

Human Rights Council
Annual Full-day Meeting on the Rights of the Child
Access to Justice for Children

Thursday 13 March 2014

CONCEPT NOTE

I. Background and mandate

In its resolution 7/29 on the Rights of the Child adopted in March 2008, the Human Rights Council affirmed “its commitment to effectively integrate the rights of the child in its work and that of its mechanisms in a regular, systematic and transparent manner, taking into account specific needs of boys and girls”. It also decided “to incorporate into its programme of work sufficient time, at a minimum an annual full-day meeting, to discuss different specific themes on the rights of the child, including the identification of challenges in the realization of the rights of the child, as well as measures and best practices that can be adopted by States and other stakeholders”.

In resolution 22/32 (paragraph 57) on the right of the child to the enjoyment of the highest attainable standard of health of 21 March 2013, the Human Rights Council decided to focus its 2014 full-day of discussion on the rights of the child on the theme of “**access to justice for children**”. It invited the Office of the High Commissioner for Human Rights to prepare a report on that issue, in close collaboration with relevant stakeholders, including States, the United Nations Children’s Fund, other relevant United Nations bodies and agencies, relevant special procedures mandate holders and the Special Representative of the Secretary-General on Violence against Children, regional organizations and human rights bodies, civil society, national human rights institutions and children themselves, and to present it to the Council at its 25th session (March 2014), to inform the annual day of discussion in March 2014. Access to justice for children will be the sixth thematic discussion at the Council since the adoption of resolution 7/29¹.

II. Children’s access to justice – A child rights issue

Access to justice has been defined as the ability to obtain, through formal or informal justice processes, a just and timely remedy for violations of rights as put forth in national and international norms and standards including the Convention on the Rights of the Child². Accessing justice is an essential pre-requisite for the promotion and protection of all the rights of the child. As stated by the Committee on the Rights of the Child, *‘for rights to have meaning, effective remedies must be available to redress violations.’*³

¹ Since the adoption of resolution 7/29 the Human Rights Council has held the following thematic discussions on children’s rights: 1) 20 Years of the Convention on the Rights of the Child: Achievements and Challenges for its full Realization (10th session, March 2009); 2) The fight against sexual violence against children (13th session, March 2010); 3) Protection and promotion of the rights of children working and or living on the street (16th session, March 2011); 4) Children and the administration of justice (19th session, March 2012); 5) the right of the child to the highest attainable standard of health (22nd session, March 2013).

² UNDP, Programming for Justice: Access for All. A Practitioner’s Guide to a Human Rights Based Approach to Access to Justice; 2005

³ UN Committee on the Rights of the Child, General Comment 5, CRC/GC/2003/5, 2003

In accessing justice, children are confronted with the same barriers as anyone else in society, such as lack of awareness about their rights and redress processes, courts fees, distrust in the system, or fear of stigma. They also face additional obstacles due to their status as children, in particular with regard to lack of legal capacity to initiate judicial proceedings.

With the creation of an Open-ended Working Group⁴ to draft the new Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and its adoption the Human Rights Council showed a strong commitment to address the difficulties for children to pursue remedies for violations of their rights. In 2010, it invited the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative to the Secretary-General on Violence against Children to produce a joint report on effective and child-sensitive counselling, complaint and reporting mechanisms.⁵ This report concluded that despite significant efforts undertaken by States, it was “urgent to develop effective, child-sensitive counselling, reporting and complaint mechanisms, universally available to and accessible by all children, without discrimination of any kind” (para. 105 and 107, A/HRC/16/56). In its 2012 report on rule of law, the UN Secretary General stressed that “age biases of State actors abet discriminatory policies and practices of institutions limit [...] children’s access to legal redress and discourage[them] from reporting crimes against them”.⁶

In spite of its crucial role in the protection and promotion of children’s rights, the issue of children’s access to justice has however rarely been researched or addressed holistically in global fora. While some initiatives exist – especially in relation to legal and paralegal aid – children are generally not taken into account in access to justice programming and when they are, it is often limited to children in conflict with the law.

The annual day of discussion at the Human Rights Council therefore provides a unique opportunity to place the issue higher on human rights and rule of law agendas. The on-going signature and ratification process for the third Optional Protocol to the Convention on the Rights of the Child also provides a favourable context for the discussion to take place as many States are currently undertaking an analysis of how children can access justice at the national level.

III. Children’s access to justice in broader agendas

Rule of law & access to justice & justice sector reforms agendas – There cannot be rule of law without access to justice for children, including for the most vulnerable ones. Establishing rule of law involves the provision of fair and prompt redress to children for violations of their rights. More generally, it requires a sense within the general public that justice is equitably delivered. As laid out in the UN common approach to justice for children ‘*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*’.⁷ In his Guidance Note on the UN common approach to justice for children, the UN Secretary-General recommends that issues pertaining to justice for children, including children’s access to justice, be fully integrated into rule of law interventions from the outset.

Post 2015 agenda – UN Member States agreed in 24 September 2012 to include the rule of law into the discussions of the post-2015 agenda and many voices have expressed that this

⁴ See resolution A/HRC/RES/11/1 of 17 June 2009.

⁵ See HRC resolution A/HRC/RES/13/20 and the joint report A/HRC/16/56.

⁶ Report of the UN Secretary-General entitled “Delivering justice: programme of action to strengthen the rule of law at the national and international levels”, A/66/749, para. 31, p. 10, accessible at : http://www.unrol.org/files/SGreport%20eng%20A_66_749.pdf

⁷ UN common approach to justice for children, March 2008

should include “access to justice” for the most vulnerable groups, including children.⁸ A discussion on “Access to Justice for Children” by the Human Rights Council in 2014 will not only help UN Member States prepare for the post-2015 discussions, it will also ensure that a child rights perspective will be taken into account in this context too.

IV. Focus and objectives

The full-day meeting will constitute the first international forum where all the different national and regional initiatives to improve the access of children to justice will be discussed and used to identify best practices and remaining challenges and share knowledge on improving access to justice for children.

The objective of the day of discussion will be to contribute to the realization of the right of the child to access justice⁹, which is an essential prerequisite for the protection and promotion of all other human rights of children, by:

- Reaffirming existing norms, standards and commitments undertaken by member States to promote and protect the right of the child to an effective remedy and ensure an adequate access to justice for all children;
- Identifying the obstacles and challenges to children’s access to justice and the consequences in terms of realization of their rights;
- Discussing good practices and lessons learnt that can be adopted by States and;
- Recommending measures that States should undertake to guarantee an effective and adequate access to justice for all children, and how the Human Rights Council, other UN bodies and member States can integrate and mainstream this issue into existing initiatives and processes, such as the Post 2015 agenda and the rule of law agenda, to ensure the inclusion of a child rights perspective.

V. Format

The morning panel will focus on measures, procedures and mechanisms that need to be put in place to guarantee access to justice for children, in accordance with international norms and standards. It will examine the necessary elements of a child-sensitive justice system, such as giving primary consideration to the child’s best interests and ensuring that the child enjoys the right to express his or her views freely and to be heard while at the same time guaranteeing the child’s right to protection. The mainstreaming of children's access to justice throughout the UN system, and alternative ways to challenge violations, such as through international and regional mechanisms, will also be addressed.

The afternoon panel will focus on the frameworks, mechanisms and strategies that are needed to empower children, including the most vulnerable, to claim their rights and entitlements when these have been violated or denied, and to seek redress. Such measures include child rights education and awareness-raising, legal advice and representation, and support from knowledgeable adults to children in the process. Particular emphasis will be placed on the obstacles faced by children, especially the most vulnerable, in this context.

⁸ See the UN System task team on the Post-2015 UN development agenda, para. 89-90, p.31, http://www.un.org/millenniumgoals/pdf/Post_2015_UNTTreport.pdf; see also the call made by the Special Rapporteur on Extreme Poverty and Human Rights “for the inclusion of a specific goal, target and indicators on access to justice in the post-2015 development agenda”, accessible here <http://www.ohchr.org/Documents/Issues/EPoverty/AccessJusticePost2015.doc> ; and the pledge made by the International Development Law Organization to “analyse the legal barriers to women’s access to justice with a timetable geared to the elaboration of the post-2015 Development Agenda”, accessible here: <http://www.unrol.org/files/Pledges%20by%20IDLO.pdf>

⁹ Art. 8 of the Universal Declaration of Human Rights; Art. 2, 9, 14 and 26 of the International Covenant on Civil and Political Rights; UN Committee on the Rights of the Child, General Comment 5, CRC/GC/2003/5, 2003.

The duration of the each panel is of 3 hours. The opening addresses and the presentations by the panellists will be followed by an interactive discussion.

Panellists will have 5-7 minutes for their initial presentation and will react to specific questions from the floor. The interactive discussion will be divided into two segments of 60 minutes each (45 minutes for comments and questions from the floor from States, NHRIs and NGOs, followed by 15 minutes for comments and replies by panellists.) The interactive discussion will be followed by concluding remarks from the panellists.

Depending on the number of registered speakers, questions and comments from the floor after the presentation of the panellists may be limited to a maximum of two minutes. States, NHRIs and NGOs are encouraged to intervene in the debate, through questions and comments directly linked to the interventions of the panellists.

Children's voices: During the day, quotes from children on what they think of the justice system, the specific obstacles they face and their access to justice will be displayed on the screen of the Human Rights Council room.

VI. Programme

Opening Statement:

Ms. Flavia Pansieri, UN Deputy High Commissioner for Human Rights

Morning panel (9:00—12:00): International norms and standards on access to justice for children and child-sensitive justice

Moderator: H.E. Ms. Mariangela Zappia, Head of the Permanent Delegation of the European Union to the UN Office and other international organizations in Geneva

- What is “access to justice” for children?, Ms. Marie-Pierre Poirier, Regional Director for Central and Eastern Europe and the Commonwealth of the Independent States, UNICEF
- Child-sensitive judicial proceedings, Ms. Renate Winter, UN Committee on the Rights of the Child
- Children's legal status and the right to representation, Mr. Tom Julius Beah, Head of Programmes, Defence for Children International-Sierra Leone
- Addressing violations of the rights of the child at the regional and international level, Ms. Rosa Maria Ortiz, Rapporteur on the Rights of the Child, Inter-American Commission of Human Rights
- Mainstreaming children's access to justice into the UN system, including rule of law and post-2015 agendas, Ms. Marta Santos Pais, Special Representative of the Secretary-General on Violence against Children

Afternoon panel (15:00—18:00): Empowering children to claim their rights

Moderator: H.E. Ms. Laura Dupuy Lasserre, Ambassador and Permanent Representative of Uruguay to the UN Office and other international organizations in Geneva

- Key challenges to children’s access to justice, Ms. Irene Khan, Director-General of the International Development Law Organization
- Good practices in providing information and support, including legal aid, Maya Bhandari, Representative of Paralegal Committees, Nepal
- Challenges and good practices to children’s access to justice: the case of children in institutional care, Mr. Nikhil Roy, Penal Reform International
- Challenges and good practices to children’s access to justice: the case of migrant girls, children living in extreme poverty and children affected by conflicts, Mr. Abraham Bengaly, International Catholic Child Bureau-Mali
- Non-judicial processes and alternative ways to challenge violations, Ms. Marie Derain, French Children’s Defender

Outcome

The annual day discussion will identify common obstacles and challenges for children to access justice, recommend solutions and ways forward and provide suggestions as to how the issue can be further integrated and mainstreamed in the UN agenda. A summary of the annual day of discussion will be posted on the OHCHR website.
