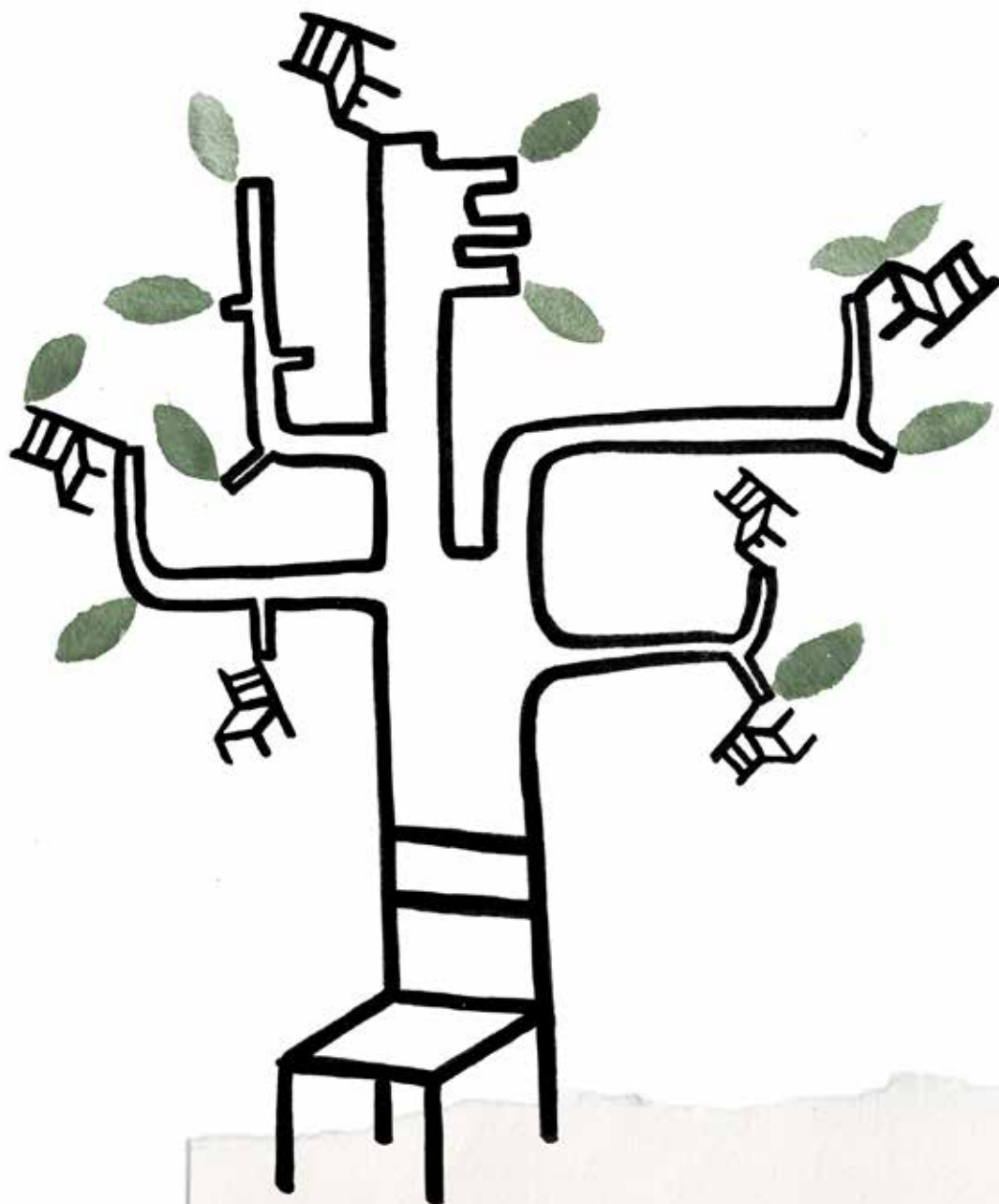


REPORT

Eutopian State



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

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

EUTOPIA

THE WORLD

The status of the CRC

Ratification, incorporation and the courts

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

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

Legal status of the child

Standing

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

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

Right to heard

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

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

Remedies

Domestic courts

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

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

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

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

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

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

Non-governmental organisations

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

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

National human rights institutions

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

Fiji’s Human Rights Commission can receive complaints or act on its own motion and is able to pursue complaints of human rights violations involving groups of people with similar complaints. Thailand’s National Human Rights Commission can bring cases on behalf of victims of rights violations, while Fiji’s Human Rights Commission and New Zealand’s Director of Human Rights Proceedings can do so on behalf of a class of people. Human rights bodies in Scotland, Northern Ireland, Ireland and Slovenia, among others, can initiate court proceedings in their own name without identifying a victim. The Ombudsman of Bosnia and Herzegovina can intervene in cases while Poland’s Ombudsman for Children can institute and then participate in legal proceedings.

Complaints to regional and international bodies

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

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

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

Practicalities

Venue

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

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

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

Legal assistance

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

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

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

Timing

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

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

Evidence

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

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

Privacy

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

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

Resolution

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

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

Appeal

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

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