneva, 3 December 1998, para. 9.
- 35 *Ibid.*, para. 3.
- 36 United Nations, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, General Assembly Resolution A/RES/54/263, United Nations, New York, 25 May 2000 (entered into force 12 February 2002). Each of the focal countries has ratified the Optional Protocol: Albania (9 December 2008); Georgia (3 August 2010); Kyrgyzstan (13 August 2003); and Montenegro (2 May 2007).
- 37 United Nations, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, General Assembly Resolution A/RES/54/263, United Nations, New York, 25 May 2000 (entered into force 18 January 2002). Each of the focal countries has ratified the Optional Protocol: Albania (5 February 2008); Georgia (28 June 2005); Kyrgyzstan (12 February 2003); and Montenegro (23 October 2006).
- 38 United Nations, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, General Assembly Resolution A/RES/66/138, United Nations, New York, 27 January 2012 (entered into force 14 April 2014). The Optional Protocol has been ratified only by Albania (29 May 2013) and Montenegro (24 September 2013) among the four focal countries. The Optional Protocol allows the United Nations Committee on the Rights of the Child to hear complaints regarding children’s rights violations in the event that a State party to the Optional Protocol has been unable to provide a remedy for the violation. The Committee is also able to launch investigations into grave or systematic violations of children’s rights.
- 39 United Nations, Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, United Nations, Geneva, 27 November 2003, para. 24.
- 40 United Nations Convention on the Rights of the Child, article 2 states: “1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”
- 41 United Nations, Human Rights Council Resolution A/HRC/25/L.10, United Nations, Geneva, 25 March 2014, para. 7.
- 42 *Ibid.*
- 43 A joint report by the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children notes: “It is urgent to develop effective, child-sensitive counselling, reporting and complaint mechanisms, universally available to and accessible by all children, without discrimination of any kind.” See: United Nations, Human Rights Council, Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children, A/HRC/16/56, United Nations, Geneva, 7 March 2011, para. 107.
- 44 United Nations, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, General Assembly Resolution A/RES/54/263, United Nations, New York, 25 May 2000, art. 8(3).
- 45 Child Rights International Network, ‘Child Friendly Justice and Children’s Rights’, CRIN, 2012, p. 3.
- 46 In determining ‘best interests’, all of the legal rights of the child as well as her/his individual circumstances must be taken into account. The Best Interests Determination should involve adequate child participation without discrimination, and with due weight given to the views of the child and input from decision-makers with relevant expertise. See also: United Nations, Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, United Nations, Geneva, 29 May 2013.
- 47 *Ibid.*
- 48 See, for example: United Nations, Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, United Nations, Geneva, 27 November 2003, para. 24; and United Nations, Human Rights Committee, General Comment No. 31[80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, United Nations, New York, 26 May 2004, para. 16.

CHAPTER 4: INTERNATIONAL AND REGIONAL LEGAL AND POLICY FRAMEWORK

- 49 United Nations, Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, United Nations, Geneva, 17 March 2003, para. 9.
- 50 Resolution adopted by the United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, 22 July 2005.
- 51 *Ibid.*, para. 9(d).
- 52 *Ibid.*, para. 6.
- 53 United Nations Office on Drugs and Crime, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, UNODC, New York, June 2013. See principles 4, 5 and 7.
- 54 Although Kyrgyzstan is not a member, the Council of Europe has recognized Kyrgyzstan's Parliament as a "Partner for Democracy" because it fulfilled the requisite conditions, including: clear commitment to pluralist and gender parity-based democracy; the rule of law and respect for human rights; the abolition of the death penalty; free and fair elections in line with international standards; balanced participation of women and men in public and political life; and joining relevant Council of Europe conventions and agreements, in particular those dealing with human rights, the rule of law and democracy. Council of Europe Parliamentary Assembly, Request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of the Kyrgyz Republic, Resolution 1984 (2014), PACE, Strasbourg, 8 April 2014.
- 55 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007, Official Journal of the European Union C 306/1, 17 December 2007.
- 56 Charter of Fundamental Rights of the European Union, Official Journal of the European Union C 326/391, 26 October 2012.
- 57 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Official Journal of the European Union L 315/57, 14 November 2012.
- 58 *Ibid.*, art. 1.
- 59 See: Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, Official Journal of the European Union L 338/2, 21 December 2011; Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, Official Journal of the European Union L 181/4, 29 June 2013; and Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, Official Journal of the European Union L 338, 23 December 2003.
- 60 An overview of all relevant *acquis* and policy documents on children's rights in the EU can be found at: European Commission, 'Rights of the Child', EC, 25 September 2014, <http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm>.
- 61 See: Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms ('European Convention on Human Rights'), ETS No. 005, opened for signature in Rome 4 November 1950, entered into force 3 September 1953.
- 62 Council of Europe, *International justice for children*, Council of Europe Publishing, Strasbourg, December 2008, p. 71.
- 63 European Court of Human Rights, Case of S.C. v. The United Kingdom, Application no. 60958/00, Judgment, ECHR, Strasbourg, 15 June 2004.
- 64 See: European Court of Human Rights, 'Protection of minors', Factsheet, ECHR Press Unit, January 2015.
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- 66 In the case of Mijušković v. Montenegro, the European Court of Human Rights found a violation of article 8 of the European Convention on Human Rights (the right to family life). European Court of Human Rights, Case of Boucke v. Montenegro, Application no. 49337/07, Judgment, ECHR, Strasbourg, 21 September 2010.
- 67 In the case of Boucke v. Montenegro, the European Court of Human Rights found a violation of article 6 of the European Convention on Human Rights (the right to a fair trial). European Court of Human Rights, Case of Boucke v. Montenegro, Application no. 26945/06, Judgment, ECHR, Strasbourg, 21 February 2012.
- 68 See: European Court of Human Rights, Case of Bajrami v. Albania, Application no. 35853/04, Judgment, ECHR, Strasbourg, 12 December 2006.
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- 70 *Ibid.*, part IV, art. D.
- 71 Council of Europe, *International justice for children*, Council of Europe Publishing, Strasbourg, December 2008, p. 12.
- 72 Council of Europe, European Convention on the Exercise of Children's Rights, ETS No. 160, opened for signature in Strasbourg 25 January 1996, entered into force 1 July 2000.
- 73 *Ibid.*, art. 6.
- 74 Council of Europe, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ('Lanzarote Convention'), ETS No. 201, opened for signature in Lanzarote 25 October 2007, entered into force 1 July 2010.
- 75 Council of Europe, Convention on preventing and combating violence against women and domestic violence, ETS No. 210, opened for signature in Istanbul 11 May 2011, entered into force 1 August 2014.
- 76 Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 126, opened for signature in Strasbourg 26 November 1987, entered into force 1 March 2002.
- 77 Council of Europe, European Convention on the Adoption of Children, ETS No. 202, opened for signature in Strasbourg 27 November 2008, entered into force 1 September 2011.
- 78 Framework Convention for the Protection of National Minorities, opened for signature in Strasbourg 1 February 1995, ETS No. 157, entered into force 1 February 1998.
- 79 European Court of Human Rights, Case of D.H. and Others v. The Czech Republic, Application no. 57325/00, Judgment, ECHR, Strasbourg, 13 November 2007.
- 80 European Committee of Social Rights, Mental Disability Advocacy Center v. Bulgaria, Complaint No. 41/2007, ECSR, Strasbourg, 3 June 2008.
- 81 Council of Europe, Recommendation CM/Rec(2009)10 of the Committee of Ministers to member states on integrated national strategies for the protection of children from violence, adopted on 18 November 2009.
- 82 Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice', COE, adopted 17 November 2010.
- 83 *Ibid.*, para. IV, 34.
- 84 *Ibid.*, para. I, 1.
- 85 The United Nations High Commissioner for Human Rights has noted that the terms 'child-sensitive' and 'child-friendly' are synonymous, and they are used synonymously in this report. United Nations, Report of the United Nations High Commissioner for Human Rights, Human Rights Council Resolution A/HRC/25/35, United Nations, Geneva, 16 December 2013.



Chapter 5: Children's access to justice across the region

5.1 Regional overview

Countries in the Central and Eastern Europe and Central Asia region have experienced significant social, political and economic transitions in the last quarter of a century, creating new opportunities for change and paving the way for economic growth and improvements in human development.⁸⁶ A number of countries are taking the requisite steps towards EU integration,⁸⁷ including strengthening institutional frameworks for the rule of law, enhancing human rights protections and combating corruption and organized crime.

At the same time, as discussed below, many of the countries in the region are still struggling to fully embrace the rule of law.⁸⁸ *Children's Equitable Access to Justice* highlights that a number of political and social factors negatively affect the way in which societies view and approach justice issues, including justice for children. A few trends emerged from the cross-country analysis of the overall state of the rule of law in the region, as follows.

Disparate development and lingering poverty

The significant progress in social and economic development seen in many countries in the Central and Eastern Europe and Central Asia region is reflected in their improved Human Development Index ratings.⁸⁹ An estimated 18 per cent of subregional populations have moved out of poverty since 1999 and progress has been achieved on a number of Millennium Development Goals.⁹⁰ Significantly, in the Caucasus and Central Asia subregions, the target of halving the percentage of undernourished people has been met.⁹¹

Poverty reduction rates and other measures of progress have not, however, proceeded at an equal

pace between states nor within states in the Central and Eastern Europe and Central Asia region. Poverty remains entrenched among vulnerable populations, particularly ethnic minorities, rural populations, refugees and internally displaced persons.⁹² The results of recent studies paint a grim picture: In Albania, 23 per cent of families with children live below the poverty line and 10 per cent of families live in extreme poverty.⁹³ In Georgia, 27 per cent of children live below the poverty line and less than 50 per cent of poor children attend preschool.⁹⁴ In Kyrgyzstan, 45 per cent of children live in poverty, with almost 6 per cent of children living in extreme poverty.⁹⁵ Montenegro's child poverty study, a first for this nation, reveals that 10 per cent of children live in poverty.⁹⁶

Entrenched challenges to strengthening the rule of law

The Central and Eastern Europe and Central Asia region is still affected by the consequences of intra- and interstate conflicts, the legacies of which are reflected in significant rates of socio-economic inequality and political instability, and deficits in the full transition to the rule of law.⁹⁷ To these challenges, the uneven political commitment to inclusive policies, in a region characterized by religious and ethnic diversity, can lead to greater levels of intolerance and security risks.

In 2014, the World Justice Project Rule of Law Index⁹⁸ ranked 99 countries on how the rule of law is experienced in everyday life. While Montenegro did not appear in the rankings, Georgia was, in 31st place, the highest ranked of the remaining focal countries, with Albania ranked 63rd and Kyrgyzstan 78th.⁹⁹ A comparison of current and former scores for Georgia and Kyrgyzstan shows that the rule of law has not significantly improved in these countries in recent years; Albania has seen some improvements, however.¹⁰⁰

Transparency International has developed an index specifically related to corruption, ranking countries based on perceived levels of public sector corruption. In 2014, of the 175 countries or territories appearing in the index, Georgia was ranked 50th, Montenegro 76th, Albania 110th and Kyrgyzstan 136th.¹⁰¹ In certain countries, "corruption is seen as particularly acute in the legal process, as the police, courts and judiciary are some of the least trusted institutions",¹⁰² demonstrating the need for effective rule of law frameworks that strengthen justice sector institutions, including access to justice services and mechanisms.

As the Rule of Law Index highlights, justice systems in the region have traditionally been fragile and there still exist challenges in terms of government accountability, judicial independence and significant levels of corruption.¹⁰³ To address these issues, reforms and progressive changes in constitutional and legal frameworks are ongoing in many countries, as are efforts to strengthen the professionalism, independence and integrity of the judiciary.

In a number of countries, efforts such as reducing court waiting times and modernizing court processes have been undertaken to improve judicial efficiency.¹⁰⁴ Despite these efforts, the independence, effectiveness and integrity of the justice sector are still evolving, as is public confidence, as illustrated by several studies on the topic.¹⁰⁵ Sufficient funding for the justice sector remains a challenge in many countries, and there have been indications that funding cuts may continue in the future.¹⁰⁶ Further complicating this picture is the fact that little attention has been paid to children as stakeholders in constitutional, legislative and rule of law reforms.¹⁰⁷

Developing civil society and fragile political freedoms

Civil society plays a fundamental role in the realization of access to justice, especially in relation to the empowerment of vulnerable groups.¹⁰⁸ While civil society organizations are growing and becoming stronger in many countries in Central and Eastern Europe, progress is slow. The legacy of communist regimes continues to affect the development of institutions charged with the protection of individual rights.¹⁰⁹ Research shows that government opposition to civil society activities undertaken by minority groups

is still apparent in some Central Asian countries,¹¹⁰ which has an impact on rights awareness, legal empowerment and, ultimately, the realization of fair access to justice. Combined with strong centralized controls, this leads to a dearth of independent institutions for the promotion and protection of human rights and the provision of legal aid and legal awareness, especially for children.¹¹¹

Persistent gender inequality and traditional attitudes

Children's Equitable Access to Justice points to a number of social and cultural norms that make it 'unacceptable' for children or their families to lodge complaints, especially with the support of external authorities.¹¹² The traditional attitudes that prevail in many parts of the region are accompanied by social and cultural practices that affect children's enjoyment of their rights. This situation is compounded by entrenched gender inequalities.

Girls are at increased risk of child marriage, sexual abuse and trafficking than boys. This can be seen in practices such as bride kidnapping in Kyrgyzstan, early and forced marriages in Albania and Montenegro, and forced marriages among some communities in Georgia.¹¹³ A study on forced and child marriage in Kyrgyzstan shows that child marriage is often accompanied by violence, irrespective of whether the girl was kidnapped or given away with her parents' agreement. The study revealed that "after marrying, nine of 11 child spouses admitted that they faced psychological abuse from their in-laws and husband's relatives; four suffered physical abuse from their husbands, including one case in which the girl and her children were beaten not just by her husband, but by his parents as well. Two of the girls suffered not just psychological and physical abuse from their husbands, but also sexual abuse."¹¹⁴ In the study, not one of the girls interviewed approached the local authorities, the law enforcement agencies or a crisis centre for help. Some had no idea that their marriage violated the law and none were aware of the measures for protection from domestic violence contained within the Law on Social-Legal Protection from Domestic Violence.

The prevalence of domestic violence in the region means that children are often witnesses to these crimes and, even when not directly the victim, are

affected by this violence. For example, a recent study found that, in Albania, one in two women experience domestic violence, and three out of every four women on maternity leave had experienced domestic violence in the previous 12 months.¹¹⁵ A 2012 poll in Montenegro revealed that 92 per cent of respondents believe that family violence is a problem, although only 13 per cent reported personally experiencing violence, while 38 per cent knew of a domestic violence situation in their neighbourhood.¹¹⁶ A 2010 nationwide survey of Georgia supported by the United Nations Population Fund revealed that while only 7 per cent

“ At home, it is absolutely clear that any children in our village can’t do anything. Nobody wants to tell bad things about his family to other people ... Children’s rights are defined by parents at home.”

14-YEAR-OLD BOY, KYRGYZSTAN

of respondents admitted to having experienced physical or sexual domestic violence, approximately 36 per cent had experienced forms of control by their spouse. Furthermore, nearly 80 per cent believe that family matters should stay within the family and 31 per cent believe that family abuse is a private affair in which the law should not interfere.¹¹⁷

The use of corporal punishment and violence within the home, which affects both girls and boys, is also not recognized as a serious problem. A recent UNICEF global study found that, in this region, around 1 in 10 adults believe that physical punishment is necessary to raise children and, on average, 29 per cent of girls and boys aged 15 to 19 believe that wife-beating is acceptable if the wife has failed to perform certain duties.¹¹⁸ Cultural traditions, gender discrimination, shame and fear of being judged within their community prevents children, especially girls, from seeking assistance for rights violations, and deters family members and the wider community from intervening.





Social exclusion and discrimination

At the heart of the rule of law is the notion that all persons are equal before the law. Equally fundamental is a state's obligation under human rights law to set up effective access to justice mechanisms for when the rights to equality and to non-discrimination are breached. Despite a set of international and regional norms protecting the rights of minorities and their ethnic, religious and linguistic identities, many minority groups in the region are excluded from full and equal political and economic participation.¹¹⁹ For example, the European Commission (EC) 2014 Albania Progress Report notes that the Roma "continue to face very difficult living conditions and frequent social exclusion and discrimination, particularly regarding access to health care, social protection, education, employment and housing."¹²⁰ Similarly, the EC 2014 Montenegro Progress Report also points to high levels of discrimination against Roma people.¹²¹

The Council of Europe estimates the total Roma population in Albania at about 115,000 people.¹²² A recent mapping of 108 Roma settlements revealed a "very high incidence of poverty among Roma (78%), high illiteracy rate (up to 70%), non-universal birth registration (about 6% of newborns are not registered), low preschool enrollment (26% against the national average of about 50%) and other huge gaps in terms of access to basic services, living standards and inclusion in the social fabric."¹²³

The Roma, Ashkali and Egyptian population in Montenegro is estimated by the Council of Europe to be about 20,000 persons, a large number of which were displaced from Kosovo¹²⁴ in the 1990s. In general, the economic situation of Roma, Ashkali and Egyptian families is dire, with significant numbers living in extreme poverty and derelict housing conditions, which has particularly harsh consequences for children, who are forced to work from a young age in jobs that pose serious health risks and restrict them from attending school. Although data are scarce, information from Montenegro's Ministry of Education from 2004 indicated that only 18 per cent of Roma, Ashkali and Egyptian children completed primary school compared to a 98 per cent completion rate among non-minority children.¹²⁵ Furthermore, it has been noted that the school dropout rate is especially

high among girls, usually following completion of the fourth grade, due to family responsibilities or early marriage.¹²⁶

In Central Asia, young people are dealing with particularly challenging issues around identity and exclusion. In some countries, replacing Russian with a single national language has exacerbated the marginalization of minorities, by removing a common language through which all ethnicities communicated.¹²⁷ The idea of collective identity, which prevailed under Soviet rule, is no longer relevant for most young people today, who are growing up in very different political and social contexts. It has been noted that "today's Central Asian youth have no common Soviet identity, have been educated in an impoverished and deteriorating education system, have limited economic prospects and have been raised in an environment of nation-building and religious revival."¹²⁸ Identity for children is being linked to ethnicity, religious affiliation and place of birth, showing a trend towards 'communal' identities rather than national identity or citizenship.¹²⁹ Young people are increasingly involved in political struggle and, in areas where inter-group conflict has been rife, negative attitudes towards other groups are strong.¹³⁰ Unequal access to justice has direct, negative effects on the social development of the most excluded and marginalized individuals, including children, who are often prevented from enjoying equal space and opportunities in society and from accessing social services and resources critical to development.

The European Union: A key driver of reform

The EU has long recognized that well-functioning and responsive legal institutions help to further fair development outcomes, encourage governments to uphold human rights and empower people to claim them. Prospects for EU accession or closer association have played an important role in bringing about reforms, including in areas affecting access to justice for children.¹³¹ Montenegro and Albania are candidate countries, which represents an important step towards EU accession. In September 2014, Montenegro opened negotiations on key rule of law elements in the *acquis communautaire*, in chapter 23 on the judiciary and fundamental rights and chapter 24 on justice, freedom and security.¹³²

In June 2014, Georgia signed an EU Association Agreement, which encompasses a number of areas including political and economic reforms, and justice, freedom and security. Article 13 provides for the strengthening of the rule of law, including through the independence of the judiciary, access to justice and the right to a fair trial.¹³³

Since 1999, Kyrgyzstan has benefited from a Partnership and Cooperation Agreement with the EU, and it is also part of the EU and Central Asia: Strategy for a New Partnership (adopted in 2007), which includes a focus on the rule of law. The EU Rule of Law Initiative for Central Asia has helped to advance reforms related to the efficiency of the judiciary, legal drafting and administrative law reform.¹³⁴ In November 2014, the European Commission (EC) announced the release of approximately Euro 38 million to rule of law reforms in the Kyrgyz Republic for the period 2014 to 2020.¹³⁵

Despite a number of countries adopting agendas for judicial reform that include a focus on minority rights and access to justice issues, progress has been mixed. For example, the EC 2014 Albania Progress Report draws attention to a number of necessary justice sector reforms and notes that the provision of legal aid must be improved and regional legal aid offices established.¹³⁶ Furthermore, the Progress Report notes that children remain confined to their homes due to fear of retribution (see below, section 6.2.5, which has further information about the traditional justice practice known as the *Kanun*) and that no specialized services exist for child victims of sexual abuse.¹³⁷ An earlier EC Albania Progress Report (2012) also cited lengthy judicial proceedings and lack of access to justice for vulnerable groups as ongoing concerns.¹³⁸ Similarly, recent progress reports for Montenegro have noted problems with the implementation of the law on legal aid¹³⁹ as well as linguistic barriers to access for certain ethnic groups.¹⁴⁰ Finally, it is worth noting that children are rarely, if ever, mentioned as stakeholders in access to justice-related issues in country progress reports.

5.2 National legal frameworks across the four focal countries

While the four countries featured in *Children's Equitable Access to Justice* have certain similarities

and, to an extent, shared legal traditions, the legal provisions related to children's rights and children's access to justice differ significantly. Research reveals that the juvenile justice system and, to a lesser extent, criminal procedures related to victims and witnesses remain more advanced across the four countries as compared to civil and administrative justice systems. Aiming to fill this knowledge gap, *Children's Equitable Access to Justice* places special emphasis on the civil justice system, including administrative matters, while criminal justice is considered predominately from the perspective of child victims and witnesses of crime.¹⁴¹ The following section provides an overview of the legal frameworks related to children's access to justice in each of the focal countries.

5.2.1 Albania

After 47 years of totalitarian rule and near-complete isolation, Albania became a parliamentary democracy in 1991. The country has seen rapid economic, political and social transformation as well as widespread social unrest following the 1997 collapse of the economy.¹⁴² Albania currently ranks 95th out of 187 countries on the Human Development Index.¹⁴³ According to the last census, conducted in October 2011, the resident population in Albania was 2,821,977 persons.¹⁴⁴ Approximately 33 per cent of the population are children, of whom almost 50 per cent live in rural areas.¹⁴⁵ Albania ratified the Convention on the Rights of the Child in 1992.

5.2.2 Georgia

Following the disintegration of the Soviet Union, Georgia experienced political turmoil, internal conflict and economic collapse. In the early 1990s, more than 250,000 people were internally displaced by conflicts in Abkhazia and South Ossetia, and new displacement occurred during armed conflict with the Russian Federation in 2008. Challenges to economic growth and social welfare reform remain. Georgia ranks 79th on the Human Development Index.¹⁴⁷ In 2014, the resident population of Georgia was 4,490,500 people, with 1,042,500 of this number aged between 0 and 19 years.¹⁴⁸ Georgia ratified the Convention on the Rights of the Child in 1994.

5.2.3 Kyrgyzstan

Kyrgyzstan is one of the poorest countries in the Central and Eastern Europe and Central Asia region,¹⁵⁵ ranking 125th on the Human Development Index.¹⁵⁶ Various economic shocks in the last decade, which led to high food and energy prices and lower external remittances, have contributed to significant social discontent and political instability, which is coupled with poor governance practices. The social and economic backlash affecting the most vulnerable contributed in part to the ethnic conflict that exploded in 2010 in the southern part of Kyrgyzstan, where large ethnic Kyrgyz and Uzbek communities live.¹⁵⁷ An estimated 300,000 people were internally displaced by the violence¹⁵⁸ and 400,000 children directly or indirectly affected by the conflict.¹⁵⁹

Kyrgyzstan has a population of 5,663,100 persons. Of this number, more than 2 million are children, of

whom approximately 78 per cent live in rural areas.¹⁶⁰ Kyrgyzstan ratified the Convention on the Rights of the Child in 1994.

5.2.4 Montenegro

Montenegro formally declared independence in 2006. During the 1990s, however, the violent dissolution of Yugoslavia caused a period of deep crisis characterized by a “dramatic economic downturn, high unemployment, poverty [and] high social inequalities”.¹⁶³ This affected all aspects of life, including parents’ ability to properly care for their children. Montenegro ranks 51st on the Human Development Index.¹⁶⁴

In 2011, the population of Montenegro was 620,029 persons, including 145,126 children (23.4 per cent of the population).¹⁶⁵ Montenegro ratified the Convention on the Rights of the Child in 2006.

> ALBANIA

Legal definition of a child:	Under 18
Legal age of marriage:	18
The Family Code (2003) sets the minimum legal age of marriage at 18, although the local court may allow marriage prior to this age if there are sufficient reasons and no lower age limit is set (art. 7).	
Age of legal capacity:¹⁴⁶	18 (full capacity) 14 (limited capacity)
<p>The Civil Code (1994) sets out the framework related to legal capacity:</p> <ul style="list-style-type: none"> • Full legal capacity is attained at the age of 18 (art. 6). • Girls who have not reached the age of 18 shall gain full legal capacity on marriage (art. 6). • A child who has reached 14 years of age may perform legal actions only with the prior consent of her/his legal representative (art. 7). • A child who has not reached 14 years of age has no legal capacity, except to perform legal transactions that are suitable to her/his age (art. 8). <p>The Family Code provides that unless otherwise provided for in law, a parent shall represent a child under the age of 14 in all legal actions. From the age of 14, a minor may perform all legal actions with the prior consent of her/his parents (art. 232). In cases involving guardianship, children over the age of 14 have the right to petition the court (art. 264). In addition, the Civil Procedure Code (1996) provides that children aged 16 and over may petition the court to establish their own custody (art. 352).</p>	
Age at which a child can file a criminal complaint with the police:	No age restriction

Age at which a child may give testimony in court:

**No age restriction for criminal matters
14 for civil matters**

The Criminal Procedure Code (1995) provides that anyone, except those who are unable to testify because of their mental or physical disability, has the capacity to give evidence and testify in court (art. 155). The questioning of a child as a witness may, however, be performed by the judge, assisted by a member of the child's family or by an expert on children's education, and the court must be satisfied that direct questioning of the child will not cause psychological harm (art. 361, para. 5).

The Civil Procedure Code provides that a child may not be questioned as a witness if under 14, unless testimony is necessary to resolve the case (art. 235).

Age at which a child must be heard in proceedings concerning her/him:

10, with exceptions

- The Law on the Protection of the Rights of the Child (2010) states that every child has the right to be heard in any judicial or administrative proceedings that concern her/him, either directly or through a legal representative, and with the obligatory presence of a psychologist in accordance with applicable law (art. 11).
- The Family Code provides that children have the right to be heard in all proceedings concerning them, and that they can only be denied this right if the court considers there to be serious reasons for it to be denied (art. 6). The child can be heard alone, through a lawyer or through another chosen person, but in any procedure the presence of a psychologist is mandatory for the child (art. 6).
- The Civil Procedure Code provides that a child's opinion must be sought in certain family procedures, like custody decisions and adoptions, after attaining the age of 10 years, or at the age of 14 in relation to citizenship cases (art. 356).

Age of criminal responsibility:

**14 for criminal offences
16 for misdemeanour offences**

The Criminal Code (1995) provides that children under the age of 14 may not be prosecuted for any offence (art. 12).

KEY LEGISLATION

Constitution The Albanian Constitution (1998) provides for the exercise of judicial power by the Supreme Court, courts of appeal and courts of first instance (art. 135). It also provides for numerous constitutional safeguards to ensure the independence of the judiciary and the right to a fair trial. The Constitution provides that children have the right to special protection from the State, protection from violence, ill treatment, exploitation and child labour, and that children born out of wedlock have equal rights to those born within marriage (art. 54). The right to education is also guaranteed.

Law on children's rights The Law on the Protection of the Rights of the Child (2010) creates legal obligations to apply the main articles of the Convention on the Rights of the Child to help ensure a coordinated child rights approach. The Law lays the groundwork for the establishment of institutional mechanisms that will guarantee and ensure respect for the rights of children by the individual, the family, the State and other third party entities. The Law provides for a coordinated approach by various child rights and child protection stakeholders.

Law relating to violence in the family The Law on Measures against Violence in Family Relations (2006) establishes a system of judicially imposed protection measures for victims of domestic violence, enhances services for victims and creates coordinated referral mechanisms.

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Family law The Family Code requires that parents, competent organs and courts primarily consider the best interests of the child (art. 2). It also provides for the right to grow up in a family environment of joy, love and understanding (art. 5).

Adoption law The Law on Adoption Procedures and the Albanian Adoption Committee (2007) aims to protect the child through permanent placement with an adoptive family (art. 1[a]) and to ensure that decisions are made in the best interest of the child (art. 2). In cases of adoption, the Family Code provides that children over the age of 10 may have their opinions considered and that the consent of the child is required if she/he is aged 12 or over (art. 246).

> GEORGIA

Legal definition of a child:¹⁴⁹ **Under 18**

Legal age of marriage: **18**

The Civil Code (1997) sets the minimum legal age of marriage at 18 (art. 1108 [1]). In exceptional cases, marriage is allowed from the age of 16 with the prior consent of the parents (art. 1108 [2]). If consent is refused, the marriage may be allowed by the court, provided that legitimate interests exist (art. 1108 [3]).

Age of legal capacity: **18 (full capacity)**
7 (limited capacity)

The Civil Code provides that:

- Full legal capacity is obtained at the age of 18 (art. 12 [2]).¹⁵⁰
- A child who has entered into marriage prior to reaching 18 years of age is deemed to gain legal capacity following the marriage (art. 12 [3]).
- Children under the age of seven are deemed to be without legal capacity (art. 12 [4]).
- Children between the ages of 7 and 18 have limited legal capacity (art. 14) and the consent of a legal representative (their parent, adoptive parent and/or legal guardian) is required to undertake certain declarations (art. 15) and transactions (art. 66).
- In cases of child abuse by a parent, children aged 14 and over may independently initiate civil proceedings (art. 1198). According to the Civil Procedure Code (1997), a representative is appointed to represent the child during such proceedings. If the child disagrees with the appointed representative, however, she/he has the right to represent her/himself personally (art. 81).

Age at which a child can file a criminal complaint with the police: **No age restriction**

Age at which a child may give testimony in court: **No age restriction**

The Criminal Procedure Code (2009) provides for the interviewing of juvenile witnesses in the presence of a legal representative (parent or guardian) or psychologist. For children under the age of 14, a parent or legal representative must give consent before the child may be interviewed during an investigation. These provisions will come into force in 2016 (art. 116).¹⁵¹ Until then, the provisions that apply are those of the previous Criminal Procedure Code (1998), which prescribes that juveniles are questioned in the presence of their parent/guardian or teacher. A child under seven must be questioned in the presence of a parent, or another legal representative where a parent is unavailable.

Age at which a child must be heard in proceedings concerning her/him:

7

The Civil Procedure Code stipulates that the court is obliged to engage a child aged between 7 and 18 in civil proceedings related to her/him, whereas children under 7 may be engaged only upon the motion of their legal representative (art. 81 [3][5]). The same rules apply to administrative court proceedings (Administrative Procedure Code [2004], art. 1[2]).

Age of criminal responsibility:**14 for criminal offences
16 for administrative offences¹⁵²**

Children aged 16 to 18 involved in the commission of administrative offences are liable according to the Administrative Offences Code (1984; art. 13).¹⁵³ Children under the age of 14 who exhibit antisocial behaviour may be referred to various social services.

KEY LEGISLATION

Constitution The Constitution of Georgia (1995) provides for the rights of children to be protected by law (art. 36[3]). It provides for an independent judiciary (ch. 5) and guarantees every individual's right to apply to a court for protection of her/his rights and freedoms (art. 42).

Law on children's rights There is no stand-alone, comprehensive legislation that provides for the rights of children; instead, provisions related to children are scattered among different subject-specific laws. The Civil Code sets out children's right to protection as well as the rights and responsibilities of parents in relation to their children (art. 1198). The Civil Code also governs issues related to custody and maintenance of a child; establishment of paternity; adoption; and restriction, suspension and withdrawal of parental rights (book 5, title 2).

Law relating to violence in the family The Law on Elimination of Domestic Violence, Protection of and Support to Its Victims (2006) defines different forms of violence within the family and aims to create legal mechanisms for the identification, elimination and prevention of domestic violence, with a special emphasis on the protection of child victims of such violence (arts. 14 and 15).

Family law The Civil Code governs issues related to custody and maintenance of a child; establishment of paternity; adoption; and restriction, suspension and withdrawal of parental rights, property and inheritance rights.

The Civil Procedure Code provides that decisions by a court in the course of proceedings related to custody, visitation, paternity and adoption may be appealed (art. 364). The right to appeal cannot be exercised directly by a child, however, due to children's perceived limited procedural capacity. A child's legal representative must file an appeal on her/his behalf.

Adoption law The Law on Adoption and Foster Care (2009) together with the Civil Code and Civil Procedure Code set a general legal framework for adoption.¹⁵⁴ Privacy is protected as a rule, as adoption cases are considered in closed court hearings. The court hearing may be open to the public if requested by the adoptive parent and the child to be adopted (if the child is aged 10 or over). According to the Law on Adoption and Foster Care, where the court finds an adoption complies with the interests of the child and serves her/his welfare, the duration for adoption cases is two weeks from receipt of application (art. 21). The Civil Code also provides that a child who is aged 10 or over must provide consent to being adopted (art. 1255).

> KYRGYZSTAN

Legal definition of a child:	Under 18
The Family Code (2003) and the Children's Code (2012) provide that all those under 18 years of age are children.	
Legal age of marriage:	18
The Family Code sets the minimum legal age of marriage at 18. Family and Child Support Departments and self-governing bodies can decide to reduce the legal age to marry by not more than one year if there is good reason to do so (art. 14). ¹⁶¹	
Age of legal capacity:	18 (full capacity) 14 (limited capacity)
The Civil Procedure Code (1999) provides that a legal guardian or adult must represent a child under 18, although a child may be a plaintiff in civil proceedings without the permission of her/his parents in these limited situations: when legally married or emancipated; or if provided for by law in certain civil, family, labour or administrative proceedings, or in proceedings related to disputes about the child's earnings (art. 37). The Civil Code (1996) also provides that capacity is attained at the age of 18 (art. 56), although children aged 14 to 17 may perform certain transactions without parental consent (art. 61).	
Age at which a child can file a criminal complaint with the police:	No age restriction
Age at which a child may give testimony in court:	No age restriction
Age at which a child must be heard in proceedings concerning her/him:	10
The Family Code provides that children must be heard in proceedings concerning them from the age of 10 (art. 57).	
Age of criminal responsibility:	14 for criminal offences 16 for administrative offences
Children aged 16 to 18 involved in the commission of administrative offences are liable to prosecution (Criminal Code [1997], art. 18 [1]). The Children's Code addresses services and measures for children under 14 suspected of committing an offence (art. 94).	

KEY LEGISLATION

Constitution The Constitution of the Kyrgyz Republic (2010) states that everyone "shall be guaranteed judicial protection of his/her rights and freedoms envisaged in the present Constitution, laws, and international treaties to which the Kyrgyz Republic is a party" (art. 40). It also provides that everyone has the right to qualified legal aid, which in specific cases must be provided at the expense of the State. The Constitution specifically establishes a right to remedy for all citizens, by setting out that individuals may approach state bodies, local governance bodies or international human rights bodies if their rights have been violated (art. 40).

Law on children's rights The Children's Code of 2012 replaces the previous Children's Code (2006). The new Children's Code provides for a number of protection mechanisms to prevent the separation of children from their families and their placement in institutions. The Children's Code establishes specialized bodies for juvenile justice (art. 88), introduces social rehabilitation of children in conflict with the law (arts. 90 and 97) and provides for protection measures for child victims and witnesses of crime (art. 98).

Law relating to violence in the family The Law on Social-Legal Protection from Domestic Violence (2003) recognizes domestic violence as a specific offence and provides for orders of protection in case of domestic violence.

The Criminal Code criminalizes bride kidnapping (arts. 154 and 155) and in December 2012 was amended to make the penalty for bride kidnapping more severe, increasing the minimum sentence of imprisonment from 3 years to 5 years and raising the maximum term from 7 years to 10 years.¹⁶²

Family law The Family Code sets out children's right to live in their family and their right to communicate with their parents and relatives, and addresses issues involving child custody, alimony, annulment and restriction of parental rights. The Family Code provides that children have the right to protection of their rights and legal interests and to protection from their parents or guardians when being mistreated (art. 56). It also establishes the right of children from 10 years of age to freely express their views in matters concerning them (art. 57).

Adoption law The procedure for adoption is regulated by the Children's Code (arts. 44 to 66) and by the Regulations on adoption of children by citizens of the Kyrgyz Republic and foreign citizens (2011). The Children's Code provides that adoption is to be conducted by the courts (art. 45) and requires a child aged 10 or over to provide consent to being adopted (art. 53). Adopted children aged 14 or over are able to apply to cancel an adoption (art. 63).

> MONTENEGRO

Legal definition of a child: **Under 18**

The Law on Social and Child Protection (2013) defines children as all those under 18 years of age (art. 19[6]).

Legal age of marriage: **18, with exceptions**

Under the Family Law (2007), the minimum legal age of marriage is 18. In exceptional cases, however, the court may grant permission for children aged 16 and over to marry (art. 24).

Age of legal capacity: **18 (full capacity)
16 (limited capacity)**

The Law on Civil Procedure (2004) provides that only persons with full legal capacity can undertake actions in court procedures alone (art. 77). Otherwise a legal representative, parent or guardian must undertake all actions on the child's behalf (art. 78). The Family Law stipulates that full legal capacity is acquired at the age of 18, but it may be acquired earlier by persons aged 16 and over who enter into marriage with a court's permission (art. 13). Furthermore, the Family Law provides for certain circumstances in which children can initiate actions for the enforcement of their rights or consent to certain events (arts. 61 to 68 and 353 to 355).

Age at which a child can file a criminal complaint with the police: **No age restriction**

Age at which a child may give testimony in court: **No age restriction**

The Law on Civil Procedure provides that a child can be heard as a witness if the court is satisfied, based on a report by the social welfare authority, that the child is capable of giving testimony (art. 231 [3]).

Age at which a child must be heard in proceedings concerning her/him: **10**

The Family Law recognizes the right of a child to be heard from the age of 10 in any court or administrative proceedings concerning the child's rights (art. 67).

Age of criminal responsibility:**14 for criminal offences and misdemeanours**

The Criminal Code (2004) provides that children under 14 cannot be held criminally responsible (art. 80).

KEY LEGISLATION

Constitution The Constitution (2007) provides guarantees for the protection of fundamental human rights and gives international conventions ratified by the State supremacy over national legislation where there is a conflict (art. 9). The Constitution prescribes that a child shall enjoy rights and freedoms appropriate to her/his age and maturity and shall be guaranteed special protection from psychological, physical, economic and any other exploitation or abuse (art. 74). It provides that children born out of wedlock have equal rights to those born within marriage (art. 72). The Constitution provides for the right of recourse, both to domestic courts (art. 57) and to international institutions (art. 56), the right to a fair and public trial (art. 32), and the presumption of innocence (art. 35).

Law on children's rights The Law on Social and Child Protection (2013) contains provisions for further reform of the child protection system, including: prevention of institutionalization, and access to services (art. 7[7]); prescription of measures to ensure high standards among child protection services, including fostering (arts. 65 to 68); restriction on institutional placement as a measure of last resort (art. 70); and transformation of residential institutions and the establishment of the Institute for Social Welfare (arts. 120 and 121).

Law relating to violence in the family The Law on Protection from Domestic Violence (2010) is Montenegro's first specialized law dealing with domestic violence. It provides for five types of protection measures for victims of domestic violence (art. 20) and requires that domestic violence proceedings are treated as urgent and that full and coordinated protection from all relevant authorities must be provided to victims (art. 10). Pursuant to this law, all Centres for Social Work have established multidisciplinary teams working on protection from domestic violence and violence against children (art. 17). A special protocol, with an annex setting out procedure and requisite institutional cooperation in regard to domestic violence, was adopted in 2011.¹⁶⁶ This protocol lists specific procedures for social workers, the police, prosecutors, judges and so on when working with child victims of violence. These include: interviewing young victims in the presence of persons they trust and in a child-friendly environment; developing comprehensive individual support plans; and sharing information among all institutions involved in a case.

Family law The Family Law requires all stakeholders to act in the best interests of the child in all child-related activities, and sets out that the State must respect and improve the rights of the child and undertake all necessary measures to protect the child from neglect, abuse and exploitation (art. 5).

Adoption law Adoption is governed by the Family Law, which provides that adoption can take place only if it is in the best interests of the child (art. 123). Centres for Social Work make adoption decisions in a procedure that is closed to the public (arts. 135 and 136). Adopting a child aged 10 or over requires the child's consent (art. 133). An adoptee may challenge a final decision on adoption in court proceedings (art. 155).



- 86 The World Bank Group Europe and Central Asia Region, 'First insights into promoting shared prosperity in South East Europe', South East Europe Regular Economic Report No.5, The World Bank, Washington, D.C., April 2014, p. 6; United Nations Development Programme, *Beyond Transition: Towards Inclusive Societies, Regional Human Development Report*, UNDP, Bratislava, 2011, p. 16; and United Nations Economic Commission for Europe and United Nations Development Programme, *From Transition to Transformation: Sustainable and Inclusive Development in Europe and Central Asia*, ECE/UNDP, New York/Geneva, 2012, p. 10.
- 87 For example, Albania, Montenegro, the former Yugoslav Republic of Macedonia, Serbia and Turkey are candidate countries, while Bosnia and Herzegovina and Kosovo (in the context of United Nations Security Council resolution 1244 [1999]) are potential candidates. See: European Commission, 'European Neighbourhood Policy and Enlargement Negotiations', EC, 24 November 2014, <http://ec.europa.eu/enlargement/countries/check-current-status/index_en.htm>.
- 88 United Nations Development Programme, *Beyond Transition: Towards Inclusive Societies, Regional Human Development Report*, UNDP, Bratislava, 2011, p. 53; and Council of Europe, *State of democracy, human rights and the rule of law in Europe, Report by the Secretary General of the Council of Europe*, COE, Strasbourg, May 2014, p. 7.
- 89 For example, each of the focal countries has seen an improvement in human development since 2005, according to data from the United Nations Development Programme Human Development Index. United Nations Development Programme, 'Table 2: Human Development Index trends, 1980–2013', UNDP, <<https://data.undp.org/dataset/Table-2-Human-Development-Index-trends-1980-2013/y8j2-3vi9>>.
- 90 United Nations Economic Commission for Europe and United Nations Development Programme, *From Transition to Transformation: Sustainable and Inclusive Development in Europe and Central Asia*, ECE/UNDP, New York/Geneva, 2012, p. 10.
- 91 United Nations, *The Millennium Development Goals Report 2014*, United Nations, New York, 2014, p. 13.
- 92 United Nations Development Programme, *Beyond Transition: Towards Inclusive Societies, Regional Human Development Report*, UNDP, Bratislava, 2011, p. 18.
- 93 United Nations Children's Fund, Ministry of Labour, Social Affairs and Equal Opportunities, Urban Research Institute and National Centre for Social Studies, *Reforming Economic Aid: from Survival to Investment in Poverty Reduction*, Shtëpia Botuese & Shtypshkronja, Tirana, 2012, p. 10.
- 94 United Nations Children's Fund, *Georgia and the Convention on the Rights of the Children: An update on the situation of children in Georgia*, UNICEF, Tbilisi, 2011, pp. 6, 12. Available at: <www.unicef.org/ceecis/Unicef_Sitan_ENG_WEB.pdf>.
- 95 National Statistical Committee of the Kyrgyz Republic, 'Living standards of the population in the Kyrgyz Republic for 2008-2012', National Statistical Committee, Bishkek, 2013.
- 96 United Nations Children's Fund, *Child Poverty in Montenegro, November 2011*, UNICEF Montenegro, Podgorica, 2012, p. 42. Available at: <www.unicef.org/montenegro/MNE_2012_child_powerty_study.pdf>.
- 97 United Nations Development Programme, *Beyond Transition: Towards Inclusive Societies, Regional Human Development Report*, UNDP, Bratislava, 2011. UNDP argues that the region continues to experience the following negative legacies: preference for a strong executive body,

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- rather than legislative body (p. 50); social welfare privileging elite groups (p. 58); and institutional corruption (p. 60).
- 98 The World Justice Project Rule of Law Index ranks countries based on how the rule of law is experienced in everyday life according to eight themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice. In 2014, the World Justice Project conducted more than 100,000 household and 2,400 expert surveys to determine the rankings. The World Justice Project, 'Rule of Law Index 2014', WJP, Washington, D.C., 2014, p. 1.
- 99 Ibid.
- 100 Albania moved from a score of 0.47 to 0.49 between 2010 and 2014; Georgia has seen a slight drop from 0.63 to 0.60 between 2012 and 2014; and Kyrgyzstan has remained constant on 0.45. Scores are between 0 and 1, with 1 the highest.
- 101 Transparency International, 'Corruption Perceptions Index 2014: Results', Transparency International, 2014, <www.transparency.org/cpi2014/results>.
- 102 Eurasia Foundation and Caucasus Research Resource Centers, 'Equal before the law? A study of how citizens experience access to justice in Kazakhstan, Kyrgyzstan and Tajikistan', Ministry for Foreign Affairs of Finland, March 2011, p. 12.
- 103 The World Justice Project, 'Rule of Law Index 2014', WJP, Washington, D.C., 2014, p. 37.
- 104 Council of Europe, *State of democracy, human rights and the rule of law in Europe, Report by the Secretary General of the Council of Europe*, COE, Strasbourg, May 2014, p. 23.
- 105 Ibid., p. 8; United Nations Development Programme Regional Centre for Europe and the CIS, *Accessing Justice: Legal Aid in Central Asia and the South Caucasus*, UNDP, Bratislava, 2013; and United Nations Development Programme Regional Centre for Europe and the CIS, *Strengthening Judicial Integrity through Enhanced Access to Justice*, UNDP, Bratislava, 2013.
- 106 European Commission for the Efficiency of Justice, 'European judicial systems, Efficiency and quality of justice', CEPEJ Studies No. 20, CEPEJ, 2014, pp. 46–50.
- 107 See: United Nations Children's Fund, 'High-Level Regional Conference on Justice for Children, Brussels 27–28 June 2013', Conference report, UNICEF, 2014, p. 1.
- 108 Report of the Secretary-General, Legal empowerment of the poor and eradication of poverty, A/64/133, United Nations, New York, 13 July 2009, para. 4.
- 109 United Nations Children's Fund, 'Promoting equitable access to justice for all children', Insights: Child Rights in Central and Eastern Europe and Central Asia Issue 1/2014, UNICEF, 2014, p. 5.
- 110 United Nations Development Programme, 'Marginalised Minorities in Development Programming, A UNDP Resource Guide and Toolkit, 12.5 Minorities in Central and Eastern Europe (CEE) and the Commonwealth of Independent States (CIS)', UNDP, <www.unssc.org/web2/free_resources/MarginalisedMinorities/chapter12/12-5.html>.
- 111 United Nations Children's Fund, 'Promoting equitable access to justice for all children', Insights: Child Rights in Central and Eastern Europe and Central Asia Issue 1/2014, UNICEF, 2014, p. 5.
- 112 United Nations Children's Fund, 'High-Level Regional Conference on Justice for Children, Brussels 27–28 June 2013', Conference report, UNICEF, 2014, pp. 8, 11.
- 113 See, for example: Manjoo, Rashida, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, Mission to Kyrgyzstan, A/HRC/14/22/Add.2, United Nations, New York, May 2010, paras. 32, 47; United Nations, Concluding observations of the Committee on the Elimination of Discrimination against Women, Albania, CEDAW/C/ALB/CO/3, New York, 16 September 2010, paras. 24, 30; and The Public Defender of Georgia, 'Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2012', The Public Defender of Georgia, 2013, p. 394, available at: <www.ombudsman.ge/uploads/other/1/1350.pdf>.
- 114 United Nations Population Fund, 'Kyrgyz Republic: Child Marriage', Factsheet, UNFPA, October 2012, p. 5.
- 115 United Nations Development Programme, 'Domestic Violence: Albania and EU countries', Survey data, UNDP, 17 April 2014. Available at: <www.al.undp.org/content/albania/en/home/library/poverty/domestic-violence-albania-and-eu-countries/>.
- 116 CEED Consulting and SOS Hotline, *Study on Family Violence and Violence Against Women in Montenegro*, United Nations Development Programme/European Union/Government of Montenegro, 2012, p. 5.
- 117 Chitashvili, Marine, et al., *National Research on Domestic Violence Against Women in Georgia*, United Nations Population Fund/Government of Norway, Tbilisi, 2010, p. 41.
- 118 United Nations Children's Fund, *A Statistical Snapshot of Violence Against Children in Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS)*, UNICEF, New York, 2014, which is based on data from United Nations Children's Fund, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, New York, 2014.
- 119 United Nations Development Programme, 'Marginalised Minorities in Development Programming, A UNDP Resource Guide and Toolkit, 12.5 Minorities in Central and Eastern Europe (CEE) and the Commonwealth of Independent States (CIS)', UNDP, <www.unssc.org/web2/free_resources/MarginalisedMinorities/chapter12/12-5.html>.
- 120 European Commission, 'Albania Progress Report', October 2014, p. 50.
- 121 European Commission, 'Montenegro Progress Report', October 2014, p. 11.
- 122 See: Council of Europe 'Estimates on Roma population in European countries', from July 2012, available to download from Council of Europe, 'Making Human Rights for Roma a reality', COE, Strasbourg, <www.coe.int/en/web/portal/roma>.
- 123 United Nations Children's Fund, *UNICEF Annual Report 2012 for Albania, CEE/CIS*, p. 2. Available at: <www.unicef.org/about/annualreport/files/Albania_COAR_2012.pdf>.
- 124 All references to Kosovo in this report should be understood to be in the context of United Nations Security Council resolution 1244 (1999). On the estimated figure of 20,000 persons in Montenegro, see: Council of Europe 'Estimates on Roma population in European countries', from July 2012, available to download from Council of Europe, 'Making Human Rights for Roma a reality', COE, Strasbourg, <www.coe.int/en/web/portal/roma>.
- 125 Open Society Institute, 'Equal Access to Quality Education for Roma', Monitoring Reports, Volumes 1 and 2, Open Society Institute, Budapest/New York, 2007, p. 300.
- 126 Government of Montenegro Ministry for Human and Minority Rights, Strategy For Improving the Position of Roma and Egyptians in Montenegro, 2012–2016, p. 13.
- 127 Eurasia Foundation and Caucasus Research Resource Centers, 'Equal before the law? A study of how citizens experience access to justice in Kazakhstan, Kyrgyzstan and Tajikistan', Ministry for Foreign Affairs of Finland, March 2011, p. 13.
- 128 Saferworld, '“Nobody has ever asked about young people's opinions”: Young people's perspectives on identity, exclusion and the prospects for a peaceful future in Central Asia', 2012, p. i. Available at: <www.saferworld.org.uk/resources/view-resource/640>.
- 129 Ibid., p. ii.
- 130 Ibid., p. 5.
- 131 Countries acceding to the EU must satisfy criteria relating to democracy, the rule of law, human rights, protection of minorities and access to justice, among others. EU accession criteria were defined mainly at the European Council in Copenhagen in 1993 and are referred to as the 'Copenhagen criteria'. See: Europa, 'Glossary, Accession criteria (Copenhagen criteria)', European Union, <http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhagen_en.htm>.
- 132 For up-to-date information on the negotiation process, see Delegation of the European Union to Montenegro, 'The European Union in Montenegro', European Union, <www.delme.ec.europa.eu/code/navigate.php?id=56>.

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- 133 See: European Union External Action, 'EU and Georgia adopt Association Agenda', Press release, European Union External Action, Brussels, 26 June 2014. Available at: <http://eeas.europa.eu/statements/docs/2014/140626_05_en.pdf>.
- 134 See: Rule of Law Platform – Central Asia, 'Kyrgyz Republic', Rule of Law Platform, 2013, <<http://ruleoflaw.eu/partners/kyrgyz-republic/>>.
- 135 Council of the European Union, 'Thirteenth meeting of the Cooperation Council between the European Union and the Kyrgyz Republic – EU announces further support for development', Press release, Brussels, 18 November 2014.
- 136 European Commission, 'Albania Progress Report', October 2014, p. 43.
- 137 *Ibid.*, p. 47.
- 138 European Commission, 'Albania 2012 Progress Report', October 2012, pp. 17–18.
- 139 European Commission, 'Montenegro Progress Report', October 2014, p. 39.
- 140 European Commission, 'Montenegro 2013 Progress Report', 16 October 2013, p. 37–38.
- 141 Note: While there is some information available in the four focal countries on specific violations of children's rights, there is substantially less information on children's interaction with the justice system. Available data suffer from serious gaps such as lack of disaggregation. To help begin to fill these gaps in the 28 EU member States, the European Commission has undertaken a study to collect data on children's involvement in judicial proceedings in the EU. See: European Commission, 'Data on Children in Judicial Proceedings in EU28', European Commission, 13 December 2013, <www.childreninjudicialproceedings.eu>.
- 142 United Nations Development Programme, *Advancing Development through Sub-national MDG Reports: a case study of Albania*, UNDP, 2005.
- 143 United Nations Development Programme, *Human Development Report 2014, Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, UNDP, New York, 2014, p. 159.
- 144 Albanian Institute of Statistics (INSTAT), 'Population and Housing Census 2011', INSTAT, Tirana, 2012, p. 7. Available at: <www.instat.gov.al/media/177354/main_results__population_and_housing_census_2011.pdf>.
- 145 According to the 2011 census, Albania's child population is 847,312 children and approximately half of this total live in rural areas. Albanian Institute of Statistics, *Living Standards Measurement Survey, Albania 2012*, INSTAT, 2014.
- 146 'Legal capacity' refers to the ability of an individual to take legal actions independently. See section 6.3.3 of this report for a more detailed discussion of the provisions in each focal country.
- 147 United Nations Development Programme, *Human Development Report 2014, Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, UNDP, 2014, p. 159.
- 148 National Statistics Office of Georgia (GEOSTAT), 'Population', GEOSTAT, 2015, <www.geostat.ge/index.php?action=page&p_id=473&lang=eng>. Note: GEOSTAT does not disaggregate data for those under 18, but the number of children between 0 and 14 years of age in 2014 is recorded as 769,400.
- 149 Georgian legislation does not contain a legal definition of a child. Georgia has ratified the Convention on the Rights of the Child, however, and international treaties become part of Georgian law upon ratification. Furthermore, in Georgia, the Civil Code (1997) provides that majority is attained at the age of 18, and several subject-specific laws (for instance, the Law on Adoption and Foster Care or the Law on Social Assistance) reflect that children are persons under 18.
- 150 The Civil Procedure Code of Georgia (2009) is separate to the Civil Code (1997) and establishes procedures related to handling civil cases in courts. Article 81 stipulates that age 18 is the age at which a person may apply to court and initiate court proceedings.
- 151 Article 332 of the Criminal Procedure Code of Georgia (2009) provides that until 31 December 2015, interrogation during investigation shall be conducted in accordance with the rules envisaged by the repealed Criminal Procedure Code of Georgia (1998).
- 152 Administrative offences are also known in different legal systems as regulatory offences or misdemeanours, and represent less serious violations of public law and order as compared to criminal offences.
- 153 The Administrative Offences Code (1984) has undergone extensive changes in recent years, yet still raises concerns around its compatibility with international standards in regard to the protection of rights related to due process and fair trial. At the time of writing, the Ministry of Justice of Georgia is developing a reformed Draft Code on Administrative Offences.
- 154 Chapter XLII of the Civil Procedure Code of Georgia (2009) deals with court procedures related to adoption. Book 5 (title 2, chapter 6) of the Civil Code (1997) deals with adoption.
- 155 It is estimated that 90 per cent of children in Kyrgyzstan live in households where daily consumption is below US\$2.50 – the highest percentage in the region. United Nations Development Programme, *Beyond Transition: Towards Inclusive Societies, Regional Human Development Report*, UNDP, Bratislava, 2011, p. 18.
- 156 United Nations Development Programme, *Human Development Report 2014, Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, UNDP, 2014, p. 159.
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Chapter 6: Research findings: A cross-country overview

The sections below present research findings related to access to justice for children in the four countries of focus.

The discussion is structured around four central questions:

- Why do children become involved in justice systems or processes?
- Where do children go to seek justice?
- What are the main obstacles that children face in seeking justice?
- Are existing justice mechanisms and processes effective and child-sensitive?

The findings are based on primary field research involving 120 interviews with justice sector professionals as well as 80 interviews and 22 separate focus group discussions involving a combined total of 207 children and family members (175 children, 32 family members) from identified vulnerable groups.¹⁶⁷ These interviews were structured to capture experiences and opinions regarding children's access to justice, with an emphasis on procedure, remedies, obstacles and available support. The diverse and sometimes conflicting views expressed by the different respondents provide important insights in regard to how justice can be strengthened for children.

Overall, the findings demonstrate that the lack of empowerment of children in justice processes is influenced by a number of key factors, including poor knowledge of the law, legal procedure and judicial and non-judicial complaint mechanisms. The host of economic, social and cultural practices that perpetuate inequality in the community and in societies at large,

making it unacceptable for children to bring about a complaint against a family or community member, must also be taken into account together with existing gaps in legal and administrative structures and the lack of resources. Such practices, gaps and deficiencies are often exacerbated by the failure to listen to children's justice needs and to fully recognize the social, cultural and economic context in which children live.

6.1 Why do children become involved in justice systems or processes?

Justice sector professionals were asked to reflect on children's justice needs and to specifically consider situations beyond those concerning children in conflict with the law. In the absence of official statistics,¹⁶⁸ justice sector professionals were asked to identify the most common instances in which children become involved with the justice system, based on their professional experience and opinion. The findings reveal that children's interactions with the justice system are both 'system-driven' and 'needs-driven'. Children – especially those from vulnerable backgrounds – have a wide range of justice needs related to protection, development and the realization of basic rights. A significant majority of justice sector professionals assessed that children have justice needs that current systems and processes fail to adequately address. While justice sector professionals identified a range of justice needs, it is clear from documented rights violations that children's need and demand for justice exceeds that which is afforded them.

Analysed below are the answers of justice sector professionals to the question 'Why do children become involved in justice systems or processes?'. While many professionals identified juvenile offending as a reason for children's involvement in the justice sector, such findings will not be discussed further since juvenile justice proceedings fall outside the focus of this research.

6.1.1 Child victims or witnesses of crime

Being a victim of crime, particularly violent crime, can have life-changing consequences for children. The United Nations Human Rights Council has emphasized “the importance of accountability for violations and abuses of the rights of the child, including those committed within the family, at school, and other institutions ... and the need to bring perpetrators to justice.”¹⁶⁹

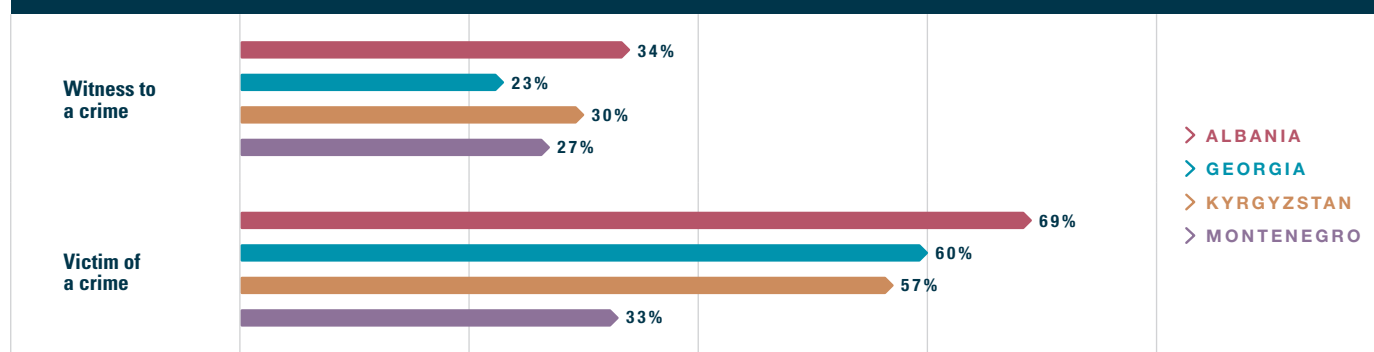
Recent research gives a sense of the scope of violence experienced by children in the Central and Eastern Europe and Central Asia region. On average, 6 in 10 children in the region experience some sort of violent discipline in the home, and the proportion of children affected by focal country is: Albania 77 per cent, Georgia 67 per cent, Kyrgyzstan 54 per cent and Montenegro 63 per cent.¹⁷⁰ Other research indicates that offences against children often go unreported, particularly in cases of physical violence in the home where social norms exert a significant effect on levels of reporting.¹⁷¹ The 2008 UNICEF *National Study on Violence against Children in Georgia* revealed that 54 per cent of children had reported experiencing physical violence in their home within the last year and more than 20 per cent of caretakers reported *repeatedly* beating a child in their care.¹⁷² The study also noted that 37 per cent of girls and 58 per cent of boys reported experiencing physical violence at school.¹⁷³ In a 2013 epidemiological survey of child abuse and neglect in Albania, which involved 4,500 children aged 11, 13 and 16, feelings of neglect were reported by 26 per cent of the children during the past year, while sexual harassment was experienced by approximately

11 per cent of children surveyed.¹⁷⁴ The 2014 UNICEF study *Hidden in Plain Sight* also found that, globally, more than half of girl victims of physical or sexual violence never tell anyone about their experience of abuse nor seek help to end the violence. In Kyrgyzstan, this figure is 84 per cent. Indeed, during this research process, most children expressed that they would not approach adults outside of their family for assistance in relation to a perceived violation of their rights.

The array of official statistics provided during this research only partially reflects the levels of victimization among children in the region. The Ministry of Internal Affairs of the Kyrgyz Republic indicated that 961 crimes against children, including 9 homicides, 10 kidnappings and 125 sexual crimes, were registered from January to November 2013. Furthermore, statistics provided by the Ministry of Social Development indicated that 104 cases of children suffering from domestic violence were also registered in the country in 2013. The Prosecutor’s Office in Albania indicated that 175 boy and 176 girl victims took part in criminal proceedings in 2011. Georgia’s Prosecutor’s Office registered 534 child victims in criminal proceedings in 2013 and 517 children in 2012. Battery and sexual assault rank among the most common offences.¹⁷⁵ In Montenegro, social welfare authorities reported 345 children as victims of neglect and violence in 2012.¹⁷⁶

Indeed, the justice sector professionals’ responses in the present research overwhelmingly identified being a victim of crime as a key entry point for children’s involvement in the justice system. More specifically, this was mentioned by the majority of

GRAPH 1. Opinions of justice sector professionals on the primary reasons children become involved in justice systems or processes: Child victims or witnesses of crime

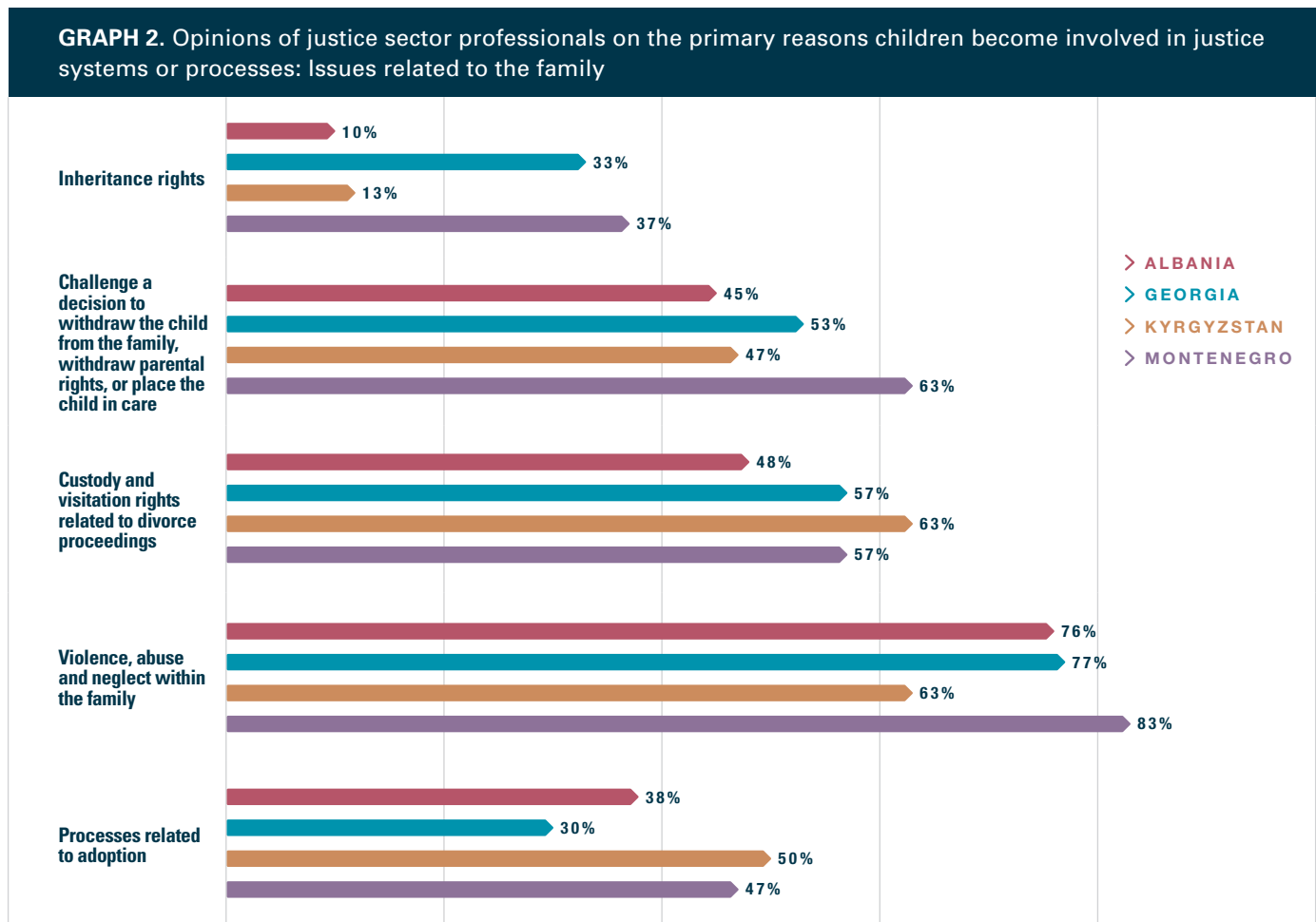


justice sector professionals interviewed in Albania, Georgia and Kyrgyzstan, and by one third of professionals interviewed in Montenegro. Across all four countries, far fewer justice sector professionals identified being a ‘witness’ to a crime as a reason for children to become involved in justice processes, with only one quarter to one third of professionals identifying this as a reason. As witnesses, children may be obliged by law to give evidence and to participate in criminal proceedings. Such participation can take various forms: Children can be drawn into the justice process as complainants; as sources of physical evidence; and as parties to the proceedings, providing testimony and/or expressing views. As discussed below, *Children’s Equitable Access to Justice* highlights that justice processes in the four countries of focus are often not equipped with the safeguards needed to minimize the impact of proceedings on children and to reduce the potential for re-victimization.

6.1.2 Issues related to the family

Justice sector professionals were also questioned about the ways in which children become involved in the civil justice system related to issues within the family. The majority of justice sector professionals in all four countries mentioned violence, abuse and neglect within the family as one of the primary reasons children become involved in justice processes. The proportions of children affected are significantly higher than those associated with ‘child victims or witnesses of crime’ (see previous section) and are substantiated by documented problems of violence against children within the region.¹⁷⁷ This gives a preliminary indication that, while children may experience violence and neglect within the family in large numbers, justice systems are not necessarily holding perpetrators accountable.

That other family-related issues such as custody and visitation were identified as significant issues



by approximately half of the respondents in all four countries is reflective of increasing divorce trends.¹⁷⁸ Justice sector professionals mentioned with similar frequency adoption and the removal of children from the family. Inheritance was viewed in all four countries as less of a primary reason for children to become involved in the justice system.

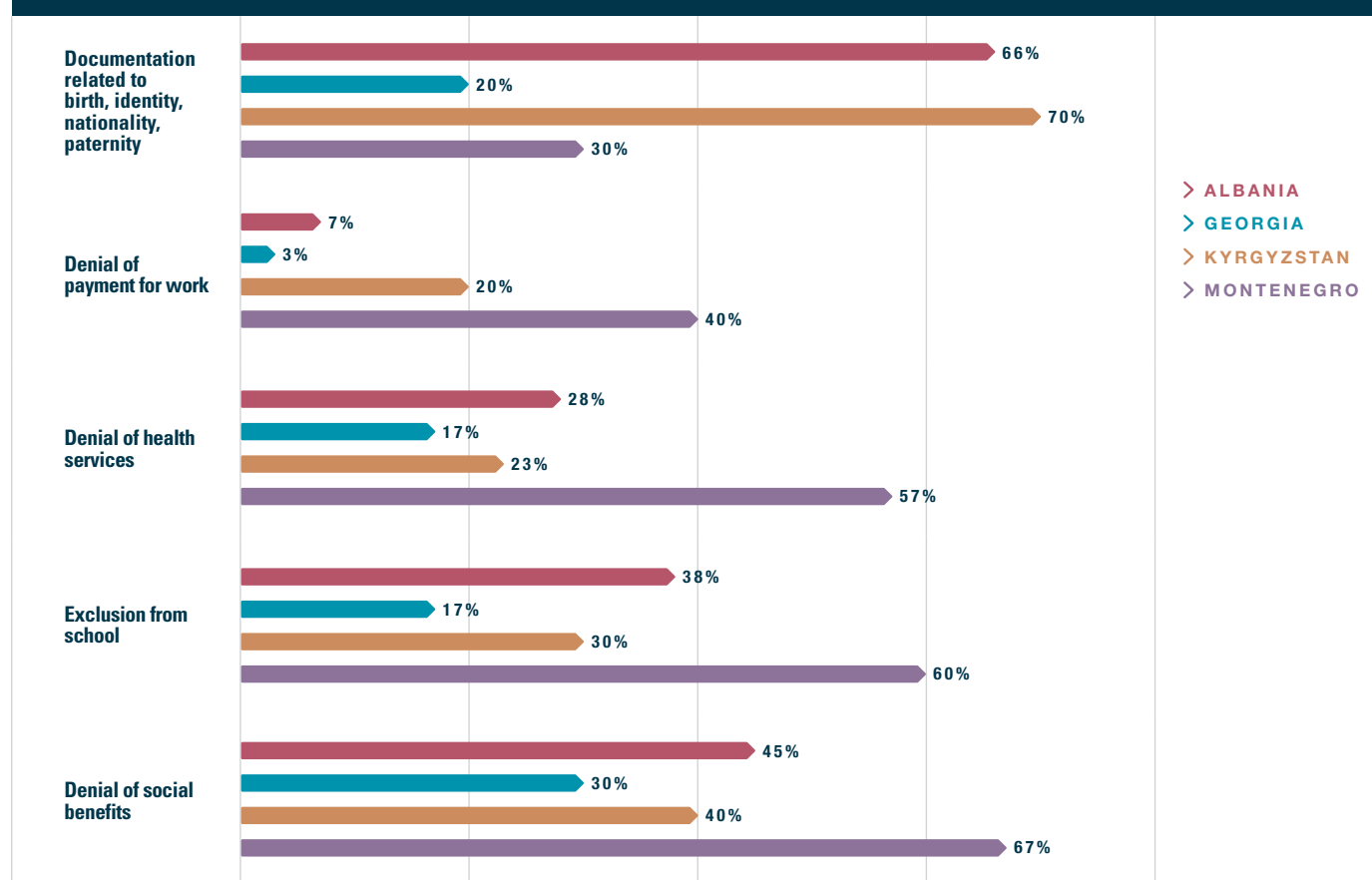
6.1.3 Denial and violations of rights and social benefits

Justice sector professionals were asked about the extent to which children come into contact with the justice system because of a denial of access to rights. The professionals interviewed identified issues related to lack of legal documentation (birth, paternity, nationality and identity documents) as a primary reason for involvement in the justice system in Albania and Kyrgyzstan,¹⁷⁹ while this was much less the case in Montenegro and Georgia. In Montenegro,

the lower percentage of responses may be more nuanced: While reports indicate an increasing number of child migrants,¹⁸⁰ the issue of legal identity and nationality seems to predominately affect children in minority communities who had migrated due to conflict and were unregistered at birth or lacked proof of registration.¹⁸¹ In both Montenegro and Albania, justice sector professionals highlighted that Roma children are particularly affected by a lack of identity papers. In Kyrgyzstan, the inability of child migrants to register and gain the required residence documents was identified as having a serious impact on their ability to access social, medical and legal services as well as education.¹⁸²

With respect to other rights violations, denial of social rights and benefits featured prominently in the responses of justice sector professionals across all four countries. Denial of health services and exclusion from school were also identified as rights violations

GRAPH 3. Opinions of justice sector professionals on the primary reasons children become involved in justice systems or processes: Violations of rights



that lead children to access justice systems. Denial of payment for work was less commonly identified as such. Overall, these results reinforce the link between the denial of rights and poverty, stressing that poverty and discrimination are intersecting vulnerabilities that hinder the realization of children's rights, including to education, health care, social benefits and full participation in society.

6.2 Where do children go to seek justice?

This section reviews the justice infrastructure available to children in the countries of focus. Research shows that there is a variety of forums and mechanisms that spans judicial and non-judicial remedies as well as formal and informal justice mechanisms. *Children's Equitable Access to Justice* has identified a general lack of awareness among children and their advocates of the range of justice mechanisms available to them as one of the barriers children face when seeking justice. The following provides a brief overview of the relevant formal and informal mechanisms available in each focal country.

6.2.1 Judicial forums

Albania has 36 courts of first instance for civil and criminal proceedings (referred to as district courts), 6 courts of appeal, 6 administrative courts, the Court for Serious Crimes (first instance), the Appellate Court for Serious Crimes, the Administrative Court of Appeal and the High Court. There are approximately 380 judges across all levels.¹⁸³ The prosecutorial service is an independent body under the direction of the General Prosecutor, with prosecutor's offices following the same territorial and subject matter jurisdictions as the courts. In total, there are approximately 330 prosecutors.¹⁸⁴ District courts have family law divisions, which hear cases involving marriage, divorce, custody and adoption¹⁸⁵ as well as issue protection orders for child victims of domestic violence. There are six specialized children's sections in district courts throughout the country for juvenile offenders and cases involving child victims/witnesses.¹⁸⁶ (A juvenile accused of serious crimes appears before the Court for Serious Crimes.) Specialized prosecutors bring cases to these specialized children's sections. The bailiff service includes public and private enforcement mechanisms. The Albanian Constitutional Court

oversees respect for the Constitution of Albania by all public authorities, and individuals may petition the Constitutional Court based on an alleged violation of their rights after exhausting all other remedies.

Georgia has 24 courts of first instance (referred to as district courts), with jurisdiction over criminal, civil and administrative matters, plus 2 appeals courts and the Supreme Court. There are approximately 250 judges across all levels.¹⁸⁷ The prosecutorial service is organized under the Ministry of Justice and comprises approximately 430 prosecutors across 37 prosecutor's offices. The district courts have criminal, civil and administrative divisions. Following a decision by the chairman of the Tbilisi City Court, family matters are assigned to a particular judge.¹⁸⁸ The Supreme Court of Georgia is a court of cassation of the highest and final instance. The National Bureau of Enforcement, under the Ministry of Justice, is responsible for the enforcement of civil decisions. The Constitutional Court of Georgia oversees respect for the Constitution of Georgia and may consider allegations of constitutional violations made by individual citizens.

Kyrgyzstan has 57 district courts of first instance (referred to as *rayon* courts) and 8 courts of second instance (referred to as oblast courts) and the Supreme Court, which has a Constitutional Chamber. In total, there are approximately 400 judges, excluding the judges in 8 economic/commercial courts. There are no formal divisions within the first instance courts, although judges tend to work on either civil or criminal cases; the second instance courts have criminal, civil and administrative/economic divisions.¹⁸⁹ Prosecutor's offices have the same divisions, and there are 57 district prosecutor's offices and 8 regional prosecutor's offices as well as the General Prosecutor's Office.

Montenegro has 15 basic courts for criminal, civil and enforcement proceedings. There are approximately 260 judges at all levels.¹⁹⁰ Two high courts try serious criminal cases and have the ability to impose sanctions of more than 10 years' imprisonment, and also serve as appellate courts. The Appellate Court hears appeals for cases originating in the high courts and commercial courts. The Administrative Court is concerned with judicial review of final administrative decisions. The Supreme Court, the highest court

within Montenegro's regular court system, has the role of ensuring the uniform implementation of laws and hears extraordinary legal remedies. The Constitutional Court of Montenegro rules on the compatibility of laws, regulations and other legislation with the Constitution of Montenegro, and it ensures protection for human rights violations where all other legal remedies have been exhausted. Minor offence proceedings are conducted within specialized minor offence administrative bodies.¹⁹¹ The prosecutorial service has 13 basic prosecutor's offices and 2 higher prosecutor's offices. Specialized professional support services, managed by the higher courts and the Supreme State Prosecutor's Office, were recently established to provide courts and prosecutor's offices with support, guidance and supervision for cases involving juvenile offenders and child victims and witnesses.

What emerges from this review of the judicial institutions in these four countries is the very broad range of professionals charged with processing cases involving children, which includes: judges specialized in juvenile offending, family law judges, misdemeanour judges, administrative law judges, appellate judges in criminal and civil matters, enforcement officers, witness support providers and psychologists, court experts, prosecutors, and judicial and prosecutorial legal assistants. The sheer variety of justice sector professionals who require specialization and understanding of justice for children presents a formidable challenge in all four focal countries.

6.2.2 Administrative bodies

Children's Equitable Access to Justice shows that public administrative bodies often play a key role in making decisions related to children's welfare in the four focal countries. Administrative bodies serve as a primary interface between the state and the individual in accessing and enforcing important rights¹⁹², and often they make important decisions related to adoption, removal from the home environment, the granting of social benefits and the issue of civil registration documents. While administrative bodies are not required to ensure all of the due process and procedural guarantees typical of judicial settings, article 12 of the Convention on the Rights of the Child unequivocally requires that children be heard in administrative proceedings that affect them.

International standards require access to judicial review of administrative decisions where an important right is in question.¹⁹³

For example, Albania's State Social Service is a public institution responsible for the implementation of policies concerning social assistance and social care services. State-established Evaluation Commissions within the State Social Service have the competence to place children in residential centres at the community, municipality or district level.¹⁹⁴ Procedurally, there is no specific requirement to take a child's opinion into consideration, however. Meanwhile, the Albanian Adoption Committee has overall supervision over adoption cases, although adoption matters are ultimately approved in judicial forums.¹⁹⁵ Procedurally, the Adoption Committee is required to take the child's opinion into account and to regularly monitor child care institutions to obtain information on children eligible for adoption.¹⁹⁶

In Georgia, the Social Service Agency – an administrative body – is mandated to protect children's rights and represent their interests in proceedings concerning children and their families. The Agency holds considerable power with respect to children. It carries out functions related to adoption and foster care through territorial units and regional boards, and is in charge of making decisions related to the placement of children in alternative care. The Agency is also involved in the implementation and enforcement of judgements related to custody and visitation rights. In addition, Georgia's administrative structure also features an 'expert group' mandated to receive and review referrals concerning cases involving children under the minimum age of criminal responsibility and children with antisocial behaviour. The expert group assesses children and makes decisions about appropriate referral options, including to community-based services, which may be educational, rehabilitative or recreational in nature. Procedurally, the expert group is not required to seek children's opinions during the review procedure. Although a decision of the expert group may be appealed before a court, children do not have independent legal standing in appeal procedures, do not receive legal assistance for this purpose and cannot independently appeal in cases where a parent/legal guardian agrees with the expert group's decision.



A similar situation is found in Kyrgyzstan, where the Commission on Children's Affairs¹⁹⁷ is mandated with reviewing and approving individual plans for child protection prepared by the Ministry of Social Development.¹⁹⁸ Under the Children's Code, the Commission may place children in care for periods

of up to six months while the courts oversee referrals for longer-term placements or to closed institutions. The Commission may recommend the granting of social allowances and financial assistance. The Children's Code stipulates that if a child has reached the age of 10, her/his views must be taken



into account in any proceedings affecting her/him.¹⁹⁹ It is also mandatory for the parents or guardians to participate in proceedings.

Child protection services

State-run child protection services play an essential role in children's access to justice. Staff exercise significant professional discretion and are generally mandated to respond to complaints, investigate abuse or difficult family situations, gather evidence, and provide evidence or prepare reports that inform decisions made in judicial or administrative forums. In some instances, where there is a conflict of interest between a child and her/his parents or guardians, protection agencies will appoint a legal representative for the child.

➤ **Albania:** At the national level, the National Council for the Protection of Children's Rights and the State Agency for the Protection of Children's Rights play important monitoring, coordination, policy and decision-making roles related to child protection. At the regional level, Child Rights Units monitor and evaluate the implementation of laws and policies related to the protection of the rights of the child; identify and coordinate referrals of abuse and violation of the rights of the child; coordinate multidisciplinary teams to undertake the identification, assessment and referral of cases of domestic violence; and collaborate and exchange information with other relevant stakeholders. At the municipal and community levels, 189 Child Protection Units offer psychological, social and legal assistance to children, including victims of crime. While not decision-making bodies, these units are tasked with monitoring at-risk families, coordinating and managing individual cases, cooperating with other community stakeholders towards child protection, raising community awareness of child protection, serving as information centres for families and children, and providing data and information to the State Agency for the Protection of Children's Rights.²⁰⁰

➤ **Georgia:** Child protection referral procedures have been introduced through

joint order of three ministries (the Ministry of Internal Affairs, the Ministry of Education and Science, and the Ministry of Labor, Health and Social Affairs). These procedures regulate the identification, mandatory reporting, assessment and intervention processes and mechanisms for child abuse cases, not only in domestic settings but also in schools and other institutions. All three ministries are jointly responsible for the implementation of preventive and rehabilitation measures.

> **Kyrgyzstan:** The Ministry of Social Development and its 57 district/city social development departments are the official child protection bodies. The district departments prepare individual plans containing analysis of a child’s situation and concrete measures to be implemented for the protection of the child. The individual plan is endorsed by one of 57 district Commissions on Children’s Affairs.

> **Montenegro:** The 11 Centres for Social Work provide direct care and practical assistance to children in need as well as professional assistance (psychosocial, legal, and financial, by means of family and child allowance social transfers). Additionally, in cooperation with UNICEF and UNDP, 10 multidisciplinary teams operate at the community level for protection from domestic violence and the protection of children from violence, abuse and neglect. The multidisciplinary teams, which are a formal part of the child protection system, consist of professionals from the judiciary as well as from social welfare, health care, law enforcement and the education and non-governmental sectors.

6.2.3 Ombudspersons/national human rights institutions

Ombudspersons are official bodies set up to receive individual grievances, usually against public officials, government agencies or bodies, including for violations of human rights. While ombudspersons

often do not have a mandate to issue decisions, they can make recommendations and facilitate the resolution of disputes in the case of violations of children’s rights.

The Committee on the Rights of the Child has strongly endorsed the establishment of children’s ombudspersons, children’s commissioners or similar bodies,²⁰¹ and research shows that such institutions play an important role in facilitating children’s access to justice. In many cases, as highlighted below, children are able to approach these institutions directly, their working methods are less formal and no fees are charged. Ombudsperson institutions are generally perceived as less intimidating and more accessible to children. Each of the four focal countries has such an institution, as below.

> Albania	People’s Advocate; Commissioner for the Protection from Discrimination
> Georgia	Public Defender
> Kyrgyzstan	Ombudsperson (Akyikatchy)
> Montenegro	Protector of Human Rights and Freedoms

In all four countries, ombudsperson institutions can receive and investigate complaints made by or on behalf of children. In Albania, Georgia and Montenegro, these institutions can recommend that prosecutors initiate a criminal investigation where a documented human rights violation constitutes a criminal offence.

In Albania, the constitutionally established People’s Advocate requires no specific rules or formalities to bring a complaint,²⁰³ and public officials or agencies, which receive recommendations from the People’s Advocate, are legally obliged to reply.²⁰⁴ The Committee on the Rights of the Child has urged the Albanian Government to allocate adequate human, financial and technical resources to ensure the efficient

operation of the ombudsperson institution, and to “conduct awareness raising programmes, particularly for children, including children living in remote areas on the possibility of submitting complaints to the Children’s Department.”²⁰⁵ A children’s rights subsection of the People’s Advocate has been operating since 2006 in one regional office. Its mandate is to “serve as an advocate, catalyzer and monitoring body for children rights, under the Children Rights Convention [sic] in Albania.”²⁰⁶ Upon the adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a national preventive mechanism was established within the People’s Advocate to monitor all institutions where children and adults are deprived of liberty.

Albania also has a Commissioner for the Protection from Discrimination, an independent public body²⁰⁷ that may examine discrimination-related complaints from individuals or groups. The Commissioner can impose administrative sanctions such as fines and represent complainants in civil proceedings. Any decision made by the Commissioner constitutes an obligation on defendants to respond within 30 days. A fine may be imposed for failure to respond, and if no action has been taken within three months, further sanction is possible.²⁰⁸ The Commissioner for the Protection from Discrimination has engaged in several projects addressing discrimination against ethnic minorities in schools, against people with disabilities and against individuals on the basis of their sexual orientation.²⁰⁹ While decisions have been reached, the process is slow, decisions are poorly implemented and the penalties for non-compliance inadequate.²¹⁰

In Georgia, the Public Defender is mandated to monitor the protection of human rights and freedoms and to examine cases concerning alleged human rights violations, based either upon complaints or independent initiative.²¹¹ The Public Defender has offices throughout Georgia and a specialized Child Rights Centre for issues involving children’s rights.

Lodging a complaint is free, and once the Public Defender has agreed to hear a complaint, it may:

- make recommendations to relevant agencies for redressing violations

- request investigations and/or criminal proceedings, if a crime is indicated by case examination
- recommend disciplinary or administrative measures against those responsible for violations of human rights and freedoms
- exercise the amicus curiae (‘friend of the court’) function in particular cases in common courts and in the Constitutional Court of Georgia.²¹²

In addition, the Public Defender has been designated, under the Optional Protocol to the Convention against Torture, to serve as the national preventive mechanism, monitoring human rights in detention centres and child care institutions to ensure protection from torture and other cruel, inhuman or degrading treatment or punishment. According to the Activity Report 2014 of the Public Defender, the Child Rights Centre received 155 applications during the year, a significant increase on the 97 applications received in 2013. Out of the 131 recommendations involving rights violations issued in 2014, 7 involved children’s rights.²¹³

In Kyrgyzstan, the Ombudsperson, established by the Constitution and known as the Akyikatchy, is mandated to hear complaints by citizens, foreign citizens and persons without citizenship (or

TABLE 2. Reported cases involving children’s rights violations in Kyrgyzstan

2012	<ul style="list-style-type: none"> • 24 petitions received regarding children’s rights violations (1 petition was from a child and 23 were from parents or legal representatives) • 9 petitions were resolved
2013	<ul style="list-style-type: none"> • 54 petitions received regarding children’s rights violations (9 petitions were from children and 45 were from parents or legal representatives) • 8 petitions were resolved

Source: Akyikatchy representative, 2014.

their representatives) with regard to violations of human rights and freedoms, including international conventions signed by Kyrgyzstan. The Ombudsperson is entitled to visit facilities and request records, but has no formal authority to resolve matters. The Ombudsperson's Office has a small unit for young people and children's rights, providing support for and protection of the rights of children as well as field offices in all provinces. It cooperates with civil society through public councils, providing an avenue for citizens to raise their concerns via petitions.

In Montenegro, where the Protector of Human Rights and Freedoms is also guaranteed by the Constitution, the Deputy Ombudsperson for Children's Rights promotes and protects children's rights as part of a special unit accessible to children. The unit is equipped to receive and investigate complaints of violations of child rights in a child-sensitive manner. It has a special telephone helpline and email address reserved for children. The unit helps to ensure that children and their families are aware that it is possible to submit complaints. The Protector of Human Rights and Freedoms has competence to oversee the work of courts in cases that involve delay, obvious abuse of procedural powers or failure to execute court decisions. In 2013, the Protector of Human Rights and Freedoms received 91 cases involving children's rights violations.²¹⁴

6.2.4 Alternative dispute resolution forums

The importance of ensuring equal access for children to non-judicial mechanisms such as alternative dispute resolution forums has been widely recognized.²¹⁵ Such mechanisms are perceived to have greater flexibility and to focus more on personal and family interrelationships. Alternative dispute resolution forums often involve a restorative rather than retributive justice approach, with the aim of restoring harmony and bringing disputants to a common position. All forms of non-judicial mechanism must comply with international human rights standards and procedural safeguards, and be child- and gender-sensitive, as noted by the United Nations Human Rights Council.²¹⁶

Mediation

Mediation is an alternative dispute resolution process involving a mediator, or neutral third person, to help parties reach an agreement. Mediation may be used in civil or criminal cases, with matters referred to mediation either by the court or at the request of affected parties. Victim-offender mediation is a form of restorative justice in which parties work together to resolve matters arising from crime.²¹⁷ While victim-offender mediation is an important element of restorative justice for juvenile offenders, caution must be exercised in using these techniques with criminal offences involving domestic violence or sexual violence,²¹⁸ and the power differential between offender and victim must be a consideration when assessing the appropriateness of a mediation process.²¹⁹

In Albania, offences that require prosecution or the initiation of action by the victim, including assault and neglect, may be referred to mediation, regardless of the age of the victim.²²⁰ Mediation can also be applied to the resolution of civil, commercial, labour and family law disputes. There are no special provisions providing for additional protections for child victims involved in mediation. The National Chamber of Mediators, which falls under the auspices of the Ministry of Justice, has 287 licensed mediators.²²¹

Georgia's Diversion and Mediation Program enables children aged 14 or over who are first-time offenders to receive diversionary measures. Mediation may also be used to resolve conflict between victim and offender. Mediators have an obligation to inform all parties involved, including the child and her/his parents, of the mediation process, its risks and advantages. The victim must express her/his views on diversion and mediation conditions. Services have expanded in recent years, resulting in a decrease in the number of children serving sentences in closed institutions.²²² Mediation is also available in civil and family law cases, with a few exceptions.²²³

In Montenegro, where out-of-court mediation is available in criminal, civil, family law, labour and commercial cases, there are 77 certified mediators for civil proceedings and 35 mediators for criminal proceedings.²²⁴ The Center for Mediation in

Montenegro performs victim-offender mediation on the basis of referral by the court, or by a prosecutor and the police in exceptional circumstances (where the proceeding is initiated by private suit). Mediation is available regardless of whether or not the child is a first-time offender. A referral is usually made if the prosecutor is of the view that conditions are met for the enforcement of an order of victim-offender settlement and it is appropriate to remove the harmful consequences of the crime by means of an apology, work or some form of compensation. The mediator must be trained to handle matters involving children.

Reconciliation

Reconciliation is an alternative dispute resolution process that aims to resolve a dispute by renewing amicable relations between affected parties. Albania and Kyrgyzstan recognize this type of process. In Albania, reconciliation procedures can be used only in a small number of cases, where either the child is a victim of specific illegal behaviour²²⁵ or the injured party has initiated the procedural matter.²²⁶ In Kyrgyzstan, reconciliation allows criminal charges to be dropped when a first-time offender and the victim reach an out-of-court settlement,²²⁷ generally by compensating the victim before trial. The use of this procedure has been criticized often, especially as it relates to matters involving children. For instance, sexual offences against minors are often dismissed because of out-of-court reconciliation and payment of monetary damages, leaving offenders unpunished. In many cases, due to pervasive corruption, the child victim is the subject of bargaining and profit for parents, judges and the police. She/he may be pressured to accept the solution proposed through the reconciliation procedure without having an opportunity to express her/his views or receive support.²²⁸ The law also allows for the dismissal of a case without the victim's consent if it is recognized that the offender is no longer dangerous to society.²²⁹

6.2.5 Informal justice systems

Informal justice systems, often referred to as non-state, customary or 'traditional' justice systems,²³⁰ can provide important justice avenues for children, as offenders and also in cases involving

the resolution of custody, marriage and inheritance matters.²³¹ A study on pathways to justice in three countries in the Central Asia region (Kazakhstan, Kyrgyzstan and Tajikistan) indicated that in two of the three countries (Kyrgyzstan and Tajikistan) people were "far more likely to go to an informal authority [than a formal authority] with their legal issues" and that "the most likely source of external authority is the head of the village or a group of village elders."²³² For the purposes of the present research, informal justice systems in Albania and Kyrgyzstan were examined, with justice sector professionals, children and their families questioned on their experiences of these systems.²³³ Their responses are explored in detail below.

Although it is difficult to generalize given the wide diversity of these mechanisms, informal justice systems usually exist at the community level and enjoy an authority based on social rather than legal norms. Similar to mediation and reconciliation, such systems reflect restorative justice approaches. The benefits of informal justice systems range from decision-making being perceived as reflecting prevailing social and religious norms, and therefore more easily accepted by the community, to their inexpensive nature, often being located in the immediate vicinity of disputants. Informal justice systems are also credited with being efficient, rarely imposing the same time-consuming evidentiary requirements as the formal justice system. As UNDP has surmised: "Informal and traditional mechanisms of justice are often more accessible to poor and disadvantaged people and may have the potential to provide speedy, affordable and meaningful remedies to the poor and disadvantaged."²³⁴

Informal justice systems have been widely criticized on a number of grounds, however. They can be susceptible to elite capture and therefore may "serve to reinforce existing hierarchies and social structures at the expense of disadvantaged groups."²³⁵ As noted, informal systems often fail to reflect international human rights standards with regard to procedure and substantive outcomes, particularly for vulnerable groups. Although there has been little research or literature published on children and informal justice systems, the available studies on the functioning of such systems indicate that these systems frequently cannot be reconciled





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with international standards concerning children and justice:

Some IJS [informal justice systems] discriminate against children born outside of marriage, who have been orphaned or who have lost their father. Some fail to protect orphans against abuse of property rights by guardians, or fail to protect the property rights of widows, which, of course, has an adverse impact on dependent children. The failure of IJS to protect such property rights effectively can have profound consequences for the child's right to development, to protection against exploitation and even survival.²³⁶

In addition, informal justice systems often condone harmful traditional practices such as child marriage and forced marriage and, more generally, discrimination against and between children. In many cases, children, especially girls, are forbidden from participating in dispute resolution proceedings, and decisions are made in the interests of community harmony rather than in the best interests of the child.²³⁷

Informal justice systems are widely regarded as patriarchal and therefore "systematically deny women's rights to assets or opportunities".²³⁸ According to some commentators, gender perspectives may even be so deeply inculcated that they "leave many women ... resigned to being treated as inferior as a matter of fate, with no alternative but to accept their situation."²³⁹ This critique is levelled at both processes of dispute settlement and informal justice administration.²⁴⁰ The three-country study in the Central and Eastern Europe and Central Asia region cited above, for example, observed that village heads and elders "tend to be conservative, particularly regarding social and domestic issues", with the result that outcomes are "far worse for vulnerable groups like women and young people."²⁴¹

It should be recalled, however, that many of the shortcomings of informal justice systems in relation to children's rights may also exist in the formal legal system. In spite of the criticism above, engagement between informal and formal justice systems should not be considered a zero-sum game when considering optimal ways to maximize access to justice for children. Informal justice systems can

have some benefits for children's access to justice, in that they usually avoid the formal prosecution of child offenders and promote a restorative approach, and because of their inherent flexibility may also be able to adapt to changing cultural attitudes about children and justice.²⁴²

The intersection between formal and informal justice: Aksakal (elders) courts in Kyrgyzstan

In Kyrgyzstan, the informal justice system comprises *aksakal* courts or 'courts of elders'. Having originally operated independently from the state, courts of elders were integrated into the formal justice sector by presidential decree in 1995. They were further formalized in 2003 through the adoption of the Law on the Courts of Elders and again in the new 2010 Constitution. Among a number of major changes to the Constitution, article 59 provides that "the citizens have the right to establish the courts of *aksakal*".²⁴³ It is the responsibility of courts of elders to "protect the rights of citizens by resolving disputes based on customs and traditions, in accordance with Kyrgyz law."²⁴⁴ Their jurisdiction includes debts, labour agreements, conflicts over property and shared resources, and family disputes, although they are not authorized to hear cases concerning children's rights and protection. Courts of elders were initially criticized for not being in line with basic human rights standards. Prominent due process violations were, however, largely addressed by the 2003 legislation, which made referral to courts of elders voluntary, restricted their competence over criminal matters and recognized the right to appeal. Courts of elders grew throughout the country after these changes were made, but the extent to which they remain active is unclear as rates of use are reported to be in decline.²⁴⁵

In Kyrgyzstan, justice sector professionals consulted during the research were divided on questions related to the operation of courts of elders, with 53 per cent stating that such justice systems were effective where children were involved and 47 per cent disagreeing. Reasons cited in support of the courts' effectiveness included fewer formal procedures and less paperwork, and children and family members' attitudes towards court procedures. One police officer working with children explained: "Less paperwork is needed if cases are reviewed by

the elders' court. Moreover, children's perceptions of the police and the elders' court are different. Children are afraid of the police but they can freely talk in front of the elders' court because they are not afraid of them." Some justice sector professionals also felt it desirable for decisions to be based on traditional and cultural circumstances. A representative of the

“ **The elders' court helps those children whose parents divorce. I think I would perhaps approach the elders' court if my parents get divorced, but still I am afraid that they would ignore me and make their decisions without listening to me. That is why there is no point for children to address them even if their parents get divorced. Sometimes they make a decision completely opposite to the wishes of a child.**”

15-YEAR-OLD BOY, KYRGYZSTAN

Ombudsperson's Office noted: "Usually, elders' courts take people's mentality and traditions into account while making a decision on certain cases. Such an approach is very important in our context because acting only upon laws is not always in line with 'best solution' to cases."

Those who viewed the courts of elders as ineffective pointed out that traditional laws are not always aligned with either Kyrgyzstan's laws or international human rights standards.

Justice sector professionals also explained that courts of elders in some areas, while popular, lack the necessary resources and standards. A representative of a regional branch of the Family and Child Support department commented:

Theoretically, the elders' courts are very effective. Unlike official courts, the elders' court makes decisions based on morality and traditions or cultural circumstances of local people –

defendants or victims. In turn, this is a guarantee, to some extent, for decisions to be just. The official court doesn't care about traditional and cultural circumstances and the mentality of people. Therefore, usually decisions made by official courts are not perceived to be just. This is another reason why many people don't trust the official courts. But, at the moment, the elders' courts are not functioning effectively because they are not equipped, and members are not trained properly. The members work chaotically without long-term vision and professionalism. If they worked professionally and strategically, elders' courts would be very effective.

Though the majority of justice sector professionals interviewed (80 per cent) felt that the informal justice system incorporates provisions for the protection of children, they could not identify specific child-sensitive measures that apply in courts of elders. According to the head of one court of elders, information provided is not written in child-friendly language, members do not receive specialized training and there are neither recesses or safeguards for child victims nor special provisions for vulnerable children.

Despite these drawbacks, a representative of one court of elders believed that court practices are inherently in the best interests of the child:

We always focus on children's best interest. For example, the elders' court plays a conciliator's role during a conflict between a husband and his wife. We do our best to reconcile them for the sake of their common children and to avoid divorce. If we are unsuccessful in reconciling the husband and wife, and they decide to get divorced anyway, we invite their child and ask his or her opinion about with whom he or she wants to live – with the mother or father. We do our best so that the child would be able to live with one of his parents with whom he or she wants to live.²⁴⁶

The children interviewed who had had contact with courts of elders also reflected this mixed perspective, acknowledging both negative and positive aspects related to the courts' adherence to cultural norms and their perceived fairness in relation to outcomes.

One child accused of extorting money from other children and fined by a court of elders explained his unhappiness with the process, while at the same time suggesting that the outcome was more just than he would have received in the formal court system: "They couldn't provide enough evidence to prove my guilt. The proceeding was not just and impartial because it took an accusing character from the beginning ... I should thank the elders' court anyway. They made more or less a humane decision because they didn't decide to imprison me although they could ... If the [formal] court reviewed my case, I am sure I would be imprisoned and spend many years in prison."

'Self-justice' and 'blood feuds' in Albania: The Kanun system

In Albania, the traditional justice system following the body of law known as the Kanun is still in existence, especially in the northern part of the country.²⁴⁷ This customary law is applied directly by those concerned (victims and their families) as a form of 'self-justice', although 'mediators' and local NGOs are often involved in negotiating reconciliation.²⁴⁸ Many of the features of the Kanun such as 'blood feuds', arranged marriages and the execution of adulterers are incompatible with contemporary human rights standards.²⁴⁹

In principle, children are exempt from attacks under the Kanun, but this may not always be respected. In practice, children often become direct or indirect victims of the application of customary law, especially where their families are involved in blood feuds.²⁵⁰ The full impact of the Kanun and of blood feuds on children is difficult to gauge. While government figures indicate a decrease in the number of blood feud cases between 2010 and 2012, the Special Rapporteur on extrajudicial, summary or arbitrary executions refers to major challenges in defining the extent of the problem due to inconsistent definitions, fragmentation of statistical data, and underreporting by affected families and officials.²⁵¹ The Special Rapporteur has noted the need to "profoundly and comprehensively study the phenomenon" and to prioritize "effective functioning of the judiciary and proper implementation of legislation and policy measures ... to eliminate this phenomenon."²⁵² A number of NGOs working on reconciliation issues

are currently engaged in ensuring that children are not involved in Kanun matters, especially in regard to negotiated settlements.²⁵³

Most justice sector professionals approached during the research felt that questions related to informal justice were no longer relevant in Albania and chose not to respond. Of those who did respond, the majority stated that there were no safeguards or protective provisions in place for children. Furthermore, almost all who did respond indicated that informal justice mechanisms were ineffective in dealing with children's rights. A representative of the ombudsperson's office suggested, "customary law is part of an old-fashioned tradition", which cannot be referred to for protection of children's rights. A representative of a centre supporting domestic violence survivors noted: "Some of the women and children we have here are first victims of the mentality and of old rules of Kanun". In 2013, the Human Rights Committee, the monitoring body of the International Covenant on Civil and Political Rights, called on Albania to investigate and prosecute all cases of Kanun-related crimes, and to intensify efforts to identify and support families and children affected by this phenomenon.²⁵⁴

6.3 What are the main obstacles that children face in seeking justice?

Justice sector professionals interviewed in all four countries indicated that while important reforms have occurred in recent years, the significant gaps in the justice system that still exist hinder children's access to justice. In Albania and Georgia, most of the justice sector professionals agreed that there are significant gaps affecting children; in Kyrgyzstan and Montenegro, about half of the justice sector professionals noted significant gaps. The present research identified the main obstacles that children face in seeking justice to include: lack of awareness of justice mechanisms and supporting institutions; poor access to information on children's rights; a host of legal and practical obstacles; and, perhaps most pronounced, deeply entrenched social and cultural norms. How children experience these obstacles, and justice sector professionals' perceptions of these difficulties, is detailed below.

6.3.1 Lack of awareness of justice mechanisms and supporting institutions

Children's Equitable Access to Justice shows that children are not necessarily aware of the range of redress mechanisms available to them. Overall, however, children reported awareness of available avenues for redress with greater frequency than justice sector professionals perceived (see *Table 3*). Justice sector professionals in all countries largely responded that children were unaware of how to access justice mechanisms, or only partially aware of how to do so. Many professionals noted that possessing any such knowledge depended on the child's age, home environment and living circumstances. A lawyer working on domestic violence issues in Georgia explained: "In my experience, children know very basic things about the mechanisms that exist to enable them to access their legal rights, for instance, in general, they know they can apply to courts, however, beyond this, their knowledge is very limited."

In all four countries, children and their family members were aware of certain mechanisms in particular (courts and ombudspersons) but the functions of various mechanisms were not always well known. In Georgia, for instance, children had heard of the Social Service Agency, but most thought its function was to provide money, not support services.

TABLE 3. Children’s awareness of different justice forums and mechanisms

Mechanisms	Children’s responses
> Albania	
Courts	85%
Ombudsperson	85%
Child helpline	25%
Mediation and reconciliation	10%
> Georgia	
Courts	95%
Social Service Agency	90%
Ombudsperson	75%
Police Emergency and Operative Response Center	65%
Child helpline	5%
> Kyrgyzstan	
Police	80%
Courts	70%
Ombudsperson	35%
Courts of elders	20%
Child protection agency	10%
Rehabilitation centre	5%
> Montenegro	
Courts	100%
Centres for Social Work	90%
Ombudsperson	70%
Child helpline	45%
Mediation	20%

Where do children receive information? Who do they approach for help?

In Albania and Montenegro, the children interviewed had heard about justice mechanisms through school and radio and television. In Georgia, many children had heard of different mechanisms from family members or radio and television, with some mentioning school and Internet searches or websites as the source of their information. There was a limited response from children in Kyrgyzstan, and the majority of children and family members in Kyrgyzstan who did respond had only heard of courts and the police.

Children from all four countries generally preferred to deal with family and school issues close to home. When asked whom he would approach for assistance if he felt his rights were threatened, one 17-year-old boy from Montenegro answered succinctly, “the best and the most reliable support is our family, older siblings, cousins and best friends.” Similarly, children in Kyrgyzstan indicated that for problems experienced within the home, they would speak to someone within the family (mother or grandmother) or to no one. Most children in Georgia also explained that they would approach someone close to them and whom they trusted such as a parent, teacher, friend or the leader of their group home. Several children also mentioned that they would not speak to anyone and would instead rely upon themselves. This was especially true in the case of problems experienced at home. As one 13-year-old girl living in a settlement for internally displaced persons explained: “My rights are never violated within the family, however, if I have to imagine such a situation, then I would not talk to anybody.” Several children mentioned speaking to their parents – even a parent whom was violating their rights – and attempting to defend themselves. In Montenegro, several respondents displayed uncertainty on whom to turn to in this situation. For instance, one 17-year-old girl said, “I would talk to parents.

If we were not able to solve the problem, I do not know anybody else who could help me.”

For problems experienced at school, the majority of children interviewed in Georgia stated that they would speak to their teachers and to the director of the school or of the institution where they lived. One 16-year-old girl living in a small group home explained: “I would speak to the director and ask for help. If it is the director who violates my rights, then I do not know, I would probably try to prove the truth myself without involving anybody.”

Similarly, children in Albania noted that for problems experienced at school or outside the home, they would speak to their parents or other relatives, with a few mentioning teachers or staff at residential institutions. They were clear that they would prefer to speak to someone close to them and with whom they were familiar. As one 13-year-old girl without parental care explained: “I don’t know them [officials] and I don’t like to talk with people that are strangers to me. I prefer to ask my teachers and educators to help me.” In Kyrgyzstan, children mentioned that were their rights threatened outside of school and the home, they would still speak to their teachers or the director of the school or to relatives.

In Kyrgyzstan, children living on the street indicated that they would seek out informal structures to solve their problems, namely peers with criminal reputations, noting that they turned to a ‘roof’ or protector when their rights were threatened, even if the threat was from the police. This person would assist them in exchange for payment. This sort of structure was also mentioned in schools. As one 14-year-old ethnic Uzbek boy suggested: “Boy-children sometimes turn to *paravoz* [a student with a negative reputation]. For example, if other children beat me without any reason at school, I turn to him and ask for help. He calls the boys who beat me and asks why they beat me. If they don’t have any reason or can’t prove their action, the *paravoz* punishes them and protects me.”

Some justice sector professionals who were interviewed stated that lack of awareness among children was partially due to parents’ lack of awareness and community perceptions and attitudes. A district court judge in Albania noted: “It depends on where the children live and depends also on the social, economic and cultural profile of a child’s family, the mentality of the parents or the environment within which they live.”

Justice sector professionals also suggested that better information about available resources and remedies must be disseminated in more practical,

“ I think adults can do a lot of things for us, as adults are allowed to do a lot of things, but sometimes they don’t understand what we need, our situation. I hope that my family’s economic conditions will improve and my father could find a job.”

15-YEAR-OLD ALBANIAN BOY,
WHO STOPPED ATTENDING SCHOOL
TO WORK DUE TO HIS FAMILY’S
DIRE FINANCIAL SITUATION

relevant forums for children and their families, and suggestions were put forward. In Albania, justice sector professionals mentioned the lack of relevant information in schools, even though rights education features in the curriculum. A representative of Montenegro’s police directorate on juvenile justice issues suggested that awareness raising must be practical: “Practitioners should be involved in education activities, explaining to children the legal remedies, what can be expected from the institutions, what is the role of each institution, whom to address if faced with a specific problem, etc. Even presenting some case examples could be beneficial. That way the child can learn about real life examples and that is the way for them to understand better.” A representative of Kyrgyzstan’s Family and Child Support department mentioned that institutions lack data regarding children’s awareness of justice mechanisms, suggesting a need for better coordination.

These research findings show that children have a limited understanding of justice mechanisms and want more information about their rights and such mechanisms to be made available. Receiving this information in interesting and accessible ways in school was repeatedly suggested. This must be countered, however, by the fact that many children living in vulnerable situations do not attend school regularly. Children also want to receive information from their families, and adult caregivers also identified the need for more information as crucial.

6.3.2 Poor access to information on children’s rights and their realization

Information provided in an accessible and practical way can be a powerful tool in helping children to understand their rights, know about the options available to them and make informed decisions. The United Nations High Commissioner for Human Rights suggests, “children’s access to information about their rights and ways of promoting their safeguard and implementation, as well as ensuring their informed consent to decisions in line

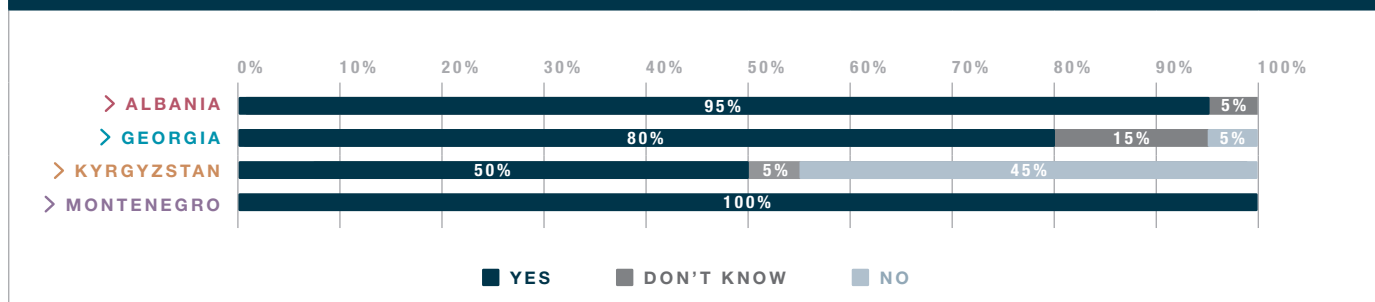
with their evolving capacities, is a crucial dimension of access to justice.”²⁵⁵

The percentage of children and family members interviewed in the four countries who reported having knowledge of human rights was relatively high, with the exception of Kyrgyzstan. The accuracy and breadth of this understanding varied, however, and it was clear in some instances that rights were not fully understood.

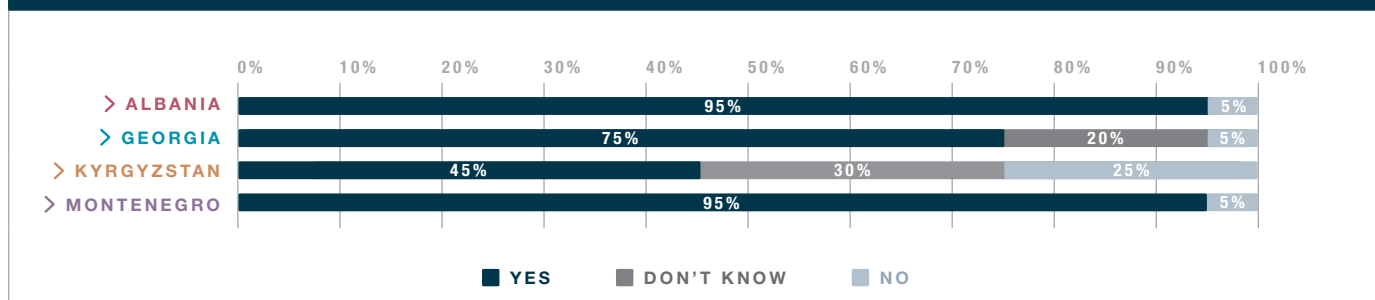
In Albania and Montenegro, almost all of the children and their family members stated that they knew about human rights and children’s rights; most respondents in Georgia also reported that they were familiar with the same. In Kyrgyzstan, only about half of the children and family members interviewed responded affirmatively when asked if they knew about human rights and children’s rights.

Similarly, the responses that came exclusively from children, which are not displayed below, demonstrate that knowledge of human rights is relatively high among children in the focal countries, except in

GRAPH 4. Responses by children and their family members to ‘Do you know what human rights are?’



GRAPH 5. Responses by children and their family members to ‘Do you know what children’s rights are?’



Kyrgyzstan. In Albania, Georgia and Montenegro, all or most of the children interviewed stated that they knew about human rights and children's rights. In Kyrgyzstan, less than half of the children responded affirmatively when asked if they knew about human rights and children's rights.

When asked to identify specific human rights, children and their family members in Albania suggested the right to education, the right to family and the right to work. Several children mentioned the right to be free from abuse and violence. One child without parents and living in a residential institution explained: "To me it is important to get protection when a family can't afford a child. The state must guarantee our protection when family does not care about us." In Georgia, children identified the rights to life, to education and to freedom as human rights they knew about. Some children acknowledged that although they had heard the phrase, they did not know what 'human rights' meant in any concrete way.

When asked specifically about children's rights, some children were quite clear and could refer to rights they felt were relevant to them. One 16-year-old girl in Georgia living in a small group home explained: "First of all, children have the right to life and the right to defend themselves if their life is threatened. Children also have the right to shelter and adequate food. Children should also have a possibility to express their views and say if they disagree with adults." Several children recognized that they have the right to be protected from violence. One 17-year-old boy living in an internally displaced persons' settlement in Georgia said: "Children should not be subjected to physical or mental violence within the family. However, children know very little about their rights. They only know that teachers should not shout at them."

In Montenegro, some children, having received rights awareness classes in school, were able to provide complex definitions. For instance, one 17-year-old girl stated: "Human rights are rights that belong to all human beings, regardless of their nationality, sex, origin, religion or other status. All human beings are entitled to human rights without discrimination." Several children mentioned the right to education, the right to family and the right to work. One 14-year-old girl noted economic and social rights such as "the right to education, basic living conditions such as a roof above





CHAPTER 6: RESEARCH FINDINGS: A CROSS-COUNTRY OVERVIEW

one's head, food, clothes and shoes", and several other children mentioned the right to freedom of expression, the right to liberty and the right to vote. One 14-year-old girl made the distinction, however, that information on human rights "was pure theory – it was not presented in a way to see that it is our life and we could not see the applicability of our rights anywhere."

In Kyrgyzstan, very few children or their family members mentioned a range of rights, and responses demonstrated a poor understanding of rights. Focus groups with children and their family members showed that even a minimal awareness of rights is absent in some remote areas. Even among those who said that they had heard of human rights, responses were limited and revealed a misunderstanding of rights. For example, the need to obey adults was perceived as a right, as were things that the children desired such as nice clothes. The term 'human rights' was also revealed to have negative associations. One 15-year-old girl said: "I know what human rights are. This is a police or lawyer. They do 'human rights'. It is a bad word. This word is used in a conflict situation. That is why I hate this word." Some children and their family members also associated human rights with a sense of imposition of 'Western culture'. Others expressed surprise at the mention of children's rights. One mother said: "Do children have any rights? My son doesn't know about this." Or, as one 16-year-old boy responded to the interviewing researcher, "What are you asking about? I have no idea what you are talking about!"

In general, most justice sector professionals who were interviewed responded that children were only partially aware of their rights, or entirely unaware of them. A representative of an NGO working with child victims in Georgia suggested, "Children do not have knowledge of their rights, they do not even know that they are liable for criminal acts from the age of 14. Children believe that they have rights, but they do not know what rights they have or do not understand the content of a particular right." Justice sector professionals identified a range of factors that determine children's awareness, including the children's home environment, their parents' educational attainment and whether they were living in an urban or rural setting. It was recognized that there was a lack of information and awareness of rights among children living in institutions or on the street.

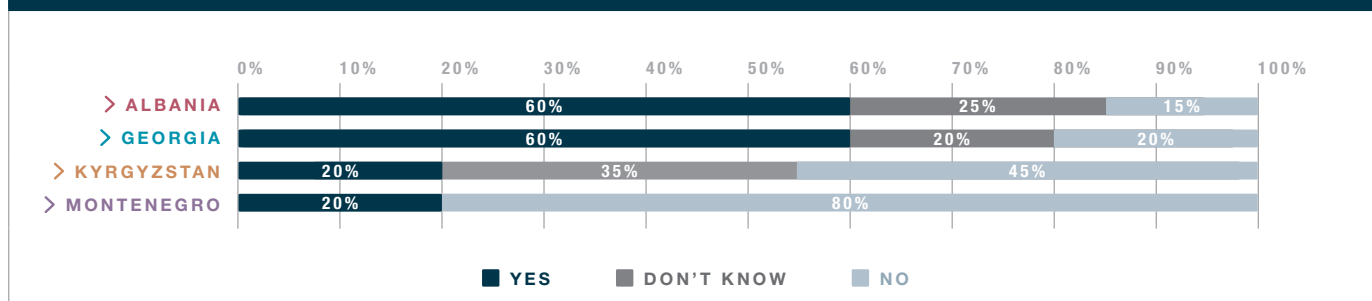
Many justice sector professionals interviewed identified the important role that schools can play in determining children's rights awareness. Others, however, signalled a lack of appropriate rights-related education in school settings and, more broadly, a lack of interest in educating children on their rights. For example, one lawyer working on issues related to victims of domestic violence in Georgia suggested, "Children receive little information on their rights in schools, and children's awareness very much depends on how proactive a child is in obtaining information on their own through other sources." A social worker in a rural area of Kyrgyzstan noted: "Nobody provides children with information on their rights. Parents

“ I think that every child should have the same rights no matter from where or what nationality she is, but in reality some children have less rights and some children's rights are violated, for example, when a girl gets married at an early age. My neighbour is a 14-year-old girl who was dreaming to study and become a doctor, but she was forced to marry a man 15 years older.”

16-YEAR-OLD GIRL, GEORGIA

never tell children about what rights they have at home. Parents treat their children usually as a thing rather than a person at home. Schools lack teaching on rights." Several respondents in Kyrgyzstan also highlighted this point. For example, a representative of the Ombudsperson's Office commented: "Children are not provided with information by anybody about their rights, since institutions think that there is no need for children to know about their rights because their parents and guardians are responsible for seeking justice for children."

Children and their families were also asked whether they thought all children had the same rights. Notably, there were different understandings of what 'having the same rights' meant. For some it meant that all human beings have the same rights (distinct of the exercise of rights);

GRAPH 6. Responses by children and their family members to ‘Do you think all children have the same rights?’

for some others, responses indicated the realization that not all children are able to exercise their rights in the same way. Significantly, children were acutely aware that some children are more vulnerable to violations of rights than others, although this varied across the four countries. More than half of the children interviewed in Albania and Georgia thought that all children have the same rights, while only one quarter of children in Montenegro and very few children in Kyrgyzstan responded to this question in the affirmative (data not illustrated).²⁵⁶ Despite these figures, children from all four countries put forward incidents of the uneven implementation of rights or otherwise commented on disparities during discussions.

Children were particularly aware of differences between girls and boys. In Kyrgyzstan, a 17-year-old girl summed up the feelings of many child respondents: “Boys have more rights than girls. For example, if a boy wants to marry, he can tell his parents about this. Most importantly, he can speak openly about which girl he wants to marry. In that case, his father says proudly, ‘Oh, my son has grown up and become a man!’. But girls cannot tell their parents if they want to marry. Her parents become very angry if a girl speaks about this.”

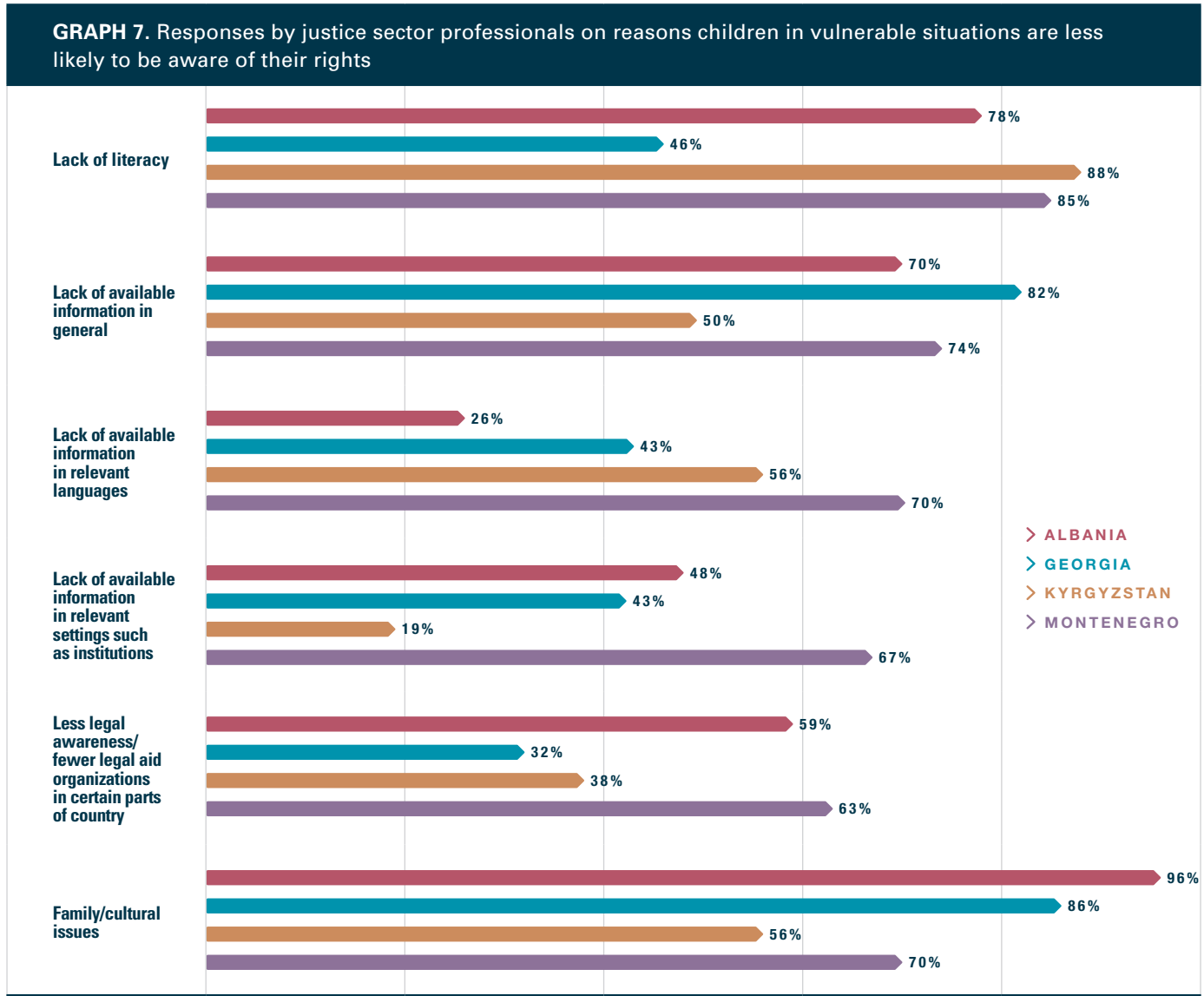
Children also articulated awareness of social and economic inequalities. While many children stated that all children should enjoy the same rights, they noted that this was not actually the case in practice. A 16-year-old boy living and working on the street in Georgia stated: “Of course every child is a human being and should have the same rights, but this is not always the case – children are different and they are treated differently.” A 13-year-old Albanian girl noted, “All children must have

the same rights, but children that stay on the street do not enjoy these rights.” In Montenegro, a 14-year-old boy responded that all children “should have the same rights but they don’t. I think that some children such as Roma children do not get to be educated. They do not go to school and they spend their time on the streets begging. I think they do not get the same rights as us.”

Awareness among children and families in vulnerable situations

Across the four countries, the justice sector professionals interviewed felt that children in vulnerable situations²⁵⁷ had less awareness of their rights than other children. As the following graph illustrates, family and cultural issues, lack of information and low literacy levels feature prominently in the reasons given by justice sector professionals for this perceived difference in awareness (see Graph 7).

As pointed out by a representative of an NGO in Montenegro working to combat violence against women and children: “Roma and Egyptian children are even less aware of their rights. If we take into consideration that there are groups of children with multiple vulnerabilities, for instance, those belonging to the Roma or Egyptian minority who are at the same time disabled, the situation is even worse.” Justice sector professionals interviewed in Kyrgyzstan noted that social and linguistic barriers impede rights awareness among certain groups. Access to information is also affected by other problems. For example, the head of one court of elders explained that family issues may be relevant in this regard: “Many religious parents want their children to receive religious education and apply religious rules in their daily lives, instead of letting



children find out more about their secular legal rights shown in the Constitution and other laws.”

In Albania, lack of education/literacy stood out as one of the main reasons for children’s lack of awareness of their rights. Several justice sector professionals spoke about this issue in relation to Roma children. They pointed to parents’ illiteracy as often explaining their difficulty in educating either themselves or their children about legal rights and justice mechanisms.

Lack of access to information may also affect certain groups regardless of linguistic constraints or literacy levels. For instance, a representative of an NGO

providing social and educational assistance to children from Kyrgyzstan stated: “All girl children ... have less awareness because they are more isolated than boy children. For example, girls are not expected to participate in different kinds of activities or campaigns in our oblast. They have less access to information than boys.”

6.3.3 Legal and practical obstacles

In addition to the barriers to awareness and information, the research reveals a number of other obstacles to children’s equitable access to justice. Justice sector professionals were asked to provide

their views on which obstacles are most prevalent and act as significant barriers to children’s access to justice, particularly for vulnerable groups.

Legal capacity to initiate and participate in legal proceedings

Legal capacity has been described as “the capacity and power to exercise rights and undertake obligations by way of one’s own conduct, i.e. without assistance of representation by a third party.”²⁵⁸ The legal term ‘standing’ (locus standi is also sometimes used) refers to the right to initiate or participate in legal proceedings. Typically, minors are not accorded full legal capacity to initiate most legal proceedings and, in many cases, must rely on their parents or legal guardians to initiate proceedings on their behalf. As the legislative frameworks detailed below illustrate, children’s ability to initiate or participate in certain proceedings is dictated by an array of different laws, depending on the particular matter in question. The logic assigned to the different age restrictions may not be apparent or internally consistent even within a single country.

While the Convention on the Rights of the Child does not speak directly to issues of legal capacity, which is a matter for national legislation, it underscores the need for children to meaningfully participate, either directly or through a representative, in any proceedings affecting them.²⁵⁹ The right has two parts: the first is the right of the child to express her/his views; the second, the right to have those views given due

weight in accordance with the age and maturity of the child. The Convention sets no minimum age in terms of the applicability of the right to participate and be heard; this must be determined on an individual basis according to the evolving capacity of the child.²⁶⁰

The frequency with which the justice sector professionals interviewed mentioned standing as an obstacle varied widely, from minimally in Kyrgyzstan, to moderately in Georgia and Albania, to significantly in Montenegro. In fact, as the following legal overview demonstrates, significant legal barriers exist to ensuring the full participation of children in proceedings concerning them. Additionally, despite some of the relatively low figures noted here, interviews with justice sector professionals and with children revealed further problems in ensuring that children have the ability to file complaints and to access remedies.

In Albania, full legal capacity is gained at the age of 18.²⁶¹ In civil matters, the Civil Code provides that a child aged 14 or over may perform legal actions only with the consent of her/his legal representative.²⁶² In family matters, a child aged 14 or over may perform all legal actions with the prior consent of her/his parents.²⁶³ Children also have the right to be heard in all proceedings concerning them, in accordance with their age and capacity to understand.²⁶⁴ The Family Code also provides that a child over the age of 14 has the right to petition the court in cases regarding guardianship²⁶⁵ and has legal capacity to freely exercise the right to petition the court to

TABLE 4. Responses by justice sector professionals on obstacles to accessing justice for children in vulnerable situations

Obstacles to accessing justice	> Albania	> Georgia	> Kyrgyzstan	> Montenegro
Lack of standing	45%	30%	13%	57%
Linguistic constraints	24%	67%	37%	50%
Financial constraints	93%	63%	47%	43%
Distance from institutional support mechanisms	69%	43%	30%	30%
Lack of information and support	83%	67%	57%	67%
Distrust of state institutions	52%	33%	33%	40%
Cultural acceptance of violence within the family	86%	67%	30%	40%
Perceptions of children’s place within the family	72%	40%	20%	47%
Fear of social ostracism	31%	33%	10%	50%
Fear of discriminatory treatment from institutions	45%	33%	27%	33%

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establish her/his own custody upon reaching 16 years of age.²⁶⁶ In adoption cases, the opinion of children who have reached the age of 10 may be considered, and children who have reached the age of 12 can give their consent or refusal for adoption.²⁶⁷ The Civil Procedure Code provides that a child's opinion must be sought in certain family procedures, including custody decisions and adoptions, from the age of 10,²⁶⁸ or from the age of 14 in relation to citizenship cases. The Criminal Procedure Code provides that anyone has the capacity to give evidence and testify in court, with the exception of those unable to testify because of a mental or physical disability.²⁶⁹ There are no restrictions on the age at which a child can file a complaint with the police.

In Georgia, the Civil Code applies to both civil and family matters, and provides that full legal capacity is obtained at the age of 18.²⁷⁰ The rights and interests of children below this age are protected through their parents, adoptive parents and/or legal guardians. Exceptions are made, however, in the case of the abuse of a child by her/his parents, in which case the child, from the age of 14, may independently apply to court and initiate civil proceedings.²⁷¹ A representative is appointed for the child during such proceedings, but the child has the right to represent her/himself personally if she/he disagrees with the appointed representative.²⁷² The Civil Procedure Code stipulates that the court is obliged to engage a child aged between 7 and 18 years in civil proceedings related to her/him, whereas those under 7 may be engaged only with the consent of their legal representative.²⁷³ The same rules apply to administrative court proceedings.²⁷⁴ Children under 14 may be questioned in criminal proceedings, whether as victims or witnesses, with the consent of their parents or guardians. The Criminal Procedure Code provides that interrogation of witnesses can take place irrespective of the age of the witness, provided that also present is a teacher or legal representative, or parent or guardian in the case of children under seven.²⁷⁵ There are no restrictions on the age at which a child can file a complaint with the police.

Kyrgyzstan's Civil Procedure Code provides that full legal capacity is attained at the age of 18 and that adults or legal guardians must represent children under 14. A child aged between 14 and 17 years may initiate proceedings in her/his own name if legally married or emancipated, or if provided for in other procedural laws

such as those surrounding certain family and labour proceedings.²⁷⁶ According to the Family Code, children must be heard in proceedings concerning them from the age of 10.²⁷⁷ The consent of children over 10 must be obtained before a court will grant an adoption.²⁷⁸ There are no restrictions on the age at which a child can file a complaint with the police.

In Montenegro, the Law on Civil Procedure provides that only persons with full legal capacity may take action in court.²⁷⁹ Full legal capacity is typically acquired at 18 years of age, but may be acquired earlier by persons aged 16 and over who enter into marriage with the court's permission.²⁸⁰ Where a person lacks full capacity, the Law on Civil Procedure mandates that a legal representative must undertake all actions on her/his behalf.²⁸¹ In a number of instances, however, the Family Law provides for children to initiate actions for the enforcement of their rights or to provide consent to particular events.²⁸² A child aged 10 or over may freely and directly express her/his opinion in every court and administrative procedure in which her/his rights are being considered,²⁸³ and in adoption cases, consent is required before the court will grant adoption.²⁸⁴ There are no restrictions on the age at which a child can file a complaint with the police.

Overall, the legislative framework in all four countries demonstrates a patchwork of provisions, which differ according to the legal issue at stake. The provisions do not comprehensively support the right of the child to participate in proceedings that affect her/him, as provided for in article 12 of the Convention on the Rights of the Child. The need for parental approval to bring proceedings unduly limits children's access to remedies and to the right to participate, as do age restrictions.²⁸⁵

Justice sector professionals expressed doubt about children's ability to even file complaints, a belief that was confirmed by interviews with children and their families. For example, justice sector professionals in Kyrgyzstan expressed the opinion that children encounter serious difficulties in filing complaints, even when they are legally entitled to do so. Some mentioned that it was forbidden for children within a family to seek help from outsiders without their parents' permission. Or, as a court officer in one area mistakenly explained, "According to the law of the Kyrgyz Republic, children under 18 years don't have

a right to approach law enforcement agencies. On behalf of them, their parents, guardians or trustees approach law enforcement.” One representative of a state-run commission on children’s issues reiterated this point, stating: “No child, irrespective of their cultural, ethnic, economic and other background, is allowed to file a complaint even if his or her right is violated or assistance is needed to seek justice. Even if they file a complaint, the institutions won’t accept it. Their parents do it instead of them. This shows that children have access to justice only through their parents.”

Financial constraints and other barriers

Complex legal procedures and costs related to lawyers, court fees and transportation are obstacles that affect children disproportionately. Children generally do not have financial independence, and the requirement to be able to afford these associated costs is a serious barrier to accessing justice where support and easily accessible procedures are absent.

Poverty also exacerbates vulnerability to exploitation, and this can discourage children from pursuing their rights. Children who work illegally due to extreme poverty, for example, are unlikely to pursue legal

BOX 1.

Case study: Bride kidnapping/perceived lack of capacity (Kyrgyzstan)

This case study illustrates the harms of bride kidnapping and the need to ensure that bride kidnapping is treated as a crime. It also demonstrates the challenges involved in seeking justice where a child is incorrectly perceived as lacking the legal capacity to bring a charge.

L.S., a 17-year-old girl, was told by her parents that they had chosen a boy for her to marry. She refused the marriage repeatedly, which led to a serious conflict within her family. L.S. stood her ground, noting: “I was firm in my decision not to marry the boy because it wasn’t in my plan to marry soon.” A month later, while walking home from a friend’s birthday party, L.S. was kidnapped by four boys.

She described the experience as follows:

A black car pulled out and blocked my way. I thought the driver was drunk and tried to go around the car. At that moment, two boys got out of the car and came up to me. Without saying anything, they dragged me into the car. I cried loudly, but one of them slapped me harshly. I saw two more boys sitting in the car. I recognized one of them immediately. He was the

boy whose mother came to our house to match me with him a month ago. In the car, I tried to oppose them forcefully but the boys who were sitting on my two sides were very strong. They abused me and used very bad language towards me, calling me ‘condom’ and [other insults]. They also called me ‘stubborn donkey’. The boy who I was supposed to marry said, “Sit still, we are trying to bring you to a grass field.” I bit one of his hands. He punched me as if he were punching a man. Then, they started threatening me. One of them said, “If you continue behaving like a stubborn donkey, we will [have sex with] you in turn and throw you out of the car into the field.” I became afraid and stopped opposing them physically.

L.S. then tried to convince the boys to let her go by telling them she would report them to her parents as well as to their own. The boy she was to marry replied, “Your parents? They already know what I am doing with you ... In fact, this kidnapping is your parents’ plan, not mine.” L.S. recalled: “After these words, I was shocked and lost consciousness. Being slapped, even punched was nothing compared to hearing that my parents were participants in the kidnapping.”

L.S. regained consciousness lying alone in a field, hours outside of town and went to a friend’s house. She later tried to file a complaint against the boys at the Rayon Department of Internal Affairs, but was told that as she was a minor, and as the boys had not raped her, the police could not open a case for the kidnapping without the consent of her parents. “Of course, my parents would be against that.”

L.S. indicated: “After understanding that the boys wouldn’t be punished and nobody would be able to help me, I moved to my sister’s house in Bishkek.” L.S. has been able to continue her studies and now volunteers with an organization in Bishkek that helps other victims of bride kidnapping, but the transition has been far from easy. Being removed from her family and friends has negatively affected her physical and psychological health. Describing the change, she stated, “I fell under depression. I felt alone in this world and completely unprotected.” L.S. is stigmatized within her community, with her former friends and neighbours blaming her for having refused to marry. She has no relationship with her parents but misses her mother and worries about her health.

Source: Interview with 17-year-old girl, Kyrgyzstan.

remedy for violations of their rights. It is worth noting that non-judicial mechanisms such as ombudsperson institutions and informal justice systems usually do not have associated fees and so financial constraints may be less of an obstacle in such cases.

TABLE 5. Responses by justice sector professionals on financial constraints as an obstacle

Country	All children	Vulnerable children
> Albania	69%	93%
> Georgia	40%	63%
> Kyrgyzstan	27%	47%
> Montenegro	30%	43%

In some of the focal countries, no fees are charged for matters involving children. Yet, fees represent only one of a number of financial barriers, which include each and every one of the costs associated with pursuing a justice matter. In Albania, no court fees are charged for cases of domestic violence, but other barriers exist. In Georgia, civil or administrative cases concerning violations of children’s rights are exempt from fees.²⁸⁶ As a legal aid lawyer in Georgia explained, however:

In civil cases, a child has to apply to court through a parent or legal guardian and if the latter fails to act, the child is left unprotected. Moreover, another obstacle that prevents children or their families from seeking justice is the requirement to pay state fees on certain civil law cases if the child or his or her family decides to initiate litigation. While families under the poverty level and disabled children are exempt from the state fee, those who do not belong to these vulnerable groups, but are not well off, face financial obstacles to access justice.

Children and their family members explained how, in some instances, the effort involved in meeting the necessary requirements could be overwhelming. One 13-year-old boy from Kyrgyzstan without proper residence papers explained: “It seems that it will never end. My parents have been trying to collect the documents for a long time.” Justice sector professionals emphasized a number of other practical constraints to accessing justice such as language





barriers, requirements for documents, distance from institutions and the absence of programmes or infrastructure to ensure effective access to justice. Logistical and bureaucratic hindrances were also highlighted by the majority of justice sector professionals as well as by children and their families.

Exacerbated obstacles among vulnerable groups

Justice sector professionals identified a number of additional or more pronounced obstacles affecting access to justice for vulnerable children. For example, physical barriers were frequently mentioned in

“ I know how to file a complaint but only in the Uzbek language. But if I approach the police or other structures, I am required to write either in Kyrgyz or Russian. Nobody accepts complaints in Uzbek. That is why it is difficult for all Uzbek children to file a complaint.”

15-YEAR-OLD BOY, KYRGYZSTAN

connection to children with disabilities. Several judges and prosecutors conveyed the need to meet children outside of their offices, as these spaces are not equipped to accommodate children with disabilities. In Albania, it was highlighted that children from remote areas had difficulty travelling to the available institutional support mechanisms.

Linguistic constraints were also identified as obstacles for children from vulnerable groups, with interviewees noting that legal information is often not available in minority languages, and also that children, afraid of not being understood, avoid approaching institutions. One community coordinator from an Albanian NGO explained that there is a serious lack of information for Roma children in their own language. This point was reiterated by a representative of Montenegro's Police Directorate, who works on combating domestic violence and noted: “Websites do not provide a significant level of information in our language, not to mention minority languages.”

In Georgia, children and their family members highlighted the difficulty of filing complaints in Georgian, which is not a first language for ethnic minorities. A lawyer from Georgia's Office of the Public Defender explained that linguistic constraints were also an issue for ethnic minority children in detention: “While conducting monitoring in a children's penitentiary establishment, we witnessed that ethnic minority children could not file a complaint (fill in the form) since they didn't know Georgian and the forms were in Georgian.”

Several justice sector professionals in Kyrgyzstan also mentioned that children from very remote areas and ethnic minority children had particular problems in accessing justice, as their first language is not used in official processes and meetings. As one social worker highlighted:

Many Uzbek children, especially from mono-ethnic communities don't speak Kyrgyz or Russian at all although they understand some Kyrgyz. Only understanding Kyrgyz doesn't guarantee access to justice. It is also important to express their opinions freely. Ethnic Uzbek children can express their opinions freely only in the Uzbek language. That is why they face a burden – if they become a victim or witness of a crime – during the investigation or in the social sphere.

6.3.4 Social and cultural obstacles

Social and cultural barriers were cited among the most serious obstacles for children seeking justice, by justice sector professionals as well as by children themselves and also by their family members.

“ To nobody. I don't think they would take me seriously.”

14-YEAR-OLD GIRL, MONTENEGRO,
WHEN ASKED TO WHOM SHE WOULD TURN FOR HELP.

The social and cultural barriers highlighted include the fear of negative consequences from the family, the community or justice sector actors. It was noted that lodging complaints and seeking redress

without parental consent has social consequences, with children risking stigma, ostracism and loss of acceptance within their own family and community.²⁸⁷ Negative perceptions of and distrust in public authorities, the police and judicial officials also impact on children’s access to justice. Justice sector professionals, particularly those from governmental institutions, although aware of this distrust, were unaware of its pervasiveness and impact. The findings indicate that social and cultural barriers are even more pronounced for children living in vulnerable situations.

Cultural acceptance of violence within the family and perceptions of children’s place within the family

Research findings highlight a cultural tolerance of violence in all four countries. In the case of children, violence is considered a means to discipline and educate children for their overall benefit. Many abused children do not ask for help, possibly because they perceive violence as a normal phenomenon and do not see themselves as victims of abuse.²⁸⁸

TABLE 6. Responses by justice sector professionals on cultural acceptance of violence within the family and children’s place within the family as obstacles to access to justice for all children

Country	Cultural acceptance of violence within the family	Perceptions of children’s place within the family
> Albania	62%	48%
> Georgia	57%	53%
> Kyrgyzstan	40%	23%
> Montenegro	33%	70%

As noted by a representative of an NGO working to combat violence against children in Montenegro, some institutions mandated to report violence do not respond or pretend they don’t notice:

For example, we know a girl who suffered obvious family violence. She was beaten so heavily that her face was distorted and she was forced to go to school with severe injuries. None of her peers and, what is more terrifying, none of her teachers or

anybody from the school staff reacted. Every school has a legal obligation to report family violence cases. When such situations happen, we cannot talk about legal remedies. At least, not functional legal remedies, only those that exist on paper.

In Georgia, children expressed the opinion that violence is considered an acceptable form of punishment. According to one 13-year-old girl living in a settlement: “I would not speak to anybody, even if the teacher hits me. If I deserve it, then they should hit me. Why should I go to somebody, if I deserve such treatment?” Other children expressed similar ideas. One 13-year-old boy living in a settlement noted: “If my parents punish me, I would talk to them and promise them that I would not behave badly anymore.”

Four boys aged 14 and 15 had the following exchange when questioned about violence.

Boy 1: “There are no parents in the world who do not use corporal punishment.”

Boy 2: “In my opinion, that’s not a serious issue. Parents can use corporal punishment – they are parents, they have to raise their children and teach them what is right and what is wrong.”

Boy 3: “I completely disagree – it is not right, children should not be disciplined physically. Parents should explain verbally and not through physical humiliation.”

Boy 4: “It depends on children’s age ... at young ages everybody gets some punishment.”

In Albania, cultural acceptance of violence also featured significantly among justice sector professionals, children and their family members. Several justice sector professionals focused on children’s place within the family, as explained by one lawyer: “The traditional perception of the family, the role of the father, the place of children within the family and the strong obedience of children for what parents are asking, are still features dominating our family relations, to a great and considerable extent.” A staff member of a Child Protection Unit in an urban area suggested that parents still consider children “their property”.

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Children's own acceptance of violence was also explained as being related to their perceived lower status. In Montenegro, one professional from the education sector suggested: "Sometimes children accept the violence thinking they deserve to be punished, as they 'were not behaving, so they made dad furious'. Perception of children's place [within the family] is related to this, so children somehow have a lower level in the family, and as such, a lower level in society. That is the reason they are provided with selective information and support."

This view was shared by several justice sector professionals in Kyrgyzstan, who stated that family violence against children was considered the norm and necessary for a child's upbringing, and was therefore a private matter. A representative of the Department of Social Development in Kyrgyzstan explained:

A great majority of people, if not all, irrespective of their social, economic, ethnic and other background, accept violence in the family, especially towards children, as a norm. In their understanding, any action or attitude and behaviour by parents or elders towards children is perceived as part of their upbringing – in a good sense – although such action or attitude violates children's rights. Many people think that state structures or other organizations don't have a right to help a child if he or she is being brought up within a family. In their opinion, this is a purely family issue.

Justice sector professionals in Montenegro considered perceptions of children's place within the family an important obstacle to access to justice. Many pointed out that, culturally, children are used to being obedient and to neither having a voice nor expressing themselves within the home. As a staff member of an NGO providing assistance to Roma and Egyptian families explained: "Perceptions of children's place within the family are extremely important. Children are not involved and they do not participate in family decisions, not even for small things. They are not allowed to express their opinion in their homes. This is reflected in the treatment of children through procedures, even when their rights are protected – children fear expressing their feelings and attitudes, as they are not used to such an approach."

While some justice sector professionals identified the cultural acceptance of violence and the position of

children in society as obstacles to access to justice, many others did not. Children identified and reported violence and their place within the family as barriers in far more vivid terms, while family members in many instances reflected norms of cultural acceptance.

Children's Equitable Access to Justice shows that entrenched social acceptance of violence within the family and perceptions of children's lower status within the family can present formidable barriers to access to justice, especially for children who suffer abuse and violence within the family. An important step towards changing societal norms in relation to violence against children is the abolition of corporal punishment. While the existence of laws banning corporal punishment do not necessarily change attitudes, it has been recognized that they do send a clear message to parents and caregivers that violence against children is unacceptable, even in the home.²⁸⁹ Of the four focal countries, only Albania has in place laws that protect children from corporal punishment.²⁹⁰ Montenegro has committed to law reform,²⁹¹ while Georgia and Kyrgyzstan have not yet made clear commitments.²⁹²

Fear of negative consequences and a sense of futility

Justice sector professionals in the four countries identified the fear of negative consequences or reprisals as a barrier to accessing justice. This is deeply connected to cultural norms around the acceptance of violence and to children's lesser place within the family and society. Comments from children show that this fear extends still further, to a sense of futility or an inability to influence systems in which these types of social and cultural obstacles are ingrained.

About half of justice sector professionals interviewed in Montenegro perceived fear of social ostracism as an obstacle to justice, whereas this was seen as less of a problem in Georgia and Albania, and seldom identified as such in Kyrgyzstan. These findings were contradicted, however, by information received from children. For example, a 14-year-old ethnic Uzbek boy in Kyrgyzstan noted, "parents will 'kill' their children if they complain to other people." Other children also highlighted this general point, and it was reinforced by a 15-year-old ethnic Uzbek girl, who noted that many children face an inability to act if parents violate their rights: "Not even the police or anybody else can do

anything to help us. In our community it is not accepted for anyone to interfere in family issues, even if a father beats his child to death. And the child is expected not to tell other people. If he tells a bad word or complains to other people about his parents, other people judge him. That's why children try to keep the violence they face at home inside the family. Many children suffer from this."

A representative of an NGO in Kyrgyzstan explained: "For girls to approach authorities or other justice mechanisms is perceived negatively among the population. This is due to the mentality of our people living in our oblast [administrative division]. This is a conservative perception. If a girl approaches a justice institution, she and her family are considered a spoiler of the society. Instead of receiving a remedy, she may receive a negative label such as 'spoiler' or 'witch' that brings a curse."

In Georgia, several justice sector professionals indicated that fear of negative repercussions is a factor impeding children's ability to access justice. As one judge explained:

In general, children, especially victims of crimes, do not access justice because they often fear speaking up. I had a case of a child victim of sexual abuse. The child's mother was married to another man and lived in a rural area whereas the children lived with the uncle in Tbilisi and he was sexually abusing the child. The child could not talk to anyone out of fear. The case was brought to the attention of the law enforcement authorities only once her sister witnessed the abuse and told what she saw to her mother.

Reluctance to complain about family matters, including violence, was significant among children in all four countries. This was most apparent, however, among children in Kyrgyzstan, who were noticeably vocal about not complaining about their family. In Kyrgyzstan, children also expressed concern that complaining about abuse and mistreatment was cowardly, and a betrayal of family and cultural values. One boy explained: "I am not sure. If I speak to my father, he considers this an action of a weak person. He doesn't want us to complain about anything. He wants us to be strong men." Girls raised the same concerns. A 14-year-old ethnic Kyrgyz girl explained: "If I behave myself well, [my family] will never violate my rights.

We definitely shouldn't do something if our rights are violated at home because we can harm our parents or brothers or sisters while trying to protect our rights."

Many children in Kyrgyzstan felt that they had to rely on themselves, believing that complaining could not lead to a positive outcome. Children in all four focal countries expressed this sense of futility, explaining that telling someone would be useless, or could potentially make matters worse by exacerbating whatever situation they were facing. A 13-year-old ethnic Azeri girl working on the street in Georgia highlighted the ineffectiveness of police involvement:

When I lived with my parents, my father was drinking a lot and also forced us to beg in the street and if I earned less than 20 lari [approximately US\$11] daily, he would beat me. I would run from the house and would not come back for several days. He would find me and take me back and beat me with the broom. I didn't tell anybody, since my mother also often took his side. Then when I was fed up with this, I decided to do the right thing and denounced my father to the police. This didn't change anything. When they left, my father would beat me again.

Justice sector professionals expressed similar concerns. For instance, a project manager for a Georgian human rights organization suggested, "if children resort to [justice] mechanisms, they are unable to achieve results". In Kyrgyzstan, a representative of an NGO that runs a telephone helpline made the point that raising awareness without creating adequate support services increased children's vulnerability. For children, approaching individuals or institutions for help and then being unable to get assistance or facing repercussions for disclosing their problems is disempowering, leads to lack of faith in the system, reinforces negative perceptions and risks exposing children to greater harm.

Distrust in state institutions

Justice sector professionals expressly mentioned distrust in institutions²⁹³ as a barrier to children's access to justice. They generally viewed it as a slightly greater obstacle for children in vulnerable situations, with the exception of those professionals interviewed in Kyrgyzstan (*see Table 7*).

TABLE 7. Responses by justice sector professionals to whether distrust in state institutions is an obstacle to accessing justice

Country	All children	Vulnerable children
> Albania	31%	52%
> Georgia	27%	33%
> Kyrgyzstan	47%	33%
> Montenegro	33%	40%

Further analysis of these data shows important distinctions. For instance, in Albania, Montenegro and Georgia, approximately 70 per cent of NGO representatives interviewed considered distrust in state institutions an obstacle, as compared to a significantly smaller proportion (23 to 35 per cent) of all other justice sector professionals. These figures suggest that judicial authorities and governmental officials may not fully appreciate how they are perceived by the users of judicial services – children, family members and NGO representatives. Findings in Kyrgyzstan were slightly different, as almost equal numbers of justice sector professionals from the judiciary, government and NGOs identified distrust as an obstacle. Representatives of governmental and judicial institutions in Kyrgyzstan appeared much more aware of this deficit in trust.

Exacerbated cultural and social obstacles among vulnerable groups

Justice sector professionals interviewed in Albania, Georgia and Montenegro described this distrust in state institutions as being greater among vulnerable groups of children. Kyrgyzstan again delivered different results, with justice sector professionals expressing the opinion that distrust is an obstacle that affects all groups of children almost equally. For instance, a social worker in Kyrgyzstan noted that children’s distrust towards authorities is not limited to any one group of children, but rather is equally prevalent throughout this population.

Negative experiences involving social services and public administration authorities featured as a key aspect of distrust in all countries. A representative of an NGO in Montenegro that works with children with disabilities explained:

The hardest problem is to be forced to address institutions knowing that your attempt to reach assistance will be denied or ignored. However, parents of children with disabilities still do that. Although they distrust government institutions, they keep knocking on their door, as they have children that totally depend on them. We have nobody else to go to. Small services can be obtained. Bigger problems still remain unsolved. They earned our distrust. More than 90 per cent of parents of children with disabilities think this way.

Responses from family members reiterated this point, demonstrating a distinct lack of faith in the possibility of assistance, even among those who had expressed willingness to approach institutions for help. In Albania, distrust in institutions was raised repeatedly during discussions with children and family members from vulnerable groups. According to these individuals, procedural difficulties and the perception of authorities as unhelpful deter people from seeking help. A 13-year-old Roma girl stated: “We don’t really trust the public institutions here as they don’t like us.” Children also commented on the experiences of children from different ethnic groups, particularly the Roma community. One 15-year-old boy living in a public institution explained: “Some children are treated differently from the others. For example, when I was in the previous school, some of my classmates were Roma children and the teacher didn’t like them at all. She didn’t pay attention and care about them.”

Children in all four focal countries expressed a vivid distrust of the police. In Albania, Roma children in particular highlighted that they would not want to approach the police, even though almost none of them reported a bad personal experience. Ethnic Azeri children and families in Georgia expressed the opinion that it would be very difficult to file a complaint, with several stating the belief that the police would consider them liars. In the words of one 17-year-old ethnic Azeri girl: “An adult should accompany [a child] and attest to the facts the child is reporting to the police, because the police may not believe what the child is saying.”

While some children in Kyrgyzstan mentioned that they would approach the police, many other children perceived the police as corrupt, violent, arrogant and to be feared. Girls expressed insecurity about approaching the police for fear of sexual violence.

One 16-year-old girl explained: “How true it is I don’t know, but I heard once that a policeman sometimes uses such opportunity for his own sake. He rapes a girl victim of a rape when she approaches him because she already lost her virginity. Then, she can’t prove it to anybody.” Other children in Kyrgyzstan mentioned they believed that the police would only help those who could pay them. A 17-year-old girl stated: “Another reason why nobody approaches the police is that they will ‘torture’ both a person who committed a crime and a victim by demanding a bribe from both of them. They tell the criminal: ‘If you give this amount of money, I will close your case and you will be released.’ At the same time, they tell the victim, ‘If you give this amount of money, the criminal will be punished as you wish’.” Several boys recounted specific instances of discriminatory treatment by the police.

According to the justice sector professionals interviewed, many staff in government institutions try to help in the best manner possible. Some professionals asserted that children’s perceptions of government institutions are incorrect. One specialist from the Kyrgyzstan Department of Social Development elaborated: “Many children perceive state institutions as a monster. They think as if the institutions would kill them if they approached the office, not to mention asking something from them. I don’t understand why they have such false perceptions. In fact, state institutions want [to] and must help children. In other words, the state institutions are chasing behind children to help them, but children are running away from the institutions, refusing their help.”

Justice sector professionals identified fear of discriminatory treatment and distrust in public institutions as interrelated and reinforcing barriers. One board member of a women’s shelter in Montenegro said of Roma and Egyptian children: “They are discriminated against on the streets and at institutions equally. That is why they hesitate to address the institutions and that is why they distrust them.”

The findings on distrust in state institutions as an obstacle to children’s access to justice reveal how perceptions, more than experiences, can play a significant role in hindering access to justice. Although many children and their family members expressed distrust or suspicion and based their statements on direct experience of public authorities, others perceived

authorities as not to be trusted based on hearsay or ideas prevalent within their community.

A second issue to examine relates to the systemic problems such as inefficiency, corruption and discrimination identified by children and family members as contributing to people’s distrust of institutions. Corruption raises the question of where awareness raising should be targeted if the system does not respond effectively regardless of awareness. Increasing expectations without a corresponding, supportive response from institutions may make children more vulnerable. It may be necessary to also raise awareness about corruption or to identify which institutions are trusted and direct resources to these institutions only.

6.4 Are justice mechanisms and processes child-sensitive?

Once a child has successfully navigated the legal, practical, social and cultural obstacles to seeking justice, it is essential to ensure that justice proceedings are effective and sensitive to the age, maturity, needs and circumstances of the child. Due process considerations drawn from the international human rights framework are important, and according to the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, “Every child should be treated as an individual with his or her individual needs, wishes and feelings.”²⁹⁴ Guidelines such as these and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice²⁹⁵ define measures that States parties should take not only to protect children from hardship during the justice process, but also to ensure their meaningful participation in such processes.

The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime specify that children should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and needs, age, gender, disability and level of maturity, and fully respecting their physical, mental and moral integrity. The Committee on the Rights of the Child has elaborated on this, noting: “Proceedings must be both accessible and child appropriate. Particular attention needs to be paid to the provision and delivery of child friendly information, adequate support for self-advocacy,



appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.”²⁹⁶

Furthermore, the United Nations Office of the High Commissioner for Human Rights has identified the following good practices for children’s access to justice: empowering children with child-sensitive information, ensuring child-sensitive procedures and

participation for children in proceedings, triggering judicial action when necessary and using measures to ensure justice is equitable, particularly for those who may be disadvantaged or vulnerable.²⁹⁷

Against the background of international standards, this section of *Children’s Equitable Access to Justice* assesses the extent to which the four focal countries have child-sensitive justice proceedings



in place. While the assessment is not intended to be exhaustive, it illustrates some of the issues raised by justice sector professionals, children and their families based on their experiences within the justice system. As in other countries beyond the four under consideration, legislation concerning children's rights in legal proceedings other than criminal justice matters is minimal. Child-sensitive measures often do not extend

to civil and administrative proceedings, or are very limited.

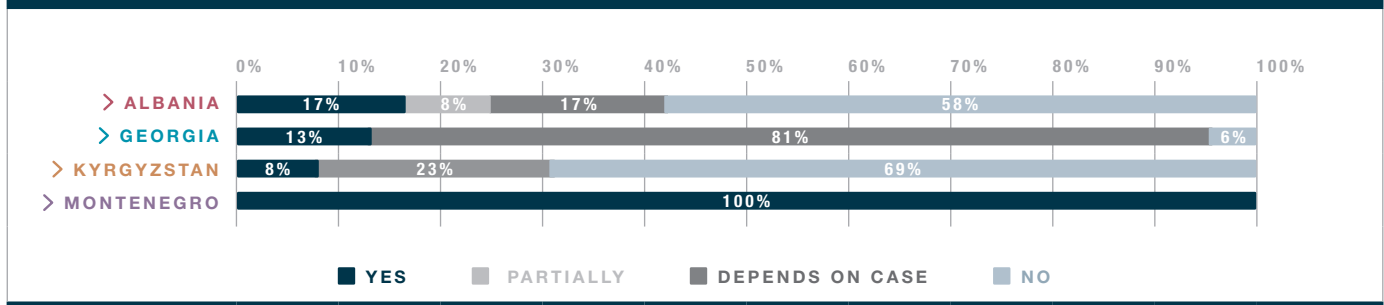
6.4.1 Specialization of professionals

For children to be treated with sensitivity, fairness and respect throughout any legal matter, all professionals should be properly trained to understand children's needs. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime require that all professionals working with child victims receive comprehensive training that addresses all aspects of working with child victims, from initial identification and crisis intervention skills to techniques for questioning child victims.²⁹⁸ The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, which address an even wider target group, also require specialization of all professionals working with children, including in civil and administrative proceedings. The Committee on the Rights of the Child routinely examines the matter of specialization of professionals in its periodical review of States parties' reports.²⁹⁹

These research findings reveal that the necessary specialization is lacking or available only to limited justice sector professionals in the countries of focus. Justice sector professionals across the four countries noted that specialized training and knowledge are strongest among those working in the juvenile justice system, and they often equated specialization and training exclusively with criminal matters. Particular gaps were identified in regard to specialization and training in civil or administrative proceedings involving children. The risk for children is that the justice system, rather than deliver justice, will lead to further rights violations.

In Montenegro, the Law on the Treatment of Juveniles in Criminal Proceedings (2012) requires the specialization of judges, prosecutors, police investigators and defence attorneys involved in cases relating to juvenile offenders and child victims/witnesses,³⁰⁰ and the process of establishing standards and procedures for recognizing qualified juvenile justice professionals is under way. The justice sector professionals interviewed unanimously agreed on the existence of provisions that stipulate training in child-sensitive procedures, even outside criminal matters, yet they

GRAPH 8. Responses by justice sector professionals on whether there are provisions requiring the special training of judges, prosecutors, lawyers and other authorities that bring decisions affecting children



did not cite specific provisions or requirements and their comments pointed to gaps. One judge stated: “We receive some symbolic knowledge in this area.” A social worker agreed: “We are all trained in child-sensitive approaches. However, it is up to individuals to implement what they are trained for.” Others explained that while training exists, it is not always effective. As noted by another judge: “I attended a couple of workshops. Not all of us passed the training. I cannot say we are trained in this respect.”

In Albania, following the establishment of juvenile sections within six district courts as per a 2007 presidential decree, specialized sections within Prosecutor’s Offices now also exist, primarily to address the juvenile offender caseload. Nevertheless, a child psychologist working at a district court suggested: “In my experience, I have noticed the judges are not properly trained for dealing with cases involving a child.” Other justice sector professionals pointed out that judges frequently move from one court or section to another, which works against specialization. The majority of justice sector professionals interviewed responded that there are no provisions that stipulate specialization and training for lawyers, judges or other authorities that hear cases involving children.

In Kyrgyzstan, the 2012 Children’s Code provides for specialization of all actors involved in the juvenile justice system, including judges, prosecutors, the police and social welfare, education and health professionals as well as all persons working at juvenile institutions. Despite this, most justice sector professionals interviewed stated that there were no provisions on specialization. Those who acknowledged the specialization requirements of

the Children’s Code pointed out that specialization is mainly within the juvenile justice system and is not applied on a systematic basis. The relative newness of the revised Children’s Code, coupled with the fact that the specialization process is an ongoing one, may account for the lack of awareness of the specialization requirements.

In Georgia, the specialization of certain judges, prosecutors and lawyers in children’s matters was initiated in 2014. Following a decision made by the High Council of Justice of Georgia in 2013, cases involving juvenile offenders are assigned to specialized judges, and justice sector professionals are increasingly required to attend capacity-building programmes. For instance, training in interviewing child victims has been incorporated into the training curricula for judges, prosecutors and lawyers. Progress has also been made in regard to the specialization of prosecutors, legal aid services and some structures – for example, the main police station in Tbilisi – in handling matters related to children. This specialization is still in its infancy, however, and legislation does not systematically establish specialized courts, judges, police, prosecutors or units within all of the criminal justice-related structures mandated to deal exclusively with cases involving children.³⁰¹ Overall, most justice sector professionals indicated that specialization depends on the case and is mostly adhered to in criminal cases. Furthermore, justice sector professionals interviewed in Georgia expressed concern about whether the capacity building provided to date adequately equipped professionals with the skills and expertise required to work with children. One judge handling juvenile matters suggested, “almost all judges are trained in child psychological development

issues. However, this two-day training provides rather basic information on the subject and is not sufficient for dealing with children.” A representative of an NGO that works with child victims agreed: “Although the judges currently attend basic training on children’s rights, I think this is not enough and it is necessary to increase justice professionals’ sensitivity through training which involves specific case studies and analysis.”

As summed up by the director of a legal clinic programme, also in Georgia:

There is a dearth of specially trained professionals within the justice system ... there are no specialized children’s courts in our country. I have heard many arguments and opinions against the creation of such specialized courts, that it is not necessary to have specialized courts and that specially trained judges will suffice. However, I still think it is necessary to have children’s courts that will hear and decide criminal, administrative and civil cases involving children. Judges hearing and deciding children’s cases should not only have knowledge of children’s rights, but should also possess the necessary skills and sensitivity to deal with children and decide cases in their best interests.

When questioned specifically about specialization and training for staff outside of the formal judicial system, the majority of justice sector professionals interviewed in the countries of focus, with the exception of Kyrgyzstan, suggested that staff from informal justice institutions receive training on children’s needs during their interactions with the formal justice system. As noted by one professional from Albania, however: “The staff are trained but the main problem remains the follow-up evaluation of whether this ... knowledge is implemented to improve the practical situation.”

Comprehensive and sustainable capacity building of all professionals who work with children within the justice system is a core component in ensuring access to justice for children. The sheer number and diversity of stakeholders involved in assisting children in accessing justice makes this a formidable challenge, however. Countries in the Central and Eastern Europe and Central Asia region are slowly taking up this task, though with an initial focus on juvenile proceedings. A greater focus must be put on all stakeholders who

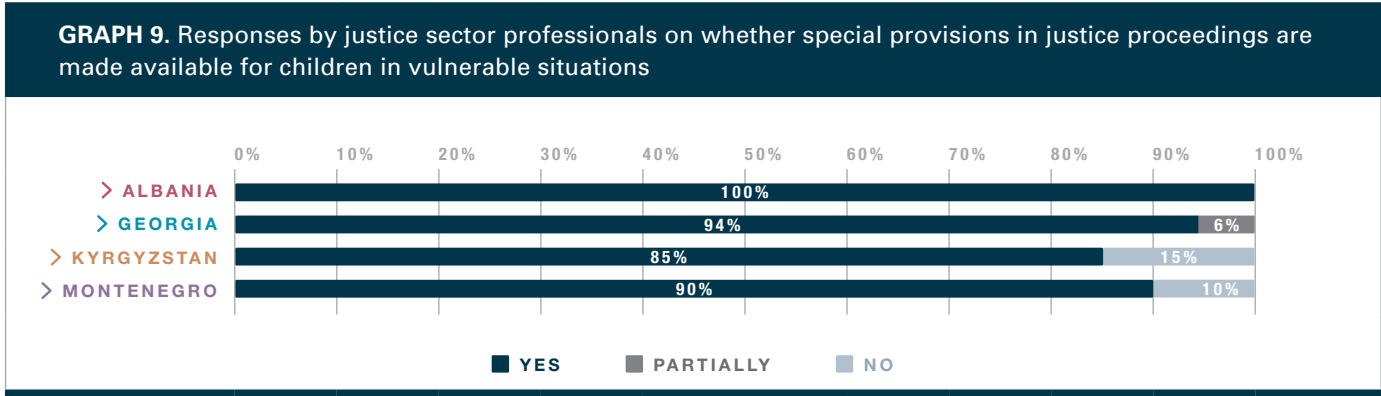
work with or support children through justice processes, and this should encompass a range of concepts and knowledge, from child-sensitive communication techniques to Best Interests Determination procedures. Furthermore, capacity-building programmes must be offered on an ongoing basis, and be adapted to the professionals’ needs.

6.4.2 Measures to protect children from discrimination

The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime note that a key component of being protected from discrimination is justice processes and support services that are “sensitive to the child’s age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities.”³⁰² The Guidelines also indicate: “Professionals should be trained and educated about such differences.”³⁰³ Special, individualized measures for persons with disabilities may include assistance with transportation and a support person to facilitate the participation or testimony of a disabled child in the proceedings. More broadly, justice systems should ensure the physical accessibility of all courts, prosecutor’s offices, police stations and other public institutions; provide information about justice processes, including laws, general information and forms, in majority and minority languages; ensure the presence of an interpreter at all stages of the proceedings when required; and ensure that neither extreme poverty nor physical distance from an institution is a barrier.³⁰⁴

The research findings reveal that children in vulnerable situations face greater obstacles to accessing justice, including informational barriers and less legal awareness. Discriminatory attitudes towards certain groups were acknowledged by children and their families as well as by justice sector professionals. Responses by justice sector professionals indicate that there is an emphasis on providing interpretation/translation, and female professionals to work with girls, but other special measures were not discussed.

In Albania, all justice sector professionals interviewed indicated that special measures such as linguistic



assistance and support staff are available to children from vulnerable groups. A judge from a juvenile justice court explained, “Women and girls who have been trafficked are assisted by female staff at the Serious Crimes Court. Translation is provided in case a person does not understand the Albanian language, and there are support staff for disabled children as well.” Responses from children and family members suggested that these special measures may not go far enough, and are intertwined with a lack of trust in the justice system more generally.

In Georgia, the large majority of justice sector professionals interviewed affirmed that special provisions are in place for children from vulnerable groups. Such responses appear to be limited, however, to rules in both the Civil Procedure and Criminal Procedure Codes relating to the provision of interpreters. These include interpreters for children who do not speak or understand Georgian as well as sign language interpreters. One civil court judge explained: “There are a few rules on this – ethnic minority children are provided with interpreters’ services and specialists are provided for children with disabilities, for instance, for deaf children.” Justice sector professionals highlighted, however, that challenges exist in implementation. As a representative of an NGO that works with children with disabilities explained: “There is a lack of qualified professionals within the justice system who can work with disabled children and facilitate communication with a child with special needs.”

The large majority of justice sector professionals interviewed in Kyrgyzstan also stated that special provisions are made for children from vulnerable

groups, and that these include the provision of interpreters, and female staff to assist girls. The provisions referred to are primarily available to children in conflict with the law, however. A representative of the Department of Internal Affairs noted: “Children who don’t speak the state language or official language are allowed, even forced, to use the service of an interpreter during the investigation or interrogation, so that they are able to understand what is asked and told during the process. Our women staff members work with girl suspects if needed, because our main job is to get information from a suspect. One way of doing so is to make the environment comfortable for that person to speak freely.”

A representative of Kyrgyzstan’s Centre of Prevention of Child Delinquency conveyed: “Children are provided with a translator and a sign language interpreter. Girls are searched by women officers and there are also women investigators in [the] police. We also have women officers in our centre.”

In Montenegro, almost all justice sector professionals interviewed noted that special measures such as linguistic assistance are available. A judge from one court handling civil matters explained: “It is in accordance with the Law on Civil Procedure. We are obliged to ensure interpreters and to support children with disabilities to facilitate communication.” A social worker noted, “Interpreters are available and courts are doing their best to meet the special provisions in accordance with their capacities.” Gaps were also identified, however. One inspector from the Police Directorate, who stated that expert teams are not part of the police, explained: “When we have deaf children, we call an interpreter. Some of us provide assistance

in this respect. I assist when we have a blind child, as I am a mother of such a child. We do not have experts, as the State does not have them.”

Across the four focal countries, funding was identified as a serious constraint to child-sensitive justice, with budgetary restrictions preventing appropriate changes. A representative of the Kyrgyzstan Family and Child Support department commented, “I must confess that this is our weakness. We should create [the] necessary conditions for vulnerable children to be able to contact us easily when they need our services. Unfortunately, we haven’t created such conditions because of shortage of money.” Similarly, a representative of the Department of Social Development noted: “Unfortunately, we still work like during the Soviet times when little attention was paid to creating special conditions for vulnerable groups.”

Overall, the judges and prosecutors interviewed suggested that mechanisms to protect children from discrimination are in place, but on further questioning, this usually referred to interpretation assistance, including for children with a hearing or language disability. A proactive approach to fostering equity in the provision of justice services appears to be lacking. The legal and policy frameworks in the four focal countries are sparse in terms of creating accommodations or conducting outreach for children at risk of discrimination within the justice sector. Information received from NGO and governmental representatives indicates that much more work is needed to make justice institutions truly equitable and accommodating for all children.

6.4.3 Guaranteeing the right to be informed

Children’s Equitable Access to Justice shows that the justice system and its mechanisms are rarely well known to children. Many children distrust the system and are intimidated by its processes. Providing children with clear, practical information about what to expect can allay fears, reduce anxiety and enable them to participate more effectively. The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime indicate that information provided to children should be both procedural and practical, allowing children to understand others’ expectations and the available options.³⁰⁵ Importantly,

this includes information on services such as health care and psychological, social and financial support.

In Albania, the large majority of justice sector professionals interviewed felt that the provision of child-sensitive information depends on the type of case, and only one third of them stated that child-sensitive information is always provided to children. One lawyer noted that children are more likely to receive information when in conflict with the law. Justice sector professionals also pointed out that the way in which information is provided might not always be effective. A judge from the family law section of one court explained: “Although the information is provided, I am not sure if a child can clearly understand what to expect throughout the justice process, as it is difficult to understand the court procedures because of his or her age, intellectual capacity, parents’ approach, etc.”

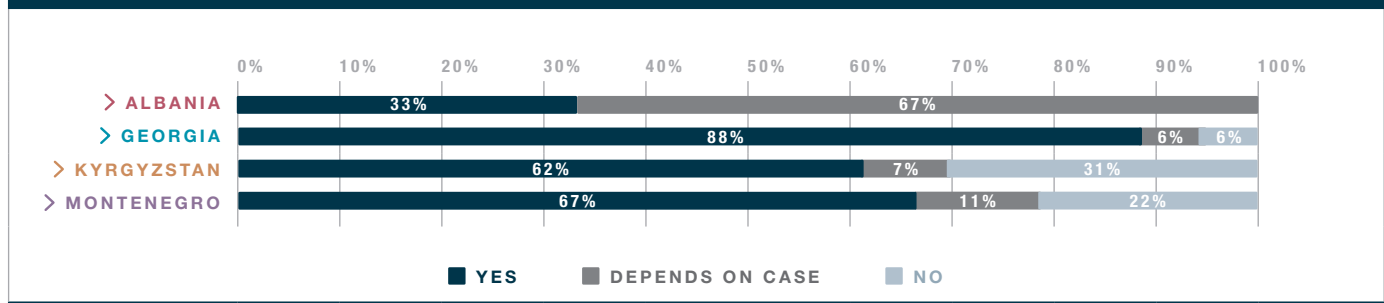
The majority of justice sector professionals interviewed in Georgia felt that children are provided with clear, child-sensitive information. The Criminal Procedure Code of Georgia contains a general provision that all participants in proceedings should be instructed on

“ **My mum was with me, but she was frightened as well, although she would never admit that. She also did not know the procedure, so she could not provide me with the information. Later on, we were not informed of what happened with our legal case and my mum did not know she had a right to ask for such information.**”

17-YEAR-OLD GIRL, MONTENEGRO

their rights. Both prosecutors and judges affirmed their role in explaining the proceedings to a child in a language appropriate to the child’s age and stage of development. Justice sector professionals also noted that staff of the state-run Social Service Agency, who represent children in proceedings related to custody, adoption and withdrawal of parental rights, are required to explain to children the proceedings and their rights. Shortcomings were also identified,

GRAPH 10. Responses by justice sector professionals on whether children are provided with clear, child-sensitive information in their own language about what to expect throughout the justice process



however. One representative of a child protection organization stated: “When decisions on removing a child from a foster family and placing in another family or service are being taken, the child is not notified in advance and sometimes learns about this one day prior to moving to another family. No preparatory work is being carried out with the child and this causes huge stress to him or her.”

In Kyrgyzstan, the majority of justice sector professionals interviewed thought that child-sensitive information is provided to children, and emphasized the provision of translation services and recent changes in criminal proceedings. A court officer working on the execution of court decisions explained: “The court has a staff member who speaks both Uzbek and Russian in addition to Kyrgyz. She communicates in a simple ... and oral form with children who are participating in the justice process.” Other justice sector professionals stated that lawyers and judges provide information to children who are victims or suspects. A regional judge noted, however, the absence of special provisions in civil matters that would ensure consistent practice across justice proceedings.

The majority of justice sector professionals interviewed in Montenegro also felt that child-sensitive information is provided, although their comments were clearly associated with criminal proceedings. Nevertheless, the Family Law also provides that children must receive all relevant information necessary for them to be able to express their opinion.³⁰⁶ In relation to child victims, a prosecutor specialized in children’s issues explained: “Victims are informed about the reasons they are invited, they are informed about their rights. All the information is adjusted to children’s

level of comprehension and is provided in their own language.” A representative of the Prosecution Support Service established in the Supreme State Prosecutor’s Office and two Higher Courts in Montenegro stated, however, that the approach and language used needs to be better adapted to children. A representative of the Protector of Human Rights and Freedoms of Montenegro also explained that while the provision of information to children is a legislative requirement, it is not fully respected in practice. Given the relative newness of the Law on the Treatment of Juveniles in Criminal Proceedings, the capacity-building process required is ongoing and the comprehensive change in approach is under development.

Children and their family members were much less positive in their responses to whether they were provided with information about the proceedings and how long they would last, the availability of additional support services and the child’s role, if any. Most children and family members noted that they were provided with no such information, or only some. The findings reveal a gap between how children experience justice processes and how justice sector professionals perceive the realization of children’s right to be informed.

6.4.4 Guaranteeing the right to be heard and to express views

As noted previously, all four countries of focus have legislative provisions that support children’s participation in specific justice processes, although these often place restrictions on age or require consent from the parents or legal guardians. In some of the focal countries, observers questioned whether such participation by children happens in practice,³⁰⁷ and

pointed out that there is no comprehensive application of the child's right to be heard across all types of justice processes. Meanwhile, as discussed above, participation in proceedings is part of the child's right to be heard, guaranteed by article 12 of the Convention on the Rights of the Child.

The Committee on the Rights of the Child has emphasized that article 12 applies to all relevant judicial proceedings in which children may be involved, including, but not limited to, cases related to custody, adoption, separation of parents, child victims of violence, sexual abuse or other crimes, child victims of armed conflict and children in conflict with the law, and administrative proceedings related to children's health, environment or education.³⁰⁸ The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime provide guidance with respect to victims and witnesses: "Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance."³⁰⁹

The right of children to participate in matters that concern them and their right to be heard and have their views taken into account are directly connected to children's right to be provided with all of the information necessary to make an informed decision, including information about available support such as psychological, social, legal or other advice or representation services. The realization of this right is linked to assistance and support and the creation of comfortable environments for children.³¹⁰

In Georgia, justice sector professionals highlighted a recurrent issue, namely that administrative bodies make decisions without understanding the circumstances surrounding a child's claim. One lawyer working in the area of domestic violence explained: "Decisions are based on the social worker's report, however, the report often fails to reflect a child's true opinion. For instance, in family separation and custody cases, children often try to please one or other parent and hide their true opinion and so the social worker has to make an effort to inquire [as to] what the child really thinks. However, they often fail to do so."

Although only a small number of the children interviewed for this research were able to comment specifically on this issue, those who did expressed the opinion that they were not heard in proceedings concerning them. In particular, children and family members in Kyrgyzstan felt voiceless vis-à-vis official administrative, police and judicial authorities, although similar sentiments were also expressed in other focal countries. Even when the relevant legislation provides for the right of the child to be heard, this does not always happen in practice across the four countries. Most children involved in this research, including those who had not had specific contact with a justice institution, stated repeatedly that their opinion and experiences are not valued. It therefore appears that decisions made on children's behalf – many of them life-changing – are made without children being adequately heard.

6.4.5 Provision of psychological and social support services

Children participating in justice processes should have access to a range of non-legal support services to help them to reintegrate and fully participate in the proceedings without risk of further traumatization. Psychological assistance, counselling and educational, health and social services should be provided to children according to their unique needs.³¹¹ These non-legal services are particularly important as children's legal and non-legal needs are often intertwined. Support persons should possess the training and professional skills to assist children of different ages and backgrounds throughout legal processes, by providing information, emotional support and advice and liaising with family members, lawyers and other involved persons as needed.³¹² These services are generally provided in the community and are distinct from in-court measures.

The research findings demonstrate that, for the most part, psychological and social support services are neither foreseen by the legislative frameworks nor available in practice. In Albania, NGOs provide legal, psychological and social assistance to some children in legal proceedings. The legal framework in Georgia does not establish any structure for such services and their availability is limited.³¹³ In Kyrgyzstan, a hotline for children has been established by an NGO, and the Child Support Centres in two cities, established by

CHAPTER 6: RESEARCH FINDINGS: A CROSS-COUNTRY OVERVIEW

municipal governments, offer assistance to children facing violence and abuse. Access for children in Montenegro to integrated psychological and social assistance is provided through Centres for Social Work, according to the 2013 Law on Social and Child Protection. Among the enumerated beneficiaries are children without parental care, children in conflict with the law and children who are the victim of abuse, domestic violence or exploitation.

Across the four countries of focus, access to non-legal support services is one of the weakest aspects in the provision of justice services for children. These findings demonstrate that community-based support services are almost completely lacking, or are provided in an ad hoc manner. Referral lines between the various sectors concerned are often unclear or informal, rather than institutionalized. Many models exist for the provision of a continuum of services within judicial proceedings, from highly concentrated and integrated service models, often referred to as 'one-stop shops', to more flexible protocols of cooperation between service providers and judicial institutions.³¹⁴

6.4.6 Provision of witness support services

Victim/witness support services within the police, prosecutor's offices and courts should help children to navigate the challenging process of providing evidence or testimony, and assist police, prosecutors and judges in conducting proceedings in a way which respects the child's safety and dignity.

A witness support provider should be able to:

- assess the child's needs and make recommendations to the prosecutor or judge on the witness protection measures required
- assist in implementing the necessary witness protection measures
- inform a child witness and her/his care providers about the proceedings and the child's role
- attend all interviews with the child
- proactively prevent harassment or trauma during questioning

- facilitate transportation assistance and visits to the court prior to a hearing
- accompany the child during waiting periods
- debrief the child following her/his testimony
- refer the child to out-of-court support services.

In Montenegro, the Law on the Treatment of Juveniles in Criminal Proceedings provides that a professional support staff member should attend a hearing involving a child witness; this is mandatory for children under the age of 14. In mid-2013, witness support services, known as Professional Support Services, were established in two higher courts and in the Supreme State Prosecutor's Office to provide support and assistance in cases involving juvenile offenders and child victims/witnesses. In addition, a protocol on domestic violence requires a Centre for Social Work professional to support and accompany the victim in all judicial proceedings. While the majority of justice sector professionals interviewed stated that both psychological and social support are available, many also highlighted resource and capacity constraints that prevent all children from receiving such support.

The Family Code of Albania requires a psychologist to be present at any legal proceeding or hearing involving children.³¹⁵ The Criminal Procedure Code provides for psychological support for all juvenile offenders at any stage of a proceeding, while child witnesses may have an expert in children's education present during in-court questioning.³¹⁶ When asked about court-appointed psychologists or other forms of support, most justice sector professionals responded that such support is available. A family court judge pointed out, however, that support persons such as social workers or psychologists must often be recruited from NGOs, and efforts are needed to streamline the process and standardize fees. A juvenile justice judge stated that the availability of support persons depends on the case as well as on such persons' own professional accountability: "If they feel really responsible for a child, they will be available for him or her during the whole justice process." While certain services are available to trafficking and domestic violence victims, largely through NGO-supported projects, the overall

institutional support for child victims and witnesses is weak, as also confirmed through discussions with stakeholders.

Since 2011, special units to assist victims and witnesses have been established in the prosecutor's offices in Georgia's major cities; there are eight victim/witness coordinators in Tbilisi Prosecutor's Office alone and a further eight spread across other cities. These victim/witness coordinators are psychologists or social workers who provide all victims and witnesses with information about their rights and duties, coordinate meetings with prosecutors and facilitate access to psychological or other support services provided by public or non-governmental programmes. Not all staff are specialized in supporting children, as the units were not established specifically to assist children.

Similarly, in Kyrgyzstan, a significant number of the justice sector professionals interviewed agreed that court-appointed psychologists or other forms of support are generally available in criminal matters. For offenders, the Criminal Procedure Code provides that a teacher or psychologist shall be present during the investigative-stage questioning of a juvenile offender

aged 16 or under; for juvenile offenders over 16, this is at the discretion of the investigator.³¹⁷ Furthermore, the Criminal Procedure Code provides that a pedagogue shall be present at both the investigative interview and testimony of a child victim or witness under the age of 14; for child victims or witnesses aged between 14 and 16, a pedagogue's attendance at either such proceeding is at the investigator's discretion.³¹⁸

It is unclear to what extent these support persons are engaged in practice, however. The Committee on the Rights of the Child, in its concluding observations on Kyrgyzstan, noted its concerns about the poor treatment of child victims and witnesses, and the "lack of a child-sensitive approach to child victims and witnesses of crimes by untrained personnel who are often dismissive" of children's testimonies.³¹⁹ Furthermore, the Special Rapporteur on the sale of children, child prostitution and child pornography during a 2013 visit to the country observed: "the total absence of a child-sensitive methodology for dealing with cases involving child victims of sexual abuse."³²⁰ Interviews with stakeholders confirmed that children are not offered adequate support in relation to judicial proceedings.

BOX 2.

Case study: Victim of sexual abuse (Georgia)

This case study demonstrates that protection of children in justice processes remains insufficient and illustrates the importance of child-sensitive procedures for child victims of crime.

T.S., an eight-year-old girl, and her five-year-old sister were sent by their mother to a neighbour's house to buy yoghurt. While there, the 67-year-old neighbour brought the two girls into a room, lifted up T.S. and took off her underwear, and putting his hand over her mouth, started to sexually abuse her. T.S. was able to pull the man's hand away from her mouth and yell for help, and she was released. Both girls ran home and immediately told their mother what had happened.

T.S.'s parents went to the police, who launched an investigation and charged the neighbour with perversion without violence under article 141 of the Criminal Code of Georgia. As T.S.'s family was already involved in poverty prevention programmes, the police notified the Social Service Agency of T.S.'s case upon receipt of the complaint. Both the police and the Social Service Agency applied for assistance to the Public Health Foundation of Georgia – an NGO that provides psychological services to child victims and witnesses. The Public Health Foundation provided examinations and assessments of T.S.'s psycho-emotional condition and helped to prepare her for court proceedings. Public Health Foundation psychologists were also present during two pretrial interviews, as were the child's parents. Legal aid services were unavailable, meaning that T.S. did not have a lawyer present.

During the trial itself, no child-sensitive measures were put in place to prevent T.S. from coming into contact with the defendant, and she was ultimately forced to testify in his presence. The investigation and trial lasted seven months, ending in a guilty verdict and prison term for T.S.'s assailant, who was later released under the Amnesty Law approved in December 2012. When T.S. learned of her abuser's release, she began experiencing psychological problems, particularly due to his proximity as a neighbour. Consultations with a psychologist were provided as a means of helping T.S. to deal with her anxiety, but no other measures or services were provided.

Source: Interview with a representative of the Public Health Foundation of Georgia.





Overall, while some jurisdictions have made progress in this area, comprehensive witness support services specialized in supporting children are still needed. In-house witness support officers within the police, prosecutor's offices and courts are preferable, as such professionals have a greater understanding of justice proceedings, can access the case file and all relevant information about the child, and are able to serve as an internal resource to the police, prosecutors and judges on an ongoing basis. Montenegro's newly formed Professional Support Services and the specialized victim/witness units in Georgia may serve as models in the region; their impact on child victims and witnesses should be assessed, and best practices developed.

6.4.7 Accessing legal assistance and legal aid

International standards highlight that children should have adequate legal representation, and where there is a conflict of interest with a parent, their own legal counsel.³²¹ The Committee on the Rights of the Child notes that children's access to legal and other assistance is important in helping children to overcome the special obstacles they face in seeking remedy for violations of their human rights.³²² Particularly in the Central and Eastern Europe and Central Asia region, where child-sensitive proceedings are still underdeveloped, the role of a lawyer specialized in working with children cannot be underestimated. For a child witness, for example, the legal representative may request protection measures, object to inappropriate questions, and submit information about material and non-material damage. A legal representative may play a key role in ensuring the realization of a child's rights to protection and to reparation.

As with other aspects of the justice systems of the four focal countries under discussion, legal representation is most clearly set out in the criminal justice system. Representation for juvenile offenders is provided for in legislation and offered in practice in all four countries. All countries also have provisions allowing a child witness to have a legal representative present during questioning. It is not known, however, to what extent these provisions are used, nor the degree to which the legal representative plays an active role in protecting the child's interests. Information gathered during the research indicates that these provisions are underutilized. Furthermore, the research identified very few cases of children receiving legal assistance to

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pursue either civil proceedings or allegations of human rights violations. Justice sector professionals reported that the available legal assistance and representation in non-criminal matters is often limited to the largest population centres, and many such programmes are dependent on international donors.

Closely tied to the right to legal assistance is the right to legal aid. Children should have access to legal aid under the same or more lenient conditions as adults.³²³ The United Nations *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* set out that legal aid should be provided to victims and witnesses, and special measures should be taken to ensure access to legal aid for children.³²⁴ Furthermore, decisions concerning legal aid for children must focus on the child's best interests as a primary consideration, and the provision of legal aid to children should be prioritized and must be "accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children."³²⁵

State-funded legal aid in civil and criminal matters is provided in three of the four focal countries, while Kyrgyzstan provides legal aid in criminal matters only.³²⁶ In Albania, the legal framework foresees legal aid for children as offenders, as victims/witnesses and in civil proceedings. In practice, this assistance is provided for offenders in criminal matters, but less so to children in other types of proceedings. The mechanisms to provide legal aid in civil cases are not yet fully in place. While a Legal Aid Commission has been established in Tirana, Albania, it is neither well known nor well staffed. The establishment of legal aid offices in six appeal courts remains a priority.³²⁷ Albania's Law on Measures against Violence in Family Relations guarantees free legal aid for victims of domestic violence. Despite these positive legislative developments and some small steps forward, in practice legal aid is still primarily provided by NGOs, and much remains to be done.

Georgia adopted a comprehensive Law on Legal Aid (2011), which provides for legal advice on any legal matter, and legal aid in criminal (both for accused and victim), civil and administrative proceedings.³²⁸ Georgia's Legal Aid Service has 11 legal aid bureaux and 3 consultation centres, and contracts work to a register of lawyers. In 2013, the Legal Aid Service represented 368 juvenile offenders, with children

under 18 representing less than 1 per cent of its overall clientele.³²⁹

In Montenegro, the Law on Free Legal Aid (2011) extends the provision of legal aid beyond juvenile justice matters and provides for legal assistance on the basis of need and/or belonging to a vulnerable group, rather than on the nature of the case.³³⁰ Legal aid is available to: beneficiaries of social assistance; children without parental care; persons with special needs; victims of family or domestic violence; victims of human trafficking; and persons in a difficult financial situation.³³¹ Legal aid centres are functioning in all 15 basic courts, enabling persons to seek advice and/or apply for legal representation, which is provided by attorneys who belong to the Bar Association of Montenegro. Despite these improvements, legal aid has yet to be provided to significant numbers of children.

For the most part, the legal aid laws described above have no special provisions to ensure that children can benefit from legal aid in view of their inherent vulnerability vis-à-vis judicial proceedings and lack of financial resources. Neither have legal aid centres adjusted their application process, nor made available child-friendly information about their services.

Eligibility for legal aid is based either on status, for example, a child without parental care, or on financial need. The laws do not specify how a child's income level will be established, although this may be clear to practitioners. The Montenegrin Law on Free Legal Aid clarifies that the income of the opposing party in the proceeding would not be considered (e.g., in a proceeding against a parent, the income of the parent would be ignored). To fully realize children's access to justice, a country's legislative framework and policies on legal aid should more proactively recognize and support children's unique position and needs in regard to legal aid.

6.4.8 Protecting the right to privacy

As previously discussed, the research findings indicate that fear of negative consequences or community disfavour is an important barrier to accessing justice. Information relating to a child's involvement in the justice process should be protected through appropriate privacy and confidentiality standards and

protocols. This is critical to ensuring that children feel able to express their views without threat of coercion or fear of retribution. In addition, privacy affords protection from stigma or shame and will therefore support a child victim in moving on with her/his life.

All four focal countries have legislation that recognizes to some degree the right to privacy for children involved in legal proceedings. Often, however, other legislation has not been brought into conformity and the regulations required for proper implementation are lacking. In addition, legislation that makes closed proceedings discretionary may provide insufficient protection for child victims.

Legislation in Georgia provides for certain civil proceedings concerning children such as adoption to be closed to the public, while other civil proceedings may be closed upon a successful motion by a party. For child victims or witnesses, the Criminal Procedure Code prohibits case-processing agencies from disclosing data regarding an individual's personal life or personal records, if the individual considers these confidential. The Criminal Procedure Code also establishes that upon the motion of a party, the judge may decide to partially or fully close the hearing for the protection of the interests of a child or for the protection of victims of sex crimes and human trafficking.³³²

In Albania, the rights to privacy and to confidentiality are guaranteed by the Constitution.³³³ The Criminal Procedure Code provides for the closure to the press and public of legal hearings that may have an adverse effect on children who participate as parties or witnesses.³³⁴ Restrictions are also in place around the publication of photos or personal information about an accused child or child witness in criminal proceedings.³³⁵ The Albanian Commissioner for Personal Data Protection found violations in the publication and dissemination of personal information about children in the media and on official court websites, leading the Commissioner to demand that the courts (and Ministry of Justice) preserve information and data in compliance with the Law on Personal Data Protection, especially where a child is involved.³³⁶

All legal proceedings in Montenegro concerning children are closed to the public. Justice sector professionals reported, however, that children

regularly suffer violations of their privacy. A representative of the ombudsperson's office explained:

We have reacted in many cases. One of them was when a girl reported sexual abuse by her teacher. It happened in a village in the northern part of Montenegro. The girl was repeatedly interrogated, even in front of her schoolmates. The case was publicly reported, and she was confronted with the perpetrator. The system protected the teacher, as he 'was old and about to get a pension'. The judge was not aware of what this did to the girl. The girl now has psychological problems and the family is stigmatized. We asked to end the procedure in order to protect her from further victimization. Safeguards are far from being systematically implemented.

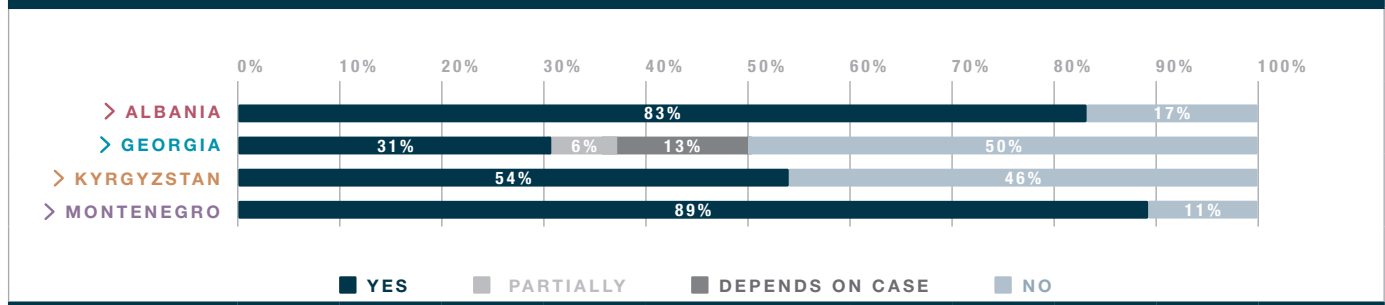
6.4.9 Protecting children from hardship and ensuring their right to safety

The right to be protected from hardship includes various measures to ensure that the best interests and dignity of the child are protected throughout the justice process. These measures relate to the provision of support and information as discussed above, and also to procedural aspects such as the time frame for proceedings, the availability of child-friendly spaces, and protection from being confronted by the accused, in the case of child witnesses.

Duration of proceedings

Resolving cases without unnecessary delay is essential, both to limit the adverse psychological impact of legal proceedings on children and to accommodate children's perception of the passage of time.³³⁷ When considering the length of proceedings from the child's perspective, it is important to bear in mind the length of time from the commission of the crime (in criminal matters) or the underlying violation or denial of rights (in civil matters) until the verdict or decision is enforced. Delays in proceedings may have a particularly adverse effect on the child.³³⁸ For example, if a child victim is called to testify before a second instance court some three years later, her/his testimony might be quite different, not only because of the passage of time, but also because her/his 12-year-old understanding of the events may be starkly different to her/his 9-year-old understanding

GRAPH 11. Responses by justice sector professionals on whether cases involving children are expedited



of the same. Civil proceedings involve an array of procedures, each with different processing times. Successful enforcement of decisions and verdicts remains a generalized problem in the Central and Eastern Europe and Central Asia region,³³⁹ and this particularly affects children’s right to maintaining a relationship with both parents, and places the family in a situation of further vulnerability.

Generally, the time frames involved in criminal proceedings are designed to protect the rights of the accused, not those of victims and witnesses. Criminal procedure codes set deadlines for the length of the investigation and trial, and cases involving child witnesses are subject to the same time frames. Most systems have no mechanism by which to fast track a case because a child witness is involved, although Kyrgyzstan has a requirement to conduct the investigation within 10 days of the complaint being received.

In most of the focal countries, the criminal procedure code sets a deadline for the length of the investigation (where the perpetrator is known) although some countries provide for the possibility to extend the length of the investigation on a discretionary basis. For example, Albania’s Criminal Procedure Code stipulates that the investigation should last no more than three months, but gives the courts discretion to grant an extension if a case so warrants.³⁴⁰ A significant number of the justice sector professionals interviewed stated that attempts are made to ensure that cases involving children are expedited so that trials take place as soon as possible. In some of the countries of focus, legislation establishes short time limits for certain kinds of civil proceedings concerning children (e.g., in Albania the limit for child custody cases is 30 days).

Justice sector professionals report that in practice, however, cases often last between 6 and 12 months at the trial level alone.

In Georgia, only one third of the justice sector professionals interviewed stated that attempts are made to ensure that cases involving children are expedited. A representative of an organization that deals with child protection services raised the issue of discrimination against children from vulnerable groups: “Cases involving children working and living on the street are not resolved within a reasonable period of time due to a discriminatory approach and the fact that such cases are not priority. Authorities will always use the excuse that they have more important issues to handle, that even if they intervene, these children will still continue to be subject to violence and so on.” Some justice sector professionals in Georgia expressed the opinion that cases related to alimony and adoption³⁴¹ as well as proceedings related to wrongful removal and visitation are generally resolved more quickly because of the specific guidelines laid down by the Civil Procedure Code.³⁴² Some justice sector professionals in Georgia noted that civil proceedings concerning children tend to be resolved within two to five months. Other justice sector professionals highlighted that protection orders related to domestic violence are usually expedited, which may positively impact on those children who have been victim or witness to such violence.

Kyrgyzstan’s 2012 Children’s Code exceptionally establishes a time limit of 10 days for investigations into crimes against children, which may be extended by the prosecutor or the court in exceptional circumstances. The practical impact of this provision has not yet been

assessed, however. Slightly more than half of the justice sector professionals interviewed in Kyrgyzstan stated that attempts are made to ensure that cases involving children are expedited so that trials take place as soon as possible.

In Montenegro, a significant number of the justice sector professionals interviewed reported that attempts are made to ensure that cases involving children are expedited and trials take place as soon as possible. Several stated that this is a legal obligation and that all cases involving children are treated as urgent. The Montenegrin Family Law stipulates that all family law-related judicial proceedings referring to children or involving parental rights shall be considered urgent and should not require more than two hearings. The first hearing shall take place within 15 days of receipt of the proposal, while the second instance court is obliged to issue a decision within 30 days of date of receipt of appeal.³⁴³ This is an important development, as the Protector of Human Rights and Freedoms of Montenegro has criticized family law proceedings for being too slow, in part because of poor coordination between the courts and Centres for Social Work. Difficulties have also been reported around ensuring the proper implementation of court orders on matters such as child support and custody, as illustrated by *Mijušković v. Montenegro*, a European Court of Human Rights case in which the proceedings regarding the enforcement of a custody decision lasted more than three years.³⁴⁴

The enforcement system in civil cases varies across the Central and Eastern Europe and Central Asia region, but it often includes designated professionals such as bailiffs or court clerks. Responses also varied across the four focal countries to questions around the implementation of decisions within a reasonable time frame, which was suggested as between three and six months. For the most part, decisions involving juvenile offenders are implemented within a reasonable amount of time, although the same cannot be said of many family law-related proceedings.

A court officer in Kyrgyzstan working on the execution of civil court decisions noted that inefficient processes slow down implementation: “Sometimes [a decision] is not implemented within a reasonable time. For example, at the moment, we write a paper letter to each institution in order to seize the property of an offender. It takes much time until we receive their response. This way, we

waste a lot of time. But it is possible to accelerate this work by using electronic forms like in Kazakhstan. This allows court officers to have access to all registration institutions in order to seize the offender’s property immediately.”

Experiences in Georgia and Albania were similar, with justice sector professionals expressing the opinion that decisions are not always implemented effectively and in a reasonable amount of time, especially with regard to civil cases. A judge who hears family law cases in Georgia commented: “Enforcement of decisions on family dispute cases is always problematic ... Social Service Agency staff [do] not possess sufficient knowledge or practical experience to enforce decisions – for instance, parents sometimes ‘manipulate’ their children, and Social Service Agency staff are not qualified enough to deal effectively with such situations.”

In Kyrgyzstan, justice sector professionals expressed greater frustration with the implementation of public administrative decisions beyond the judicial system. One representative of the Department of Social Development explained: “There is a huge bureaucracy within the Ministry of Social Development. For instance, this Ministry provides wheelchairs or special shoes to children with disabilities. First, we provide them with information on how many children need to have wheelchairs and why. Then, they make their own final decision. It takes a lot of time, sometimes years, to give a wheelchair to a disabled child. As a result, children who are in great need suffer a lot.”

A legislative imperative to resolve cases within certain time frames supports the more timely resolution of proceedings. Nevertheless, there is a stark lack of data on processing times for proceedings involving children, which is compounded by the wide array of types of proceedings involving children. With regard to the investigation of criminal offences against children, the impact of the use of a discretionary delay in the length of the investigation should be further explored. Overall, across the four focal countries, little attention has been brought to bear on measures to ensure the timely implementation of family law decisions – particularly where such decisions directly impact on a child’s relationship with a non-custodial parent – and to help lessen the effect of dramatic changes in the child’s life.

Recesses

Children do not have the same attention span as adults, and the pace and breaks of proceedings should be adapted to ensure that children can follow and concentrate on what is happening without feeling intimidated, rushed or exhausted. All justice sector professionals interviewed in Albania and Montenegro and almost all of those interviewed in Georgia stated that recesses are provided for children during court testimony. Only one third of justice sector professionals interviewed in Kyrgyzstan stated that recesses are provided during testimony.

Child-friendly interview rooms, use of audio-visual equipment and other testimonial aids

As noted earlier, an element of children's right to be heard presupposes the use of adapted spaces where children can feel comfortable enough to communicate effectively. In criminal, civil and administrative proceedings, adaptations might include modifications to courtrooms, less formal seating and appearances, and designated waiting areas as well as the ability of the judge to hear the child outside of the courtroom, e.g., in a centre for social welfare or other comfortable location.³⁴⁵ Specifically in relation to criminal proceedings, the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime suggest the use of testimonial aids to facilitate testimony and reduce potential intimidation. One-way witness screens, separate witness entrances, designated and safe waiting areas, and the use of pre-recorded testimonies or the video linking of children's testimonies from a separate room can help to avoid repeated testimony and contact with an alleged perpetrator, reducing the trauma and upset experienced by a child victim or witness. Research has shown that children feel less stress and give more effective evidence when testifying outside of a courtroom.³⁴⁶ Depending on the criminal procedure code of the country, a child who records an audio-visual statement during the investigation may not have to testify again in court.³⁴⁷

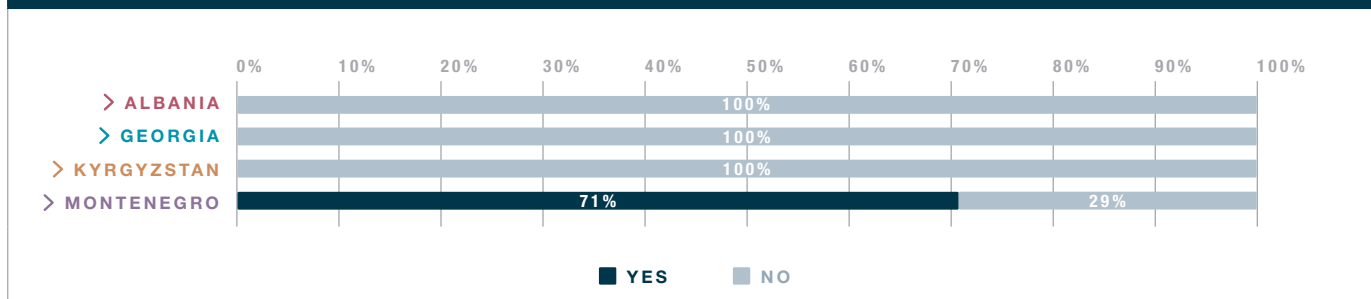
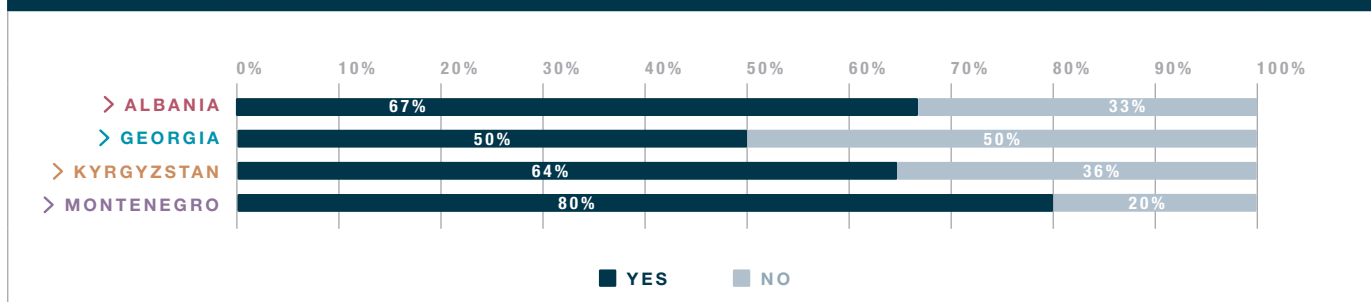
In Montenegro, more than three quarters of justice sector professionals indicated that audio-visual questioning of the child witness is used, and a similar number of professionals recognized the existence of child-friendly rooms. These measures reflect

provisions in the Law on the Treatment of Juveniles in Criminal Proceedings, which require testimony through a video link and questions asked of a child victim/witness to be posed only by the judge or prosecutor. Child witnesses should not usually be questioned more than once if the first interview is recorded. As of late 2014, eight prosecutor's offices and six courts in Montenegro have child-friendly rooms featuring equipment to facilitate children's testimonies in this manner.³⁴⁸ Justice sector professionals reported that in practice, use of audio-visual questioning is in its infancy. A representative of the ombudsperson's office stated, however: "Children's rights are not properly protected when they appear as victims of crime. They are often repeatedly interrogated. The approach is not child-sensitive at all."

Justice sector professionals in Georgia and Kyrgyzstan stated that child-friendly rooms are unavailable for the interviewing of child victims/witnesses. In Albania, modified rooms for police officers to interview children exist in five police directorates. A psychologist working in a prosecutor's office on cases relating to juvenile offenders noted that prosecutor's offices do not have appropriate interview rooms for juvenile offenders and that the interview rooms in pretrial detention facilities are in extremely poor condition and are inappropriate for children.

Half of the justice sector professionals interviewed in Georgia noted that testimonial aids are used to ensure that children do not have to testify repeatedly. Nevertheless, the use of audio-visual equipment is foreseen only for children who are victims of sexual crimes. According to one judge: "Recent amendments to article 116 of the Criminal Procedure Code of Georgia envisage a possibility to video record testimony of a child witness or victim of sexual crimes. Recorded testimony can be shown afterwards at the trial in the absence of a child."

More than half of the justice sector professionals interviewed in Albania also stated that testimonial aids are used. Albania's Criminal Procedure Code and its Law on Justice Collaborators and Witness Protection, which govern the way in which witnesses are questioned, provide almost no modifications for child witnesses other than to allow the judge to pose questions to the child and to let a family member or support person

GRAPH 12. Responses by justice sector professionals on whether interview rooms and court environments are modified for cases involving children**GRAPH 13.** Responses by justice sector professionals on whether testimonial aids are provided for child witnesses

remain with the child. The Criminal Procedure Code does, however, allow for the audio-visual questioning of witnesses.³⁴⁹

Kyrgyzstan's Criminal Procedure Code specifies that audio-visual recording may be used in the questioning of the accused, a victim or a witness, although this is not required; the circumstances that might trigger the use of audio-visual questioning are not defined.³⁵⁰ Furthermore, the special provision on questioning a child witness makes no mention of the option or need to record the interview. Although more than half of the justice sector professionals interviewed noted that testimonial aids are used, other views were elaborated on during discussions. For example, a police investigator noted, "There is such provision in the law [for testimonial aids], but in practice it is not realized." A judge corroborated: "The law provides for the possibility of video recording interrogation, but it is not applied in practice." Several justice sector professionals mentioned the possibility, in exceptional cases, of

the child providing a written statement for use as evidence at trial.

The primary testimonial aids mentioned during the research process were audio-visual recordings of the child witness forensic interview, and child-friendly rooms. Low-tech, low-cost solutions such as the use of witness screens, and measures to prevent encounters between victim and accused before and after testimony were not mentioned. It is clear from the research that legislative changes to provide for the use of audio-visual testimony are necessary, but funding to support the provision of the equipment and training in how to use it must also be prioritized. Furthermore, internal policies should encourage the use of low-tech solutions.

Avoiding confrontation with the accused

The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime recommend that child victims and witnesses "be

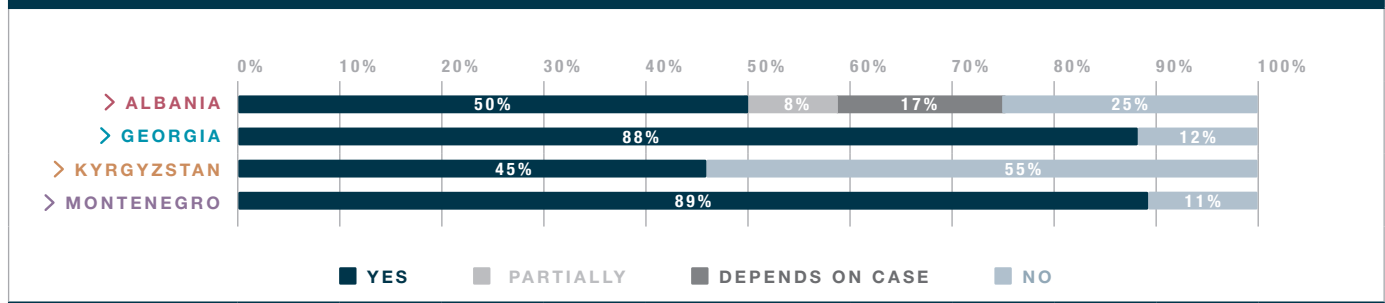
interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided.”³⁵¹ This is also canvassed as a right to safety for child victims or witnesses, which stipulates that contact should be avoided and restraining orders sought where children are subject to intimidation, threats or harm.³⁵²

In Albania, only half of the justice sector professionals interviewed said that safeguards allowing child victims to avoid contact with the accused are in place. A review of the legislation confirms that only limited safeguards exist.³⁵³ One lawyer explained, “It depends on the case. For example, the safeguards are more present in a case of a child victim of domestic violence committed by one of the parents, or family members.” A prosecutor from a juvenile section also said, “There are cases when the child victim/witness is kept aside from the perpetrator of the crime to avoid any kind of further harm or influence.” Others stated, however, that there are no specific safeguards for a victim to avoid contact with the accused, or none that relate specifically to children. Similarly, concerning witnesses to a crime, the majority of justice sector professionals were of the view that few specific protections are in place for children. A representative of a prosecutor’s office mentioned, “There is a law on the protection of witnesses, including children who are witnesses to a crime, but practically there is not much to say about its implementation.”

Most justice sector professionals interviewed in Georgia indicated that legislation foresees measures to prevent children from having direct contact with the perpetrator of a crime, although the measures related to avoiding confrontation with the accused during trial are limited. As a general measure, the judge has an obligation to protect the interests of the parties to the proceedings, and may exclude the accused from the courtroom when this is deemed necessary. Recent amendments to the Criminal Procedure Code now prohibit interviewing a child in the presence of a parent accused of abuse. Specific protection for a child in domestic violence cases may involve orders to remove the child from the home, and protective orders to ensure that the family member responsible for the harm cannot approach the child.³⁵⁴





GRAPH 14. Responses by justice sector professionals on whether safeguards are in place to prevent contact with the accused

One judge in Georgia highlighted the repercussions of children having to give testimony in front of a perpetrator:

Until recently it was not possible to avoid such contact since it was not allowed to hear the criminal case without the presence of the defendant ... For this reason we had to interview child victims at the hearing in the presence of the perpetrator. I had a case of sexual abuse of a child where the perpetrator had entered the musical school and sexually abused the girl [in the] bathroom. In that case the child had to testify in the presence of the perpetrator. I remember that the child was very stressed about giving testimony in the presence of the perpetrator, and in order to avoid direct contact, I ordered the chair of the child be turned around so that she could at least avoid seeing the perpetrator.

Overall, the respondents in Georgia provided a diverse array of opinions about the mechanisms to prevent contact with the accused, which may be a reflection of the changing legislative framework as well as of the diverse practices within the judiciary.

In Kyrgyzstan, slightly less than half of the justice sector professionals interviewed stated that safeguards are in place to avoid contact with the alleged perpetrator of a crime. Some justice sector professionals mentioned the Law about protection of the rights of witnesses, victims and other participants of criminal trial, which provides for out-of-court measures such as bodyguards, change of identification documents or relocation to another region when there is a threat to the life or health of witnesses and victims of crime. Some justice sector

professionals said that a child's lawyer may be able to ensure some level of protection, while others referred to protective measures such as identifying suspects from a photo, as allowed by the Criminal Procedure Code.³⁵⁵ Many justice sector professionals also highlighted that such measures are not always applied in practice.

A large percentage of the justice sector professionals interviewed in Montenegro stated that safeguards are in place to allow child victims to avoid contact with the accused. The Law on the Treatment of Juveniles in Criminal Proceedings provides that the defence may only question child victims and witnesses through an intermediary, either the judge or prosecutor; that experts should assist in the questioning of children, especially those under the age of 14; and that children do not have to be physically present in the courtroom, but should be questioned and give testimony via a video link.³⁵⁶ A social worker explained: "The child is protected from direct contact with their violator. Procedures are very sensitive in this respect." A prosecutor specialized in children's issues agreed: "They are in separate rooms and are asked to provide statements at different times. When it comes to children aged below 14 years, there is never direct contact, but for children older than 14, it can happen if the expert team or the office of the guardianship authority agrees."

6.4.10 Fulfilling the right to reparation

The Convention on the Rights of the Child requires States parties to take measures to promote the recovery and reintegration of child victims,³⁵⁷ and reparations may form an important part of this process. Reparations are recognized in international law as

including: restitution, compensation, rehabilitation, satisfaction and a guarantee of non-repetition.³⁵⁸ The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography also requires States parties to ensure that child victims of those crimes have access to child-friendly damage compensation procedures.³⁵⁹ The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime recommend that child victims, wherever possible, should receive reparation to achieve full redress, reintegration and recovery, and that readily accessible and child-sensitive procedures should be in place for doing so.

The research findings suggest that in practice, reparation involve complex processes and are often not easily accessible. In most countries, the right to damage compensation as a part of criminal proceedings is underdeveloped, and this particularly affects children who face further hurdles in bringing a civil lawsuit. Civil lawsuits for damage compensation typically move slowly (depending on the backlog of civil cases in the courts) and often subject children to additional interviews or forensic examinations. While few justice sector professionals commented on the right to reparation, those who did highlighted challenges.

A judge from a district court in Albania who deals with children's cases explained: "Generally speaking, when a child is [the] victim of an offence, the court merely sentences the offender, but it is not followed by compensation for the victim." Several justice sector professionals in Georgia mentioned that a provision exists within the law for reparations for damage caused in a criminal case, but it has to be pursued after the criminal case, through civil proceedings. It was noted that this happens very rarely and that children are often unable to claim damages within the specified time limits. A 2014 Georgia Trial Monitoring Report by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, which was based on the monitoring of trials involving adult victims and witnesses in Georgia, concluded that the country's legal framework and practices fail to comply with access to justice for victims, including with respect to the damage compensation claim proceedings.³⁶⁰

Comments made by some justice sector professionals in Kyrgyzstan reflect concerns noted earlier about bargaining and out-of-court settlements in cases involving child victims, and girl victims in particular, and a lack of accountability for crimes against children. A judicial department representative recalled, however: "Last year, a girl was raped in one of the villages in our oblast. The judge made a decision to sentence the perpetrator to eight years and make the perpetrator pay 80,000 som [approximately US\$1,400] for moral damage to the girl. There are a lot of other examples when perpetrators are made to pay not only for moral damage but also material damages based on courts' decisions in our oblast."

As part of meeting the requirements for EU accession,³⁶¹ the Montenegrin authorities are planning to adopt the Draft Law on Compensation of Damages for Victims of Criminal Acts in Montenegro. Once adopted into law, this would establish a state compensation scheme to provide financial compensation for certain expenses and losses.³⁶²

Both legislation and practice show that the right to reparation is rarely realized in the four countries of focus – an observation applicable to both adult and child victims. Furthermore, the unique challenges that children face in accessing these remedies have been overlooked, and the right of children to obtain reparations largely disregarded.

6.4.11 Taking decisions in the best interests of the child

The Convention on the Rights of the Child states that "the best interests of the child shall be a primary consideration in all actions affecting children". In 2013, the Committee on the Rights of the Child provided thorough guidance on implementing the concept of the child's best interests in its General Comment No. 14. The Committee explained that 'best interests' has three aspects: it is a substantive right, a legal interpretative principle and a rule of procedure.³⁶³ In determining a child's best interests, the entirety of the child's rights as well as her/his individual circumstances must be taken into account. Determining the best interests of the child also involves adequate child participation without discrimination, and with due weight given to the views of the child, in addition to input from decision-makers with relevant expertise.³⁶⁴

CHAPTER 6: RESEARCH FINDINGS: A CROSS-COUNTRY OVERVIEW

Assessing and determining the child's best interests should be a formal process that ensures all of the following components:

- child-friendly procedural safeguards are in place to ensure proper assessment of the child's best interests
- the child's views are taken into account
- the child's perception of time is respected
- all relevant facts are established
- qualified professionals (preferably multidisciplinary) are involved in the assessment
- the child is represented
- the decision is justified and explained
- a mechanism exists to review or revise decisions where the appropriate procedure was not followed.³⁶⁵

Furthermore, the Committee provides a non-exhaustive list of elements that should be taken into account when conducting a formal Best Interests Determination, as described above. This list includes: the child's identity; the preservation of family relationships; the care, protection and safety of the child; any situation of vulnerability that the child faces; the child's right to health; and the child's right to education.³⁶⁶

The majority of justice sector professionals in all four focal countries reported that in their experience, decisions are made in children's best interests. Across the four countries, however, comments indicated that there is frequently a lack of clarity on how 'the best interests of the child' should be interpreted or applied, and on the interaction between the law and a child's best interests. Some justice sector professionals in all four countries also expressed the opinion that children from vulnerable groups are less likely to have decisions made in their best interests.

In Georgia, a representative of an NGO that works with child victims stated that discriminatory stereotypes are sometimes applied to certain groups of children,

including those from religious or sexual minorities, impacting on the likelihood of their having decisions made in their best interests. In reflecting on best interests, justice sector professionals often made the distinction between civil and administrative cases on the one hand, and criminal cases on the other, explaining that the focus on custodial sentencing as mandated by law is often not in a child's best interests. One lawyer who provides legal aid to vulnerable groups explained: "In civil cases, decisions usually seem based upon a consideration of children's 'best interests'. For instance, in custody cases, judges pay attention to where a child will have a healthy and caring environment and better chances for their future. In contrast, in criminal cases, priority is not given to re-socialization of a child and he or she is usually treated as a criminal."

A judge in Georgia provided insight into how custody matters proceed, noting that participation is important in the determination of best interests:

I was hearing a dispute over the issue of where a child would reside and had to decide whether the child would continue to grow up in a village with the grandmother who had raised him since the very first years, or in the town with the grandmother with whom he was spending summer holidays. For that case, I took into consideration that the child until the age of seven was growing [up] in the village and continuity in his upbringing was in [the] child's best interests. The child was of the same opinion and wanted to remain with the grandmother caring for him.

Some justice sector professionals in Georgia also pointed out that the concept of best interests is not always clear, and that child protection agency staff lack the qualifications necessary to perform their role well, or sometimes fail to remain impartial. Justice sector professionals identified challenges in the functioning of the Social Service Agency and children's boards, and mentioned concerns over case handling and resources. One member of the child protection services explained that too great a workload and too little time jeopardize the quality of the work with children: "Children's cases are not prepared well [by the Social Service Agency]. Social workers in preparation of the case conduct no more than one or two visits, which is not enough. One social worker sometimes has 50 cases to handle and the regional board ... sometimes hears 80 cases at one

hearing. In such circumstances, I doubt that decisions will be based upon a consideration of children's best interests."

Several justice sector professionals in Kyrgyzstan noted that the application of the best interests of a child depends on certain factors, highlighting a distortion in how the principle is used in practice. According to one judge, "All decisions are made based on the law. If a law requires us to consider a child's best interest, we don't have a choice but to do so. If the law requires us not to consider a child's best interest, we don't consider his/her best interest. Everything depends on the law. Otherwise, we would answer for our illegal actions. In other words, first law, second a child's best interest." A police officer stated: "In our context, the reality requires a bribe in order for a decision to be made in children's best interest. If a child or his or her relatives pay money, the decision is made in their favour. From this perspective, children living in extreme poverty or living in difficult family circumstances are less likely to have decisions [made] in their best interest because they don't have an opportunity to pay a bribe."

A court officer also noted the unequal application of the best interests principle: "Since our institution is aimed at supporting children and their families to improve their living conditions, we always try to make our decisions based on the consideration of children's best interest. We approach every child seeking justice as an individual and take into account his/her individual circumstances. We avoid discriminating against children like some other institutions providing services to children."

Justice sector professionals in Montenegro recognized that it is not always easy to know what is in the best interests of a child. A respondent from a mediation centre noted: "We all know what best interests is. However, sometimes, especially in divorce proceedings, parents agree on matters related to children that carry ethical issues. For example, they decide to split children and to each have custody ... mediation should not be misused." One social worker noted that often children do not have the opportunity to participate effectively in proceedings, and several justice sector professionals surmised that the interests of parents and the system are better protected than the interests of children. Justice sector professionals also suggested that discrimination within the legal system, inadequate support and family pressure to

withdraw cases are reasons for poor outcomes, among vulnerable children in particular.

In Albania, justice sector professionals also highlighted a lack of clarity on what the best interests principle means in different contexts. Discrimination was identified as a factor negatively affecting best interests, with one lawyer indicating that children from vulnerable groups do not always receive support tailored to their best interests. A community coordinator for a community protection organization explained this in the context of Roma children: "There is a general inferiority and discriminatory perception and behaviour towards Roma people and there are very often delays in administrative procedures or solving a case within due time and in the best interest of the child. We intervene very often and approach the authorities to give a solution when there is a problem with Roma children and families." Lack of support throughout the process was highlighted as a reason for which vulnerable children receive lesser remedies, and a programme manager at a human rights organization suggested, "In many cases it is not the best interests of the child that prevails, but the interests of the institution instead."

The four focal countries do not appear to have developed formal proceedings with child-friendly safeguards to ensure that the Best Interests Determination process is properly implemented in all settings where decisions about children are being made. Rather, the findings suggest that the notion of best interests is viewed as a principle, and not as a rule of procedure. Indeed, in many countries, the requirement to consider the best interests of the child is included in the legislation among the 'general provisions', with no further parameters or procedures outlined to guide decision-makers.³⁶⁷ These provisions likely account for the high number of justice sector professionals who noted that decisions made about a child are based on the child's best interests. Nevertheless, the research findings reveal a concerning lack of understanding of the principle of best interests and poor, even discriminatory, implementation of the principle in practical terms. The findings also demonstrate that children's ability to participate effectively is often determined by the resources, level of support and legal representation available to them.



167 Interviews with children and separate interviews with family members were structured in the same manner as interviews with justice sector professionals. Focus groups were semi-structured to allow children to express their views openly while also capturing their specific perspectives on human rights, awareness of available justice avenues, experiences or perceptions of official institutions, and the quality of information and support available. In addition, children were asked for their views on how to strengthen access to justice for children. The vulnerable groups of children identified were different in each of the focal countries, reflecting national concerns.

168 Official statistics, as presented by official government sources, were available in some instances and these are included. Data for most focal countries were unavailable or incomplete, however, and are therefore not presented in this report.

169 United Nations, Human Rights Council Resolution A/HRC/25/L.10, United Nations, Geneva, 25 March 2014.

170 United Nations Children's Fund, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, New York, 2014.

171 United Nations Children's Fund, 'Keeping children safe from violence', *Insights: Child Rights in Central and Eastern Europe and Central Asia Issue 1/2013*, UNICEF, 2013, p. 5. This is also a global trend, see: Pinheiro, Paulo Sérgio, Independent Expert for the United Nations Secretary-General's Study on Violence against Children, *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 10.

172 United Nations Children's Fund, *National Study on Violence against Children in Georgia, 2007-2008*, UNICEF, 2008.

173 Ibid. See also: United Nations Children's Fund, *Violence against Children in Georgia, National Survey of Knowledge, Attitude and Practices*, UNICEF, July 2013. Available at: <www.unicef.org/ceecis/Unicef_VAC_ENG_final.pdf>.

174 More information about this survey is available at: <www.becan.eu/node/11>.

175 Data provided by the Prosecutor's Office of Georgia, on file with UNICEF Georgia.

176 Montenegro Ministry of Labour and Social Welfare, 'Annual Report 2012', March 2013, p. 58.

177 United Nations Children's Fund, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, New York, 2014, pp. 153, 196-198.

178 Thousands of divorces are registered annually in all of the focal countries except Montenegro (the figures range from roughly 4,800 divorces registered in Albania in 2012 to the 8,705 registered in Kyrgyzstan in 2011) and, in all of them except Montenegro, the number is increasing. United Nations Statistics Division, 'Table 24 - Demographic Yearbook for 2012', UNSTATS. Available at: <<http://unstats.un.org/unsd/demographic/products/dyb/dyb2012/notes/notes24.pdf>>.

179 In Kyrgyzstan, inability to obtain documentation is a known issue. See: United Nations High Commissioner for Refugees, *A Place to Call Home, The Situation of Stateless Persons in the Kyrgyz Republic: Findings of Surveys Commissioned by the UNHCR*, UNHCR, Bishkek, 2009, p. 18. Available at: <www.refworld.org/docid/519e0cdd4.html>. Also, the May 2014 consideration of the combined third and fourth periodic report of Kyrgyzstan on its implementation of the provisions of the Convention



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on the Rights of the Child. See: United Nations Office of the High Commissioner for Human Rights, 'Committee on the Rights of the Child examines report of Kyrgyzstan', OHCHR, 28 May 2014, <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14651&LangID=E>.

- 180 Protector of Human Rights and Liberties, 'Annual Report for 2013', Podgorica, March 2014, p. 109. Available at: <www.ombudsman.co.me/docs/izvjestaji/Final_izvjestaj_zh_2013_05042014.pdf>.
- 181 European Commission against Racism and Intolerance, 'ECRI Report on Montenegro (fourth monitoring cycle)', ECRI, 21 February 2012. Available at: <www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Montenegro/MNE-CbC-IV-2012-005-ENG.pdf>.
- 182 Youth Human Rights Group, Independent Human Rights Group and Association of NGOs for the protection and promotion of child rights, 'Shadow report of NGOs on compliance of obligations under the UN Convention on the Rights of the Child by the Kyrgyz Republic, 2013', p. 2. Available at: <www.crin.org/docs/Kyrgyzstan_Youth%20Human%20Rights%20Group_Integrated%20CRC%20Report%20EN.pdf>.
- 183 European Commission for the Efficiency of Justice, 'European judicial systems, Efficiency and quality of justice', CEPEJ Studies No. 20, CEPEJ, 2014, p. 156.
- 184 Ibid., p. 266.
- 185 Civil Procedure Code (Albania), 1996, title III, chapter IV, art. 349.
- 186 Albania's Criminal Procedure Code (1995) guarantees the accused: the right to free legal aid and the right to a legal defence by a lawyer of her/his choice (arts. 48 and 49); the right to psychological assistance throughout court proceedings (art. 35); and the right to appeal (arts. 14 and 422).
- 187 European Commission for the Efficiency of Justice, 'Scheme for Evaluating Judicial Systems 2013, Georgia', CEPEJ Studies No. 20, CEPEJ, 2014, pp.15-16.
- 188 Order of the Chairman of Tbilisi City Court No. 23-S, 1 July 2014.
- 189 Despouy, Leandro, Report of the Special Rapporteur on the independence of judges and lawyers, Addendum, Mission to Kyrgyzstan, E/CN.4/2006/52/Add 3, United Nations, 30 December 2005, p. 6.
- 190 European Commission for the Efficiency of Justice, 'European judicial systems, Efficiency and quality of justice', CEPEJ Studies No. 20, CEPEJ, 2014, p. 156.
- 191 The minor offence system is under discussion, and may eventually be integrated as departments within the basic courts. See: Government of Montenegro, Strategy for Reform of the Minor Offence System, December 2008.
- 192 See: Folke Bernadotte Academy and Office for Democratic Institutions and Human Rights, *Handbook for Monitoring Administrative Justice*, Folke Bernadotte Academy/OSCE-ODIHR, September 2013, p. 11.
- 193 See: Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms ('European Convention on Human Rights'), ETS No. 005, opened for signature in Rome 4 November 1950, entered into force 3 September 1953, art. 6; United Nations, International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, art. 14; Council of Europe, Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts, adopted 15 December 2004; and case law on article 6 of the European Convention on Human Rights.
- 194 Instruction No. 2470, 06.12.2006, on Execution of DCM No. 209, 12 April 2006, On determination of criteria and necessary documents to be accepted in the public and private residential institutions of social care.
- 195 Law No. 9695, 19.03.2007, On Adoption Procedures and the Albanian Adoption Committee, art. 4.
- 196 Ibid., art. 8/2.
- 197 The Commission on Children's Affairs does not consider cases of children accused of an offence who are above the minimum age of criminal responsibility.
- 198 Functions are described in the Children's Code (Kyrgyzstan), 2012, art. 30; and in the Model Regulation on the Commission on Children's Affairs (Kyrgyzstan), 2008.
- 199 Children's Code (Kyrgyzstan), 2012, art. 21(2).
- 200 Law on the Protection of Children's Rights (Albania), 2010, art. 35.
- 201 United Nations, Committee on the Rights of the Child, General Comment No. 2, The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, United Nations, Geneva, 15 November 2002.
- 202 As of January 2014, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights accredited Albania and Georgia with 'A' status (full compliance with the Paris Principles) and Kyrgyzstan with 'B' status (partial compliance with the same). Montenegro is not currently listed. See: International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 'Chart of the status of national institutions', ICC, 28 January 2014. Available at: <www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf>.
- 203 The Constitution of the Republic of Albania, adopted 28 November 1998, art. 60. Article 60 states: "The People's Advocate defends the rights, freedoms and legitimate interests of individuals from unlawful or improper actions or failures to act of the organs of public administration."
- 204 Law on the People's Advocate (Albania), 1999, art. 22.
- 205 United Nations, Committee on the Rights of the Child, Concluding Observations: Albania, CRC/C/ALB/CO/2-4, 5 March 2012, para. 20.
- 206 Republic of Albania People's Advocate, 'Annual Report on the activity of the People's Advocate, 1 January–31 December 2012', People's Advocate

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- Office, Tirana, 2013, p. 293. A new draft law is currently under consideration, which would enhance the institutional mandate related to children's rights.
- 207 Law on Protection from Discrimination (Albania), 2010, arts. 21 and 22.
- 208 Republic of Albania, Commissioner for Protection from Discrimination, 'Information submitted by the Commissioner for Protection from Discrimination in relation to the implementation of the International Covenant on Civil and Political Rights: On Albania's 2nd Periodic Report, 106th Session (15 October–2 November 2012)', September 2012, p. 7. Available at: <www2.ohchr.org/english/bodies/hrc/docs/ngos/CPFD_Albania_HRC106.pdf>.
- 209 The Commissioner for Protection from Discrimination is dealing with a number of lesbian, gay, bisexual and transgender-related cases. See: Immigration and Refugee Board of Canada, 'Albania: Commissioner for Protection from Discrimination, including complaints received based on discrimination against sexual minorities and actions taken by the Commissioner; Anti-discrimination training provided to government authorities, including effectiveness (2012–January 2014)', ALB104751.E, 7 February 2014. Available at: <www.refworld.org/docid/537da5594.html>.
- 210 Republic of Albania, Commissioner for Protection from Discrimination, 'Information submitted by the Commissioner for Protection from Discrimination in relation to the implementation of the International Covenant on Civil and Political Rights: On Albania's 2nd Periodic Report, 106th Session (15 October–2 November 2012)', September 2012, pp. 11–12. Available at: <www2.ohchr.org/english/bodies/hrc/docs/ngos/CPFD_Albania_HRC106.pdf>.
- 211 Organic Law of Georgia on the Public Defender, 1996, art. 12.
- 212 Ibid., arts. 21–22.
- 213 Public Defender of Georgia, 'Activity Report 2014 of Public Defender of Georgia', Presentation, 16 December 2014. Available at: <www.ombudsman.ge/uploads/other/2/2175.pdf>.
- 214 Protector of Human Rights and Freedoms, 'Annual Report 2013', Podgorica, 2014. Available at: <www.ombudsman.co.me/docs/izvjestaji/Final_izvjestaj_za_2013_05042014.pdf>.
- 215 United Nations, Human Rights Council Resolution A/HRC/25/L.10, United Nations, Geneva, 25 March 2014, para. 13(b).
- 216 Ibid., para. 14.
- 217 The United Nations Economic and Social Council Basic principles on the use of restorative justice programmes in criminal matters define 'restorative justice' as an approach in which the victim/survivor and offender, and in some cases, other persons affected by a crime, "participate actively together in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles." See: Resolution adopted by the United Nations Economic and Social Council, Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Resolution 2002/12, 24 July 2002, I (2).
- 218 Santos Pais, Marta, United Nations Special Representative of the Secretary-General on Violence against Children, *Promoting Restorative Justice for Children*, New York, 2013, p. 19.
- 219 Resolution adopted by the United Nations Economic and Social Council, Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Resolution 2002/12, 24 July 2002, para. 9.
- 220 Criminal Procedure Code (Albania), 1995, arts. 59 and 284. It should also be noted that such provisions requiring the victim to initiate prosecution often create additional barriers to seeking justice, and impact negatively on justice for child victims.
- 221 European Commission, 'Albania Progress Report', October 2014, p. 43.
- 222 United Nations Children's Fund, *UNICEF Annual Report 2013 – Georgia*, UNICEF, 2013. Available at: <www.unicef.org/about/annualreport/files/Georgia_COAR_2013.pdf>.
- 223 See: Civil Procedure Code (Georgia), 1997, art. 187.
- 224 See: Center for Mediation, 'Mediators', Montenegro, <www.posredovanje.me/mne/posrednici.html>.
- 225 Criminal Procedure Code (Albania), 1995, arts. 59 and 284. Reconciliation is available only for specific matters under the Criminal Procedure Code, for instance: denial of support, unlawfully taking a child, insulting a public official on duty, wrongful intentional use of telephone calls, insulting a judge, assault and other intentional harm, non-serious intentional injury, serious injury due to negligence, non-serious injury due to negligence, insult, libel, etc.
- 226 Law on Mediation for Dispute Resolution (Albania), 2011, art. 2.
- 227 Criminal Code (Kyrgyzstan), 1997, arts. 65 and 66. Reconciliation is only available if the crime is classified as a 'petty' crime (punishable by up to two years) or as a 'less serious' crime (punishable by up to five years) and if it is a first offence for the offender.
- 228 United Nations Children's Fund, 'Promoting equitable access to justice for all children', Insights: Child Rights in Central and Eastern Europe and Central Asia Issue 1/2014, UNICEF, 2014, p. 8.
- 229 Where the crime is classified as a 'petty' crime (punishable by up to two years) or as a 'less serious' crime (punishable by up to five years) and if it is a first offence for the offender. Criminal Code (Kyrgyzstan), 1997, art. 65.
- 230 United Nations Development Programme, United Nations Children's Fund and United Nations Entity for Gender Equality and the Empowerment of Women, *Informal Justice Systems: Charting a Course For Human Rights-Based Engagement*, UNDP, UNICEF and UN Women, 2012, p. 8. Available at: <www.unicef.org/protection/files/INFORMAL_JUSTICE_SYSTEMS.pdf>.
- 231 In many parts of the world disputants access informal systems more frequently than they do the state court system. See: Wojkowska, E. and J. Cunningham, 'Justice Reform's New Frontier: Engaging with Customary Systems to Legally Empower the Poor' in S. Golub (ed.), *Legal Empowerment: Practitioners' Perspectives*, International Development Law Organization, 2010, p. 95. See also: United Kingdom Department for International Development, 'Non-state Justice and Security Systems', Briefing note, DFID, May 2004, which estimates that by choice or necessity, up to 80 per cent of disputes are resolved through informal mechanisms in many developing countries.
- 232 Eurasia Foundation and Caucasus Research Resource Centers, 'Equal before the law? A study of how citizens experience access to justice in Kazakhstan, Kyrgyzstan and Tajikistan', Ministry for Foreign Affairs of Finland, March 2011, p. 6.
- 233 While not forming part of this research, as it was not raised by respondents, the Roma traditional institution known as the *kris* is a forum where disputes are resolved for Roma populations. The ability of children to access justice through the *kris* can be challenging, traditional rules will often dictate the result of disputes, and the extent to which the principle of the 'best interests of the child' forms a primary consideration is unknown. See: Heinschink, Mozes F., and Michael Teichmann, 'Kris', Romabase, Wien, November 2002, <<http://romabase.uni-graz.at/cgi-bin/art.cgi?src=data/ethn/social/kris.cs.xml>>; and Cahn, Claude, 'Nexus: domestic violence, Romani courts and recognition', European Roma Rights Centre, 2000, <www.errc.org/popup-article-view.php?article_id=644>.
- 234 United Nations Development Programme, 'Access to Justice Practice Note', UNDP, 2004, p. 4.
- 235 United Nations Development Programme, *Programming for Justice: Access for All. A practitioner's guide to a human rights-based approach to access to justice*, UNDP, 2005, p. 101; Asian Development Bank, 'Law and Policy Reform at the Asian Development Bank', ADB, 2001, p. 66; The World Bank, 'Village Justice in Indonesia: Case studies on access to justice, village democracy and governance', The World Bank, February 2004.
- 236 Examples include the prohibition against marrying off children for the economic benefit of parents, and against other decisions that perpetuate the exploitation of children. UNDP, UNICEF and UN Women, *Informal Justice Systems*, p. 15.
- 237 UNDP, UNICEF and UN Women, *Informal Justice Systems*, p. 15.
- 238 Chirayath, Leila, Caroline Sage and Michael Woolcock, 'Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems', prepared as a background paper for the World Development Report 2006: Equity and Development, The World Bank/Oxford University Press, New York, July 2005, p. 4.

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- 239 Asian Development Bank, 'Law and Policy Reform at the Asian Development Bank', ADB, 2001, pp. 31–32.
- 240 Informal dispute settlement issues include the fact that courts lack women decision-makers, women face cultural impediments to participating in debates, and in some cases, women are even required to have their interests represented by their husband or a male relative. Informal justice administration issues include the fact that men hold most of the leadership positions.
- 241 Eurasia Foundation and Caucasus Research Resource Centers, 'Equal before the law? A study of how citizens experience access to justice in Kazakhstan, Kyrgyzstan and Tajikistan', Ministry for Foreign Affairs of Finland, March 2011, p. 8.
- 242 UNDP, UNICEF and UN Women, *Informal Justice Systems*, p. 15.
- 243 See article 59 of the Constitution. Available at: <www.legislationline.org/documents/section/constitutions/country/20>.
- 244 Law on Courts of Elders of the Kyrgyz Republic (2003), arts. 15 and 16.
- 245 Eurasia Foundation, 'The Declining Use of Aksakal Courts in Kyrgyzstan'.
- 246 The concept of the 'best interests of the child' is subject to different understandings and interpretations, as described in section 6.4.11 of this report.
- 247 Celik, Ayse Betul, and Alma Shkrell, 'An Analysis of Reconciliatory Mediation in Northern Albania: The Role of Customary Mediators', *Europe-Asia Studies*, 62(6), 2010, pp. 885–886. Available at: <www.academia.edu/1788876/An_analysis_of_reconciliatory_mediation_in_Northern_Albania_the_role_of_customary_mediators>.
- 248 Ibid.
- 249 For instance, see: Ahmeti, Zef, 'The criminal law in the "Kanun of Lekë Dukagjini"', 15 November 2014, <<http://shkoder.net/en/?p=133>>. See also the cases summarized in Vodo, T., 'The Albanian judicial system in front of the customary law: path dependency and critical junctures', Université Libre de Bruxelles, Brussels, 2010, p. 4.
- 250 Alston, Philip, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Mission to Albania, A/HRC/17/28/Add.3, United Nations, 14 March 2011, para. 5.
- 251 Alston, Philip, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Follow-up to country recommendations: Albania, A/HRC/23/47/Add.4, United Nations, 23 April 2013, para. 14.
- 252 Ibid., para. 91.
- 253 Immigration and Refugee Board of Canada, 'Issue Paper: Albania Blood Feuds', Issue Paper, May 2008, s. 4.4.1. Available at: <www.justice.gov/eoir/vll/country/canada_coi/albania/ISSUES_PAPER_BLOOD-FEUDS.pdf>.
- 254 United Nations, Human Rights Committee, Concluding Observations: Albania, CCPR/C/ALB/CO/2, United Nations, 22 August 2013, para. 10.
- 255 United Nations, Report of the United Nations High Commissioner for Human Rights, Human Rights Council Resolution A/HRC/25/35, United Nations, Geneva, 16 December 2013, para. 18.
- 256 Montenegro is the only focal country where responses from children resulted in a higher indication of equality than those from children and family members combined.
- 257 See section 2.2 of this report for details of the various groups of children in vulnerable situations approached for the research (such as children living in poverty, in institutional or foster care, and from minority groups). See also the Appendix for a description of the methodology used in each country of focus.
- 258 See: Office of the United Nations High Commissioner for Human Rights, 'Legal capacity', Background conference document prepared for the Sixth Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, August 2005. Available at: <www.un.org/esa/socdev/enable/rights/ahc6documents.htm>.
- 259 United Nations, Convention on the Rights of the Child, General Assembly Resolution A/RES/44/25, United Nations, New York, 20 November 1989, art. 12(2).
- 260 Further research findings on the child's right to be heard as part of child-sensitive proceedings are presented in section 6.4.4 of this report.
- 261 Civil Code (Albania), 1994, art. 6.
- 262 Ibid., art. 7.
- 263 Family Code (Albania), 2003, art. 232.
- 264 Ibid., art. 6.
- 265 Ibid., art. 264.
- 266 Civil Procedure Code (Albania), 1996, art. 352.
- 267 Family Code (Albania), 2003, art. 246.
- 268 Civil Procedure Code (Albania), 1996, art. 356.
- 269 Criminal Procedure Code (Albania), 1995, art. 155.
- 270 Civil Code (Georgia), 1997, art. 12(2).
- 271 Ibid., art. 1198.
- 272 Civil Procedure Code (Georgia), 1997, art. 81.
- 273 Criminal Procedure Code (Georgia), 1998, art. 306.
- 274 Civil Procedure Code (Georgia), 1997, art. 81(3)(5).
- 275 Criminal Procedure Code (Georgia), 1998, art. 306.
- 276 Civil Procedure Code (Kyrgyzstan), 1997, art. 37.
- 277 Family Code (Kyrgyzstan), 2003, art. 57.
- 278 Children's Code (Kyrgyzstan), 2012, art. 53.
- 279 Law on Civil Procedure (Montenegro), 2004, art. 77.
- 280 Family Law (Montenegro), 2007, art. 13.
- 281 Law on Civil Procedure (Montenegro), 2004, art. 78. Normally, a child's legal representative will be a parent, but the custodial body or the court may appoint a special guardian or a temporary representative in the case of a conflict of interest.
- 282 The Family Law provides for certain circumstances in which children may consent to certain events such as a medical intervention or attendance at a particular secondary school. See, for example, Family Law (Montenegro), 2007, arts. 61–68 and 353–355.
- 283 Family Law (Montenegro), 2007, art. 67.
- 284 Ibid., art. 133.
- 285 United Nations, Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, United Nations, Geneva, 20 July 2009, para. 21.
- 286 See Civil Procedure Code (Georgia), 1997, art. 46, which provides for exemptions for civil lawsuits related to violation of children's rights as well as for parents in alimony or custody disputes.
- 287 These findings confirm those of other similar studies on this issue. For example, a study surveying almost 4,000 children across Europe found that common reasons for not seeking help included: fear of what might happen to their family; fear that their confidentiality would be breached; a previous bad experience of asking for help; fear that they would not be believed or would not be listened to; and fear of punishment. See: Kilkelly, Ursula, 'Listening to Children about Justice: Report of the Council of Europe Consultation with Children on Child-friendly Justice', Council of Europe, Strasbourg, 5 October 2010, p. 24.
- 288 In Kyrgyzstan, in research supported by UNICEF and carried out in collaboration with the Ministry of Education and Science, 73 per cent

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- of surveyed children reported experiencing abuse and/or neglect in the family. See: United Nations Children's Fund, *Child Abuse and Neglect in Families in the Kyrgyz Republic*, UNICEF, Bishkek, September 2010, p. 8. Available at: <www.unicef.org/kyrgyzstan/Child_Abuse-Neglect_In_Families_ENG.pdf>. In a recent survey of 3,328 children in Albania, 69 per cent of respondents reported facing psychological violence within their home and 59 per cent reported facing physical violence within their home. See: Children's Human Rights Centre of Albania, 'Balkan Epidemiological Study on Child Abuse and Neglect', Tirana, 29 January 2013, <www.becan.eu/node/345>. See also: United Nations Children's Fund, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, New York, 2014.
- 289 United Nations Children's Fund, *Stop Violence Against Children: Act Now, Regional Consultation Report for the UN Study on Violence against Children, Europe and Central Asia*, 5–7 July 2005, UNICEF, Ljubljana, 2005, p. 19.
- 290 Law on the Protection of the Rights of the Child (Albania), 2010, art. 21.
- 291 Global Initiative to End All Corporal Punishment of Children, 'Global progress towards prohibiting all corporal punishment', Global Initiative to End All Corporal Punishment of Children, December 2014, p. 5. Available at: <www.endcorporalpunishment.org/pages/pdfs/GlobalProgress.pdf>.
- 292 *Ibid.*, pp. 9–10.
- 293 The term 'institutions' was here meant to encompass any official governmental, judicial or other decision-making body.
- 294 Resolution adopted by the United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, 22 July 2005, para. 11. As noted earlier, the Guidelines "could also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law" (*ibid.*, para. 6).
- 295 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies.
- 296 United Nations, Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, United Nations, Geneva, 20 July 2009, para. 34.
- 297 United Nations, Report of the United Nations High Commissioner for Human Rights, Human Rights Council Resolution A/HRC/25/35, United Nations, Geneva, 16 December 2013, s. IV.
- 298 Resolution adopted by the United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, 22 July 2005, paras. 41–42.
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CHAPTER 6: RESEARCH FINDINGS: A CROSS-COUNTRY OVERVIEW

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Chapter 7: Conclusions and recommendations

7.1 Conclusions

Looking at access to justice for children as an integral component of the rule of law, *Children's Equitable Access to Justice* provides a first-of-its-kind analysis of children's access to justice in four countries of the Central and Eastern Europe and Central Asia region. With its research focus the legislative, policy and institutional frameworks around children's access to justice, the report reflects on whether these frameworks are aligned with international standards and implemented effectively for children, and looks at how children, especially those in vulnerable situations, experience justice.

Based on evidence offered by children, their families and, in varying degrees, by justice sector professionals in the four focal countries of Albania, Georgia, Kyrgyzstan and Montenegro, *Children's Equitable Access to Justice* highlights that access to justice is not equitable for all children. For the children interviewed, most of them from disadvantaged backgrounds, justice concerns a whole range of decisions by a whole range of people – not only the police, lawyers and judges – which affect them in various ways, in terms of family, education, identity and/or immigration status.

Drawing on empirical research findings, and with the support of real life examples and case studies, *Children's Equitable Access to Justice* suggests that to improve access to justice for children, one must look critically at the whole spectrum of child services linked in one way or another to the justice system. This encompasses not only the police and the courts, but also teachers, social workers, psychologists and community leaders, all of whom interact with children along their pathways to justice. Furthermore, children are not a homogeneous group, and services must be adapted to their age and particular circumstances. The research shows that children living in vulnerable





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situations, whether with a disability, in poverty or without parental care, face even greater challenges in accessing justice.

Children's Equitable Access to Justice shows that while the legislative and policy frameworks in the four countries of focus continue to develop, important gaps remain, particularly in civil and administrative matters. Research findings reveal a significant divide between law and practice as well as considerable discrepancies in the understanding of justice by justice system professionals as compared to children, their advocates and their family members. The four countries lack specialized procedures applicable to children in justice processes beyond juvenile justice. This, compounded by the lack of child-sensitive approach, can create additional hardships for children. Distrust of institutions and of those tasked with supporting children remains pervasive in the four countries, reflecting cultural realities and social and cultural approaches that ultimately prevent children from making full use of the justice system.

Children's Equitable Access to Justice also reveals considerable variation in the alignment with international standards of the domestic legal frameworks in place for children, with the real progress made in legislative reform not translating into similar progress in the practical application of the law. The principle of the 'best interests of the child' is not systematically understood or applied, and is strongly influenced by social and cultural norms. The same can be said of the child's right to be heard in judicial and administrative proceedings. The use of child-sensitive justice procedures remains ad hoc, while the obstacles – legal, practical, social and cultural – to navigating justice systems are many. These obstacles, which are exacerbated by children's dependent status, reflect local realities such as fear of reprisals and stigmatization for seeking justice, and acceptance of violence within the family.

The research findings also indicate that children's access to justice is further impeded where justice systems are under-resourced and corruption is rife. There is a clear need for interventions aimed at improving the effective and independent functioning of the justice system in all four countries of focus. A more transparent and effective judiciary will in turn enhance children's confidence in the justice system.

Finally, *Children's Equitable Access to Justice* points to gaps in both the information held by and the legal awareness of children, who often do not know their rights or how to pursue remedies where these rights are violated. Where children were aware of their rights, at least to a small degree, the research findings often revealed a lack of institutional support for children's claims to their rights. In the words of one 15-year-old boy: "I think you are a nice person, but you are a bit naïve with this talk about institutional support. It does not exist."

Hindered access to justice for children reflects society's limited understanding of children as rights-holders. Prevailing thought around the world still too often identifies children as the property of their parents or helpless objects of charity, rather than human beings with a distinct set of rights. As a result, public administration and justice systems have not tailored their services to recognize children's rights and agency, and their own unique experiences, perspectives and ideas. The research, which also highlights how cultural norms and attitudes towards children must shift in order to facilitate children's access to justice, was informed by the valuable input of children. Likewise, the recommendations emphasize the concerns and suggestions put forward by children during the research process – many had specific and targeted ideas about how to improve their access to information and justice services.



7.2 Recommendations

Children's Equitable Access to Justice underscores the significant amount of work still to be done to strengthen justice systems and empower children in the Central and Eastern Europe and Central Asia region to achieve equitable access to justice. The challenges reported demand attention and mobilization on the part of governments and professionals across relevant sectors as well as civil society, so that reforms at the national

“ It would be useful if children would be taught their rights at school. Families should also give children information on their rights, however, sometimes parents do not know anything about children's rights themselves and [so] how they can pass such knowledge to their children? Families should also be taught children's rights. It would be good if organizations who work in this direction conduct trainings more often for as many children as possible. TV programmes on children's rights might also be useful to improve children's knowledge on their rights.”

17-YEAR-OLD GIRL LIVING IN A GROUP HOME, GEORGIA

and regional levels are tailored to children's specific rights and needs. Despite substantial investment in rule of law interventions in the region over the past decade, insufficient resources have been directed at addressing the concerns children face in accessing the justice system and receiving fair justice outcomes in line with international human rights standards.

To gain the most traction, efforts to improve children's access to justice should be systematically integrated into broader justice and security sector reforms, constitution-making processes, good governance and sustainable development initiatives. This inclusive approach should be adopted by international donors and organizations, together with national policymakers, judicial authorities and civil society. In particular,

the European Union (EU) accession and association processes should prioritize children's access to justice, and use the EU standards and tools to drive progress. Among other things, this involves integrating children's access to justice into human rights and policy dialogues and rule of law missions, and benchmarking domestic reforms on the progress they achieve in ensuring access to justice for all children, including the most vulnerable.

Recommendation 1: Strengthen the right to effective and child-sensitive remedies in national legislation

Children's Equitable Access to Justice demonstrates that key legal provisions necessary for the full realization of the child's right to a remedy are not systematically incorporated into domestic legal frameworks, leaving an important legal gap in the protection of child rights. While legislation alone cannot remedy injustice against children, legal frameworks are essential to achieving substantive equality. The law has the ability to deter discriminatory practices with the threat of punishment, and the capacity to influence and guide social interaction, including, most relevantly, interactions between children and adults. Public debates associated with legislative reforms can help in the longer term to influence social norms, including by nurturing the perception of children as subjects of the right to an effective remedy.

National legislative frameworks should specifically include:

- a. Provisions for adapted judicial and administrative procedures and other appropriate measures for fair, effective and prompt access to justice for children, and for adequate, effective, prompt and appropriate remedies, including reparation.
- b. The right for children to initiate judicial and administrative proceedings, either personally, through a parent or guardian, or through a chosen or appointed legal representative. The legal capacity or standing of children to take legal action on their own behalf should be specifically recognized, in accordance with the evolving capacity principle. Children should have the right to be informed and to receive support when doing so. When a parent, guardian or other representative initiates legal action on behalf of a child, her/his decisions and

actions must be guided by the best interests of the child and give due weight to the views of the child.

- c. Children's right to be heard in all judicial and administrative proceedings which affect them, if they so desire and in a manner adapted to their age, maturity and best interests. Age should never be a barrier to allowing a child to express her/his views. Children who do not wish to express their views personally during proceedings, or whose direct participation would be contrary to their best interests, should have the opportunity to have a legal representative convey their views accurately to the competent authority instead.
- d. The child's right to legal aid in criminal, civil and administrative proceedings at no cost, and, in particular, the ability to assign counsel to represent the child in her/his own name where there is or could be a conflict of interest between the child and her/his parents or other involved parties.
- e. Clear procedures setting forth the child's right to a Best Interests Determination at all stages of the proceedings, and the option to appeal a decision where Best Interests Determination procedures have not been properly adhered to.
- f. The urgency of proceedings in all matters involving children as a legislative and policy imperative, supported by clear deadlines.
- g. Child rights norms, as put forth in international human rights law and international humanitarian law, incorporated into domestic laws. In particular, the definition of criminal offences against children, especially those involving violence, should align with international standards.

Recommendation 2:
Adapt law enforcement and justice systems to children's particular rights and needs

An array of institutions and mechanisms exist, or should exist, to realize children's rights to an effective remedy and unhindered access to justice. In this respect, judicial mechanisms are key avenues. Children in justice processes have the right to special protection, assistance and support appropriate to their age, level of maturity and unique needs, to prevent

further hardship. As demonstrated in *Children's Equitable Access to Justice*, however, courts are generally not adapted to children's particular rights and needs, sometimes resulting in the secondary victimization of a child. Similarly, the police force is usually inadequately equipped to question children in line with international standards.

Priorities for this recommendation include:

- a. Bringing in specialized criminal, civil and administrative procedures for questioning and hearing children in line with international standards, including the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005). Among other things, the procedures should: limit the number of times a child can be questioned; prevent confrontation with the accused before, during and after testimony; limit the number of persons authorized to question the child; allow for audio-visual recording of the forensic interview; allow for a change in order of the testimony; and allow for the use of other low-tech measures to facilitate the child's testimony in the best possible environment for the child.
- b. Building the capacity of the police, prosecutors, judges, lawyers and other relevant professionals – both pre- and in-service – on child rights; children's specific developmental needs, vulnerability and agency; and child-friendly communication. Standards should be developed to ensure that all professionals working with children in justice processes possess a set of core skills and knowledge, which is supported and maintained through continuing professional development. Specialized child courts should be established wherever they are needed. Informal justice providers should also be involved in training initiatives.
- c. Ensuring the availability of adapted victim and witness support measures and services within criminal proceedings, starting at the investigation stage and available through to second instance proceedings, as well as measures to ensure the safety and protection of child victims and witnesses. It is also important to ensure the availability of national programmes for reparations, including compensation, rehabilitation and measures to promote recovery.

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- d. Ensuring the availability of and access to child-friendly legal aid for all children, without discrimination. Legal aid provided to children should be prioritized; free of charge; available in criminal, civil and administrative proceedings; accessible, age-appropriate and multidisciplinary; and effective and responsive to the specific legal and social needs of children.
- e. Use of child-responsive budgeting within all national, regional and local planning processes to ensure that relevant institutions and agencies have the necessary resources to provide justice services to children and to implement the legal provisions. This should include strengthening the staffing of and support available to children in key institutions serving children.

Recommendation 3:

Adopt a multidisciplinary, coordinated approach to children's access to justice

Children's access to justice is everyone's business. Children may require a range of support services when their rights have been violated or their entitlements denied, including financial, educational, social, health and psychological support in tandem with legal assistance. Research findings highlight that access to justice for children works better where the child services linked in one way or another to the justice system are efficient and responsive to children's justice needs. Integrated approaches that connect justice institutions and non-legal institutions are critical to addressing the bottlenecks to children's access to justice and will also ensure that remedies are sustainable and responsive to children's long-term developmental needs.

This recommendation involves the following priorities:

- a. Ensuring that legislation, policies and guidelines provide clear roles and responsibilities for all of the key professionals who support access to justice for children, including the police, prosecutors, judges, lawyers, social workers, psychologists, mental health service providers, staff from detention and other facilities, victim-witness support personnel, mediators, educators, informal justice providers and health officials. Protocols of cooperation should support information sharing, coordination, referrals and effective responses on a case-by-case basis.

- b. Building the capacity of all professionals working with children in justice processes – both pre- and in-service – and enhancing in higher education institutions course offerings on child rights and access to justice. Consideration should be given to implementing a renewable certification system for all actors engaged with children in the justice system. Continuous and in-depth training should be provided for all professionals working with children, especially social workers, educators and health care providers, to help them to recognize violations of children's rights, to assist in identifying options for referral and remedies, and to take decisions in the child's best interests.

- c. Ensuring the availability and accessibility of holistic, multidisciplinary support services (legal, social, psychological, medical) for child victims and witnesses, and for children involved in family law or civil proceedings characterized by conflict. Support services should take into account the particular vulnerability of certain children in accessing such services and tailor their outreach activities and responses accordingly. Such adaptations may include the provision of helplines, use of mobile teams/home visits, flexible hours, gender-sensitive staff assignment, language/translation resources, and accessibility for children with disabilities.

Recommendation 4:

Strengthen administrative accountability mechanisms within governmental and judicial institutions

Accountability begins from within governmental and judicial institutions, including those in the justice, security, social protection, education and health sectors. As such, there is a need for internal administrative mechanisms that will ensure the full implementation of laws, policies and provision of services for all children, without discrimination. Institutions should establish procedures for processing internal complaints and addressing the legitimate claims of complainants. Such procedures should also be used to identify systemic problems for which reform is required. Improved statistical data are required both to do this and to strengthen planning, evidence-based policymaking, budget allocation, monitoring and evaluation of policies on children's

access to justice; the research highlighted the paucity and often unreliable nature of data in this area.

Some of the priorities in this regard include:

- a. The need for institutions serving children (schools, open and closed institutions, social care institutions, hospitals, the foster care system, police stations, etc.) to have clear, child-sensitive, internal complaint procedures in place to address children's concerns, and to provide information about how to submit a complaint. Children should have the option to resort to other avenues, including judicial action, should this route fail to provide the necessary help.
- b. Developing and monitoring standards for recruitment, codes of conduct and standards of practice for all professionals working with children in justice and administrative processes. Institutional guidelines should provide for services to reach and serve the largest number of children possible, especially hard-to-reach children such as those with disabilities, outside the educational system or living in rural areas, and to monitor the implementation of all such initiatives.
- c. Supporting data collection and management, with appropriate disaggregation, to aid proper monitoring and evidence-based policymaking in this area. Data should cover the number of children involved in justice processes, their profile and circumstances, the reasons for their involvement in justice proceedings and indicators of child rights compliance. Disaggregation of data should allow for the identification of potential discrimination in access and treatment. Research on access to justice for children should be promoted.
- d. Accountability of informal justice systems, where these exist, should be strengthened, including through enhanced state oversight and monitoring of such systems. Requiring or promoting the recording of case outcomes is one measure that can encourage transparency, enhance oversight and strengthen enforcement mechanisms. Avenues of appeal are also effective mechanisms in promoting the accountability of informal justice providers.

***Recommendation 5:
Strengthen the role of national human rights institutions and civil society in supporting children's access to justice and holding governments accountable***

Accountability for child rights must be approached and reinforced in multiple ways, and non-judicial mechanisms – whether parliamentary committees, independent oversight bodies such as national human rights institutions (NHRIs), or community-based accountability systems – also have an important role to play. NHRIs such as ombudsperson offices have a particularly crucial role in the case of children, as these are often free to access, more flexible, quicker to respond and less intimidating than courts. Some NHRIs can even initiate proceedings on behalf of children. Civil society organizations also play an increasingly important role in calling governments to account and in providing information and services, especially among hard-to-reach children. Formalized cooperation protocols among NHRIs, NGOs and community-based service providers have proven useful in improving children's access to justice, and their use should be explored where not already in existence.

Priorities include:

- a. Enabling NHRIs to carry out their mandate with regard to children, including serving as an interface between children's justice needs and governmental service providers, policymakers and judicial stakeholders; and investigating complaints, adopting decisions and seeking informal resolution where appropriate. Legislative frameworks should be adjusted to allow NHRIs to submit lawsuits on behalf of children, support children taking cases to court, intervene in ongoing judicial proceedings as *amicus curiae*, pursue public interest litigation and take measures necessary to ensure that all public administration bodies respect the rights of the child.
- b. Strengthening the role of parliamentary committees, detention monitoring bodies and other monitoring mechanisms to scrutinize the realization of children's right to an effective remedy, and to receive complaints from children and process these in a child-sensitive manner.
- c. Reinforcing the capacity of NGOs to monitor children's access to justice, serve as advocates for

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systemic improvements and hold governments accountable to their commitments. Collaboration with community-based service providers to identify needs and inform advocacy should be encouraged. In particular, NGOs can play a key role in engaging with informal justice systems, so as to gradually influence their practices with regard to children and bring these into conformity with child rights.

- d. Supporting children in making use of international human rights mechanisms, including the complaints procedures established under international human rights treaties. These include the communication procedure established under the third Optional Protocol to the Convention on the Rights of the Child. Help should be given to convey children's voices through mechanisms such as the treaty bodies mandated to monitor States parties' compliance with their treaty obligations (e.g., the Committee on the Rights of the Child) and special procedures mandates.
- e. Use of strategic litigation as a powerful means to obtain landmark decisions that are susceptible in the longer term to influencing laws and social norms. When an avenue fails to protect children, claims should be raised within the judiciary, constitutional courts and, where applicable, the European Court of Human Rights to advance children's access to justice.

Recommendation 6:
Step up initiatives for the legal empowerment of children and engage families in supporting children's access to justice

For children to access justice, they must be seen as rights-holders rather than objects of adults' goodwill. This involves empowering children, and the adults who care for them, to understand children's rights and how to seek redress where such rights are violated. Targeting children only cannot work and would place children at risk. As shown in *Children's Equitable Access to Justice*, children would like to receive information from family members and trusted adults, and adults must be prepared to provide this. Improving women's access to information and resources, particularly for women facing violence, enhances access to justice for children. To be effective, legal empowerment measures should be designed

with the participation of children in mind.

This recommendation involves the following priorities:

- a. Ensuring the availability of child-friendly information and advice, including on the right to an effective remedy and the right to participate in judicial and administrative proceedings and have views taken into consideration, and the benefits and potential risks involved in participation. Such information and advice must be appropriate to the child's age and maturity, and be presented in language that the child can understand and in a gender- and culturally sensitive manner. Children should be informed about the whole range of options for seeking redress and the protection measures available. Child rights information and discussion should be integrated into school curricula.
- b. Raising awareness among families and caregivers about the availability of remedies and how to access these, and about how to minimize the potential risks involved in participating in justice processes. Provision of information to parents, guardians or caregivers should be in addition, rather than an alternative, to communicating information to children. It is also important to build the capacity of adult caregivers to bring actions on behalf of children, especially the youngest, where necessary.
- c. Developing the capacity of community members, including women, to act as paralegals/legal assistants in their own communities, so that they may provide information and advice to children and families, especially in the most difficult to reach places. Women's legal empowerment should be supported, both to foster greater gender equality and as a means to support children's access to justice.
- d. Promoting and supporting decentralized, community-based, multidisciplinary information and support centres, including within the most vulnerable communities, to help children and their families to access information, legal aid/advice and referral to support services. Existing community resources should be leveraged in this respect. NGOs should strive to ensure equal access to services for all children wherever they provide direct services.

e. Implementing outreach strategies to enhance trust in justice institutions. Children's confidence in accessing justice should be increased through information sessions and guided exchanges with the police, prosecutors, judges, ombudsperson offices, child protection agencies and representatives of other relevant institutions. Such initiatives, which may be incorporated into educational programmes, allow law enforcement and judicial officials to regularly interact with children in settings that are comfortable and familiar to the child.

Recommendation 7:

Promote a shift in social norms to support children's equitable access to justice

Children's Equitable Access to Justice identified a number of systemic problems which present barriers to children's ability to access justice. In particular, it is crucial to proactively address social norms that perpetuate discrimination and allow violence against children to be tolerated as a legitimate disciplinary measure, and traditional attitudes that make it unacceptable for children to seek remedies. To successfully claim redress, children must be seen as rights-holders. The goal is to create a 'culture of justice', where principles of equality and non-discrimination are not only enshrined in law but also translated into practice. Because of the clear link between societal perceptions of children and the adherence of informal justice systems to children's rights, tackling social norms also appears to be a necessary step in bringing informal justice systems into conformity with international human rights standards.

Some of the priorities in this regard include:

- a. Raising awareness among the general public of children's right and capacity to actively participate in matters affecting them, through the use of positive images of children in the public space and support of children's own sense of agency. Work with governments, civil society and community leaders should foster greater understanding of children as rights-holders. At the same time, attitudes and beliefs that result in violence, discrimination or exclusion can be identified and addressed.
- b. Engaging prominent government, community and religious leaders to act as agents of change and

speaking out in support of children's access to justice. Attention should be drawn to the empowering stories of children who have secured their rights and changed their communities, and to successful models that support children's access to remedies, for example, landmark judicial decisions that serve to reinforce children's rights.

- c. Promoting and supporting the role of the media in raising awareness of children's equitable access to justice, including through comprehensive and sustained media campaigns. Most important is building the media's capacity to report on the realization of children's rights, especially with regard to children in vulnerable situations, and also its ability to challenge the underlying social norms that make it unacceptable for children to claim redress and which tolerate or justify violence against children.

Appendix: Study methodology

During 2013 and 2014, under the guidance and with the support of the International Development Law Organization (IDLO), a nine-person research team collected information on children's access to justice in four countries. The research was carried out using both qualitative and quantitative research methods designed in line with local sensitivities and adhering at all times to an ethical and child-sensitive approach.

The main objectives of the research were to:

- analyse children's access to justice in the four countries under consideration using a broader lens, looking beyond the existing emphasis on children in conflict with the law to all children who need to engage with the justice system, and focusing on vulnerable children in particular
- provide greater insight into local realities, concerns and approaches
- facilitate the identification of culturally relevant, sustainable and effective action plans and good practice benchmarks
- inform policymaking and programming on children's access to justice.

A comprehensive desk review was first conducted. The focal countries were selected on the basis of meeting predefined criteria,³⁶⁸ and two structured questionnaires were developed. Questionnaires were devised with open and closed questions, and with a special focus on civil and administrative proceedings as well as criminal proceedings relating to child victims or witnesses of crime. The first questionnaire, for justice sector professionals,³⁶⁹ was designed to capture experiences and opinions regarding children's access to justice in relation to standing, procedure, remedies







and available support. The second questionnaire, for children and their family members,³⁷⁰ was designed to capture experiences and perceptions relating to rights awareness, access, procedure, remedy and available support. Children and their family members were interviewed separately.

In addition to the interviews that employed these structured questionnaires, focus group discussions were organized with children from identified vulnerable groups.³⁷¹ These aimed to capture: perspectives on the concept of rights and on the nature of specific rights; awareness of available justice avenues; attitudes to and perceptions of official institutions; details of the quality of the information and support available; and any messages or information the children wanted to share in regard to access to justice.

Finally, case studies were used to better understand pathways to justice and to document individual cases.

The mixed methods research allowed for the gathering of a diversity of perspectives and experiences as well as triangulation of information collected from different sources. IDLO compiled a comprehensive database of the content of interviews and focus group discussions.

This fieldwork was action-oriented in the sense that it also provided opportunities for researchers to impart information about and raise awareness of children's rights, particularly among children and their family members. It also allowed the researchers to convey to the participants information about available programmes and services.

Research sample

In total, IDLO interviewed 120 justice sector professionals, 175 children and 32 family members across the four focal countries. Children aged between 10 and 18 participated in the research and, where possible, focus groups were disaggregated by sex.

Respondents were chosen through purposive sampling to enable the selection of justice sector professionals engaged in children's access to justice on a day-to-day basis as well as children and family members from identified vulnerable groups or with experience of the justice system. Sampling was progressed further via interaction with community-based organizations and through interview questions that allowed individuals who met the criteria for inclusion in the study to identify other relevant justice sector professionals, children or family members who might be included.

Composition of respondents

> ALBANIA		
Justice sector professionals: ³⁷²		30
17 state/governmental/judicial institutions		13 NGOs
Children and family members:		20
12 children		8 parents/guardians
4 girls	8 boys	3 Albanian; 5 Roma
4 Albanian	6 Albanian; 2 Roma	
Focus group participants (ages in brackets):		24
6 Roma girls without parental care and formerly living on the street but now living in a public residential institution (10–13)		
6 girls and boys living/working on the street and involved with the child protection system (12–14)		
7 mothers of Roma children		
5 Roma girls from Fushë-Kruja region (11–15)		
> GEORGIA		
Justice sector professionals: ³⁷³		30
16 state/governmental/judicial institutions		14 NGOs
Children and family members:		20
16 children		4 parents/guardians/family members
9 girls	7 boys	4 Georgian
4 Georgian; 4 Azeri; 1 Osetian	5 Georgian; 1 Azeri; 1 Armenian	
Focus group participants (ages in brackets):		29
5 internally displaced girls and boys from a settlement (10–13)		
7 internally displaced girls and boys from Abkhazia (14–15)		
6 ethnic Azeri girls and boys in Marneuli municipality (15–17)		
6 ethnic Azeri girls in Marneuli municipality (13–15)		
5 girls and boys with physical disabilities (15–17)		

APPENDIX: STUDY METHODOLOGY

> KYRGYZSTAN		
Justice sector professionals: ³⁷⁴		30
11 state/governmental/judicial institutions		19 NGOs
Children and family members:		20
15 children		5 parents/guardians
7 girls	8 boys	5 ethnic Kyrgyz
4 ethnic Kyrgyz; 2 ethnic Uzbek; 1 ethnic Kyrgyz/ ethnic Uzbek	6 ethnic Kyrgyz; 2 ethnic Russian	
Focus group participants (ages in brackets):		35
6 ethnic Uzbek girls and boys in Osh Oblast (14–15)		
5 ethnic Uzbek girls and boys in Jalal-Abad (14–16)		
6 ethnic Kyrgyz girl and boy refugees from Murghab (Tajikistan) now settled in Chui Oblast (14–16)		
6 ethnic Kyrgyz girls and boys in Batken Oblast, bordering Uzbekistan (10–11)		
5 girls in the religious conservative region of Nookat (16–17)		
7 girls in the remote traditional community of Chon-Alai rayon of Osh Oblast (14–15)		
> MONTENEGRO		
Justice sector professionals: ³⁷⁵		30
16 state/governmental/judicial institutions		14 NGOs
Children and family members:		20
12 children		8 parents/guardians
7 girls	5 boys	6 Montenegrin; 2 Serbian
7 Montenegrin	3 Montenegrin; 2 Serbian	
Focus group participants (ages in brackets):		39
6 Roma girls and boys living in Konik refugee camp (16–17)		
6 Roma girls and boys living in Konik refugee camp (13–15)		
5 girl and boy victims of family violence (15–17)		
5 girl and boy victims of family violence (13–15)		
6 girls and boys with physical disabilities (15–17)		
11 girls and boys without parental care, living in a children’s home (16–17)		

Research limitations and challenges

While thorough in its approach, this research had certain limitations that it is important to acknowledge. The depth and complexity of data collected in interviews and focus groups reveals patterns and consistent themes rather than statistically significant findings. The short time frame in which to carry out fieldwork and code and analyse results allowed for only limited pretesting of research instruments, and adjustments were later made to these in the course of the fieldwork. Children's participation in the design of research instruments was not possible. Respondents could refuse to answer questions, meaning that the data sets contain missing values and the depth and quantity of information available on particular topics varies across the four focal countries. Widespread difficulties in accessing baseline statistics about children in the justice system were compounded by incomplete statistical information or unofficial statistics that could not be independently verified. The research took place in urban as well as rural areas, with a greater number of the respondents living in urban settings.

Researchers faced a number of challenges including bureaucratic delays, distrust, restrictions on access to child participants and the suspicious attitudes of some government agencies.

Child-centred and nationally led research approach

The research study adopted a child-centred approach at all times. Researchers adhered to ethical standards to ensure that all aspects of the research respected child participants and protected them from potential

harm. Considerations included: offering the choice to participate; obtaining appropriate consent;³⁷⁶ preparing participants for risk, harm and distress; sharing research benefits with participants; privacy and confidentiality; and dignity. All researchers received training to support their fieldwork, and protocols were developed for instances where the disclosure of certain information necessitated referral or reporting.

Resources and tools were provided to all researchers to reinforce their training and to ensure that the research was conducted ethically and truly reflected a child-centred approach.³⁷⁷ Child-sensitive considerations included: creating comfortable research spaces; building trust; managing children's expectations; communicating effectively to obtain reliable information while helping children to express themselves; and adopting appropriate attitudes towards sensitive issues. A child psychologist and specialist on ethical and child-sensitive research reviewed the research tools from a child-friendly perspective and provided support to the researchers throughout the duration of the fieldwork.

The data gathering process was entirely nationally led, with comprehensive support given by IDLO and UNICEF Country Offices. National researchers translated materials to ensure that definitions, categories and terminology remained consistent and accurate across the four countries of focus while also aligning with international norms. The national researchers were essential, as they possessed the linguistic fluency necessary to the fieldwork as well as substantive political and cultural knowledge.





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- 368 The criteria included: participation in 2012 UNICEF exploratory survey; representation of the various sub-regions in the Central and Eastern Europe and Central Asia region; potential to inform a diverse range of child justice issues; identified commitment from relevant authorities; support from UNICEF Country Offices to facilitate access to information and partners; participation in the UNICEF Regional Knowledge and Leadership Agenda; and feasibility given the project time frame and budget.
- 369 Justice sector professionals included individuals from the judiciary, legal aid providers, the police, government ministries, child protection agencies, NGOs working on issues related to children's legal rights, centres for social work, administrative commissions/bodies, ombudsperson institutions, traditional or informal justice groups and institutions or homes for children. Questionnaires were divided to capture responses from judicial institutions and formal processes as well as non-judicial institutions and informal processes, including traditional or customary justice mechanisms.
- 370 Children and family members had experience of the justice system and/or belonged to an identified vulnerable group.
- 371 These groups were identified through desk research and consultations with UNICEF Country Offices and national researchers. Respondents were also asked to identify vulnerable groups. One focus group with family members was conducted.
- 372 Justice sector professional respondents were drawn from: the formal court system (17 per cent), legal services including lawyers and paralegals from legal aid centres (14 per cent), support services during the legal process (24 per cent), prosecutorial staff (14 per cent), law enforcement (3 per cent), child protection services (24 per cent), social work centres (10 per cent), professional experts (7 per cent), mediation or diversion programmes (7 per cent), ombudsperson institutions (3 per cent), staff of institutions or closed facilities (7 per cent), and other areas such as government policy or monitoring bodies (21 per cent). Total may be above 100 per cent as respondents were able to select more than one category.
- 373 Justice sector professional respondents were drawn from: the formal court system (10 per cent), legal services including lawyers and paralegals from legal aid centres (37 per cent), support services during the legal process (30 per cent), prosecutorial staff (7 per cent), law enforcement (7 per cent), child protection services (10 per cent), professional experts (3 per cent), mediation or diversion programmes (10 per cent), ombudsperson institutions (3 per cent) and other areas such as government policy or monitoring bodies (10 per cent). Total may be above 100 per cent as respondents were able to select more than one category.
- 374 Justice sector professional respondents were drawn from: the formal court system (10 per cent), legal services including lawyers and paralegals from legal aid centres (3 per cent), support services during the legal process (3 per cent), prosecutorial staff (7 per cent), law enforcement (17 per cent), child protection services (37 per cent), social work centres (10 per cent), mediation or diversion programmes (7 per cent), ombudsperson institutions (7 per cent), customary or traditional justice mechanisms (7 per cent), and other areas such as educational facilities or NGOs (27 per cent). Total may be above 100 per cent as respondents were able to select more than one category.
- 375 Justice sector professional respondents were drawn from: the formal court system (6 per cent), legal services including lawyers and paralegals from legal aid centres (3 per cent), support services during the legal process (20 per cent), prosecutorial staff (6 per cent), child protective services (13 per cent), social work centres (3 per cent), professional experts (20 per cent), mediation or diversion programmes (6 per cent), ombudsperson institutions (3 per cent), staff of institutions or closed facilities (10 per cent), and other areas such as shelters for those affected by domestic violence, disability facilities or NGOs (66 per cent). Total may be above 100 per cent as respondents were able to select more than one category. A number of respondents identified more than one category.
- 376 All children were provided with an information sheet about the research, written in a child-friendly style and language. Children provided their consent prior to participating in the study, and the consent of legal guardians was also obtained as appropriate. Children could withdraw from the research at any time but none did.
- 377 Training and materials included: (1) Guidelines – Interviews and Focus Groups with Children; (2) Presentation on Ethical and Child Sensitive Research; (3) FAQ Sheet on Ethical Considerations for Research with Children; (4) Suggested Phrases for Focus Groups/Interviews with Children; and (5) Referral Protocol – Guidance Notes. In particular, researchers were prepared for challenging situations likely to occur and were provided good practices to adopt.



PHOTOGRAPHY CREDITS AND CAPTIONS

Pages 2-3

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A young girl sits on a bed in an institution in Tbilisi, the capital of Georgia. The country has made considerable progress in reforming the child care system, with the aim of preventing family separation and establishing foster care and small group homes.

Pages 10-11

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A young boy from a vulnerable family looks through a window of his house. He lives in the town of Shumen, northern Bulgaria, one of the towns where child health and social indicators are among the worst in the country.

Pages 12-13

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Doichin pats a donkey in front of his home in Bulgaria. As a teenager, he submitted a case to the national Commission for Protection against Discrimination and the Ministry of Education and Science after being denied the opportunity to continue his schooling after the age of 16. The positive decision came too late for him but will hopefully enable other children with disabilities to continue their education until they are 18.

Pages 14-15

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A mother and her three children sit in front of their house in rural Georgia. Many vulnerable families in remote villages live below the poverty line.

Page 17

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Roma girls and boys in Bulgaria stand in a field where a Roma community shanty town is located. UNICEF is promoting better access to social services and more efficient and effective use of resources for vulnerable Roma families, which fosters greater social inclusion in wider society.

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A child places his hands on the bars of his cell in Penitentiary Institution No. 13 in Chişinău, the capital of Moldova. UNICEF supports comprehensive juvenile justice system reforms in Moldova as well as greater access to justice for all children.

Page 22

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A legal aid worker in a centre for child victims of abuse and violence established with UNICEF support in Bishkek, the capital of Kyrgyzstan explains to a mother and her young boy how to claim redress for violations of their rights.

Pages 26-27

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A Roma boy in Bulgaria stands in a field where a Roma community shanty town is located. UNICEF is promoting better access to social services and more efficient and effective use of resources for vulnerable Roma families, which fosters greater social inclusion in wider society.

Page 33

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Ali, 5, plays in a UNICEF-supported preschool in the Baliqchilar settlement in the southern city of Lankaran, Azerbaijan, where many vulnerable families live.

Pages 36-37

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Two boys sit at the bottom of the stairs in an institution in Tbilisi, the capital of Georgia. The country has made considerable progress in reforming the child care system, with the aim of preventing family separation and establishing foster care and small group homes.

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A girl sits behind a window blind in her room in an institution in Bulgaria. The country has one of the most ambitious child care reform plans to help vulnerable children remain with their family, supported by UNICEF.

Pages 56-57

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Boys in a state prison in Albania look through their windows. UNICEF supports comprehensive juvenile justice system reforms in Albania as well as greater access to justice for all children

Pages 62-63

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Vulnerable young teenage boys stand in front of a youth centre in the Republic of Moldova. Some were living in residential institutions, others were affected by HIV/AIDS, drug abuse and commercial sex work or had been in conflict with the law.



Pages 70-71

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A young boy sits at a playground outside St. Ivan Rilski infant home in Sofia, the capital of Bulgaria. Most of the children in the institution are placed here because they are born with disabilities or due to poverty. UNICEF supports the development of alternative care services for children.

Pages 78-79

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Girls and boys from a marginalized community write on their textbooks in a UNICEF-supported classroom. UNICEF is promoting better access to social services and more efficient and effective use of resources for marginalized families which fosters greater social inclusion in wider society.

Pages 86-87

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A mother sits on a sofa with eight of her nine children by two different fathers, neither of whom support her. When her first husband left she was forced to place her four eldest sons in an institution. But she is now receiving support from Christian Children's Fund, an NGO supported by UNICEF, to help her keep her children at home.

Pages 96-97

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Children walking in a Roma community in the town of Shumen, northern Bulgaria. It is one of the towns where child health and social indicators are among the worst in the country.

Pages 104-105

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Zhenia, 19, sits on his bed at the Way Home shelter for children who live or work on the streets, in the port city of Odessa, Ukraine. He was institutionalized as a small child following the death of his mother (he does not know his father). The UNICEF-assisted shelter provides food, accommodation, literacy training and an HIV/AIDS awareness outreach programme for children who live or work on the streets.

Pages 110-111

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A female interviewer talks to a young girl in a child-friendly room, a specialized space in which to conduct interviews and hearings of child victims or witnesses of violence, at the Ruse Complex for the Social Support of Children and Families in Ruse, north-eastern Bulgaria.

Pages 116-117

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A girl is filmed and interviewed by Nika and Nick, both 16, on a street in Tbilisi, the capital of Georgia, as part of an initiative to support media capacity building for vulnerable children to help them speak up on matters that affect them.

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A girl removes laundry from the washing line at a camp for migrant workers near the city of Adana in Adana Province, Turkey. The country's improved economic performance has not filtered down to benefit the poorest, particularly not the ethnic minorities of Kurdish or Roma descent.

Pages 126-127

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Virginia, 2, lives with her mother Nicolinka and 17-year-old sister Graziela in a Roma community in the town of Shumen, northern Bulgaria. Nicolinka is jobless and pregnant with her third child. Graziela does not attend school so that she may look after Virginia. The father abandoned the family. They receive support from the social and health workers at a UNICEF-assisted family centre.

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Vencislava, 14, has an intellectual disability and was placed in an institution in Bulgaria because her family could not afford to take care of her. The Mental Disability Advocacy Center, an NGO, and UNICEF promote greater access to justice for children with disabilities in Bulgaria.

Pages 132-133

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A girl and boy from a vulnerable family wait to be checked by health workers at a health centre in Uzbekistan.

Pages 134-135

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Young people discuss the issue of child marriage, at a UNICEF-supported youth centre in the southern coastal city of Lenkaran, Azerbaijan. UNICEF is supporting community programmes and interventions to raise awareness and promote behaviour change to end this and other harmful practices.



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